

## 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

Organised crime  
Foreign nationals  
Illegal migrants  
Immigration

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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)<sup>1</sup> 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.

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1. See [http://www.amnesty.org.uk/uploads/documents/doc\\_20461.pdf](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).

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### I. Introduction

#### Overview of research

The broad aim of this research was to examine the current practice for determining the identity and nationality of foreign nationals (FN) who have been arrested and how to improve the effectiveness of these practices. 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.

#### Policy and research context

The consequences of immigration into Western Europe and North America, and its impact on crime and criminal justice agencies, have been the focus of a number of contemporary studies (e.g. Junger and Polder, 1992; Newman, Freilich and Howard, 2002). While some studies have also made rather controversial attempts to determine the extent to which migrants commit more or less crime than indigenous populations (e.g. Lynch and Simon, 1999; Lee, Martinez Jr. and Rosenfield, 2001), most research has in fact focused on the extent to which certain migrants are at high risk of becoming victims of crime (e.g. Anie *et al.*, 2005; Martens, 1997, 2001; Federal Ministry of Justice, Germany, 2001).

Within the UK, the main focus until quite recently (for researchers and policy-makers alike) has been on the management of formal immigration systems, including the issue of controlling illegal immigration. However, there has also been a growth in attention paid to the

exploitation and abuse of migrants. This has led to a number of significant policy and practice developments, including the establishment in 2005 of the Gangmasters Licensing Authority, the commissioning of research into the scale and characteristics of various forms of human trafficking (e.g. Kelly and Regan, 2000; CEOPS, 2007) and the development of national anti-trafficking operations such as Pentameter (Avenell, 2008).

A parallel concern to that of migrant exploitation and abuse is that of a growth in organised immigration crime groups which both exploit migrants and facilitate illegal migrant flows more generally (Salt, 2000). An early response to this perceived threat in the UK was the establishment in 2000 of Reflex, a multi-agency group tasked with combating organised immigration crime. Part of this group's remit was to stimulate prevention and enforcement activities and to sponsor analytical and research work to help better understand the characteristics of organised immigration crime.

In late 2003, Reflex sponsored a police operation that aimed to develop an understanding of the links between local crime, as typically experienced within a police division, and organised immigration crime. A core part of this operation was to undertake immigration checks on arrestees in one divisional custody suite. While this operation produced interesting findings, it also had a number of limitations.

- The work was conducted in only one police custody suite over a three-month period, thereby limiting ability to generalise the findings.
- In most cases, only those arrestees who freely admitted coming from outside the European Economic Area<sup>2</sup> had their details checked against immigration records.

2. The European Economic Area encompasses the Member States of the European Union (EU) together with Iceland, Liechtenstein and Norway. In addition, Swiss citizens, though not members of the EU or EEA, enjoy similar rights to EEA members, namely a right to live and work in the UK.

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- Checks generally involved submitting basic arrestee details (on paper or over the phone) to the immigration service, rather than using more sophisticated checking processes or technology such as validating identity documentation or checking immigration records via electronic fingerprint submissions.
- Estimates of criminal activity by FNs were based purely on arrest figures. However, many FNs were from distinct ethnic groups, and previous research, particularly into the use of stop and search powers (see MVA and Miller, 2000), has shown that certain ethnic groups are more likely to come to the attention of the police in this way. This may partly be reflected by cultural and lifestyle attributes of certain migrant groups, which mean they have a relatively higher presence in public areas. Thus, broad patterns of arrests may not reliably reflect actual patterns of offending.

The current study was commissioned to build on this work, to better understand how FNs and illegal migrants impact on local policing. The key objectives for this work were:

1. to explore current practices for determining the identity and nationality of FN arrestees and managing cases involving FN arrestees;
2. to explore the impact of enhanced checking processes on the identification of known and suspected illegal migrant arrestees; and
3. to explore the type of offending in which known and suspected illegal migrants are involved at the local and national level.

Given the scope for contention when discussing issues such as immigration, FNs and crime, a few key qualifications are required. The project objectives *did not* encompass making any judgements as to whether migrants were more or less likely to commit certain types of crime than UK nationals. To make such a judgement

one would need, at the very least, baseline estimates for the local population of both legal and illegal migrants. Producing any estimate of the size of an illegal migrant population is fraught with difficulty (see Pinkerton *et al.*, 2004)<sup>3</sup>, and it can be strongly argued that any attempt to produce estimates at the level of local authorities or police divisional areas would be methodologically unsound. What the research was interested in was whether there was a sufficient population of potential migrant offenders being encountered in custody suites so that a pragmatic case could be made for closer police and UK Border Agency cooperation.

The focus on serious and organised crime, and in particular on organised immigration crime, was also driven by a similarly pragmatic and policy-driven concern to explore whether more joined-up working would be beneficial between local police forces, national police agencies (principally the Serious and Organised Crime Agency (SOCA)), and the UK Border Agency. This concern has also been reflected more broadly in new multi-agency approaches to tackling immigration and immigration crime. For example, 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 aimed to create an environment that makes it harder for illegal migrants to live or work in the UK. Regionalisation and the roll-out of Local Immigration Teams (LITs) is also intended to facilitate closer working with other agencies to address local priorities.

Finally, 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)<sup>4</sup>.

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3. Following on from Pinkerton *et al.*, an officially published estimate of the illegal migrant population for the UK as a whole was produced (Woodbridge, 2005).

4. Comparing FN prison populations across the EU is, admittedly, problematic in view of widely varying geography and demography. Based on geography, e.g. the absence of land borders, one might expect the UK to have a lower FN prison population. However, Palidda *et al.* also show that relative to the *resident* FN population in each country, whilst all European states imprison FNs at a much higher rate than their own nationals, the gap between these rates is lower in the UK than in any other EU state.

With these qualifications in mind, the research objectives were pursued through three key research components.

1. A sample of 14 custody suites were visited to determine: baseline practices in terms of police encounters with FNs; procedures used for checking nationality and migrant status; and the nature of offending by FNs.
2. Four of these sites were selected to pilot enhanced checks to determine nationality and immigration status over a three-month period.
3. A full year's worth of prison service data were analysed to examine broad patterns of offending by FNs, with a particular focus on their involvement in organised immigration crime.

The pilot component of this research involved setting up a range of practices and procedures in four sites. The work was developed with support from Reflex, the UK Border Agency<sup>5</sup>, and local police forces. The set-up period ran between mid-2005 and mid-2006, with fieldwork stretching between mid-2006 and early 2007. The early stages of fieldwork coincided with the foreign national prisoners crisis and early findings from this research contributed to some of the subsequent policy and practice responses, notably the development of the National Identification Pilots (designed to improve FN offender identification and the effectiveness of subsequent case handling), and a further set of pilots set up to develop and improve police/UK Border Agency joint working.

Other subsequent developments, whilst independent from this research, have nevertheless complemented its findings and recommendations. For example, Ministers committed to pilot the powers in sections 44 to 47 of the UK Borders Act 2007 that were introduced as part of the response to the foreign national prisoners crisis enabling police (and UK Border Agency) officers to search for and seize nationality documents. Following the successful piloting of these powers in two phases, covering a range of operational environments, Ministers agreed to roll out the powers nationally from 1 April 2010. Although it is too early to measure the national impact, the pilots

found that the powers were effective in ascertaining the nationality of foreign national suspects, including those suspected of serious offences such as murder, rape and assault. Further information on the pilots and the results can be found in Home Office Circular 004/2010<sup>6</sup>.

The UK Border Agency has also implemented a range of other complementary actions designed to improve the practices involved in checking the nationality and migrant status of arrestees. These are referenced in the report where relevant.

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## 2. Research approach

### Site selection

Fourteen sites were selected to take part in the research. It was not possible to draw a statistically representative sample of sites because the information needed to do this was not available. The selection was, therefore, purposively made to ensure the sites encompassed a diverse range of socio-demographic contexts and that custody suites were drawn from a wide range of police forces.

Criteria were devised to ensure selection was as systematic as possible. Police divisions within England and Wales were allocated into bands on the basis of the likely migrant population figure within an area (based on information on the proportion of 'foreign-born' residents from the 2001 Census) and the number of arrests for notifiable offences of persons described as being from a Black or Asian ethnic minority background (based on Home Office Section 95 statistics).

A table was constructed which allowed all police divisions to be placed within one of nine possible cells, based on the two variables above. With the support of the Association of Chief Police Officers (ACPO), 14 sites (including four pilot sites) were successfully recruited

5. At the start of this research, immigration casework and enforcement within the UK was undertaken by the Immigration and Nationality Directorate within the Home Office. Subsequently this department was significantly restructured and renamed. It is now called the UK Border Agency. To avoid confusion, the organisation will be referred to as UK Border Agency throughout this report, but it is important to note that the UK Border Agency organisation is now operationally independent of the Home Office. See <http://www.ukba.homeoffice.gov.uk/aboutus/organisation/> for details.

6. See <http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2010/004-2010/>

**Table 1: Site selection grid**

Percentage of foreign-born residents, 2001		Arrest rate for notifiable offences per 1,000 Black and Asian residents, 2005		
		Low	Medium	High
	<b>Low</b>	● Hinterland 1	● Coastal 2	● County ● <i>Hinterland 2</i>
	<b>Medium</b>	● New Town	● Midland 2 ● Satellite 1	● <i>Coastal 1</i>
	<b>High</b>	● Midland 1 ● <i>Metropolitan</i>	● Midland 3 ● <i>Northern 1</i>	● Northern 2 ● Satellite 2

to participate in the research. The sample had at least one site drawn from each of the cells and each site was based in a separate police force area. Each site was given a pseudonym (see Table 1 above – pilot sites are in italic font).

Additional data on police calls for UK Border Agency support were used to help select the four pilot sites. The characteristics of the pilot sites are included in Annex A.

## Research methods

The research methods will be described in relation to each of the three key research components (the baseline study, the pilot study and analysis of Inmate Information System records).

### i. The baseline study

The baseline study sought to identify existing police practices in dealing with FN and migrant arrestees, and to assess how identity and immigration status were established. The particular issues focused on were:

- the circumstances in which FN arrestees were encountered and arrested;
- police knowledge of immigration rules, relevant procedures and the resources available for undertaking checks;
- the availability of IT systems to facilitate identity checks and to communicate check outcomes (e.g. Livescan);
- police decision-making when determining the nationality or migrant status of arrestees;

- general handling issues when dealing with FN/ migrant arrestees up to the point of charge, and further actions taken; and

- the quality and extent of the relationship between the police and the UK immigration service and the nature of UK Border Agency support provided to the police.

### Fieldwork

Fieldwork was carried out between mid-2006 and early 2007. A mixture of methods was used in each site.

- Focus groups with front-line and custody officers were held in nine sites. Focus groups ranged in size from four to eight officers and ran for an average of one and a half hours.
- Interviews with custody suite leads were conducted in 11 sites. In certain sites this was supplemented with custody suite ‘tours’ that provided the opportunity to observe working practices directly and to talk informally to a wider range of custody officers.
- Where suitable records were available, sites provided details of the number of FN arrestees passing through custody in a given period. Where such records were not available (normally because there was no reliably used ‘nationality’ field in the custody database), focus group participants were sometimes able to provide rough estimates of typical weekly or monthly FN arrestee ‘throughput’.
- Unstructured and semi-structured interviews were carried out with 12 immigration officers drawn from seven enforcement offices.

- Information was also gathered through a mixture of regular meetings, email communications and opportunistic conversations.

Detailed fieldwork notes were kept during custody suite visits and data from these notes were entered onto a spreadsheet and coded according to themes. Some aspects of custody suite performance were rated (e.g. use of Livescan machines). These ratings were based on simple scales (poor, medium and good) and inter-rater reliability testing was undertaken to strengthen the reliability of these judgements.<sup>7</sup>

## ii. The pilot study

Enhanced immigration/nationality checks were piloted in four police custody suites. The objectives of the pilot study were:

- to establish baseline practices for identifying FN arrestees and determining immigration status in these four areas;
- to introduce a set of enhanced processes in each site for determining nationality and migrant status;
- to assess the impact of the enhanced checking processes; and
- to gather additional case details on arrestees to develop a profile of offending and possible links to organised immigration crime.

All the pilots operated during 2006, with formal measurement taking place over three months in each site.

### Fieldwork

The enhanced processes were assessed using the same mix of methods as for the baseline, although formal focus groups were not held.

An additional source of data available in the pilot sites was UK Border Agency performance data on the number of police check requests made and initial 'case outcomes'. Post-pilot interviews were also undertaken with custody suite leads to review how the pilot processes were implemented. In the Metropolitan site, an extensive debrief of UK Border Agency staff was also undertaken, while in the Northern site, a questionnaire was completed by custody staff detailing their perspectives on the pilot and eliciting information on some of the cases that they had dealt with.

### **Introducing enhanced processes for checking nationality and migrant status**

There was significant variation in how enhanced checks were introduced in each site. These variations were dependent upon: local priorities; how custody suites were staffed and supervised; and on the resources available for supporting and undertaking checks. Each pilot site, therefore, presented different barriers and opportunities to this study. While this inevitably led to some inconsistencies across the four sites, the variation in practice was also instructive in terms of examining the efficacy of different approaches.

While the exact management and processes underpinning the enhanced checks varied in each site, the same sorts of checks were being enhanced in all four sites.

- Although all four sites already conducted Livescan checks, the pilot aimed to make these checks more routine. Livescan allows arrestees' biographical details and fingerprints to be checked against offender records held on the Police National Computer, while simultaneously checking fingerprints against UK Border Agency immigration records.
- The pilot also provided each of the sites with EEA 'country check' questions<sup>8</sup> and visual aids that were intended to enable officers to interrogate

7. Inter-rater reliability testing is a form of quality control where a second researcher interprets the same data to come up with his/her own independent ratings. If the ratings of the first and second researcher are the same, or are closely matched, then these ratings may be viewed as reliable.

8. EEA 'country check' questions were trialled prior to the commencement of the research. The check questions were tested on a small sample (N=29) of EEA citizens from 11 different EEA countries. The majority of selected respondents had a strong familiarity with at least one other EEA country aside from their 'home' country (typically they may have lived there for a period for the purposes of work or study). They were asked to answer questions both on their own country and on the EEA country with which they were familiar. Differences in scores were then compared to see if the question sets accurately differentiated between a respondent's scores when answering questions about their own country, from when they answered questions about another country. The average score where respondents answered questions about their home country was 93 per cent, while the average score when answering questions about another country was only 31 per cent.

those arrestees who claimed to come from an EEA country. The questions tested arrestees' basic knowledge of their claimed country of origin. These tools were not intended to definitively determine the veracity of claims, but aimed to help officers determine which claims merited further scrutiny.

- Each site was encouraged to use facilities for checking immigration status out of office hours (in a separate initiative to this research, a new 24-hour UK Border Agency telephone line was introduced just before the start of the pilots). Prior to this, most custody officers were unable to check status outside of office hours.
- Sites were also given additional support (through an office-hours-only telephone line) for checking the status of arrestees claiming to be British-born or British citizens.

Critical to the success of the pilots was ensuring that custody officers were aware of the objectives of the work and the resources available to check migrant status, and had an understanding of the sorts of cases where it would be appropriate to make such checks.

Although the research was reasonably successful in ensuring that enhanced checks were undertaken in each site in appropriate cases, *how* these checks were undertaken varied in line with how the pilot custody suites operated more generally. Likewise, while basic data on check results were available for all sites, there were variations in terms of the additional data that were made available for analysis (see Annex B).

One common approach adopted in all four pilots was the identification of a pilot 'champion' from among local UK Border Agency enforcement staff. These champions helped in raising awareness of the pilot and generally helped to ensure its smooth running by being a point of information for custody officers, and a communication link between custody suites, UK Border Agency enforcement offices, and the Home Office research team. In some sites they also provided training to custody officers.

### **Assessing the profile of arrestees**

In addition to assessing the impact of the enhanced checks, data from the pilot sites were used to develop a profile of offending among FN arrestees and to explore possible links to organised immigration crime.

Data were obtained on the proportion of arrestees who were as follows.

- Legally-resident FNs.
- Illegal migrants (IMs): those individuals whose status had been checked and where there was solid evidence to indicate that they had *no legal entitlement to reside within the UK*.
- Suspected illegal migrants (SIMs): those individuals whose identity or status was never fully established during the pilot, but there were strong grounds for suspecting that they might be an IM. Typically, FNs who could not or would not provide any documentation to demonstrate their legal entitlement to be in the UK might be classed as SIMs. Another example would be an individual claiming to be an EU citizen, who again could not or would not supply appropriate documentation and who failed to answer the EEA check questions satisfactorily.

### **iii. Analysis of prison service data: the Inmate Information System (IIS)**

To examine broad patterns of offending by FNs, as well as their involvement in organised immigration crime more specifically, three datasets were obtained from the Inmate Information System (a regularly updated database which contains records of all prisoners in England and Wales).

#### **Dataset A**

**Dataset A** contained records of every offender received into a prison establishment between January and December 2005. To eliminate double-counting, records of offenders received into prison for bail offences and for breaching the licence conditions for their current offences were removed.

Differences in offending by UK and FN offenders were examined for all those sentenced to imprisonment for one year or more. The analysis was then re-run for those sentenced for two years or more, and then finally for those sentenced to four years or more. The number of unique prison records included in the analysis was 40,106.

#### **Datasets B and C**

These datasets contained two sub-sets of offenders, again drawn from 2005 IIS records.

**Dataset B** consisted of FN offenders who had committed a serious offence (*excluding* organised immigration crime offences), who had been sentenced to two or more years in prison, and who had been removed or deported on release from prison (N=316).

**Dataset C** consisted of FN offenders convicted of organised immigration crime offences (facilitation, smuggling, and people trafficking, including trafficking for sexual offences), who had been sentenced to two or more years in prison, and who had been removed or deported on release from prison (N=13). Due to limitations of IIS offence coding, Sample C was constructed initially through identifying offenders from the courts' database (those convicted), and then locating these offenders in IIS records.

Using both datasets, analysis was undertaken to compare the offending of British and FN prisoners, with a particular interest in FN involvement in serious and organised crime.

This national-level analysis aimed to supplement the findings from the pilot sites by examining broad patterns of offending among FNs who had been *convicted* of a crime (rather than just focusing on arrest data).

### 3. Baseline practices

This chapter outlines the findings from the baseline visits and explores: circumstances of arrest and nature of offending; processes for checking identity and confirming status; disposals and detention; and actions taken post-disposal. Results from the pilots are discussed in Chapter 4.

The main focus of the baseline visits was to explore circumstances of arrest and detention of migrant and FN arrestees and outline existing processes for dealing with FN arrestees within custody suites.

The 14 custody suites varied significantly in terms of their size and capacity. For instance:

- the size of suites ranged from 12 to 97 cells;
- the number of prisoners passing through these cells ranged from approximately 5,500 to over 13,000 per year with 'cell density' (the number of prisoners per cell per year) ranging from 150 to 750;
- correspondingly, the ratio of custody officers to prisoners ranged from approximately 200 prisoners per officer per year to over 750;<sup>9</sup>
- these differences also extended to the throughput of FN prisoners – the percentage of individual arrest records associated with an FN arrestee ranged from less than two per cent to 17 per cent.<sup>10</sup>

These figures illustrate the considerable difference in the pressures experienced by custody suites. However, there was no simple read-across between suites which might be seen as 'under pressure' and the quality of practice in dealing with FN and migrant arrestees. Indeed, the custody environment and processes proved far more complex and heterogeneous than anticipated. This means that any central initiatives which impact on the custody role need to take careful account of this complex terrain.

### Circumstances of arrest and detention and types of offending

The extent to which FN throughput in custody suites related to immigration matters rather than criminal charges varied considerably by area. However, it should be noted that in every site there was a regular flow of arrestees who were picked up purely on the basis of their immigration status. The two most common circumstances of arrest were as follows.

- Traffic officers picking up IMs on the sides of major arterial routes, in service stations, or on industrial estates. Small groups would typically claim to have been dropped off by a lorry. Although such 'lorry drops' had been encountered by officers in 13

9. These figures must necessarily be viewed as rough approximations, as the custody role was divided up in different ways in different sites between arresting officers, custody officers and various support staff. Producing an exact staffing figure was therefore problematic.

10. These estimates included, in most sites, immigration arrests, bail returns and multiple arrest records against one individual charged with multiple offences. The figures reported for the pilot sites provide a better indication of FN throughput in terms of individual incidents of arrest for criminal offences (e.g. discounting bail returns and multiple arrest records relating to the same arrest).

sites, the number of these 'drops' was perceived to be declining in some sites (N=3). Lorry drops occurred even in quite provincial areas, as IMs would disembark at a service station or in a lay-by, sometimes when drivers took their first rest break after arriving in the country.

- Immigration officers or joint immigration/police teams bringing in SIMs arrested as part of targeted operations. Eleven sites regularly accommodated people arrested in such operations, which were normally focused on specific industries such as construction, catering or casual agricultural labour.

In sites where figures were available, a significant proportion of FN detentions were connected with criminal investigations.<sup>11</sup> However, it is important to note that, during the research, officers made no judgement about whether FNs committed more or fewer of certain types of offences than British nationals. Officers merely identified the most common reasons for which FNs were arrested.

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.

## Patterns of offending by foreign nationals

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. Other offence types mentioned included the following.

- Driving offences, including drink-driving and offences relating to driving documentation (e.g. driving an incorrectly insured vehicle or driving with an invalid licence). These were mentioned in every site.
- Using or being in possession of forged driving licenses, forged (or fraudulently obtained) insurance documents, and counterfeit passports and ID cards

were all commonly encountered. Many of these documents were seen in the context of traffic policing or through banks alerting the police to a suspicious transaction.

- Gang-related deception was an issue in a number of sites. This tended to involve short-term spates of credit-card fraud (using counterfeit and stolen cards) and distraction offences (typically 'bag-dipping' and various cash-point scams) associated with specific FN groups.
- Counterfeit goods sales were identified as being a notable problem among FN groups in two sites.
- Drug-related offending among FN groups varied in scale between sites. While some association between low-level dealing and gangs with FN members was mentioned in a couple of big urban sites, in other sites drug dealing and drug supply were largely associated with well-established indigenous groups. However, interviewees from seven sites mentioned recent or current problems with cannabis cultivation, operated by FN criminal gangs.
- More serious (often weapons-based) violence occurring either between different FN groups, or different factions within a single FN group, was mentioned by interviewees from four sites. Conflict sometimes revolved around political affiliations or centred on gang-related rivalry.
- Domestic violence was another offence type in which FNs and IMs were reportedly involved.

One characteristic of FN offending that was mentioned in the majority of sites visited (nine in total) was that at least some offending was associated with individuals travelling in from outside the force area. This style of offending was particularly associated with fraud and deception-based offences, as well as drug supply offences. However, officers admitted that in many cases they simply did not know whether a particular series of offences were cross-border or not. Such judgements were reportedly difficult to make, as it was difficult to establish the identity and addresses of many FN suspects (see below).

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11. In every site where figures were available (N=6), the majority of FN arrests were for non-immigration-related matters. However, there were appreciable differences between sites. For example, approximately one-third of all FN arrestees in the 'Coastal 1' site were detained for immigration matters, compared to seven per cent of arrestees in the 'Northern 1' site.

## Hiding identity and impeding investigations

There were a number of tactics reportedly deployed by some FN arrestees to impede attempts to establish their identity either on the street or in the custody suite, or to impede criminal investigations against them more generally. Some of these tactics were specific to immigration offenders while others were also employed more generally by FN offenders during criminal investigations. Without going into detail, tactics tended to involve:

- deceiving officers through miscommunication or feigned incomprehension;
- using a range of counterfeit or fraudulently obtained documentation;
- presenting falsified details relating to nationality or migrant status to deflect or deter UK Border Agency scrutiny or action; and
- those who facilitated illegal entry into the UK briefing migrants on how and what to claim if apprehended by the police.

## Checking identity and immigration status

There was a wide range of options and opportunities available to officers for checking immigration status. These ranged from the point of arrest through to the point of release, bail, or charge. The main types of procedures and resources that could be used to check someone's status included the following.

- *At the point of an individual being questioned or a suspect being arrested.* As well as asking general questions to determine identity, an officer conducting a formal stop and search might request to see identifying documentation. Officers may also be able to question non-English-speaking individuals using interpretation services that are available in certain forces via police radios. Exceptionally, some officers may have portable 'Quick Check' machines that will allow them to fingerprint and check the claimed identity of an individual.
- *When a suspect is being booked in at the police station.* When arrested, a suspect may again be questioned

and searched for documentation. If an arrestee does not speak English, officers can access interpreters, usually by telephone. Suspects can be fingerprinted and photographed and if a custody suite has a 'Livescan' machine, an immediate identity check can be made. Checks can automatically be made against PNC records and there is an optional resource to simultaneously check the same prints against UK Border Agency databases.

- *When a suspect is being held in custody.* If an immediate identification was not undertaken, fingerprints and other details can be submitted and checked against the PNC and UK Border Agency databases. Critically, there may now be time for an arrestee's details and documentation to be scrutinised more thoroughly by the nearest UK Border Agency Local Enforcement Office (LEO), and/or through immigration officers in the custody suite. Arrestees claiming UK or EU status may have their claim checked either against UK administrative records (such as electoral records or data on births, deaths and marriages), or police or immigration officials may approach EU embassies for confirmation of an individual's nationality. If immigration officers physically visit a custody suite then they may also be able to check an arrestee's fingerprints against UK Border Agency databases using a 'Quick Check' machine. Finally, police officers may be able to initiate a search of an arrestee's accommodation to find identity documentation, or may request friends or family members to bring such documentation to the police station.

Checking processes were generally strongest in sites where dedicated custody officers dealt with booking in and fingerprinting. Conversely, checking processes were weakest in sites where arresting officers had a more significant role in terms of fingerprinting offenders and requesting immigration checks. This was, in part, because the extent of their duties in relation to determining identity and immigration status was often unclear. Poor handover between arresting officers and custody officers could also potentially result in a discontinuity of focus in case management.

Table 2 provides an overall rating for 12 of the 14 sites in terms of the quality of their checking processes and rates distinct aspects of that overall performance. Insufficient information was available to reliably rate performance in two of the sites.

**Table 2: Check quality ratings\***

Site	General check	Further check	Livescan	EU check	UK check	Overall rating
<i>Northern 1</i>	2	3	3	3	3	Poor
<i>Metropolitan</i>	2	3	3	2	2	Moderate
<i>Coastal 1</i>	2	3	3	3	3	Poor
Hinterland 1	2	3	2	2	2	Moderate
<i>Hinterland 2</i>	1	1	1	2	3	Moderate
New Town	2	2	3	3	3	Poor
Coastal 2	2	1	1	2	3	Moderate
Midland 1	1	2	1	2	1	Good
Midland 2	2	3	2	3	3	Poor
Midland 3	2	3	2	3	3	Poor
County	2	2	2	3	3	Moderate
Northern 2	2	2	2	3	2	Moderate
<b>Average rating</b>	<b>1.8</b>	<b>2.3</b>	<b>2.1</b>	<b>2.6</b>	<b>2.6</b>	

\* Ratings: 1 = Good, 2 = Moderate, 3 = Poor. Italics indicate pilot sites. Please note that these ratings are relative judgements, based on the coding and comparison of qualitative responses across sites.

- **‘General checks’** refers to the propensity of arresting officers and custody officers to question an arrestee’s nationality and immigration status and submit their details to the UK Border Agency if appropriate.
- **‘Further checks’** refers to an officer’s knowledge, and use of, additional options for checking an arrestee’s identity and immigration status, such as using UK Border Agency resources for checking the authenticity of ID and travel documentation.
- **‘Livescan’** refers to how consistently and well Livescan was used in the custody suite to establish identity, most commonly through submitting prints to be searched against immigration records.
- **‘EU’ and ‘UK’ checks** refers to officers’ awareness of the possibility that some claims to EU and UK citizenship might be false and their propensity to act on these suspicions.

Only one of the 12 sites ranked here was assessed as having overall ‘good quality’ checking processes, with a further six being ranked as ‘moderate’ and five as ‘poor.’

EU and UK checking processes were most likely to be rated as moderate or poor across all 12 sites. The ‘further check’ processes and Livescan use were the two

areas that demonstrated most variation in performance across sites.

### **Why and when checks would be initiated**

The likelihood of an individual’s migrant status being questioned varied considerably both between and within sites. Results of interviews and focus groups suggested that these differences were due – in part – to varying levels of awareness of immigration law and variations in officers’ general perceptions of their own role in enforcing it.

The sorts of circumstances that led officers to believe that nationality and migrant status might be an issue (aside from the circumstances of arrest) included:

- poor English skills;
- no identifying documentation;
- poor quality documentation; and
- inconsistencies/lack of clarity in response to questions about identity or residency.

Conversely, there were a number of circumstances that could result in officers failing to check an individual’s status effectively, either before or after arrest.

- An arrestee being perceived as compliant or non-confrontational.
- An arrestee who was familiar to officers through repeated encounters over a period of years was (at times wrongly) assumed to have a legitimate immigration status.
- An arrestee's details had previously been taken and logged on the PNC. Generally, these details were accepted, unless there was substantive evidence to hand to cast doubt on the accuracy of the record.
- Arrestees who looked like they belonged to a well-established local ethnic minority or FN population could escape scrutiny.
- In some sites there was a marked reluctance to challenge arrestees who claimed to be British, even though officers suspected that the claims might be false. This reluctance was commonly ascribed to the fear that any such challenge could result in an accusation of racism.
- There was some confusion over which nations currently constituted the EEA or the EU. In the majority of sites, claims to EEA citizenship were not challenged.
- Officers were often unable to form a sound judgement about the likely credibility of identity or travel documentation presented to them, and did not always initiate further checks when appropriate.

### **The processes of identity checking**

If status checks were undertaken, the first action was to check a suspect's fingerprints and other personal details against police and UK Border Agency records using Livescan. However, while most sites reliably checked police records before a prisoner was charged or released, only three sites claimed to routinely check UK Border Agency records at the same time, even though this could be done simultaneously through submission of the same data. This was largely because Livescan submissions were automatically checked against PNC data, but an obscure 'options box' had to be selected for the same submission to also be checked against UK Border Agency records. The majority of officers were either unaware of this box or failed to use it.

Steps have since been taken to improve police practices in cross-checking Livescan submissions against UK Border

Agency records. In April 2010 ACPO undertook to revise the guidance on checking non-EU/EEA nationals against the Immigration and Asylum Fingerprint System (IAFS) (due for publication in autumn 2010).

Even in cases when a Livescan submission was made, there was no guarantee that the police officer would take appropriate action (contacting the immigration service with the reference number) based on the result. Additionally, if results came back showing 'no trace', then officers would sometimes assume that the arrestee's immigration status must be unproblematic. This was not always the case, as IMs would not be on the system unless they had already come to the attention of the UK Border Agency.

Where Livescan was used correctly, police officers were quick to appreciate its benefits, particularly the 'squeeze' it placed on offenders in terms of their ability to pass off a false identity. The benefits of checking UK Border Agency records specifically included the ability to remove long-standing and persistent criminals who police had assumed were legally resident, and providing the correct details for individuals who had false details recorded on the PNC. It would also sometimes highlight an address associated with an offender which was unknown to the police.

If Livescan was not used, then immigration checks would typically only be carried out if the Local Enforcement Office (LEO) was contacted.

### **Contacting the immigration service and options for conducting further checks**

If an officer still had questions over the immigration status of an individual after fingerprinting him/her and conducting a Livescan check, then the next step was to contact a UK Border Agency LEO. The majority of custody officers in all the sites knew how to contact the UK Border Agency and how to access details of their nearest LEO. It was also encouraging that 12 sites used the new 24-hour national hotline number. However, an awareness of these options did not necessarily translate into the use of this resource in every appropriate case. There were three main reasons why referrals did not occur.

- The decision to refer an arrestee to the UK Border Agency was often mediated by officers' judgements about whether it was worth their while doing so (i.e. whether they felt that the UK Border Agency could/would act on the referral or not). While these decisions were sometimes based on previous

experience, the majority of officers did not have enough knowledge of immigration rules and current removals policies to make a reliable judgement in every case.

- If a custody suite was very busy, officers might not always find time to contact the LEO, or they might refer the individual too late, so that the arrestee had been bailed or released without charge before the UK Border Agency had a chance to check that person's status.
- In some instances, handover arrangements between shifts meant that checks were not initiated.

### **Other means of identifying status**

Even if an arrestee's details were not found on existing immigration databases, other options were available for ascertaining someone's status. For instance, the LEO could offer expertise in authenticating documentation found in the arrestee's possession. However, while police officers were often aware of these facilities, they sometimes felt that they did not have sufficient knowledge to determine whether a document might be worth checking, a view that was supported by almost half of the immigration officers interviewed. Consequently, very simple forgeries could escape attention.

Another option for determining identity was to undertake a search of an arrestee's address. However, in five sites there was uncertainty about whether they were legally empowered under the 1984 Police and Criminal Evidence Act (PACE) to conduct searches solely to obtain evidence relating to identity or immigration status. This gap in powers was subsequently closed with the provisions in sections 44 to 47 of the UK Borders Act 2007 that enable police officers to search for, and seize, nationality documents where they suspect that an arrestee is not a British citizen. As set out above, the pilots found that the powers were effective in ascertaining nationality and Ministers agreed their national roll-out from 1 April 2010.

Officers from only one site knew that they could validate claims that an arrestee came from the EEA by submitting a query to the relevant embassy. However, this practice appeared to be largely concentrated in cases within the Greater London area (presumably due to the geographical proximity of the LEOs and embassies). Even in the site where these checks were made, immigration officers reported that it was sometimes difficult to get an answer from embassies before the police were

legally obliged to release the arrestee and in some cases, embassies were reportedly reluctant to help at all.

### **The UK Border Agency response to police requests for assistance**

Although the provision of support services by the UK Border Agency varied between sites, the main practical ways in which LEOs assisted police officers were as follows:

- checking arrestees' details against UK Border Agency databases to help determine their identity and status;
- assessing the authenticity of identity, travel or immigration documentation held by an arrestee;
- interviewing arrestees to make further enquiries about their immigration status;
- providing further assistance with the handling of FN and IM prisoners, such as providing advice on issuing IM3 forms (which allow judges to recommend deportation when an FN offender is given a custodial sentence of a year or more), or IS91 forms (which allow the police to detain an individual on the basis of his/her immigration status); and
- either recommending an arrestee's release or his/her release on bail (normally with reporting conditions if they were an IM or an asylum seeker) or arranging for their secure transfer to immigration detention facilities pending their removal from the UK.

In terms of the overall standard of support provided by LEOs, the perception of police officers in a small number of sites (N=4) *at the time of the research* was that the LEOs' performance had deteriorated in the previous few months, and that the strength of their relationship with the police had weakened over the same period. Immigration officers connected to three of the pilot sites also supported these observations. They attributed this to a move within the UK Border Agency towards conducting more targeted enforcement work. However, in spite of this perceived deterioration, officers were generally quite understanding about the constraints that immigration officers worked under (in particular, resource constraints) and the difficulties that confronted them in achieving successful case outcomes.

One of the main criticisms of LEO practices was the limited extent to which immigration officers would attend custody suites to interview prisoners during their initial period of detention. In ten sites, it was reported by police interviewees that immigration officers would generally not attend when a case was classed as 'no trace' (i.e. when no record for the individual could be found). However, in four sites police respondents stated that their LEO would attend 'no trace' cases on a more regular basis. Furthermore, it was reported that immigration officers would generally only attend if the individual in custody represented a clear 'performance win' for the UK Border Agency. Invariably, this appeared to reflect attendance being driven by pressure on immigration officers to focus their efforts on meeting their key performance targets. At the time of the fieldwork, this target was focused on removing failed asylum seekers. Respondents in seven sites claimed that cases which were: overly complicated; involved lorry drops; or involved individuals who would be problematic to remove (due to technical, legal or humanitarian considerations relating to returning them to their country of origin) were very unlikely to prompt a visit from an immigration officer.

Another issue raised was that immigration officers were sometimes unable to attend the custody suite until after an arrestee had been released, which was frustrating for police officers. Equally it could be frustrating for LEO staff if they attended the custody suite only to find that the offender had been released before the legal time limit had expired.

## Disposals and detention

There were generally four possible courses of action for dealing with FN arrestees whose immigration status remained uncertain or who had been proven to be in the UK illegally.

- If the arrestee was being held for a serious criminal matter, the police could detain him/her until his/her appearance in court, in the expectation that the arrestee would be held on remand. This gave the police and the UK Border Agency the opportunity to deal with the arrestee's migrant status later (whether at the end of the court case or – if sentenced to prison – at the end of that sentence).
- The UK Border Agency could instruct the police to release the offender or to release the offender

on bail once any criminal charge had been dealt with. This was a common outcome in all the sites visited. However, some respondents were sceptical as to the value of these practices, especially when arrestees were bailed to their home address, as it was perceived that many of these individuals would not meet their bail conditions.

- The UK Border Agency could serve an IS91 form and instruct the police to hold the arrestee in the custody suite pending his/her transfer to a UK Border Agency detention centre. While some detainees were picked up for transfer within 12 hours, others remained in police custody, normally for no more than one to two days.
- Finally, if the individual was a new migrant who had not yet made a claim to enter or stay in the UK, then they would typically be released and told to report either to the LEO or to one of the two main immigration-case-processing centres (in Croydon or Liverpool). The extent to which the individual's onward journey was facilitated varied between sites: in ten sites individuals were released with directions to the relevant immigration office; in three sites taxis were provided; and in one site rail warrants were issued. Both police and immigration officers in 11 sites were sceptical of the efficacy of these practices, as it was perceived that many of these individuals would be unlikely to voluntarily report to the relevant LEO.

### ***The impact of the detention process on police and UK Border Agency relations***

The use of police custody suites to detain arrestees because of their immigration status was a significant source of tension between the police and the immigration service in nearly every site visited. Immigration detainees reportedly took up valuable custody space, and officers often felt frustrated by the lack of timely and clear UK Border Agency communication relating to transfer and detention issues.

The release of detainees on the condition that they should report to an immigration centre also caused concern for police officers in four sites. Some custody leads thought that these arrangements amounted to a detainee being 'transferred'. If that detainee came to harm during the transfer, then some custody leads perceived that they would be held to account for this as they would still have a duty of care for that individual.

Officers in every site demonstrated concern about the welfare of detainees. Looking after the physical well-being of individuals during their detention was the principal priority of officers in nearly every custody suite and rigorous risk assessment processes were typically followed. It emerged that immigration detainees were more likely to be categorised as being 'at risk' (e.g. because they had particular health issues or were considered to be at risk of self-harm) and therefore required more frequent observations and reviews. Thus, while immigration detainees were generally perceived as being cooperative and non-confrontational, in seven sites custody leads perceived them to be a greater burden on officers in terms of the resources required to look after them while in custody.

### **Post-disposal: updating systems, case progression and tracking outcomes**

Regardless of the final disposal outcome, a critical aspect of managing FN and immigration cases effectively was the proper implementation and recording of immigration checks and case details, on both custody suite systems and the PNC.

First and foremost, if an offence had been committed, accurate biographical data needed to be captured on the police custody suite system and on the PNC. However, in five of the 12 sites where detailed information was provided, the custody suite IT systems had no field – or no mandatory field – for recording an arrestee's nationality. In these sites, place of birth was used as a proxy indicator for possible FN status. In the remaining seven sites there was a mandatory nationality field. However, if an officer failed to complete this field, the system would usually automatically insert 'United Kingdom' as the default status. While one of these custody suite systems did alert officers to any mismatch between the given place of birth and the given nationality, it would appear that officers still often failed to record nationality accurately. Subsequent improvements now mean that in both the case preparation and custody applications the recording of nationality is mandatory, with the ability to select unknown if required.

Of the seven custody suite systems that had a nationality field, two could be classified as 'through systems', where custody suite information was electronically linked up with case information used by investigating officers, Crown Prosecution Service (CPS) lawyers and the courts. These systems had clear added value in that

information on nationality and immigration status could be automatically carried forward as the case progressed through the criminal justice system. Encouragingly, the stand-alone systems being used in the five other sites were all due to be upgraded to 'through systems'.

The quality of PNC submissions was not systematically examined during this research. Another area of uncertainty was the extent to which officers would log false nationality claims or other attempts by arrestees to pass themselves off as a different person, a different nationality, or a person with entitlement to be in the United Kingdom. It appears that this was largely left to the initiative of the responsible officer.

### **Issuing IM3 forms ahead of court appearances**

Once there was enough evidence to charge an FN with a criminal offence, one option available to officers was to issue an IM3 form to the arrestee at the point of charge. An IM3 form permits judges to recommend deportation of a convicted FN offender at the end of a custodial sentence.

The baseline visits found that IM3 forms were generally not well used at the point of charge; in the majority of sites, most officers had only limited (or no) awareness of the forms and how to use them. Issues included: lack of knowledge about how to obtain a form; lack of clarity about who was responsible for issuing the form; and lack of understanding about when a form should be issued.

Some respondents (N=5) who had worked in the custody suite environment for a comparatively long period recalled a time when IM3 forms were issued more routinely. Respondents attributed the decline in use to a reduction in the support provided by the UK Border Agency; in the past, while forms had been issued by the police, this had been done largely at the instigation of immigration officers. However, it should be acknowledged that, during the fieldwork visits, more IM3 forms were starting to be issued, largely as a result of the issues highlighted during the foreign national prisoners crisis.

### **Tracking outcomes**

There were also a number of problems identified with tracking the outcome of individual cases. These cases were principally those in which police – when advised by the UK Border Agency – released individuals who had been arrested, but not charged with an immigration offence. When this happened, there was often no record retained that would alert the police if they encountered

that individual again. Respondents in two sites were also uncertain about whether the UK Border Agency retained any details of these individuals either.

Police respondents felt that it would also be useful if they were informed of the outcome of other immigration cases, in particular those cases where individuals had also committed a criminal offence. The importance of communicating case outcomes related not only to informing the police about whether an offender was still 'at large' but also in providing them with details about whether these individuals had the right to reside within the UK.

## Summary

There are a number of different points during arrest and charge when a suspect's identity and immigration status can be checked and a number of different people can request or undertake these checks (including arresting officers, custody officers and immigration officers). The baseline visits found wide variations between sites in terms of: how (and to what extent) FNs and IMs were encountered by the police; what actions were taken to try to establish arrestees' identity and nationality; and what happened as a result of these checks.

Processes were generally strongest in sites where dedicated custody officers undertook checks, as this provided clarity about roles. It was acknowledged that checking processes would be further strengthened if more routine support was provided by the UK Border Agency through LEOs, although the resource constraints under which the UK Border Agency was operating were acknowledged.

Working relationships between the police and the UK Border Agency would be strengthened by improved communication about the detention and transfer of detainees and improved communication of case outcomes.

Better and more consistent recording of information (on both police and UK Border Agency databases) would also help improve the management of cases involving FNs and IMs and make it easier to deal with those individuals who repeatedly come to the attention of the police and UK Border Agency.

## 4. Pilot site findings

This chapter starts with an exploration of the impact of the enhanced checking processes in the four pilot sites and the actions taken by the UK Border Agency once migrant status was determined. Patterns of offending by FNs and IMs in the pilot sites are examined and the links to organised immigration crime explored. Finally, national-level data from the Inmate Information System (IIS) are analysed to examine the involvement of FNs in different types of offending.

Figures presented here relate to a three-month reporting period in each site, although enhanced checking processes were in fact 'bedded in', and continued to operate either side of these reporting periods. The three-month reporting periods differed in each site, although the overall fieldwork period fell within the period between March 2006 and January 2007.

### Impact of enhanced immigration checks

The introduction of enhanced checking processes led to a marked increase in both the level of checks undertaken in each pilot site, and in the number of IMs or SIMs identified.

The number of individuals who had their details checked by the UK Border Agency across the four pilot sites increased by over 400 per cent, from 129 checks in the three months prior to the pilots<sup>12</sup> to 650 checks in total across the four sites during the pilots. This resulted in the number of IMs/SIMs identified also increasing substantially from 73 to 250, an increase of 242 per cent, across the four pilot sites. The smallest increase in numbers of IMs/SIMs identified was in Hinterland 2, the site with the smallest FN and migrant populations. The site with the biggest increase with 300 per cent was Metropolitan, where immigration officers were embedded into custody suites as part of the pilot, helping to reverse the site's previously limited capacity for checking migrant status.

12. To generate a more robust pre-pilot figure that would be less subject to any possible short-term trends, figures for the previous six months were taken then halved to provide an 'average' three-month pre-pilot estimate.

**Table 3: Arrests for non-immigration offences in the pilot sites, during the three-month pilot period**

Pilot sites	All arrests	Total FN arrests	% FN arrests	Total IM/SIM arrests	% IM/SIM arrests
Metropolitan	<b>1,734</b>	435	25	135	8
Hinterland 2	<b>2,789</b>	27	1	1	0.03
Coastal 1	*	185	*	85	*
Northern 1	<b>4,140</b>	205	5	12	0.3

\* Figures not available

The proportion of all arrestees who were identified as being FNs and IMs/SIMs in each site, *excluding* individuals arrested for their immigration status, is outlined in Table 3. The FN figure includes both legal FNs and IMs/SIMs.

These figures need to be treated with some caution, not least because the figures in each site were generated through distinctly different methods for conducting checks. Consequently, these figures cannot be extrapolated to give some insight into the overall national picture. However, the figures do give a sense of the considerable variations in the numbers of FN and IM/SIMs coming to the attention of the police at the local level.

### Action taken by the UK Border Agency once migrant status has been determined

The Metropolitan pilot site provided the most detailed information on arrestees' immigration status and on case immigration enforcement outcomes. Table 4 shows that the 135 IM/SIMs identified in this site during the pilot resulted in 21 successful enforcement outcomes.

Immigration officers working in this site claimed that the number of enforcement outcomes should have been a lot higher given the characteristics of the caseload, and suggested that such outcomes were constrained by a lack of immigration service detention space. For instance, in the first month of the pilot, 191 detailed checks were undertaken resulting in the identification of 20 IM/SIMs who could potentially be removed. However, only six of these individuals were either removed or detained

**Table 4: Case breakdowns and case outcomes in one pilot site (Metropolitan)<sup>13</sup>**

Status	Number of cases	Case outcomes*
Failed asylum seekers	32	6 removed 2 detained 1 due to be removed
Illegal entrants	23	4 removed 2 removed to third country
Overstayers	22	6 removed
Unknown status	58	
<b>Total</b>	<b>135</b>	<b>21</b>

\* Forty IM3 forms were also issued.

pending removal; the others were all given temporary release with reporting conditions. The detention situation worsened in the remaining two months of the pilot (in part due to a fire at one of the main detention facilities in November) and in the final month only two removals proved possible.

In spite of these constraints on removal it should be noted that the productivity of enforcement officers in the Metropolitan site (who were embedded as part of the pilot) was high compared with other sites where enforcement officers were not embedded – at least in terms of the proportion of FNs whose status was checked and determined.<sup>14</sup> Moreover, in terms of case outcomes, in the three months *prior* to the pilot the use of IM3 forms had stopped in the Metropolitan site and

<sup>13</sup> While enforcement outcomes are not available for the Coastal 1 site, it is worth noting that officers here arrested a similar proportion of failed asylum seekers, half of whom (N=17) were arrested for non-immigration offences.

<sup>14</sup> It should be noted that embedded officers and custody staff reported other beneficial outcomes associated with their work, notably the increased opportunity to identify and develop intelligence opportunities on the back of arrests. This included in one instance the identification, on the back of an arrest for domestic violence, of a victim of forced marriage.

there was reportedly not a single successful enforcement outcome associated with that custody suite.

Finally, the Metropolitan pilot site undertook the most systematic scrutiny of arrestees who claimed to be EEA citizens, including undertaking embassy checks. During the pilot there were 123 arrestees who claimed to come from EEA countries (excluding the UK). Whilst immigration officers were not able to fully check all of these claims prior to individuals being released, 11 claims (9%) were shown to be false. Similar estimates were not available for the other sites, and in view of the urban nature of the Metropolitan site, care needs to be exercised in extrapolating this estimate to other areas.

### Patterns of offending by FNs and IMs

The types of offences for which FN and IM/SIM offenders were arrested were analysed for three of the pilot sites. The fourth site, Hinterland 2, provided too few cases to merit inclusion. As patterns were broadly similar across the three sites<sup>15</sup>, the figures were combined and are presented in Table 5.

The analysis was based on records of just under 6,000 arrests. Only 'unique' arrest records were analysed (duplicate and/or multiple records of the same offence committed by the same individual at the same time were removed).<sup>16</sup> It is important to note that the definitions of the crime categories are necessarily subjective. In particular, the offences included in the category of 'serious crime' are based on the authors' judgement of what might commonly be viewed as a serious crime. The crimes included in this category are listed in Annex C.

Significant differences between the groups included the following.

- A higher proportion of FNs, and in particular IM/SIMs, were arrested for serious offences, with 19 per cent of all IM/SIM arrests being for one of these offences compared to just over ten per cent of arrests of UK citizens.

**Table 5: Proportion of UK citizens, legal FNs and IMs/SIMs arrested for different crime types in three pilot sites**

Crime category	Percentage arrested		
	UK citizen	FN (legal only)	IMs/SIMs
Acquisitive crime	21	18	18
Serious crime	10	16**	19**
Motoring offences	6	18**	10*
Misc. crime***	14	15	15
Deception/fraud	2	2	6**
Violence/robbery	39	26**	28**

\* Statistically significant at the 0.05 level.

\*\* Significant at the 0.01 level. Kruskal Wallis H Test.

\*\*\*Misc. crime includes minor drug offences and criminal damage. Court- and bail-related offences were excluded from the analysis due to differences in recording and coding across the three sites.

- FN and IM/SIM offenders were significantly more likely than UK citizens to be arrested for motoring offences.
- IM/SIMs were also more likely than UK citizens to be arrested for deception and fraud.
- Conversely, FNs and IM/SIMs were less likely than UK citizens to be arrested for offences of violence or robbery.

### Connections to organised immigration crime

Linking individual cases from the pilot sites to organised immigration crime (OIC) proved difficult. The Coastal 1 pilot site provided the best opportunity for this to be done, as researchers were given access to full PNC police records for all confirmed and suspected FN arrestees, and were also subsequently given access to a set of UK Border Agency databases that held a range of information

15. Figures were similar in so far as the spread of offending across different offence categories *within each group* (UK, FN, IM/SIM) were very similar. Two of the three sites had complete data on UK and legal FN offending, and two of the three sites had complete data on legal FN and IM/SIM offending. Only Metropolitan had data covering all three groups.

16. There are limitations to this approach (for instance an arrestee may have had multiple arrest records because he/she had been accused of a single violent act that involved three complainants, which might potentially have led to three criminal charges at a later date), but as it proved impossible in practice to identify and separate out genuine 'crime series' of this type from duplicates that were simply administrative 'artefacts,' it was decided that removing these sorts of multiple records would provide the most reliable picture of the sorts of criminality that arrestees were suspected of.

on those arrestees from the site who were known to the UK Border Agency.

For the purpose of this research, offenders in the Coastal I site who were intercepted arriving clandestinely in a group, who had counterfeit or forged identity/travel documentation, or who admitted making some use of OIC resources were marked as having a possible connection to OIC.

During the three months of the pilot there were 41 cases involving FN arrestees (18% of all FN arrests at this site) where it was possible to make a connection to OIC in some form. Thirty-three of these were assessed as being IMs (43% of the total number of IMs). The most common possible connection to OIC was having made a clandestine entry into the UK in a group. In addition, five individuals were arrested specifically for OIC offences, including:

- three EU citizens charged with assisting with unlawful immigration into an EU state;
- one non-EU citizen charged with assisting with unlawful immigration into an EU state; and
- one non-EU citizen charged with arranging the trafficking of someone into the UK for sexual exploitation.

While the majority of arrestees who had some connection to OIC were arrested on the basis of their immigration status, or because they had committed an immigration offence, eight individuals (19% of arrestees linked to OIC) were arrested for other matters.

The majority of the 33 IMs where a possible connection to OIC could be made were arrested at – or near – a major port of entry. It would, therefore, be difficult to extrapolate from this figure to the wider population of IMs (many of whom enter the UK legally and then overstay). Consequently, the research is not able to confirm or qualify pre-existing law enforcement estimates<sup>17</sup> on the extent to which organised crime facilitates illegal immigration.

## **Potential for enhanced checks to improve intelligence gathering on OIC**

Enhanced immigration checks could potentially be a useful way of developing intelligence on OIC.

In the Coastal I site there were cases involving attempted entry with fake residency cards, counterfeit visa stamps and counterfeit passports. Two individuals admitted using an agent to gain entry, while nine individuals had in their possession a mixture of forged, counterfeit and fraudulently obtained documentation. There was evidence of individuals obtaining documentation pre-entry, but also obtaining sets of false documentation post-entry (either to legitimise status once a visa had expired, or to replace fake documentation that had already been seized).

The enhanced checking process, including more thorough interviewing of arrestees, could therefore be a means of gathering important intelligence on: where and how forged and counterfeit documentation can be obtained; how OIC groups are structured and how they operate; and methods of illegal entry. Importantly, as a recent report by the Anti-Trafficking Monitoring Group (2010) highlights, some people ostensibly arrested for serious or organised crimes, may in fact be victims. For instance, individuals arrested for cannabis cultivation, may in some cases be trafficked individuals forced into the role of a cannabis 'gardener'. Proper scrutiny of such arrests not only provides an intelligence opportunity but also the opportunity to properly identify and support victims. This again highlights the potential benefits of closer working between the police and the UK Border Agency.

## **Patterns of offending based on data from the Inmate Information System records**

The data analysed above relate only to arrests made in three pilot sites; not all of these arrests would result in a formal charge, or indeed in a formal conviction. A more robust examination of serious offending<sup>18</sup> was therefore undertaken by analysing national-level data from the Inmate Information System (IIS).

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17. There are a wide range of published estimates attempting to link various categories of illegal migration to facilitation by organised crime groups. Typically estimates range from around 50 per cent (Bruggeman, 2002) of illegal migrants having their journey in some way facilitated by organised crime up to figures of 70 per cent (Aronowitz, 2001).

18. In this analysis, similar offence categories were used to define serious crime to those described above.

A sample of data (Dataset A) was taken from the IIS which encompassed records of all offenders received into a prison establishment between January and December 2005 (N=40,106). Known FNs comprised 12 per cent of the prison population in this sample. This sub-population comprised both legally and illegally resident FNs. The analysis found that there were significant<sup>19</sup> variations in the involvement of FNs in certain types of offending. These patterns were evident for the whole sample, but also remained intact when the sample was refined by excluding offenders sentenced to lower terms of imprisonment. The following significant variations were noted for offenders sentenced to prison for four years or more.

- Individuals with an African nationality were more likely than UK citizens to be sentenced for importing and exporting drugs\*\*, fraud and forgery\*\*, and assisting illegal immigration\*.
- Individuals with an Asian nationality were more likely than UK citizens to be sentenced for fraud and forgery\*\*, assisting illegal immigration\*\*, and false imprisonment\*.
- Individuals with another EU nationality were more likely than UK citizens to be sentenced for importing and exporting drugs\*\*, and fraud and forgery\*\*.
- Individuals with a Middle Eastern nationality or with a nationality for one of the non-EU countries *that bordered the EU* were more likely to be sentenced for fraud and forgery\*\*. In addition offenders with a nationality for one of these non-EU countries were more likely to be sentenced for assisting illegal immigration\*\*.
- Individuals with a nationality from the West Indies were more likely than UK citizens to be sentenced for drugs supply with intent\*\*, drugs supply\*\*, and drugs import/export\*\*.

It is notable that most of the offences which have a significant level of FN involvement are commonly associated with organised crime and are also inherently transnational; the involvement of FN offenders in this type of crime is hardly unexpected. Aside from these offences, the involvement of different FN groups in serious offending was mostly similar to that of UK nationals (e.g. for more serious cases of theft, handling and burglary), though UK nationals were significantly more likely to have convictions for certain types of sexual offences, and for more serious violent assaults<sup>20</sup>.

## Summary

The introduction of enhanced checking processes led to an increase in both the level of checks undertaken and in the number of IMs and SIMs identified in each site. This was particularly true in the Metropolitan site, where immigration officers were embedded as part of the pilot, highlighting the benefits of closer working between the police and the UK Border Agency.

The research found that in the pilot sites, both FNs and IMs/SIMs were more likely to be *arrested* for serious crimes (including drugs offences) than UK citizens. However, establishing links to organised immigration crime (OIC) could only be undertaken in one site (Coastal 1). Here, it was found that 22 per cent of FN arrestees could be linked to OIC either through having made or assisted clandestine entry into the UK. Analysis of IIS records highlighted disproportionate levels of FN involvement in offences commonly associated with organised crime.

It was established that the enhanced checking processes that were introduced as part of the pilots could potentially be a useful way of developing intelligence on OIC activities, which again highlights the importance of close working between the police and the UK Border Agency.

19. Significance levels here are reported as \*=  $p < 0.05$  and \*\*=  $p < 0.01$ . Non-parametric tests (Chi square and Mann-Whitney U) were used as this type of analysis best suited the data. Initially chi-square and the Kruskal Wallis tests were conducted for all groups within a variable. If the test proved to be significant, the variables were collapsed into two-by-two tables to identify where the differences were and further chi squares or Mann-Whitney tests were conducted.

20. UK nationals were significantly more likely to be sentenced for Assault occasioning GBH ( $p < 0.01$ ), gross indecency ( $p < 0.01$ ), and unlawful sexual intercourse ( $p < 0.05$ ).

## 5. Conclusions

The most central findings relate, firstly, to the practical difficulties and potential complexities involved in establishing an individual's identity, nationality and migrant status, even in circumstances where adequate resources and skilled officials are available. Consequently, estimates produced throughout this report must necessarily be treated with some degree of caution and are best viewed as indicative. Secondly, despite the difficulty of the task, the pilots provided ample evidence to show that even with a modest increase in scrutiny, there was a substantial pay-off in terms of law enforcement and UK Border Agency outcomes.

The research also found variations in the extent to which different policing areas encountered FNs, IMs and SIMs. These widely varying levels of potential demand for UK Border Agency support did not appear to be matched by suitably tailored UK Border Agency operational policies. The advantages of having an immigration officer 'on site' in high-demand police divisions was clearly demonstrated in one pilot site, while more 'light-touch' levels of support were clearly appropriate in others. However, while the extent of encounters varied hugely, it was notable that every baseline site regularly encountered FNs and IMs, and therefore needed at least some basic capacity and UK Border Agency support.

A number of areas of improvement in the processes for establishing the identity and status of arrestees were identified and included the following issues:

- generally poor case management of arrestees which could lead to key checks not being completed prior to an individual's release;
- inadequate use of Livescan machines, particularly for cross-checking records against UK Border Agency databases;
- problems with how the PNC was used (i.e. recording an arrestee's correct details as an 'alias');
- a failure to scrutinise arrestees claiming to be UK or EEA citizens, even in circumstances where there

were reportedly grounds for questioning such claims; and

- against the backdrop of pressured custody environments, an observed tendency for compliant, familiar or well-documented arrestees to be overlooked. However, as was demonstrated in a number of cases in the pilot sites, familiarity and the possession of ample documentation were not reliable indicators of an individual's legal right to be in the UK.

There was a general lack of knowledge about immigration rules or what UK Border Agency resources might be available. Even if an arrestee's migrant status was questionable, an appropriate referral to the UK Border Agency was not always made. While police respondents welcomed the training provided as part of the pilot projects, it was clear both to them and to UK Border Agency staff that there were limits to how much police officers and custody staff could be expected to know about fast-changing immigration rules and legislation. Critical, therefore, to successful practice, was having a basic level of police knowledge and supporting that knowledge through a consistent and cooperative relationship with local UK Border Agency staff.

Police respondents were 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. Key concerns are highlighted below.

- The perceived lack of response from the UK Border Agency when it came to assisting with SIMs, whose identification or removal was more of a police priority (due to the level of criminality involved) than a UK Border Agency priority.
- The use of police custody accommodation for detaining non-criminal immigration cases. While custody officers made commendable efforts to look after the welfare of immigration detainees, detainees were often said to take up valuable cell space and put pressure on custody staff resources.
- Conversely, a shortage of UK Border Agency detention space prevented some IMs being detained up to the point where they could be safely removed from the country. This was a frustration for police and UK Border Agency officers alike, particularly in instances where IMs had repeatedly,

and deliberately, evaded immigration control. While detention was clearly not required in many instances, detention spaces were often only available for limited periods of time. This often meant that IMs who were at high risk of absconding, but whose removal was going to take time to arrange, were released. The perceived shortage of UK Border Agency detention space was raised as a problem throughout the course of this research.

- Lack of information on immigration case outcomes (e.g. whether someone was ultimately removed from the UK). Respondents reported that this may have been a result of inadequate relationships between the police and the UK Border Agency rather than specific weaknesses in UK Border Agency practice. This impacted not only on the communication of case outcomes but also communication on the progress and status of ongoing cases. This notably affected performance when it came to issuing IM3 forms, meaning that the opportunity to recommend deportation at the end of an offender's sentence was missed.

Some missed opportunities were observed in terms of the sharing and developing of strategic information between the police and the UK Border Agency. For instance, among IMs, clear evidence of connections to OIC could be discerned in a significant minority of cases. While these connections were frequently those of a customer-service provider (at least from the evidence available in this study), there was clearly a significant opportunity for further intelligence gathering that might, in turn, have exposed organised crime operations, methods, or infrastructure. There appeared, however, to be no effective mechanism in most sites for such locally derived intelligence to be routinely recorded, flagged up or developed.

Despite these issues, 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. Significant improvements in practices were seen in all the pilot sites, and many of these were carried forward and developed beyond the end of the project. The challenge will be to ensure that such good

practices are: mainstreamed; effectively tailored to widely contrasting policing environments; and are sustained against the backdrop of the evolving and flexible practices of those facilitating illegal immigration into the UK.

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 including 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.
- 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).

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## Annex A: Characteristics of pilot sites

Area	Context	Referrals to UKBA* and potential actionable cases**
Coastal 1	<ul style="list-style-type: none"> <li>Town that hosts a major port of entry with a moderate population of foreign-born nationals, some established, many transient.</li> </ul>	<ul style="list-style-type: none"> <li>High rate of referrals to UKBA.</li> <li>Medium percentage of potential actionable cases.</li> </ul>
Metropolitan	<ul style="list-style-type: none"> <li>Large urban borough with a high and diverse foreign-born population both established and recent.</li> </ul>	<ul style="list-style-type: none"> <li>Low rate of referrals to UKBA.</li> <li>High percentage of potential actionable cases.</li> </ul>
Northern 1	<ul style="list-style-type: none"> <li>Industrial town with a high foreign-born population, mostly associated with an established ethnic minority.</li> </ul>	<ul style="list-style-type: none"> <li>Low rate of referrals to UKBA.</li> <li>Medium percentage of potential actionable cases.</li> </ul>
Hinterland 2	<ul style="list-style-type: none"> <li>Small town serving an industrial/rural hinterland. Low foreign-born population.</li> </ul>	<ul style="list-style-type: none"> <li>Moderate rate of referrals to UKBA.</li> <li>Low percentage of potential actionable cases.</li> </ul>

\* 'Referrals to UKBA' gives a rough indication of the comparative<sup>21</sup> volume of police referrals to UKBA (prior to the pilots) for assistance with ascertaining an arrestee's identity, nationality, or immigration status. A rate was calculated by comparing the number of actual referrals in a six-month period with census figures on the foreign-born population within the local area. The resulting rate gives some indication of the strength of the working relationship between the police and UKBA in each site.

\*\* The 'percentage of potential actionable cases' refers to the proportion of referrals in which the individual was identified as potentially having an illegal migrant status.

21. Judgements as to the 'comparative' position of the UK Border Agency referral and 'actionable cases' figures were based on producing distributions of figures for a set of 15 areas (the four chosen pilot sites and a further 11 candidate pilot sites).

## Annex B: Summary of implementation and data availability across the pilot sites

Approach			Implementation					Data availability			
Who undertook checks?	What training was provided?	Quality of checks	EEA check questions used?	Embassy checks used?	UK checks undertaken?	24-hour line used?	Custody records?	PNC records?	UKBA case data?		
<b>Coastal</b>	Custody officers with supervision from custody inspector	Variable	Yes - occasionally	No	No	Yes	Yes	Yes	Yes		
<b>Metropolitan</b>	Immigration officers embedded in custody suites	Good	Yes	Yes	Yes	Yes	Yes	No	Yes - incomplete		
<b>Northern 1</b>	Custody officers with supervision from custody inspector	Good	Yes	No	Yes - occasionally	Yes	Yes	No	Yes - incomplete		
<b>Hinterland 2</b>	Patrol officers; Custody officers.	Fair	Yes	No	No	Yes	Yes	No	No		

## Annex C: Serious offences

The offences listed below are drawn from offence codes used in three different custody suites. Each custody suite had its own offence codes that were not standardised. Codes have been combined where possible. These codes do not encompass all the serious crimes that it is possible to commit, merely those offence allegations that were raised in one or more custody suite during the pilots.

abduction	indecent assault on a male
aggravated burglary in a dwelling	kidnapping
aggravated taking (criminal damage <£5,000)	manslaughter
aggravated vehicle taking – no death	murder
arson – dwelling	attempted murder
arson – motor vehicle	murder (threat of/threat to kill)
arson – non-dwelling	perverting course of justice/perjury
arson – other	possession of firearms
blackmail	possession of imitation firearms
buggery	possession of indecent photo or pseudo-photo
child abduction	possession/distributing prohibited weapons or ammunition
cruelty to or neglect of children	possession of offensive weapon
cruelty to or neglect of children [mental health act]	possession of pointed/bladed article
drugs – concerned in supply class a	possession of weapon not blade/firearm
drugs – concerned in supply class a – conspiracy	production from prison
possession with intent to supply class b	attempted rape
drugs – concerned in supply class c	rape
drugs – possess w/i to supply class a – attempt	sl public order act – rioting
drugs – possess w/i to supply class c	robbery – business
drugs – possess w/i to supply class a	robbery – business – attempt
drugs – produce class a	robbery. business. conspiracy
drugs – produce class c	sexual offences, other
drugs – supply class c	taking/making indecent photo/pseudo-photo of children
false imprisonment	unlawful sexual intercourse with a woman (defective)
false accounting	unlawful sexual intercourse with girl (aged under 13 or 16)
forgery	using false instrument or copy
forgery. conspiracy	violence for securing entry
grievous bodily harm	wounding with intent – grievous bodily harm
gross indecency	
gross indecency with children	
indecent assault on a female	