



UK Visas  
& Immigration

# Quality Analysis Report

*Rule 35: Detention Centre Rules 2001*

March 2015

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UKVI Performance Team  
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# Index

Section	Page
A. <a href="#">Background</a>	3.
B. <a href="#">Recommendations</a>	4.
C. <a href="#">Introduction</a>	6.
D. <a href="#">Overall quality performance</a>	8.
E. <a href="#">Quality performance by marking criteria: creation of the Rule 35 report</a>	10.
F. <a href="#">Quality performance by marking criteria: referral of report</a>	13.
G. <a href="#">Quality performance by marking criteria: consideration of Rule 35 report - content of response</a>	15.
H. <a href="#">Quality performance by marking criteria: procedural areas</a>	19.
I. <a href="#">Quality performance by marking criteria: service of Rule 35 response</a>	24.
J. <a href="#">Quality performance by area</a>	26.
K. <a href="#">Annex</a> 1. Quality scoring criteria 2. Error definitions	31.

## A. Background

1. [Section 55.8A of the Enforcement Instructions and Guidance](#) states the Rule's purpose: *"The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case"*
2. [Chapter 55.10 of the Enforcement Instructions and Guidance](#) sets out that certain persons are only considered suitable for detention in very exceptional circumstances. These include *"those where there is independent evidence that they have been tortured"* and those suffering from serious medical conditions or serious mental illness which cannot be satisfactorily managed in detention.
3. [Rule 35 of the Detention Centre Rules 2001](#) imposes certain obligations on medical practitioners (defined in Rule 33 as a registered general practitioner) working in Immigration Removal Centres (IRCs). It states that the medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention, any detained person he suspects of having suicidal intentions, and any detained person who he is concerned may have been the victim of torture.
4. On 4 February 2011 the [Detention Centre Rule 35 audit report](#) outlining the findings of a Rule 35 audit was published by the UK Border Agency (UKBA). As a result of this audit, Rule 35 processes were improved, and guidance updated. Updates to the guidance were made in January 2013, and again in August 2013 to replace the United Nations Convention against Torture (UNCAT) definition of torture with that defined by Burnett J in [EO & Ors. \[2013\] EWHC 1236 \(Admin\)](#) as *"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based upon discrimination of any kind."* At the time of writing this audit report, this definition of torture is relevant to Rule 35(3) and detention policy only.
5. As a result of the 2011 audit, mandatory training was also introduced for all officers with responsibility for managing detained cases. Training was also provided to IRC healthcare staff.
6. After the audit report was published in 2011 the Home Office committed to carry out a further follow-up audit. This, however, was postponed to allow for improved processes, guidance and mandatory training to be developed and implemented and then pending the outcome of [EO & Ors. \[2013\] EWHC 1236 \(Admin\)](#). In the meantime, the Home Office introduced the Next Generation Quality Framework, with a focus on auditing the asylum process from end-to-end, including Rule 35 casework. As part of this an audit of Rule 35 casework was undertaken by the Home Office's internal Quality Analysis Team (QAT) between April and June 2014. This audit was planned in isolation to the previous audit, and uses a different methodology.

## B. Recommendations

7. Recommendations are made relating to each stage of the Rule 35 process and the Rule 35 policy guidance:

### a. Policy instructions

- **A brief section on the consideration of Rule 35(1) and Rule 35(2) reports should be added to the Detention Rule 35 Process Instruction.** This would not require the same level of detail as the Rule 35(3) section but should briefly state what must be considered in these cases.
- **The Detention Rule 35 Process Instruction should remind responsible officers that the CID ‘special conditions’ tab should be flagged in cases concerning suicide/self harm and medical conditions.** This is described in the CID Routing and First Contact Guide (20/11/2009) which is an internal Home Office document.

### b. Templates

- **The IS.335 (the Rule 35 response template) has the UKBA logo on it; this should be updated to reflect the Home Office and current branding requirements.**

### c. Rule 35 Reports

- **All Home Office staff involved in the Rule 35 process should be reminded that the Rule 35 report must be stored on the Home Office file.**

### d. CID Information

- **All Home Office staff involved in the Rule 35 process should be reminded of the need to accurately input and update CID in regard to Rule 35 to assist in ensuring that Rule 35 management information (MI) is accurate.** In particular, in line with common errors observed:
  - Only recording a case type as Rule 35 in cases where a Rule 35 report has been produced.
  - The CID outcome of ‘Detainee Released’ is only completed on the Rule 35 case type if the detainee has been released for reasons relating to the Rule 35 report. If the detainee is due to be released for reasons unconnected to the Rule 35 report, the outcome on CID under the Rule 35 case type should be “Detention Maintained”, before effecting release, referencing CID notes accordingly and clearly explaining the reasons for release.
  - Duplicate Rule 35 cases are not opened on CID (or correctly closed if required).
  - All notes relating to Rule 35 are stored on the Rule 35 case type.
  - CID is updated in respect of all Rule 35 actions.
  - Mandatory CID training (available on the Home Office’s internal e-learning system - Discover E-Learning) covers CID case types and must be completed by all staff using CID.

### e. Content of Report

- **Medical practitioners should be reminded of the requirements placed upon them by Detention Services Order (DSO) 17/2012.** A template with tick boxes and text questions could assist in focusing medical practitioners on the requirements of the DSO. As described in [Section E](#) of this report the content and level of detail

contained within Rule 35(3) reports varies significantly and often does not include all of the information required by DSO 17/2012.

#### f. **Responsible officers and SEO/HMI clearance officers**

- **Responsible officers and clearance officers should be reminded of a number of key points in line with common errors observed:**
  - Rule 35 reports are not medico-legal reports, and they must not be considered defective by responsible officers for not containing the detail of such a report or not being written according to the Istanbul Protocol or other similar standards;
  - all Rule 35 responses must have SEO/HMI clearance (or clearance by an officer clearly identified as acting in that grade); this must be clearly evidenced by completion of the 'authorised by user' box on the case outcomes tab on CID;
  - the Rule 35 response must be sent to the legal representatives, where applicable, and evidence of this recorded on CID;
  - unapproved locally produced templates must not be used to respond to the Rule 35 report;
  - all responses must be written on the IS335 template and stored on the Rule 35 case type on CID;
  - responsible officers must contact the IRC to confirm their receipt of the Rule 35 response, and record evidence of this on CID; and
  - the Process Instruction must be followed for all Rule 35 responses. The content and quality of responses varies across the business and not all responses are in line with this. More use should be made of the helpful example responses in this instruction.

#### g. **Contact Management Team (CMT)**

- **CMT should be reminded of the following requirements** in line with common errors observed:
  - the Rule 35 report must be sent to the detainee's legal representative (if they have one);
  - the responsible officer must be contacted by the CMT to confirm their involvement in the case, and alerted to the fact a Rule 35 report will be forwarded to them;
  - the responsible officer must be contacted by the CMT to confirm their receipt of the Rule 35 report;
  - a copy of the Rule 35 response must be forwarded by the CMT to the medical practitioner; and
  - where a detainee does not understand English, translation assistance should be provided so the contents of the response can be properly understood.

#### h. **Detention Reviews**

- Responsible officers and clearance officers should be reminded that the detention review triggered by the Rule 35 report must be completed in line with published detention policy and authorised by a member of staff at the appropriate grade. The detention review should be fully documented on CID, with the detention review document stored on CID (Doc Gen); this should clearly indicate who completed and who authorised the review and their grades. A copy of the detention review document should be stored on the Home Office file in all cases.

## C. Introduction

8. The purpose of this Rule 35 audit is to assess the extent to which the instructions contained within the [Detention Rule 35 Process Instruction](#) and [Detention Services Order 17/12](#) have been followed when a report is issued under Rule 35 of the Detention Centre Rules 2001. It also provides an assessment of the content of the Rule 35 reports and the responses made to those reports, including the decision whether to maintain detention.
9. The Home Office's Performance Unit provided the QAT with Rule 35 1<sup>st</sup> Case Outcomes for the period 1<sup>st</sup> January 2014 to 31<sup>st</sup> March 2014. Sixty cases were subsequently randomly selected for audit, representing 12% of Rule 35 outcomes over this period. To ensure that all areas of Rule 35 could be reported some cases were purposively selected so the sample included Rule 35(1) - Health Concerns/health injuriously affected by detention, Rule 35(2) - Suicide Risk and Rule 35(3) - Torture Allegation, as well as outcomes of both 'Detention Maintained' and 'Detainee Released'. All case types are represented in the audit including criminal cases, asylum, and general enforcement.
10. The sample comprised the following:

Rule 35 Type	Maintained Detention	Released	Total
<b>Rule 35(1) (health Concerns/health injuriously affected by detention )</b>	6	1	7
<b>Rule 35(2) (suicide risk)</b>	2	0	2
<b>Rule 35(3) (torture allegation)</b>	43	8	51
<b>TOTAL</b>	51 (85%)	9 (15%)	60

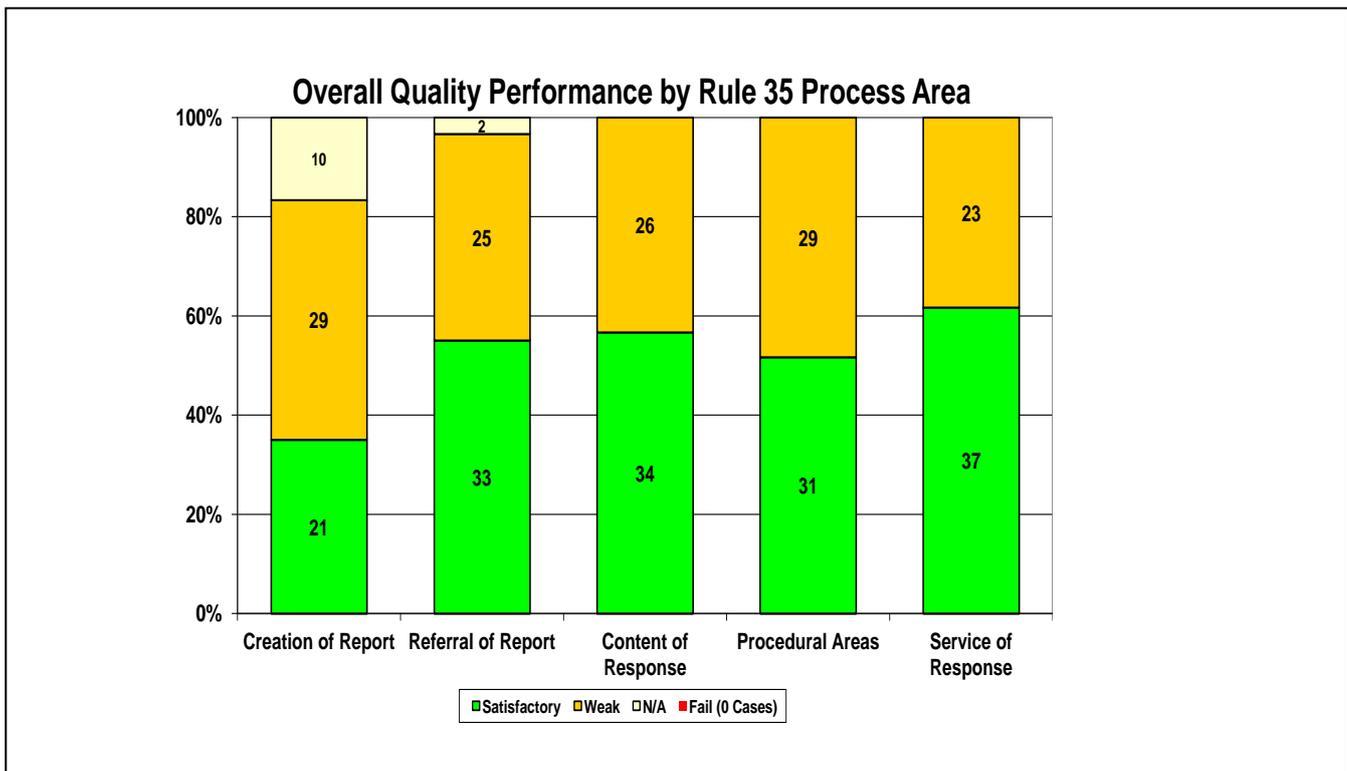
11. In comparison, in the February 2011 audit 91% of cases in the sample had their detention maintained and 9% of cases were released from detention.
12. During the first quarter of 2014, 487 Rule 35 cases were opened on the Case Information database (CID)<sup>1</sup> and had a corresponding case outcome (detention maintained or released). To place these Rule 35 figures into context, 7032 people entered the detention estate in the first quarter of 2014 and there were 2991 people in detention as at 31 March 2014 (although it must also be noted that multiple reports may be issued in respect of a single detainee).
13. In 50 of the 60 cases, the Rule 35 reports were available on the Home Office file. 2 cases were recorded erroneously as Rule 35 (thereby increasing and misrepresenting Rule 35 report volumes): despite a Rule 35 report not having been issued by a medical practitioner, a Rule 35 case was nonetheless opened on CID and a response written in relation to Rule 35 type issues. In 8 cases selected for assessment the Rule 35 report was missing from the Home Office file, although CID clearly referenced the availability of a Rule 35 report in the case and the corresponding Rule 35 responses were available on CID (Doc Gen). It may be that the report had been attached to the local detention file (which was not available to auditors). However as local detention files are destroyed, if a copy of the report is not stored on the main Home Office file, this presents a risk to both the business and the individual should the report need to be referred

<sup>1</sup> Case Information database (CID) is the Home Office database which is used to record and manage all types of in country case work. Once a Rule 35 report is received by the decision maker a Rule 35 case is opened on CID and once the report has been considered and responded to the Rule 35 case is updated with an outcome of 'Detention Maintained' or 'Detainee Released'. The data was recorded from 08/04/14.

to in future. For example in Judicial Reviews, where relevant information contained in the Rule 35 report will not be available. This links into **Recommendation c**. Where auditors were unable to mark a criterion due to the absence of the Rule 35 Report, e.g. Section 1 on the creation of the report, this was marked as N/A for the purposes of the audit.

## D. Overall quality performance

14. **There were no critical errors; therefore no cases were assessed as *failing*** (see the Quality scoring criteria in the [Annex](#) for definitions). **No incorrect decisions were observed by auditors which led to victims of torture being inappropriately detained. All cases, across all 3 categories of Rule 35, received an overall marking of *satisfactory* or *weak* i.e. only minor errors and/or serious errors were observed** (it should be noted that weak cases/serious errors does not mean that a case failed or that detention was maintained inappropriately in any case). The majority of cases (56) contained serious errors in one or more of the marking criteria and were assessed as weak. Note: this review of Rule 35 cases involved the assessment of the content of the Rule 35 report and the substantive consideration of the report, including the response and the decision on whether to maintain detention; however the review also looked at various administrative and procedural issues. Whilst it is important for guidance to be adhered to in relation to these administrative and procedural issues, errors on the administrative and procedural criteria in most cases did not have a significant detrimental impact on the detainee. Full details of the errors found are contained in the following sections of this report.
15. The chart below shows the overall quality performance, by percentage and number of cases, for each part of the Rule 35 process:



Base: 60 Rule 35 cases

16. [Sections E](#) to I of this report provide an individual breakdown and detailed analysis of each of the quality standards. [Section J](#) provides a breakdown of quality performance by area.

### Timeliness

17. The Rule 35 report must be considered and responded to as soon as possible, but no later than the end of the second working day after the day of receipt by the responsible officer. Within the sample there was an **average of 1.73 working days between the report being referred and the decision being made**, with no cases left without a response.

18. **88% of the 60 cases in the sample met the 2 working day deadline**, with the following outcomes:

Response within 2 working days	53 cases
Response between 3 and 5 working days	4 cases
Reponses over 5 working days	3 cases

19. **This is a significant improvement on the findings reported in February 2011** where only 35% of cases audited met the 2 working day deadline for a response and 33% of cases received no response.

20. The maximum time it took for a responsible officer to respond to a Rule 35 report was 19 working days. In this case the detainee was released from detention 10 working days after the Rule 35 report was referred (for reasons other than the Rule 35 report).

21. In the 4 cases where the delay to the response was minimal (i.e. made by the end of the 3<sup>rd</sup> working day) there was no evidence that CMT had chased up the response. In one further case, where the response was delayed to the 5<sup>th</sup> working day, although there was no evidence on CID that the CMT had chased up the response, a decision had already been taken and effected to release the detainee. In two further cases, where the responses were made at 9 working days and 19 working days, there was evidence on CID that the CMT had chased up the responses in line with their obligations as set out in the Detention Services Order 17/2012.

22. The delayed responses came from across the business areas; therefore it is not considered that one particular business area had systemic difficulties in relation to meeting this deadline. Rather where delays were encountered, the reasons for these were case specific. Discounting the cases where the delay was minimal (responded to within 3 working days), two cases (responded to on 5 working days and 9 working days) encountered delays because the Rule 35 report was not referred to or received by the responsible officer within appropriate timescales. In one case there is evidence on CID that the responsible officer chased this up with the IRC. In the second case, CID notes confirm that the responsible officer was unaware of the Rule 35 report until this was received 8 working days after the report had first been referred. One case (response delayed to 19 working days) encountered delays because the Rule 35 report was overlooked by the IRC and decision making team while other actions took place (the Rule 35 report was referred at the same time as an asylum claim was made and a decision taken and effected to release the detainee on account of the asylum claim).

## E. Quality performance by marking criteria: creation of the Rule 35 report

23. Overall Rating:

Satisfactory	21 cases
Weak	29 cases
Fail	0 cases
N/A	10 cases

24. The table below shows the breakdown of markings by each criterion:

Criteria	Satisfactory		Weak		Fail		N/A	
	Number	%	Number	%	Number	%	Number	%
1a. Special illness, condition or concern to have been a victim of torture correctly identified as meeting the terms of Rule 35(1) to (3).	50	83%	0	0%	0	0%	10	17%
1b. Rule 35 report has been completed by a medical practitioner	49	82%	0	0%	0	0%	11	18%
1c. Rule 35 report is clear and legible.	50	83%	0	0%	0	0%	10	17%
1d. The detainee has been asked to provide consent to their medical information being shared with the Home Office.	49	82%	0	0%	0	0%	11	18%
1e. The report clearly identifies which section of Rule 35 the report is relevant to.	49	82%	0	0%	0	0%	11	18%
1f. In the instance of a Rule 35(1) report, where it is a concern that an individual's health is likely to be injuriously affected by continued detention, the report has been completed appropriately by the medical practitioner.	5	8%	0	0%	0	0%	55	92%
1g. In the instance of a Rule 35(2) report, where the detainee is considered to be at risk of suicide, the report has been completed appropriately by the medical practitioner.	1	2%	0	0%	0	0%	59	98%
1h. In the instance of a Rule 35(3) report, where an allegation of torture has been made, the report has been completed appropriately by the medical practitioner.	16	27%	29	48%	0	0%	15	25%

25. For Question 1a, all reports received a scoring of *satisfactory*. However, there were 16 Rule 35(3) reports out of 45<sup>2</sup> (36%) where it was unclear from the Rule 35 report (in particular the

<sup>2</sup> There are 51 Rule 35(3) cases in the sample, of which 6 did not have the Rule 35 report on file and were therefore marked N/A.

clinical reasons set out in section 5 of the Rule 35 report), why this had led the medical practitioner to have concerns that the detainee may have been a victim of torture. This suggests that medical practitioners are taking a very cautious approach when deciding whether or not to produce a Rule 35 report which favours issuing them in circumstances when they may not need to.

26. Examples of 2 different cases observed by auditors include:

- The detainee claims that her mother received some threats by family members; no further clinical reasons were noted in the Rule 35 report, therefore it was not clear why this had led the medical practitioner to have concerns the detainee may have been a victim of torture.
- The detainee claims to have been the victim of date rape. Whilst this is abhorrent, and it is clear that the detainee has suffered harm, it is unclear without further information, why this led the medical practitioner to have concerns that the detainee may have been a victim of torture. This is not to say that rape cannot be used as a method of torture, but that in this case more context was required in the Rule 35 report.

27. We assessed these reports as having minor errors (as this approach is less of a risk than an approach where cases might be missed).

28. **Auditors observed a high number of Rule 35 reports which contained little or no medical evidence in support. Included in this were:**

- 29 Rule 35(3) reports which passed on the allegations of the detainee that they had been tortured without there being a required statement as to whether or not there was no, or limited medical evidence identified to support those allegations.
- 2 Rule 35(3) reports with medical evidence disputing the allegations of torture.
- 1 Rule 35(1) report where it is unclear from the medical evidence why detention would be injurious to health.

29. **A key area of concern is Question 1h, where auditors assessed whether the content of the Rule 35(3) report meets the requirements for preparing reports as set out in DSO 17/2012.** Within the cases in the sample the content and level of detail contained within Rule 35(3) reports varied significantly and often did not include the information set out in paragraphs 20-25 of DSO 17/2012.

30. **Twenty-nine (64%) of the 45 cases<sup>2</sup> that had Rule 35(3) reports were marked as weak because they had serious errors.** DSO 17/2012 states:

- *The medical practitioner should **always** state clearly the reasons why he/she has concerns arising from the medical examination – specifically the medical evidence which causes these concerns, including **all** physical and mental indicators.*
- *The medical practitioner should set out clearly if his/her concern derives from an allegation with no or limited medical evidence in support.*
- *Where there is medical evidence in support of an allegation, the medical practitioner must set out clearly all physical and mental indicators in support of his/her professional concerns. He/she should record any mental or physical health problems that are relevant to the torture allegation.*
- *Where possible, the medical practitioner should say why he/she considers that the person's account is consistent with the medical evidence. This means that the medical practitioner should ask to see any scars and record what he/she sees, including on a body map and, where possible, assess whether it is in his/her view medically consistent with the attribution claimed by the detainee. The medical practitioner should consider whether the injury, health problem or other indicator may have other possible*

*explanations which do not relate to torture. The medical practitioner must identify any medical evidence which may be contrary to the account given by the detained person.*

31. **Merely repeating the detainee's allegations, and noting the scars on the body map, does not address these requirements.** In such cases there is no indication of whether there are any other issues beyond the claim of the detainee, and conclusions in line with the DSO 17/2012 need to be reached, including where possible an assessment of whether the scars are consistent with the claim or may have other possible explanations. Reports with such errors can make it difficult for the responsible officer to assess whether to maintain detention, and can create additional work further down the line. This links into **Recommendation e**.
32. In the majority of cases assessed as *weak* on this criteria, the contents of the reports did not amount to independent evidence of torture and no medical evidence was cited to support the detainees' allegations. As the medical practitioner did not clearly state that their concern derived from an allegation only, with no or limited medical evidence in support, this is a failure to adhere to guidance set out in the DSO and such cases were therefore assessed as *weak*. However these errors were not viewed as detrimental to the detainee.
33. **In addition to the 29 cases that had serious errors, a further 13 cases had minor errors but were deemed to be satisfactory overall.** In these cases, the medical practitioner addressed the majority of the requirements within the DSO 17/2012. As a result a clear decision about whether to maintain detention could be reached. However not all of the requirements of the DSO 17/2012 were covered, for example there was nothing to suggest that the medical practitioner had considered whether the injury may have other possible explanations which do not relate to torture.
34. **There were 5 Rule 35(1) reports included in the audit which related to Question 1f<sup>3</sup>. All 5 cases were scored as *satisfactory*, indicating that medical practitioners are completing Rule 35(1) reports in line with the instructions set out in paragraph 15 of the DSO 17/2012.** Just 1 of these cases received a minor error; here the report clearly set out the medical issues, confirmed the condition as stable, the difficulties that the injury presented to the detainee and the medication taken. The report also noted a lack of home furnishings as an issue which may cause the injury to deteriorate, however it was unclear what this referred to, what issues this was causing or if there was any remedial action that could be taken in detention.
35. **There were 2 Rule 35(2) cases included in the audit, as they had Rule 35 outcomes on CID, which relate to Question 1g. However in neither of these cases had a Rule 35(2) report been raised (either by a medical practitioner or anyone else).** These were incorrectly recorded as Rule 35 cases by responsible officers. This is discussed further in Section G at [paragraph 51](#).
- One minor error was recorded for Question 1g; in this case the report identified Rule 35(3), however it acknowledged that the definition of torture was not met and dealt with the suicide risk and mental health issues, noting the medication the detainee is taking and their current status as stable. This should have instead been raised as Rule 35(1) or (2), and the report should also have noted any known triggers, any past suicide attempts, and the likely effect of continued detention.
36. **Questions 1b through 1e all scored very well, with 100% *satisfactory* markings.**

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<sup>3</sup> Although 7 Rule 35(1) cases were audited 2 did not have the report on file.

## F. Quality performance by marking criteria: referral of report

37. Overall Rating:

Satisfactory	33 cases
Weak	25 cases
Fail	0 cases
N/A	2 cases

38. The table below shows the breakdown of markings by each criterion:

Criteria	Satisfactory		Weak		Fail		N/A	
	Number	%	Number	%	Number	%	Number	%
2a. Home Office contact management team checks report completed appropriately and logged in accordance with DSO 17/2012.	50	83%	1	2%	0	0%	9	15%
2b. Home Office contact management team contacts decision maker to alert them to the Rule 35 report being dispatched, to confirm ownership and contact details.	52	87%	6	10%	0	0%	2	3%
2c. Local detainee records updated appropriately. <sup>4</sup>	0	0%	0	0%	0	0%	60	100%
2d. Copy of Rule 35 report forwarded to legal representatives noted on file.	5	8%	17	28%	0	0%	38	63%
2e. Rule 35 report faxed or e-mailed to the Home Office responsible officer by the Home Office contact management team within appropriate timescale 24 hours.	53	88%	4	7%	0	0%	3	5%
2f. Centre's Rule 35 log updated to show date and time report submitted and date and time by which a response is required. <sup>4</sup>	0	0%	0	0%	0	0%	60	100%

39. The assessment of these criteria relies upon information being accurate and correctly recorded on CID. It may be that these mandatory tasks are being completed by the CMT, but they are not being recorded as set out in the guidance.

40. **Auditors only found errors in the checks made by the CMT (that the report was completed appropriately Q2a) in one case.** This case was marked as *weak* because further clarification should have been sought by the CMT prior to forwarding the report to the responsible officer for consideration. This report contained very little information and the medical practitioner stated that he would be happy to expand on the report, and therefore this should have been requested prior to forwarding it. Auditors were unable to check if reports were logged at the IRC as local records were not available.

<sup>4</sup> For Question 2c & Question 2f QAT did not have access to local records and were therefore unable to assess these criteria. Consideration should be given to removing these questions for any future audits.

41. Out of 58 cases, 52 were scored as *satisfactory* for Question 2b; however 36 of these had minor errors:
- In 16 cases minor errors were scored when there was no evidence that the CMT contacted the responsible officer to alert them to the Rule 35 report and confirm ownership, but this did not impact negatively on how the case was handled or lead to delays in decision making. This requirement is set out in paragraph 29a DSO 17/12.
  - The 6 cases that were assessed as *weak* had the same error, but this did subsequently result in a delay in the report being received by the responsible officer and thereby unnecessary delays in the overall process. In line with the DSO it is essential that the CMT contact the responsible officer to alert them to the report being forwarded and to confirm ownership. Evidence of this being done should be recorded on CID notes. This links into **Recommendation g**.
42. In 17 of the 22 cases (77%) whereby the detainee had legal representation at the time of the referral of the Rule 35 Report, there is no evidence on CID to suggest that a copy of the Rule 35 report was forwarded to the legal representatives (Q2d). It is essential that this is done and recorded on CID; a failure to do so makes it difficult to defend any claim by detainees and/or their representatives that this has not been done. This also links into **Recommendation g**.
43. In 53 cases the Rule 35 report was faxed or emailed by the CMT to the responsible officer within the 24 hour timescale (Q2e) and were scored as being *satisfactory*. However, 21 of these 53 cases had minor errors. Minor errors were scored because the report was faxed and received by the responsible officer within 24 hours, but there was no evidence of the CMT contacting the responsible officer to confirm receipt. This requirement is set out in paragraph 29e of the DSO 17/12. The 6 cases that were assessed as weak also had no evidence that the CMT had contacted the responsible officer to confirm receipt and in these cases the report had not been received by the responsible officer, thereby resulting in delays in responding to the report. Evidence of this being done should be recorded on CID notes. This also links into **Recommendation g**.
44. By way of illustration an auditor commented in one case:
- “It is unclear when the fax was sent by the CMT to the responsible officer; according to CID notes it was faxed on 26/01/14, however the fax covering note is dated 27/01/14, and the fax header states 28/01/14. According to CID notes it was not received until 28/01/14 and subsequently had to be faxed to NRC Capita who are handling the casework. Therefore it took longer than 24 hours to be faxed to the correct person, which resulted in a subsequent delay in responding to the report. There is no evidence that the responsible officer was contacted by the CMT to alert them to the report, confirm ownership or confirm receipt of the report”.*
45. Auditors observed that the Rule 35 information on CID tends to be held under various different CID case types for a person (e.g. the asylum, illegal entrant case types) rather than the Rule 35 case type. This can make it difficult and time-consuming to find the relevant Rule 35 information and establish the timeframe, and there is a risk that information could be missed (this issue is not isolated to Rule 35 but exists throughout all types of casework).
46. The assessment of this area relies upon information being accurate and correctly recorded on CID. It may be that these mandatory tasks are being completed by the CMT, but they are not being recorded. It is essential that there is evidence in the correct place on CID that records the various tasks completed at each stage of the process as required by the DSO.

## G. Quality performance by marking criteria: consideration of Rule 35 report - content of response

47. Overall Rating:

Satisfactory	34 cases
Weak	26 cases
Fail	0 cases
N/A	0 cases

48. The table below shows the breakdown of markings by each criterion:

Criteria	Satisfactory		Weak		Fail		N/A	
	Number	%	Number	%	Number	%	Number	%
3a. Correct decision reached as to whether detention should be maintained.	49	82%	4	7%	0	0%	7	12%
3b. Clear reasoning has been given to explain the finding for the decision whether to maintain detention, addressing all issues raised in the Rule 35 report.	32	53%	22	37%	0	0%	6	10%
3c. The decision was professionally drafted.	58	97%	1	2%	0	0%	1	2%
3d. The decision is free from speculation.	59	98%	0	0%	0	0%	1	2%
3e. The correct standard and burden of proof have been applied.	45	75%	14	23%	0	0%	1	2%

49. **In 49 cases (82%) the correct decision was reached as to whether detention should be maintained (Q3a).** To assess this auditors reviewed the Rule 35 report, the guidance in the Rule 35 AI, detention policy and all other factors relevant to the case (including very exceptional circumstances where appropriate) to come to a view as to whether the correct decision had been reached. Seven cases (12%) were marked as “not applicable” because the Rule 35 report was not on file and a view could not be taken by the auditor (based on the other evidence available) about whether detention should be maintained.

50. **Four Rule 35(3) cases (7%) were assessed as being *weak* and having serious errors relating to the decision as to whether detention should be maintained. However, it is important to note that in these cases, no incorrect decisions were observed by auditors which led to victims of torture being inappropriately detained.**

- **Two cases were assessed as being *weak* because a decision had been reached to maintain detention in respect of Rule 35, but in both cases Rule 35 reports had not been raised either by a medical practitioner or anyone else.** Rule 35 decisions were therefore not required. Addressing Rule 35 type issues on Rule 35 response templates

was not appropriate in these cases and, if recorded on CID, will inflate the number of Rule 35 reports recorded.

- **One case was assessed as being *weak* because the information in the Rule 35 report was lacking** and further information was required, and therefore it was not possible to conclude whether it was the correct decision to maintain detention.
- **One case was assessed as being *weak* because, for the purpose of Rule 35, detention should have been maintained.** In this case the detainee had been released from detention wholly for reasons other than the Rule 35 report (an asylum claim was made that could not be dealt with within detained fast track (DFT)<sup>5</sup>); however both the Rule 35 response and the CID Rule 35 case type stated that the detainee was released as a result of the Rule 35 report. The implications of this are twofold. The Rule 35 response stated that the detainee had been released because he was considered to be a victim of torture (which was incorrect), which may have implications for the further consideration of the asylum claim. Also MI relating to the number of detainees released on account of Rule 35 reports will be incorrect.

**51. In respect of Question 3b, auditors assessed whether clear reasoning has been provided to support the decision which addresses all issues raised in the report. Thirty-two cases (53%) were rated as *satisfactory*, 15 of which had minor errors:**

- The minor errors occurred in cases where overall the reasoning to support the decision was sound and sustainable and the responses considered all the issues raised, but some of the language used in the response may imply an incorrect standard of proof being applied to the Rule 35 reports. In particular, a number of responses made reference to the reports making 'no diagnostic findings'. These cases all came from one team, suggesting that a locally produced template or guidance may be being used for responses (this links into **Recommendation f**).
- A small number of cases also received minor errors, because although it was accepted that detention was injurious to health or that there was independent evidence of torture, the very exceptional reasons to maintain detention could have been made clearer in the response. In these cases the very exceptional circumstances were highlighted, but not elaborated on sufficiently within the context of the individual's case.

**52. Twenty-two cases (37%) were assessed as *weak* and having serious errors recorded for Question 3b. Cases with serious errors were isolated to decisions in response to Rule 35(3) reports.** Responses to Rule 35(1) reports were all assessed as *satisfactory* when considered in line with the Detention Rule 35 Process Instruction, however it is considered that this instruction lacks information on the specific consideration of Rule 35(1) and Rule 35(2) reports and responsible officers would benefit from guidance here. This links in with **Recommendation a**.

**53. As stated in the Detention Rule 35 Process Instruction, the consideration of a Rule 35(3) report must take the following approach and the written response must address each element clearly:**

- Consider whether the Rule 35 report constitutes independent evidence of torture
- If the report constitutes independent evidence of torture, consider whether there are very exceptional circumstances such that detention is appropriate
- If the report is not independent evidence of torture, consider whether, on the full facts of the case (including the report), ongoing detention remains appropriate

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<sup>5</sup> An applicant may enter into or remain in DFT processes only if there is a power in immigration law to detain, and only if on consideration of the known facts relating to the applicant and their case obtained at asylum screening (and, where relevant, subsequently), it appears that a quick decision is possible, and none of the Detained Fast Track Suitability Exclusion Criteria apply.

It is these areas which were considered to be lacking in the 22 Rule 35(3) responses that were assessed as being *weak*. Although the responses did not fully explain to the detainee why detention was being maintained or alternatively why they were being released, full consideration of the evidence available by the auditors shows that these weaknesses did not lead to victims of torture being inappropriately detained.

54. The errors observed by auditors can be grouped into a small number of themes:

- Responses stating that the Rule 35(3) report does not constitute independent evidence of torture, without any explanation for this conclusion.
- Responses requiring too high a standard of proof or level of detail within the Rule 35(3) report, with the response merely making reference to a lack of detail or lack of diagnostic findings, without any further consideration of whether the report amounted to independent evidence of torture.
- Responses in more complex cases, which correctly accepted that the Rule 35(3) report amounted to independent evidence of torture, and also correctly maintained detention, but the response did not fully or clearly explain what the very exceptional circumstances were, and why these led to detention being maintained.
- Responses in Rule 35(3) cases which considered whether detention was injurious to health, rather than considering whether the report amounted to independent evidence of torture.
- Responses failing to address all the issues raised in the report, in particular where additional concerns were raised in addition to the claim of torture (e.g. post traumatic stress disorder and anxiety).
- In 1 case, although CID had been updated with an outcome no written response could be found on CID for the Rule 35(3) report. In this case 2 family members were detained and both had individual Rule 35(3) reports referred by the medical practitioner on the same day. CID notes state that the detainee's Rule 35 report had been responded to in the same response produced for the family member's Rule 35 report (e.g. one combined response for two individual Rule 35 reports). This was inappropriate as the detainee should have received an individual response addressing the specific issues raised in their individual Rule 35(3) report. In addition, a review of the family member's Rule 35 response showed that this did not address in any way the report relating to the first detainee. This also raises confidentiality issues, which should be observed in all cases.

**55. Failing to provide sound reasons to explain the decision in the response to the Rule 35 report can create additional work and can also lead to additional costs for the Home Office.** For example, one case had numerous Rule 35 reports. The first report dated 22/9/2013 was responded to appropriately. The second report dated 30/09/2013 was responded to inappropriately, with the responsible officer placing significant weight on the fact that the report did not follow the Istanbul Protocol. Although the two September 2013 reports and responses are outside the scope of this audit, the second September 2013 response was criticised by the medical practitioner in a further Rule 35(1) report dated February 2014 (which is in scope for the audit). The response from 30/09/2013 failed to address the fact that the medical practitioner stated the scarring was consistent with the attribution claimed and also failed to detail any very exceptional circumstances which led to detention being maintained. Although the February 2014 report has been responded to appropriately, and the detainee subsequently released, the errors in September 2013 have created additional work and a Judicial Review has been lodged by the detainee alleging unlawful detention from the date of the September 2013 report.

**56. While reviewing the content of the response, auditors also looked at the standard and burden of proof that was applied by the responsible officer and this was assessed at Question 3e. Forty-five responses (75%) were assessed as being satisfactory.** Note: this refers to assessing whether responsible officers considered the Rule 35 report in terms of whether it amounted to independent evidence of torture. Ten of these cases had minor errors, while deemed to be satisfactory overall. These minor errors related to the language used within

the response. In all these cases, whilst it is clear that the correct standard has been applied and that the correct decision has been made, the language used (in particular reference to diagnostic findings) may imply that the incorrect standard was being applied. Fourteen responses (23%) were assessed as being *weak* and as having serious errors. Again all cases assessed as being *weak* related to responses to Rule 35(3) reports. Responses to Rule 35(1) reports were assessed as being satisfactory.

**57. The Detention Rule 35 Process Instruction makes it clear that Rule 35 reports are not medico-legal reports, and they must not be considered defective for not containing the detail of such a report or being written according to the Istanbul Protocol or other standards. IRC medical practitioners are not expected to have specialist forensic training and are not trained in standards relating to documentation of torture such as the [Istanbul Protocol](#).**

**58. A number of serious errors relating to the standard and burden of proof applied by responsible officers relate directly to them not taking the Detention Rule 35 Process Instruction into account.** In particular, a number of cases cited a lack of diagnostic findings or a lack of detail in the report, and instead required a level of detail from the Rule 35(3) reports that would normally only be found in medico legal reports written according to the Istanbul Protocol. In all cases where serious errors were found the responses relied solely on this lack of detail in the reports, rather than clearly explaining why the report did not amount to independent evidence of torture. Despite the responses not fully explaining to the detainee why detention was being maintained or alternatively why they were being released, these weaknesses did not lead to victims of torture being inappropriately detained. This links into **Recommendation f**. By way of illustration, the following comments were noted by auditors in the responses to Rule 35(3) reports:

- *"Dr .... has not identified the specific symptoms he refers to, nor the diagnostic criteria that he has used to confirm his findings".*
- *"It is noted that the medical practitioner has not identified the specific symptoms of the diagnostic criteria that he refers to you displaying which are likely to be confirmatory evidence of your claimed torture. Furthermore, in the absence of a full assessment of PTSD, it is unclear whether the symptoms relate to torture or in relation to separate trauma".*

Serious errors were also observed on this criterion in cases where:

- The standard and burden of proof applied by the responsible officer was unclear because of the lack of reasoning in the decision.
- In 2 Rule 35(3) cases, rather than considering whether the report constitutes independent evidence of torture, the decision-maker considered whether detention would be injurious to health or whether the detainee required ongoing medical care in the UK.
- One case considered whether the definition of torture as set out in [EO & Ors. \[2013\] EWHC 1236 \(Admin\)](#) was met, concluding it was not, without explanation or any consideration of whether the Rule 35 (3) report constituted independent evidence of torture.

**59.** One case was assessed as being weak in relation to professional drafting (Q3c). This was as a result of the response being 'cut and paste' from a previous unrelated decision and therefore it failed to address the specific issues in the Rule 35 report. The response also contained inaccurate information. All other responses were awarded a satisfactory marking, although it was observed that the IS335 (the Rule 35 response template) has the UKBA logo on it; this should be updated to reflect the Home Office and current branding requirements. This links into **Recommendation b**.

## H. Quality performance by marking criteria: procedural areas

60. Overall Rating:

Satisfactory	31 cases
Weak	29 cases
Fail	0 cases
N/A	0 cases

61. The table below shows the breakdown of markings by each criterion:

Criteria	Satisfactory		Weak		Fail		N/A	
	Number	%	Number	%	Number	%	Number	%
4a. Decision Maker takes appropriate steps to ensure the Rule 35 report once received is brought to their immediate attention.	16	27%	0	0%	0	0%	44	73%
4b. Appropriate CID case type opened (Rule 35(1) – Health Concerns, Rule 35(2) - Suicide Risk Concerns, Rule 35(3) – Torture Allegation).	57	95%	3	5%	0	0%	0	0%
4c. Where the Responsible Officer has deemed the report to contain insufficient information such as to allow substantive consideration of the report, they have contacted the IRC contact management team at the earliest possible opportunity and a clarified report obtained within appropriate timescales.	4	7%	2	3%	0	0%	54	90%
4d. Decision clearly identifies the responsible officer and team names.	59	98%	0	0%	0	0%	1	2%
4e. The decision is available on Doc Gen and linked to the correct CID record.	56	93%	4	7%	0	0%	0	0%
4f. Response has SEO/HMI clearance and CID notes confirm this.	41	68%	19	32%	0	0%	0	0%
4g. Decision faxed to IRC that made initial report and to new IRC, if applicable. Confirmation fax receipt added to file. If applicant has been released, fax sent to initial IRC.	59	98%	1	2%	0	0%	0	0%
4h. IRC contacted by phone to confirm receipt of response. Notes added to CID to this effect.	58	97%	0	0%	0	0%	2	3%
4i. Response faxed to Representative, where appropriate.	18	30%	12	20%	0	0%	30	50%
4j. CID records updated appropriately with case outcome.	54	90%	6	10%	0	0%	0	0%

## Completing Rule 35 information correctly on CID

62. **In 95% of cases the appropriate CID case type was opened (Q4b). Three cases were assessed as weak and having serious errors for this question:**

- In 2 cases a Rule 35 report was not produced by a medical practitioner to respond to, and therefore a decision was not required, and the Rule 35 case type should not have been opened on CID by casework. Addressing Rule 35 type issues on Rule 35 response templates is not appropriate and although of no detriment to the detainee, if recorded on CID in this manner will inflate the number of Rule 35 reports recorded. This links into **Recommendation d**.
- In the third case, the first responsible officer/unit received the Rule 35 report from the CMT however they did not action this and solely put it in the Home Office file. When the case was transferred to the asylum team the asylum case owner went through the file, found the Rule 35 report and dealt with it and the Rule 35 CID case type was opened by them - nearly one month after the report was produced. This error was attributable to those involved earlier in the process rather than the asylum team, who once the case was routed to them, took all relevant action. However in this case the detainee had already been released from detention.

63. **Four cases scored satisfactory overall, but did have minor errors.** Minor errors were awarded for a variety of reasons, including minor delays in opening the Rule 35 case type on CID. In 1 case, a Rule 35(2) and a Rule 35(3) case were opened, and the Rule 35(3) case subsequently closed as a duplicate case and instead the Rule 35(2) case type updated in response to the report. This was incorrect as a Rule 35(3) report had been received. This links into **Recommendation d**. Two minor errors were given because the appropriate CID case type had been opened, but this was not recorded in CID special conditions as required in cases concerning suicide/self harm and for medical conditions. This links into **Recommendation a**.

64. **In 90% of cases in the sample, CID records were updated appropriately with the case outcome. However in 10% of cases (6), the incorrect Rule 35 outcome was recorded on CID, as a result of which there will be incorrect MI on Rule 35.** These errors link into **Recommendation d**. Details of these 6 cases are:

- In 3 cases the CID outcome recorded was 'released', however the detainee was released for reasons other than the Rule 35 report, therefore the outcome should be 'detention maintained'. This ensures that the release will not be wrongly attributed to Rule 35 reasons.
- In 2 cases the Rule 35(2) CID case type had been opened and updated with the case outcome of 'maintaining detention', but a Rule 35 report had not been produced by a medical practitioner, or anyone else, to respond to in these cases.
- In 1 case there was a significant delay in updating CID. The decision was made on 10/02/14 to release the detainee, with the detainee released on 11/02/14, however the Rule 35 case type was not updated until 18/03/14. MI will inaccurately show a significant delay in responding to the Rule 35 report in this case. Also a CID note dated 10/2/2014 incorrectly states that the decision was to 'maintain detention' which is incorrect.

65. Question 4e assessed whether the decision is available on CID (DocGen) and linked to the correct CID case type. 93% of cases (56) were marked as satisfactory. However, 22 cases were marked as having minor errors because:

- The decision was available on DocGen, but was on the incorrect case type (auditors tended to find that these were stored on the asylum case type rather than the Rule 35 case type).

- The decision was not written using the correct standard template, IS335. In some cases the ICD 1100 had incorrectly been used.

66. While these may only be minor errors they are high in number. For ease of quick access of information specific to Rule 35 the decision should be stored on the correct case type, and the decision written using the correct standard template as otherwise there is a risk that it could be missed. **In the 4 cases that were deemed to have serious errors for Question 4e, this was because the decision was not available at all on CID DocGen (on any case type).** The lack of a centrally located electronic response carries clear risks, and is not in line with the process instruction which clearly outlines this requirement in part 2. These errors link to **Recommendation f.**

#### Authorisation of decision

67. Question 4f assesses whether the response has appropriate SEO/HMI clearance. **Within the sample in 32% of cases (19) the evidence did not sufficiently show that the response had the appropriate level of clearance,** with one of the following occurring:

- No evidence could be found that the decision had been authorised at all.
- The decision was authorised, however no evidence could be found to confirm that the person authorising the decision was of SEO/HMI grade, or above (or was appropriately acting in one of those grades).
- The responsible officer authorised the decision themselves on CID, however the evidence did not show that they were of the appropriate grade to do so.

68. As highlighted in the previous section, on the content of the Rule 35 response, serious errors were identified in a high number of cases within the sample. It may be that some of these could have been prevented had the decision gone through the appropriate clearance process. This links to **Recommendation f.**

69. **Within the 41 cases that were authorised by a person of the appropriate grade, 6 cases were assessed as having minor errors.** This tended to be because CID notes confirmed the decision has the required level of clearance, but the decision was not authorised on the CID 'case outcomes' tab.

70. QAT extended the scope of the audit to look more closely at the 19 Rule 35 responses that were not authorised correctly. **Auditors considered whether the detention review generated by the Rule 35 response was authorised at the appropriate level,** because the detention review is crucial to the decision as to whether detention should be maintained following receipt of a Rule 35 report (this should be added to the marking criteria for any future audits). **The results are as follows:**

- In 10 of the 19 cases the detention review was signed off at the correct grade.
- In 2 cases the evidence suggested that the detention reviews were authorised at the incorrect grade, at HEO rather than SEO level, with the previous and subsequent detention reviews authorised at the correct grade.
- In 3 cases there is evidence on CID that a detention review had been completed, however evidence is lacking on CID and the file to confirm who authorised the review.
- In 3 cases a decision had already been taken to release the detainee prior to the Rule 35 response being drafted (for reasons other than the Rule 35 report). As the detainees' were no longer in detention a further detention review was not required.

- In 1 case the detainee was removed on the same day as the Rule 35 report was referred and responded to. This was the last in a series of Rule 35 reports for this case, which was dealt with appropriately. The final Rule 35 report did not include any material changes compared to the previous reports in this case, and the report did not amount to independent evidence of torture. There had been a full asylum appeal hearing in the case, a Rule 35 report was before the Immigration Judge (IJ) where the claims of torture were central to appeal. The IJ dismissed the account of torture on credibility grounds.

This links to **Recommendation h**.

### Forwarding the response to all required parties

71. **Half of the detainees in the sample had legal representatives recorded on CID at the time of the Rule 35 decision. However in 40% of these cases (12 in total) there was no evidence recorded on CID that the Rule 35 response had been sent to the legal representatives (Q4i).** Whilst the incidence of this error figure is not as high as in Question 2d (CMT forwarding the report to the legal representatives), it is still too high. It is essential that the response is sent to the legal representatives and that this is recorded on CID. Again, it may be that in some cases this action was completed, but confirmation of this was not recorded on CID. In some cases there is evidence on CID of this causing a difficulty at a later date, and of phone calls and letters from representatives requesting this information. This can be avoided if the decision is sent to them in a timely manner at the time of response.
72. **In regard to Question 4g, 98% of cases (59) were deemed to be satisfactory and faxed the Rule 35 decision through to the IRC.** Of these 59 cases 17 had minor errors. These occurred for a variety of reasons, including when there was not a note on CID, or other evidence, that the decision had been sent to the IRC (however it could be established by subsequent CID notes that it had clearly been received by the IRC within appropriate timescales); the detainee was released prior to the decision being made and there was no evidence that the decision was sent directly to them; or the decision was sent to the detainee's current IRC but not the IRC who originally referred the report.
73. One case was assessed as weak in this area. This was very case-specific. The CID notes suggested that the decision had been faxed to the IRC, however no individual response for this case could be found on CID.
74. **Fifty-eight cases were deemed to be satisfactory with regard to Question 4h, which assessed whether the IRC was contacted by phone to confirm receipt of the response. However, 57 out of the 58 cases had minor errors** because no evidence could be found to suggest that the IRC was contacted to confirm receipt of the response. Despite this there was nothing to suggest that this led to any case handling issues or delays. The Detention Rule 35 Process Instruction clearly sets out the necessity for responsible officers to telephone the IRC to confirm they have received the response. Evidence of doing this should be clearly recorded on CID. **This links to Recommendation f.**

### Other procedural areas

75. Responsible officers performed very well in regard to question 4d, where all decisions clearly identified the responsible officer and team names.
76. Question 4c, concerning the responsible officer contacting the IRC CMT when the report contained insufficient information, was not applicable in 90% of cases because in these cases the report contained sufficient detail and information. In 4 cases it was correctly identified that further information was required to allow an effective consideration of the medical practitioner's concerns and the decision to release or maintain detention, and the responsible officer took immediate and appropriate steps which were fully documented on CID.

77. **Two cases were assessed as having serious errors.** In these cases further information was required but not sought:

- In 1 case, the Rule 35 report raised areas of concern, but lacked key information. Given the nature of the scars on the detainee further information was required from the medical practitioner including an assessment of whether the scars are in his/her view medically consistent with the attribution claimed by the detainee and also whether these may have other possible explanations which do not relate to torture. The medical practitioner did not clearly state this within the report. Without this it was not possible to conclude whether or not it was the correct decision to maintain detention.
- In the second case, the decision to maintain detention was correct on balance in light of various very exceptional circumstances in the case, including imminent removal. However, the response did not deal fully with the reasons why it was appropriate to maintain detention and further information was required from the medical practitioner to ensure that the response was as robust as possible, in particular in relation to a medical concern (anxiety) as the report contained limited content.

78. **In regard to Question 4a, the majority of cases (44) were marked ‘not applicable’ because there was no evidence that the responsible officer was notified of the report in advance in order to take steps to notify support staff or ensure appropriate monitoring of the fax machine to prevent a delay in receiving the report.** All 16 cases that scored satisfactory had minor errors, because no evidence was found that the responsible officer showed diligence in taking steps to notify team administration officers to ensure that faxes were brought to their immediate attention, as set out as required in Section 2 of the Detention Rule 35 Process Instruction. However, this did not result in any delays in the handling of these cases.

79. In a similar manner to Section 2, regarding the referral of the report, the assessment of this area relies upon information being accurately and correctly recorded on CID. It may be that some of these procedural requirements have been done, however no evidence of this is recorded. The errors identified in this section are ‘quick wins’ and easy errors to rectify.

# I. Quality performance by marking criteria: service of Rule 35 response

80. Overall Rating:

Satisfactory	37 cases
Weak	23 cases
Fail	0 cases
N/A	0 cases

81. The table below shows the breakdown of markings by each criterion:

Criteria	Satisfactory		Weak		Fail		N/A	
	Number	%	Number	%	Number	%	Number	%
5a. A copy of the Home Office response sent to the medical practitioner to review.	36	60%	22	37%	0	0%	2	3%
5b. The detainee is provided with a copy of the report and given help, where necessary, to understand the contents.	53	88%	4	7%	0	0%	3	5%
5c. Where the detainee has been transferred to another centre, the response is forwarded to the local Home Office contact management team as soon as practicably possible.	2	3%	0	0%	0	0%	58	97%
5d. Where the medical practitioner feels that their concerns have not been appropriately addressed in the response; this has been escalated through the Home Office contact management chain.	0	0%	0	0%	0	0%	60	100%

82. In a similar manner to Sections 2 and 4, the assessment of this area relies upon information being accurately and correctly recorded on CID. It may be that some of these tasks have been done, however no evidence of this is recorded. The errors identified in this section are 'quick wins' and easy errors to rectify.

83. In 36 cases (60%) a copy of the Home Office response was sent to the medical practitioner to review (Q5a). Two of these cases had minor errors, while deemed to be satisfactory overall. In both cases subsequent CID notes confirmed that a copy of the response had been received by the medical practitioner, however CID was not updated to record the fact that it had been sent to them.

84. **Twenty-two cases (37%) were assessed as being weak and having serious errors. All cases assessed as being weak were those where the evidence does not sufficiently clearly show that a copy of the response was sent to the medical practitioner.** Failing to provide medical practitioners with a copy of the response prevents the medical practitioner from promptly raising any concerns that they may have about the response, which may lead to further work and cost implications for the Home Office. This links into **Recommendation g**.

85. **In 53 cases (88%) there was evidence that the detainee was provided with a copy of the response (Q5b).** Thirty of these cases had minor errors, while deemed to be satisfactory overall:

- Twenty-eight cases incurred minor errors because although the response was served, **auditors could find no evidence to suggest that the detainee spoke English and it was unclear whether any assistance had been provided to the detainee to understand the contents.** This also links into **Recommendation g.**
- In 1 case, the 'confirmation of conveyance' form stated that the detainee was unable to sign for the IS335, however the reasons for this were not recorded.
- In 1 further case there was no record of the detainee being served with a copy of the response, however the detainee had significant mental health problems and it is possible that health care took the decision not to provide him with a copy in light of his refusal to cooperate, lack of consent and present diagnosis. If this was so, CID notes should have been updated to reflect this.

86. **4 cases (7%) were assessed as being weak and having serious errors in relation to Question 5b.** All cases assessed as being weak were those where auditors could find no evidence to suggest that a copy of the response had been provided to the detainee.

87. In 2 cases the detainee had been transferred to another IRC. In both cases the response was forwarded to the local Home Office CMT as soon as was practicably possible and therefore scored satisfactory at Q5c.

88. No cases were encountered whereby the medical practitioner felt that their concerns had not been appropriately addressed and therefore Question 5d is marked 'not applicable' for all cases.

## J. Quality performance by area

89. This section of the report provides high level performance data by area. As a note of caution; in some areas the numbers of cases audited are very small and therefore the quality markings should not be viewed as representative of overall quality in these areas. Please see the 'Quality performance by marking criteria' sections of the report for further details on the errors identified.

### [Creation of Rule 35 report](#)

Location	No of cases	Satisfactory		Weak		Fail		N/A	
		No.	%	No.	%	No.	%	No.	%
Brook House IRC	6	3	50%	2	33%	0	0	1	17%
Colnbrook IRC	5	1	20%	4	80%	0	0	0	0
Dover IRC	3	2	67%	1	33%	0	0	0	0
Dungavel IRC	3	2	67%	1	33%	0	0	0	0
Harmondsworth IRC	15	4	27%	7	46%	0	0	4	27%
Haslar IRC	2	2	100%	0	0	0	0	0	0
Morton Hall IRC	5	4	80%	0	0	0	0	1	20%
Tinsley House IRC	1	1	100%	0	0	0	0	0	0
Yarl's Wood IRC	18	2	11%	14	78%	0	0	2	11%

**Note:** In 2 cases Rule 35 reports were not produced by a medical practitioner, or anyone else, but had Rule 35 outcomes recorded on CID.

## Referral of Rule 35 report

Location	No of cases	Satisfactory		Weak		Fail		N/A	
		No.	%	No.	%	No.	%	No.	%
Brook House IRC	6	3	50%	3	50%	0	0	0	0
Colnbrook IRC	5	4	80%	1	20%	0	0	0	0
Dover IRC	3	2	67%	1	33%	0	0	0	0
Dungavel IRC	3	1	33%	2	67%	0	0	0	0
Harmondsworth IRC	16	8	50%	8	50%	0	0	0	0
Haslar IRC	2	0	0	2	100%	0	0	0	0
Morton Hall IRC	5	4	80%	1	20%	0	0	0	0
Tinsley House IRC	1	0	0	1	100%	0	0	0	0
Yarl's Wood IRC	17	11	65%	6	35%	0	0	0	0

**Note:** In 2 cases Rule 35 reports were not produced by a medical practitioner, or anyone else, but had Rule 35 outcomes recorded on CID. These cases were therefore also not referred.

## Content of Rule 35 response

Location	No of cases	Satisfactory		Weak		Fail		N/A	
		No.	%	No.	%	No.	%	No.	%
Asylum Casework Directorate.	2	0	0	2	100%	0	0	0	0
Criminal Casework Directorate	7	3	43%	4	57%	0	0	0	0
Midlands & East Detained Screening Unit	10	10	100%	0	0	0	0	0	0
Detained Fast Track	22	11	50%	11	50%	0	0	0	0
National Removal Command	8	3	38%	5	63%	0	0	0	0
Operation Support and Certification Unit (OSCU)	1	0	0	1	100%	0	0	0	0
Removals Casework	1	1	100%	0	0	0	0	0	0
Immigration Compliance and Enforcement	1	0	0	1	100%	0	0	0	0
Third Country Unit	8	6	75%	2	25%	0	0	0	0

## Procedural areas

Location	No of cases	Satisfactory		Weak		Fail		N/A	
		No.	%	No.	%	No.	%	No.	%
Asylum Casework Directorate	2	0	0	2	100%	0	0	0	0
Criminal Casework Directorate	7	2	29%	5	71%	0	0	0	0
Midlands & East Detained Screening Unit	10	9	90%	1	10%	0	0	0	0
Detained Fast Track	22	10	45%	12	55%	0	0	0	0
National Removals Command	8	3	38%	5	63%	0	0	0	0
Operation Support and Certification Unit (OSCU)	1	0	0	1	100%	0	0	0	0
Removals Command	1	1	100%	0	0	0	0	0	0
Immigration Compliance and Enforcement	1	0	0	1	100%	0	0	0	0
Third Country Unit	8	6	75%	2	25%	0	0	0	0

## Service of Rule 35 response

Location	No of cases	Satisfactory		Weak		Fail		N/A	
		No.	%	No.	%	No.	%	No.	%
Brook House IRC	6	3	50%	3	50%	0	0	0	0
Colnbrook IRC	5	5	100%	0	0	0	0	0	0
Dover IRC	3	1	33%	2	67%	0	0	0	0
Dungavel IRC	3	3	100%	0	0	0	0	0	0
Harmondsworth IRC	15	7	47%	8	53%	0	0	0	0
Haslar IRC	2	1	50%	1	50%	0	0	0	0
Morton Hall	5	2	40%	3	60%	0	0	0	0
Tinsley House IRC	1	1	100%	0	0	0	0	0	0
Yarl's Wood IRC	18	12	67%	6	33%	0	0	0	0
Criminal Casework Directorate	2	2	100%	0	0	0	0	0	0

# K. Annex

## 1. Quality scoring criteria

RAG	Criteria for Overall Quality Score
SATISFACTORY	Score of all Correct or Minor errors allowed.
WEAK	Score of 1 or more Serious errors.
FAIL	Score of 1 or more Critical errors.

## 2. Error definitions

**CORRECT** - Adheres to legislation, Home Office policy and/or guidance. The consideration is fully justified. No risks to the applicant, the UK or the Home Office.

**MINOR** – Does not fully adhere to legislation and/or process and/or policy; however this is without significant detriment to the decision. A minor lack of professionalism and/or adherence to good practice and/or efficient handling of the case through the system has been demonstrated. However, the strengths of the consideration outweigh the few weaknesses, and/or errors can be rectified effectively. No apparent risks or impact on applicant or the UK.

**SERIOUS** – Does not fully adhere to legislation and/or process and/or policy, which has led to a fundamental error, and led to the Home Office being exposed to potentially significant levels of risk, for example to reputation or resources. Some aspects of the consideration require substantial attention to address serious weaknesses or omissions.

**CRITICAL** – Does not fully adhere to legislation and/or process and/or policy. There are such serious weaknesses or omissions that little confidence can be placed in the validity of the consideration. The applicant or the UK are exposed to unacceptable levels of risk, for example the applicant is potentially exposed to treatment that is contrary to the 1951 Geneva Convention and/or the ECHR Article's 2 & 3, the UK is potentially exposed to risks to the public good, safety or security.