Introduction

The mental health needs of foreign national individuals who come into contact with the criminal justice system are a neglected issue, with what discussion does exist on this subject confining itself solely to the prison system. Whilst this is to an extent understandable as this is where the concentration of foreign national individuals lies, it is also important to look at the criminal justice system as a whole (as well as its interface with the mental health and the immigration system) in any examination of the mental health needs of foreign national offenders and detainees.

Foreign nationals – including those with a learning disability – often have mental health needs which go beyond (and are different to) those experienced by the general offender population, and which can be exacerbated by other factors that render them more vulnerable than other indigenous defendants or offenders. In addition to the usual health stresses that accompany being arrested and incarcerated, foreign national prisoners may experience:

- mental health and welfare problems (such as isolation, separation from family, trauma and loss, particularly if they are seeking refuge or asylum)
- a lack of access to information about their current experience
- a lack of legal and immigration advice
- language barriers and a shortage of translation facilities
- a period of effectively being held in bureaucratic limbo following the serving of their sentence and prior to deportation
- limited preparation for release and insufficient access to resettlement programmes
- a fear of return to their home country fuelled either by a lack of affinity with that country or by other reasons.

All of the above factors can impact on the experience of foreign nationals in the criminal justice process and, as such, affect their well-being and mental health.
It has long been recognised that the risk of mental health problems for those entering prison is high. As much as 80% of the general prison population suffer from one mental health problem or another, or several at once. Given the additional strains and pressures that foreign nationals find themselves under once incarcerated, levels of distress can be higher than amongst the indigenous prison population although, conversely, in some ways they may also possess greater resilience due to their previous experiences. It has been noted, for instance, that surviving the flight from their country of origin and negotiating their arrival in the UK often means that an individual has had to draw upon enormous personal strengths and has had to be extremely resourceful.

However, the evidence available generally points to negative experiences for foreign nationals whilst in prison which impact adversely on their mental health. An assessment by the Department of Health revealed that racism and a lack of respect from prison staff towards foreign national prisoners are commonplace. Consecutive reports have found that the foreign national prisoner experience is extremely challenging and debilitating, whilst the trajectory for self-inflicted deaths amongst foreign national prisoners, which was generally declining from 2002 to 2005, has been rising since 2006. The Chief Inspector of Prisons found that the experience of open-ended immigration detention had left many feeling depressed and considering self-harm or suicide. Her report provides several examples of inmates feeling seriously distressed or carrying out threats to harm themselves as a result of IND/UK Border Agency delays or an inability to obtain appropriate legal advice and assistance whilst still being held in prison and beyond the end of their sentence. As one foreign national put it:

‘Before and after prison I feel I have really changed. I find myself laughing or talking to myself. I think I need to see a psychiatrist now. I think a lot about being in prison and I live in fear the whole time of being sent back to prison. I live in fear every day…it makes me cry.’

**Key facts**

- At the end of March 2009 there were 11,238 foreign national prisoners in British prisons (14% of the overall prison population).

- Foreign national prisoners come from a range of countries: 169 in total. However, just under half of this figure come from just 10 countries: Jamaica, Nigeria, the Republic of Ireland, Vietnam, Pakistan, China, Somalia, Poland, India and Lithuania. Foreign national prisoners comprise a larger proportion of the total female prison population than they do of the male prison population. Approximately one in five women in prison are foreign national prisoners compared to 14% of the male prison population.

- Over 50% of female foreign national prisoners are from African and Caribbean black and minority ethnic (BME) groups.

- Fifty-eight per cent of female foreign national prisoners and 32% of male foreign national prisoners are serving a custodial sentence for drug offences.

The diverse cultures, languages and faiths which together make up the population of foreign national prisoners and defendants pose a significant need and challenge both to the prison system and the wider criminal justice system.
It is important to point out that foreign national prisoners are not a homogenous group. Quite apart from the myriad of nationalities involved, the experiences of refugees will differ from those of economic migrants. Asylum seekers who may have fallen foul of the law, for example, may have little in common with those incarcerated for drug importation, whilst those held in prison for transgressing immigration laws may feel aggrieved at being housed with those they view as ‘criminals’ but who incidentally happen also to be of foreign national origin.

This paper seeks to map out some of the issues and challenges relating to the mental health needs of foreign national prisoners, and explores some of the changes needed to address them.

### Foreign national defendants and prisoners – who are they?

The term ‘foreign national prisoner’ is applied to anyone in prison who is either remanded on or convicted of criminal charges or breaches of immigration laws, and who does not have an absolute legal right to live or remain in the UK. Asylum seekers will also include those who may have been resident in the UK for some considerable time, perhaps decades, but who are not full British citizens. Any offenders who have indefinite leave to remain or who have any limits on their stay in the United Kingdom will also be classified as foreign nationals.

**Asylum seekers**

Those of foreign nationality caught up in the criminal justice system will also include asylum seekers. The term ‘asylum seeker’ refers to a person who has asked for asylum in the UK and who is waiting for a decision on that claim. Although asylum seekers might enter the UK illegally, once they have applied for asylum they are no longer illegal – they are deemed to be seeking permission to remain in the UK on the grounds of asylum.

Asylum seekers have no right to get a job in the UK, although voluntary work and study are allowed and in mental health terms these can be alleviators of stress. 

**Refugees**

A person who has received a positive decision on his or her asylum claim is called a refugee. A refugee enjoys the protection of the host community and has the right to work in the UK. However, someone who has been granted refugee status may not necessarily be immune from deportation if they lose this protection. Protection can be lost if a person has committed what is considered to be a ‘particularly serious crime’ (crimes whereby the sentence is two years or more) and they ‘constitute a danger to the community’.

**Trafficked people**

People who have been trafficked into the UK can also find themselves caught up in the criminal justice system. Guidance provided for prisons recognises that trafficked individuals have high healthcare and psychological needs, and that victims should not normally be charged with offences that are a direct consequence of the trafficking situation. However, there are occasions where the Crown Prosecution Service will proceed – for example, where the individual has been subject to trafficking but the offences are not necessarily a direct consequence of this or where the offences are so serious that it is in the public interest to pursue charges. Once within the system, trafficked individuals will be considered foreign national offenders – a further illustration of the diverse nature of those who make up this group.

**Special groups**

European Economic Area nationals may only be expelled from the UK on grounds of public policy, public security or public health. According to article 27(2) of the European Commission’s Directive 2004/38/EC on the free movement and residence of citizens within the EU, the ‘personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society’. Article 28 requires the member state to consider factors such as the length of residence, their age and state of health, family and economic situation, social and cultural integration and extent of links with the country. It also provides that an expulsion
decision may not be taken against persons who have resided in the host member state for the previous 10 years or against minors except on ‘imperative grounds of public security’.

### The key challenges

Foreign nationals in the criminal justice system face a number of problems over and above normal offenders which can affect their mental health. After a critical period in the Home Office in 2006 following which all foreign national prisoners were considered for deportation, a 2007 report from the Chief Inspector of Prisons said of foreign nationals:

‘One stark indicator of their predicament was the increased level of self-harm...foreign nationals described feeling suicidal due to the uncertainty of their position; and IMBs [independent monitoring boards] and establishments reported increased self-harm and suicide attempts.’

The report interviewed 22 prisoners and most of these (86%) said that the uncertainty of their situation had made them consider self-harming.

HM Inspectorate of Prisons’ Thematic Review identified three overarching problems for foreign national prisoners: family contact, immigration and language issues. The review makes it clear that these, as well as some other key issues set out below, have implications for their mental well-being, feeding into potential feelings of depression and self-harm, as well as attempted suicide.

### Inappropriate detention

Often detention continues following the end of a sentence until immigration issues are resolved. This process takes an indeterminate length of time and is a considerable source of stress. Individuals may not be told until the date of their release that they are going to be further detained.

### Immigration and legal advice

Information from the Immigration and Nationality Directorate (now the UK Border Agency) can be slow to come through and is often inaccurate. There have been examples of a total absence of information being fed through to individuals in relation to final decisions on cases and deportation dates.

### Visits

Family visits are clearly impossible where the family is situated abroad, or difficult where the individual is located in a designated foreign national prison which is unlikely to be local. In situations like these, alternatives need to be explored, such as long distance telephone cards.

### Language barriers

Translation and interpreting facilities for foreign national prisoners have historically not been good. This has meant that they may miss out on the most basic of provisions such as showers and association with other prisoners because they may not have understood staff instructions or questions, or not followed guidance because it was not translated.

### Resettlement and sentence progression

Foreign nationals may experience particular problems as a result of being poorly informed about the legal system, immigration system and prison rules and procedures. They can experience difficulty in accessing accurate advice during sentence and whilst on remand. A survey carried out in Jamaica by the Ministry of National Security found that prisoners returning from the UK were not receiving adequate information whilst in prison and were ill informed about schemes such as the Early Release Scheme and Facilitated Returns Scheme.

Anxiety about their legal status and dealing with the machinery of the immigration system can also be a key cause of stress for foreign nationals. A 2006 report published by the Commission for Patient and Public
Involvement in Health on the provision of mental health services to asylum seekers and refugees in London not only deemed that group ‘the most vulnerable and socially excluded people in our society’ but described the mental health implications of their immigration status as follows:

‘The experience of uncertainty means that for many months and sometimes years individuals live with a fear that they may be returned to their country of origin. Daily and persistent anxiety over the possibility of deportation and dealing with the complex legislation and decision-making process has resulted in an increased level of mental distress and demoralisation for many of those interviewed. This inevitably impacts on integration, mental well-being and emotional and behavioural responses.’

The challenge of dealing with the complexities of the immigration system, meanwhile, engenders feelings of ‘helplessness and despair most likely due to a lack of control over the situation’. Sentiments like these could exacerbate any feelings of despondency that foreign nationals may feel as a result of their contact with the criminal justice system or incarceration and compound any mental health problems they have.

The effect of immigration legislation
Since 2006, some have observed what they describe as a ‘new moral panic’ in relation to immigration offenders and ‘outsiders’. Certain sections of the media have undoubtedly played upon a blurring of the boundaries between criminal and foreigner, offender and seeker of asylum or refuge. The Immigration and Asylum Act 2004 rendered it a criminal offence for someone to enter the UK without a passport or having destroyed travel documents and there has been a gradual criminalisation of other previously solely immigration infractions – there are now approximately 50 potential offences under immigration legislation. Indeed a significant number of offences committed by foreign nationals may be acts which have gradually become criminalised by immigration

The legislation and key dates

2002 Nationality, Immigration and Asylum Act (section 72) states that a refugee can lose the protection of this country (namely, have their refugee status revoked) should they commit a particularly serious crime.

2004 Immigration and Asylum Act creates further immigration offences, such as entering the country with false documents or destroying one’s documents. The caveat remains that ‘in some circumstances persons with learning difficulties or a disability may be particularly dependent on the person who advised them or facilitated their travel to the UK. In such circumstances it may be unreasonable to expect non-compliance with instructions or advice.’

2006 The NHS assumes responsibility for healthcare in prisons.

2007 The Metropolitan Police begins recording the nationality of offenders after the government’s failure to follow guidelines in relation to the consideration of more than 1,000 foreign national prisoners for deportation.

2007 Changes to the UK Borders Act mean that deportation is now mandatory for foreign national prisoners sentenced to 12 months or more.

2007 Specific foreign national prisons are established, with hub and spoke prisons to follow.

2008 Criminal Justice and Immigration Act introduces a special immigration status (designation) for those believed to be involved in serious crime. These individuals can be deported, tagged or have conditions imposed on their employment and their accommodation. Spouses can have special immigration status applied to them.
legislation over the years. In 2007, 900 people were charged and convicted of these types of offences.\textsuperscript{29}

### Diversion and liaison services

Foreign nationals can first come into contact with the criminal justice process in a variety of ways. The customary route into the system is by way of arrest for alleged criminal activity. Should the individual be arrested and taken to a police station they will fall under \textit{Police and Criminal Evidence Act 1984} guidelines and this would provide the opportunity for early assessment. Other routes in such as detention or arrest as a result of failure to meet visa requirements or asylum application irregularities may not provide the same opportunity. Detention by police under sections 135 or 136 of the \textit{Mental Health Act 1983} is also a possibility if the individual is deemed to be in need of care and control. This is not an arrest and it does provide an opportunity for a mental health assessment at a place of safety.

Nacro has long argued that the focus for mental health assessment and interventions should be at the earliest possible point in the criminal justice process and that there should be a matrix of practical solutions in place to facilitate the transition across the interface between the criminal justice system and health and social care systems.\textsuperscript{31} Criminal justice and mental health liaison schemes, court diversion schemes and other arrangements are an important part of this process. Lord Bradley’s recent report on people with mental health problems or learning disabilities in the criminal justice system reiterated that intervention at the earliest stages is particularly beneficial for both the client and the process.\textsuperscript{32} However, consideration of foreign nationals and their needs has largely been omitted from these discussions and processes, which is surprising given their numbers in the criminal justice system. Lord Bradley’s report did not, therefore, explicitly deal with issues surrounding foreign national defendants, but it did state that custody exacerbates mental ill health, heightens vulnerability and increases the risk of self-harm and suicide. Accordingly, it can be argued that the report makes a case for better assessment, liaison and joint and co-ordinated decision making in relation to the mental health needs of foreign nationals as part of the custodial population.

In view of the vulnerabilities of many foreign national defendants, it is clear that they should not be excluded from proactive diversion and liaison processes. Consistent assessment and effective treatment from co-ordinated mental health services – responsive to the needs of the offender and available at each stage of the criminal justice process – are vital for all those with a relevant need coming into contact with the police and before the courts. However, due to their foreign national status, a presumption is often made in favour of custody (rather than treatment or care) for foreign nationals and they are less likely to both apply for and receive bail than other defendants – an outcome which may mask considerable psychological and emotional need.\textsuperscript{33} Paragraph 2.1 of \textit{Prison Service Order 4630} stipulates that foreign national prisoners are eligible for bail, and should be provided with the same appropriate legal advice as is made available for other defendants or those remanded in custody.

Where a foreign national defendant is suspected of committing a minor criminal offence (for which bail could be granted) and has an ongoing immigration irregularity (eg, out-of-date paperwork/over-stayer etc) magistrates’ hands are largely tied and they would not be able to release the person on the immigration misdemeanour. This would have to be decided at an immigration tribunal hearing, heard in front of an adjudicator, which may take some considerable time to convene.

Foreign national offenders with mental health needs and with outstanding immigration considerations should theoretically be given the same consideration by practitioners (at either the police station or court-based schemes) as indigenous offenders. There is currently insufficient evidence available to
ascertain whether the needs of defendants seeking asylum and refuge (who may have suffered loss, possible abuse and even torture) are being met by schemes. Nonetheless, the fact that many foreign national individuals will come from visible minorities means that inevitably they will be subject to the same biases that all visible BME communities undergo at the hands of the criminal justice system. Research has shown, for example, that those from BME communities, particularly black communities, are disproportionately represented in both the criminal justice and mental health systems and Home Office statistics have consistently borne out the discrimination experienced by black people who come into contact with criminal justice agencies.

Research into the activities of criminal justice mental health liaison and court diversion schemes and provision of services to BME clients (which includes foreign nationals) has found that practitioners themselves readily identify that:

- schemes have limited resources to meet BME needs
- there is a general lack of understanding of what these needs may be
- problems are encountered where English is not the first language
- there is a lack of culturally sensitive service provision
- some scheme personnel have misplaced perceptions of dangerousness and risk with these clients.

It was found that:

- schemes make few proactive links with BME community mental health organisations
- there is a dearth of interpreters available
- in assessments, little consideration is given to matters of culture or action planning
- a variety of differing systems is utilised to record and monitor client throughput
- there is little formal analysis of this information.

Given the above, it appears likely that schemes would not have either the capacity or expertise to assist effectively with foreign nationals. There are several areas, therefore, which policy makers need to focus on, as set out below:

- Schemes should be liaising with, and encouraging input from, third and voluntary sector organisations with relevant expertise and knowledge of the foreign national experience.
- All operational protocols and equality and diversity statements should include reference to foreign nationals.
- All monitoring systems should be cognisant of foreign national throughput.
- Cross-cultural training and training on the needs of foreign national defendants should be made available to scheme practitioners.
- Schemes should have a designated foreign national lead practitioner who is able to advise and lead as the need arises (in action planning, assessments and data collection).

### Designated foreign national prisons

In 2007 the government announced that it had converted two prisons (Bulwood Hall in Essex and Canterbury Prison in Kent) into institutions solely for foreign nationals on the grounds that this would make it easier to meet their particular needs. Groups working for the welfare of foreign national prisoners, however, suspected that this development may simply facilitate the easier removal of prisoners and thereby fulfil deportation targets.

In May 2009 arrangements were further formalised through a service level agreement between the National Offender Management Service (NOMS) and the UK Border Agency committing NOMS to implement a ‘hub and spoke’ arrangement for holding foreign national prisoners in certain prisons. In addition to Bulwood Hall and Canterbury, there were six additional establishments
designated hub prisons where foreign national prisoners might be concentrated; it is envisaged that specialist regional immigration teams will be embedded in each of these prisons. The prisons are:
- HMP Risley (North West)
- Hewell (West Midlands)
- Morton Hall (East Midlands)
- The Mount (Eastern region)
- The Verne (South West)
- Wormwood Scrubs (London region)
A further 36 prisons have also been identified as 'spoke' prisons and will also take foreign national prisoners. Policy tending towards the segregation of foreign national prisoners is contentious, however, as it can arguably lead to lower standards of care and support. A recent High Court ruling made in February 2010 found that NOMS failed to comply with disability and race legislation in its treatment of foreign national prisoners, having not carried out formal equality impact assessments which would have considered the impact of new policies on disabled and BME prisoners prior to implementing its policy of transferring foreign prisoners to new facilities.

The separation of foreign national prisoners may also mean that prisoners are moved many miles from relatives and friends, thereby increasing their sense of isolation. Women interviewed for a Nacro study at Morton Hall, for example, much preferred being located at Holloway Prison due to the more diverse make-up of both staff and prisoners. Furthermore, they also cited lack of community engagement in establishments in rural areas as being problematic. The movement of remand prisoners to these separate establishments before conviction and sentence would appear contradictory to the remand prisoner’s long established right to be detained locally until either conviction or sentence.

### Deportation
Since 2006 deportation has been an important issue on the political agenda. In 2007, the law was changed so that deportation became mandatory for foreign nationals sentenced to a prison sentence of over 12 months or if convicted of a range of specified crimes. In these circumstances deportation can only be avoided by demonstrating that the human rights of the deportee would be breached should deportation be carried out. The rate of deportations has continued to rise in recent years: in 2005 approximately 1,000 foreign national prisoners were deported, in 2006 approximately 2,500, in 2007 approximately 4,200 and in 2008 approximately 5,400.

Those with full refugee status cannot, except in exceptional circumstances, be deported and EU nationals can only be deported where their presence is considered to be not conducive to the public good. As of August 2009 approximately 1,800 foreign national prisoners were detained under immigration powers following completion of their sentence and whilst awaiting deportation, and around 500 of these were held in prisons under immigration powers.

### The experience of foreign national women

#### Key issues
The plight of foreign national women is generally better documented than that of men. A Nacro study of foreign national women in prison examined a range of issues affecting women across five prisons and, although mental health was not specifically addressed, most of the issues that were raised had the very real potential to impact on mental health and well-being, including the following:

#### Family contact
Most of the women interviewed across the five prisons felt that communication with family was problematic. Keeping in touch with families by telephone assumes enormous significance in a closed
environmen and much more so when the environment is not in your own country and family and support systems are often far away. Relatively few foreign national women received visits and the research found that issues around the purchase and use of phones and phone cards were particularly stressful.

- **Separation from children**
  It was found that some women chose not to have any contact with their children who sometimes had been left largely on their own in their home country. The report cites one woman describing her method of coping with not being able to see her child as pretending to be a 'bit dead, and when I go home, that will be my resurrection'. Many women were also fearful for the safety of their children. The permitted five-minute telephone call once a month did not go any way towards preserving the mother-child relationship.

- **Language**
  Although language courses were available for women whose first language was not English, the isolation, vulnerability and fear factor for women coming into the prison system was compounded by an inability to communicate in English. This was worse for those from a foreign national minority, for example Chinese prisoners. These individuals were sometimes the only members of their nationality in the prison, and therefore unable to communicate with anybody.

- **Isolation**
  Women interviewed expressed a preference for London prisons where they felt the staff were more representative of minority groups and where BME community groups were more involved in the life of the establishment. It was more likely, they thought, that they would come into contact with women speaking their own language and who understood their culture. Their feelings of isolation were compounded by the fact that the small number of women's prisons across the country inevitably increased the likelihood of being incarcerated further away from any family and friends in the UK.

Although the study discussed above had foreign national women as its focus, and the scale of the problem is significantly greater in the female prison estate, the issues raised will, to an extent, also apply to foreign national males.

**Gender and drugs**
Many of the foreign national women in prison are there as a result of attempting to import drugs into the UK. Around 10% of the women in prison currently are Jamaican drug couriers who swallowed cocaine and attempted to bring it into the UK. Many of these women will come from a background of poverty and see their action as a method of escaping poverty, despite the risk of serious damage to their health (and even the possibility of death) from swallowing drug pellets before flying. Women caught importing drugs into the UK have traditionally received very long sentences, even exceeding those for violent offences on occasion. Foreign national women are also: less likely to apply for bail (and therefore inevitably await trial in custody); less likely than UK prisoners to understand the legal system; less likely to have support from friends and family; and less likely to have a command of English.

As a disproportionate number of the foreign national women in British prisons are African Caribbean, a noteworthy (but as yet unpublished) study by Kremer has gathered qualitative data on issues relating to this group. In-depth interviews were carried out with 60 women prisoners across five prisons and a further 20 women in Jamaica following their release from imprisonment in the UK. The interviews focused on the issues of deportation and resettlement. Significantly the issue of mental ill health was a major theme for this group, explored in discussions about their feelings of guilt and their experiences of the criminal justice system,
prison and resettlement. One of the most significant factors at play was social identity. Many of the women stemmed from matriarchal societies and were heads of their respective families. Fifty-one of the 60 were mothers and naturally suffered from the guilt of missing out on motherhood. Some women were in prison with their babies whilst others with young children had seen them taken into care or sent back to their country of origin, thereby compounding feelings of maternal guilt.

The Caribbean interviewees were also anxious that modifying their identity in order to integrate into prison life (often considered essential to survive a long sentence) would change them irrevocably. This anxiety affected their mental health and well-being, and they also felt that the prison system did not understand their needs. Consequently, there was a reluctance to take up services or place trust in prison staff, with prisoners preferring instead to engage with voluntary sector and third sector agencies such as Hibiscus who have a track record of working with female foreign national prisoners (as well as having offices in Jamaica and West Africa).

Overall, the needs of foreign national women in prison will be multifarious. They will need assistance with the sense of alienation they may feel; the length of sentence imposed; feelings of isolation and guilt following separation from children and family; and anxiety about what to expect next. The challenge for the criminal justice and prison systems is whether they can develop the cultural capability necessary to meet these needs.

Immigration removal centres

Much of the discussion around the treatment of mental health and foreign nationals who offend centres on the prison estate, and it is likely that foreign national prisoners held, following sentence, for removal will be held in prison establishments. However, the 11 immigration removal centres in the UK should also be subject to scrutiny since they too could be used to securely hold foreign nationals who have had contact with the criminal justice system. Whereas the major development around prison health in recent times has been the commissioning of services from the NHS into prisons (thus raising the standard of mental health provision) no parallel development has occurred in immigration removal centres. Healthcare in these centres is still provided by private agencies under contract to the Home Office and is therefore not provided by the NHS nor regulated by the Care Quality Commission. Indeed, various inspections have found that mental healthcare and facilities are lacking in immigration removal centres. A recent debate in the House of Commons on Oakington Immigration Removal Centre noted that:

‘When someone is self-harming or has attempted suicide they are taken to a close care and observation room…it consists of completely bare cells with mattresses on the floor and a guard watching over it. This facility is located in the same part of the building that is used to isolate detainees who have misbehaved. It does not feel like a therapeutic environment.’

Other serious failings that have been noted which are likely to have implications for mental health include: a failure by healthcare staff to investigate whether detainees had been subject to torture; a failure by immigration detention staff in immigration removal centres to properly investigate and appropriately treat or refer detainees with significant mental health problems; and evidence of detainees being obstructed from accessing a medical practitioner of their choice.

In line with recommendations made by HM Chief Inspector of Prisons with regard to mental health provision in immigration removal centres, Nacro believes there should be a consistent multi-disciplinary approach to assess and report on the extent to which physical or mental health could be adversely affected by detention, and that any health needs assessments take children into consideration as well as adults.
Children and young people

Although not the focus of this paper, children and young people will often become involved with the UK Border Agency and immigration removal centres simply because their parents are. Consideration should therefore be given to their emotional and psychological well-being. Indeed, each year approximately 1,000 children are detained in immigration removal centres. These children are members of families identified for enforced removal from Britain and are subject to detention indefinitely under administrative order, without time limit and without judicial oversight. Almost a third of children are detained for longer than a month. A recent joint policy statement from the Royal Colleges of Paediatrics and Child Health, general practitioners and psychiatrists and the UK Faculty of Public Health recognised the damaging effects of such detention on the mental health of already disadvantaged and vulnerable children, and called for the following changes:

- Children and young people in immigration detention should be recognised as children in need and given the same safeguards, such as having an initial assessment completed within seven days.
- The commissioning of healthcare in the detention estate should be transferred from the Home Office to the NHS. Primary and secondary medical care for children and their families should be provided on the same in-reach basis as it is with HM Prison Service. Such services need to be properly commissioned and resourced.
- Delivery of care should be provided by healthcare professionals who are competent to respond to the physical and mental health needs of this client group.
- Any medical care offered to children and young people in immigration detention should be consistent with what would normally be considered as good practice in other primary care settings, including NHS general practice.
- The provision of mental health services for children and young people in immigration detention should be based on their current mental health need and not on their immigration status.

Release and resettlement

Research carried out by Nacro has found that resettlement programmes are often not aimed at foreign nationals and little is done to prepare them for eventual release and deportation. Their needs in this area are often neglected because they do not fit the normal resettlement pattern since many are likely to be deported upon release. This resettlement limbo causes considerable anxiety. One man said: ‘I can’t make plans; I need to know if I am going to be deported.’ And another said he felt ‘…maybe suicidal if this goes on, worried about the future, finding it hard to sleep, pains in body, getting easily upset and feeling depressed. Just want an answer to immigration case.’ HM Chief Inspector of Prisons has also commented:

‘All of them need to know as early as possible in sentence whether or not it is proposed to deport or remove them. They need to have access to appropriate regimes, not only to reduce the risk of reoffending, wherever they are released, but also because safety, security and decency within prisons depends upon prisoners having access to purposeful activity.’

Good mental health and well-being are also, to an extent, reliant on purposeful activity. Foreign nationals in prison may prefer work to education as this means that they can send money home. However, there have been incidences where foreign national women have been deprived of the opportunity to work towards certain qualifications due to their status:

‘One woman at Drake Hall cited one example of a foreign national woman being asked to leave the laundry when a member of staff was talking to the other women about NVQs, as she wasn’t
eligible to work towards it because of her foreign national status.\textsuperscript{53}

This sort of discriminatory approach is likely to impact on an individual’s mental health and well-being. A study by Bhui\textsuperscript{54} found that specialist resettlement staff indicated that foreign nationals were less likely to be given assistance with education and training, as well as housing and unemployment advice because the limited resources were targeted on those certain to be resettling in the UK. There was a reluctance to obtain housing or employment opportunities for foreign national prisoners who might be informed of deportation proceedings on or near their release date and therefore further detained.

\section*{The way forward}

The mental health needs of foreign nationals who come into contact with the criminal justice system are a considerable cause for concern. In 2008 the Chief Inspector of Prisons commented in her annual report that ‘unless there is clear direction from the centre, the care and treatment of the 11,000 foreign nationals in our prisons will remain unsatisfactory and inconsistent’.\textsuperscript{55} ‘There has, however, been some recognition of both the scale of the problem and the need to address it. For example, Health and Social Care in Criminal Justice (Offender Health) South East has established a well regarded annual conference on BME and foreign national offenders and mental health, various prisons have set up partnerships and programmes to assist with the provision of services to foreign national groups, and HM Inspectorate of Prisons has continued to give focus to the issue in its thematic reviews, annual reports and follow-up reports.

The National Delivery Plan which followed Lord Bradley’s report and set out the strategy for taking forward its recommendations stated that it would ‘address any adverse impact and improve access to services for disadvantaged groups’.\textsuperscript{56} ‘This plan was itself subject to an equality impact assessment\textsuperscript{57} which provides some focus in that it discusses the way in which all seven equality strands are impacted by the strategy and accompanying policies. Issues affecting foreign nationals are included here and several examples of negative and racist treatment of foreign national offenders and detainees mentioned. The use of interpreters is also raised as being particularly crucial for foreign national prisoners and a lack of these is cited as a contributory factor to their negative experience of incarceration.

The equality impact assessment makes clear that an opportunity to advance policy on, and the treatment of, foreign nationals in the criminal justice system with mental health needs lies within human rights legislation. A central purpose of the \textit{Human Rights Act 1998} is to institutionalise human rights thinking in public service provision\textsuperscript{58} and the opportunity now exists to embed these principles into the delivery of healthcare services to offenders – including services to foreign nationals. A key difference between human rights standards and other equalities laws is that the former applies to everyone. Individuals who break laws may compromise some of their rights and liberties (eg, with regard to freedom of movement etc), but there remain human rights standards that must be adhered to no matter what the individual has done. On this basis alone the equality impact assessment presents a template for the better treatment of foreign national offenders which it advocates should be progressed in accordance with the ‘Fred’ principle of fairness, respect, equality and dignity.\textsuperscript{59}

\section*{Conclusion}

The way in which we treat foreign national defendants and prisoners and the possible implications of that treatment upon their mental health is clearly an issue that requires urgent and detailed attention. It is also clear that the potential stresses, anxieties and mental health problems that foreign nationals may face require responses which are in many respects different to those of indigenous individuals.

It should also be remembered that foreign national prisoners are not a homogenous group and there will indeed be variations
among their experiences and requirements. Broadly speaking, more efficacious responses to the mental health needs of foreign national prisoners are required at three levels:

- Improved responses to the quite distinct triggers of mental ill health with which some foreign national defendants and prisoners may present, whether these be feelings of trauma, loss or isolation. Practitioners and personnel at all stages along the criminal justice mental health pathway (including those in court diversion and criminal justice liaison schemes) should be supported and trained to work with these issues and better support foreign nationals in the criminal justice system.

- Improved responses to the unique set of immigration and related stressors that foreign national prisoners may find themselves subject to, especially around areas such as information exchange, deportation, length of detention and designation.

- Improved responses to the resettlement needs of foreign national prisoners. These should be addressed with the same rigour afforded to indigenous prisoners.

Although good work is already taking place in many establishments, the National Delivery Plan and its accompanying equality impact assessment provide a clear opportunity to improve provision to this group with a human rights-based approach. Alongside these developments there are also other changes which would positively impact on the experience of this client group, such as the transfer of healthcare in immigration removal centres from the Home Office to the NHS. In addition, statistics on self-harm, suicide and foreign national prisoners should be systematically gathered so that trends can be gauged and anomalies addressed.

**Notes**

1. Foreign national prisoners may be subject to immigration control whilst on remand, convicted but unsentenced or serving a custodial sentence. This means that a person is detained sequentially: first by remand or conviction by the courts, and then upon expiry of a custodial sentence under an IS91 served by the UK Border Agency. Where foreign national prisoners have reached the end of their custodial sentence but continue to be held in prison under the *Immigration Act 2004* there is no automatic requirement to return them to a local prison, although they should be treated as unconvicted prisoners. If at any point a detainee is considered to be at risk of self-harm or is refusing food or fluids, prisons are obliged to inform the UK Border Agency.


9. *ibid*


In 2006 it was admitted by the Home Office that more than 1,000 foreign national prisoners had been released over a seven-year period without being considered for deportation. The Home Secretary was replaced and the government then announced that it was to be assumed that all foreign national prisoners were henceforth deportable. As a result, overstretched immigration authorities – already under considerable strain – were unable to cope effectively whilst foreign national prisoners, regardless of individual circumstances, found themselves subject to possible arbitrary deportation. For example, those who had been in open conditions or on licence in the community were returned to closed conditions (even if their behaviour had been exemplary).

The automatic deportation provisions of the 2007 UK Borders Act came into force on 1 August 2008. From that date it became possible for the UK Borders Agency to deport any non-British and non-EEA citizen who has been sentenced to a prison term of 12 months or more, no matter how long they have been settled in the UK and no matter how valuable their work is to their local community, unless they can show that deportation breaches their human rights. There is no right of appeal against deportation – only against the decision that human rights are not breached by deportation.

NB: Exception 5 to this rule of automatic deportation concerns mental health provisions and applies where any of the following has an effect in respect of a foreign national prisoner:

1. a hospital or guardianship order under section 37 of the Mental Health Act 1983
2. a hospital direction under section 45 of the Mental Health Act 1983
3. a transfer direction under section 47 of the Mental Health Act 1983
4. a compulsion order under section 57 of the Criminal Procedure (Scotland) Act 1995
5. a guardianship order under section 58 of that Act
6. a hospital direction under section 59A of that Act
7. a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003
8. an order or direction under a provision which corresponds to a provision specified above and has effect in relation to Northern Ireland.

References:

1. The online briefing, AVID Prison Visiting Project – Visiting Foreign National Prisoners: Findings from a scoping study is available at www.aviddetention.org.uk.

2. The automatic deportation provisions of the 2007 UK Borders Act came into force on 1 August 2008. From that date it became possible for the UK Borders Agency to deport any non-British and non-EEA citizen who has been sentenced to a prison term of 12 months or more, no matter how long they have been settled in the UK and no matter how valuable their work is to their local community, unless they can show that deportation breaches their human rights. There is no right of appeal against deportation – only against the decision that human rights are not breached by deportation.

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35 Nacro (2007) Black Communities, Mental Health and the Criminal Justice System: Mental health and crime briefing London: Nacro


40 ‘Segregating foreign national prisoners’ is at www.irr.org.uk/2009/july/ha000024.html.

41 Hansard, col 483-4w, 30 November 2009


44 ibid

45 Hibiscus is a well regarded third sector organisation that works with foreign national and BME women in prison and with their families. See http://fpwhibiscus.org.uk for more information.

46 Hansard, col 626w, 8 June 2009


49 Royal College of Psychiatrists (2009) Significant Harm: The effects of immigration detention on the health of children and families in the UK (a joint statement) London: The Royal College of General Practitioners, Royal College of Paediatrics and Child Health, the Royal College of Psychiatrists and the UK Faculty of Public Health


58 ibid

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