

Form 6.2 Response

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
HAMILTON

Court ref: B351-20

RESPONSE

to the

DETERMINATION OF SHERIFF COLIN DUNIPACE

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS

ETC. (SCOTLAND) ACT 2016

IN THE

INQUIRY INTO THE DEATH OF XI BIAO HUANG

To: the Scottish Courts and Tribunals Service

The Home Office, being a body to whom a recommendation under section 26(1)(b) was addressed, do respond as follows.

- 1 **Recommendation i** - All medical assessments, and particularly clinical examinations should be carried out with the use of a professional interpreter where the detainee does not speak fluent English. Whilst the nature of the establishment may mean that it would not be possible or practicable to use professional interpretation services for every interaction with a detainee, the use of fellow detainees and/or members of staff to provide interpreting services should not be permitted for medical consultations and assessments when detainees present with complaints. Professional interpreting services should always be utilised in a medical context, except in emergency situations.

Response i - The Home Office regularly considers and updates its guidance for staff working in the immigration removal estate. New guidance was published in June 2022, on the use of interpretation services. The guidance is contained within Detention Services Order 02/2022 - Interpretation Services and use of Translation Devices ("DSO

02/2022"). DSO 02/2022 is publicly available and can be accessed at: <https://www.gov.uk/government/publications/interpretation-services-and-use-of-translation-devices>. Paragraph 42 of DSO 02/2022 states:

A detained individual will undergo a number of interactions with healthcare staff, including a mandatory initial health screening, voluntary healthcare examinations on admission to detention carried out under Rule 34 of the Detention Centre Rules 2001 (IRCs only), ACDT and other medical appointments. Clinical discussions are important for identifying health care issues and other health-related vulnerabilities. They are extremely difficult if the individual has little or no use of English. Therefore, all healthcare related conversations must be undertaken using professional interpreting services, such as in-person or telephone interpreters, where a language barrier has been identified. This should be recorded on the individuals medical file and System1/Vision records.

- 2 **Recommendation ii** - The terms of the DSOM and Detention Centre (DC) Rules 2001 should be amended to address the existing lack of guidance in relation to the situations in which it is acceptable for the Centre to use other detainees, visitors or staff to interpret. Proper guidance should be provided to assist staff in relation to the situations in which it would be appropriate for them to exercise their discretion in this regard.

Response ii - The Home Office currently operates seven immigration removal centres (IRCs) throughout the UK, (six in England and Dungavel House IRC in Scotland) by way of private contract. The legislative framework for the management and operation of IRCs is set out in Part VIII (sections 147 to 151) of the Immigration and Asylum Act 1999 and in the Detention Centre Rules 2001 (Statutory Instrument 2001/238). Section 147 of the 1999 Act was amended by section 66 of the Nationality, Immigration and Asylum Act 2002 (which changed the name from detention centres to removal centres).

The DSOM was developed to build on the DC Rules 2001, and to underpin the arrangements for IRCs. The DSOM stipulates the minimum auditable standards on a wide range of issues including, *inter alia*, specific sections related to admission and discharge, healthcare, activities, access to legal advice, and interpretation.

The Home Office publishes Detention Services Orders (DSOs) available online at gov.uk. The DSOs contain operational instructions outlining procedures to be followed by Home Office staff and staff working on behalf of the Home Office. They provide guidance on management of specific issues within the immigration removal estate, including setting out related requirements and responsibilities. DSOs ensure that operational activity adheres to the DC Rules 2001; the Short-Term Holding Facility Rules 2018, where appropriate; and the DSOM. The Home Office undertakes a rolling review of DSOs to ensure that operational guidance continues to align with policies and statutory requirements, as well as undertaking ad-hoc reviews to reflect changes to processes that may arise through continuous improvement or recommendations from third parties. New DSOs are developed where the need for further guidance is identified.

The DSO 02/2022, published after the death of Mr Huang, provides new guidance on the use of other individuals present in an IRC for the purpose of translating. As noted above, the guidance now requires all clinical discussions to be conducted with the use of a professional interpreter, where interpretation is required. Paragraph 23 of DSO 02/2022 states:

In most circumstances, for confidentiality and quality reasons other persons in detention and/or centre staff must not be used for translation purposes. However, there are occasions when this may be acceptable including general enquiries and questions and helping with day-to-day activities, such as signing up for classes. Translation by another person in detention (this might include peer support in detention workers or a centre staff member with appropriate language skills) must be with the individual's agreement.

- 3 **Recommendation iii** - In the event that it is necessary and appropriate to utilise the services of a fellow detainee rather than a professional interpreter, then the reason for this decision should be properly recorded and documented. There should also be a system in place regulating the retention and availability of these records.

Response iii - As noted above, paragraph 42 of DSO 02/2022 places a requirement on staff to record the use of an interpreter on an individual's medical file for interactions with healthcare staff. Additionally, all staff in IRCs are required to record when telephone interpretation services or electronic translation devices have been used to engage with individuals. Paragraph 13 of DSO 02/2022 states:

When necessary staff must access the telephone interpretation service to facilitate communication between the detained individual and themselves or others present. They will remain for the duration of the call and assist the detained individual in any way possible, except for legal and health related visits which must be treated as private and [sic] confidential. When a telephone interpretation service is used it must be recorded on local supplier detention records (supplier staff) or CID/Atlas (Home Office staff), together with the identification number of the interpreter assisting.

DSO 02/2022 provides clarity in that the use of other detained individuals or staff with appropriate language skills should only be used for translation in informal engagements with the individual's agreement. As such, formal interactions, appointments and engagements between staff and individuals in detention that require interpretation, should use interpretation services (in-person or by telephone) or translation devices, the use of which is recorded.

- 4 **Recommendation iv** - All medical assessments of and interactions with patients, should be fully recorded and maintained in a manner that ensures that they are available to future healthcare staff when they are interacting with or examining patients. Training on the requirements of the Nursing and Midwifery Council Code should be considered to remind nurses of their professional obligations

notwithstanding any employer based rules. Appropriate documentation should be provided to the medical staff enabling them to comply with the requirement of the aforementioned code.

Response iv – In accordance with Rule 33 of DC Rules 2001, all IRC have dedicated health facilities run by doctors and nurses which are managed by the NHS or appropriate providers. In Dungavel IRC, the healthcare provider (Med-Co) is regulated by Health Improvement Scotland and delivers services in line with the national service specifications for Healthcare Services in IRCs.

The DSOM requires healthcare providers in IRCs to open clinical records for each individual arriving at an IRC and obtain, so far as is reasonably practicable, relevant health information from previous healthcare providers. The Operating Standards also stipulate that clinical records are transferred with the detained individual when being moved to a receiving centre or prison. These requirements mirror that which is set out in Rule 33 of DC Rules 2001.

In addition to the abovementioned requirements under the DC Rules and DSOM, healthcare staff at Dungavel are expected to operate in accordance with the Nursing and Midwifery Council Code of Professional Standards of Practice and Behaviour (NMC) and are required to keep clear and accurate records.

The Home Office is not directly responsible for the training of healthcare staff. The Home Office understands however, that Med-Co have updated their practices at Dungavel IRC since the death of Mr Huang in respect of record taking.

- 5 **Recommendation v** - The "Homely Remedy" policy should be amended to ensure it is cross-referenced to other health records to safeguard that any such remedies dispensed cannot continue for a protracted period without a further clinical examination. The Kardex system, if it is to be maintained, should be amended to ensure that it enables the dispensing practitioner to complete details of; the patient's reported complaints

and symptoms; relevant medical history; observations; diagnosis; and treatment plan. In each case a separate record should be maintained on an appropriate Physical Care record outlining the symptoms, diagnosis and the results of any physical examinations which should be maintained with the patient's clinical record.

Response v - The Minor Ailment Policy ("Homely Remedy" policy) is operated by Med-Co. It would be a matter for Med-Co to update their policy, however the Home Office understand that this policy has been reviewed and updated on several occasions since the time of Mr Huang's death. The Kardex system is also operated by Med-Co, rather than the Home Office.

- 6 **Recommendation vi** - The policy of using retired GPs on an ad hoc basis should be reviewed to ensure that there is always sufficient cover in place to meet existing demand. Where an appointment is made to see a GP this appointment should take place as arranged and in the event that it cannot proceed an explanation should be provided, and a further appointment arranged as soon as possible. Alternative appointments should immediately be offered as soon as possible thereafter.

Response vi - The DSOM places a requirement to meet certain timescales for healthcare appointments. Paragraph 18 of the Healthcare section states:

Detainees requiring a routine appointment during Monday to Friday must be seen within 48 hours. Those requiring a routine appointment with a nurse must be seen within 24 hours. For those making such appointments during a Saturday or Sunday they must be seen no later than the following Monday.

It is for the healthcare provider to ensure that individuals are seen by healthcare staff in a timely manner and have a sufficient staffing cohort to meet demands.

- 7 **Recommendation xi** - Access to the IS.91 and other Home Office forms should routinely be made available to all medical staff, and in particular to the admissions nurse.

Response xi – In accordance with Rule 33(9) of DCR 2001, it is the responsibility of healthcare teams in IRCs to ensure that all medical records relating to a detained person are forwarded as appropriate following the individual’s transfer to another IRC or prison. This requirement is supplemented by DSO 03/2016 ‘Consideration of Detainee Placement in the Detention Estate’ which can be accessed here: <https://www.gov.uk/government/publications/considering-detainee-placement>, which states that medical records and Assessment Care in Detention and Teamwork (ACDT) records should accompany detained individuals at all times when transferring from one centre to another. DSO 08/2016 ‘Management of Adults at Risk in Immigration Detention’ which can be accessed here: <https://www.gov.uk/government/publications/management-of-adults-at-risk-in-immigration-detention> similarly requires that Vulnerable Adult Warning Forms travel with the individual as part of their transfer records when moving from a short-term holding facility and be fully considered by staff at the receiving IRC.

In addition, all prisons and IRCs operate a healthcare-to-healthcare referral system, which enables immediate access to healthcare records for the receiving centre and ensures that medication travels with the individual or is otherwise made available at their arrival at a centre. This referral system is supported by the electronic medical record system at Dungavel which has been installed and embedded since the time of Mr Huang’s death. The healthcare-to-healthcare referral system negates the need for Home Office documentation IS.91 (which deal with reasons for detention, authority to detain, movement notification and risk assessment) to be shared with healthcare providers unnecessarily. However, it remains open to healthcare providers in IRCs, including those at Dungavel, to access the IS.91 Risk Assessment form of any detained individual arriving at the centre from the contracted centre supplier, to review identified risks.

8 **Recommendation xv** - Receiving custody staff should receive training in processing arriving detainees to ensure that accurate details in relation to languages spoken are obtained.

Response xv - The Sheriff did not specifically request a response from the Home Office in respect of this recommendation. However, the Home Office wish to address this recommendation.

The Detention Services Order 06/2013 'Reception, Induction and Discharge Checklist and Supplementary Guidance' which can be accessed here: <https://www.gov.uk/government/publications/reception-and-induction-checklist-and-supplementary-guidance>, requires the contracted centre supplier to conduct a basic assessment of a detained individual's proficiency in spoken English. During the arrivals and induction process, primary and secondary language assessments are conducted of each detained individual, the outcome of which is recorded on the individual's detention profile, to enable appropriate support with engagement throughout their time in the IRC. The DSO 02/2022 'Interpretation Services and Translation Devices', published after the death of Mr Huang, which can be accessed here: <https://www.gov.uk/government/publications/interpretation-services-and-use-of-translation-devices>, provides guidance to staff on conducting these English fluency assessments, which may be carried out at any time during an individual's period of detention by either Home Office or contracted supplier staff. The DSO 02/2022 is clear that the language assessment must be carried out for all detained individuals arriving at an IRC and that staff at the centre should not simply rely on escorting staff to confirm an individual's proficiency in English.

To hold the office of a Detainee Custody Officer (DCO), a certificate is required. In line with Detention Service Order 02/2018 <https://www.gov.uk/government/publications/detainee-custody-officer-and-detainee-custody-officer-escort-certification>, before issuing a DCO certificate, the Home Office requires confirmation that an individual has completed and (where appropriate) passed all elements of the initial training course for DCOs. This learning course includes training on diversity which encompasses an 'Interpersonal Skills and

Communication' session, led by the contracted supplier locally. In Dungavel IRC, this locally delivered training includes focus on the initial language assessment and access to translation services. The centre supplier at Dungavel IRC ensure that these elements are incorporated into 'on the job' ongoing training which follows the initial training course.

The Home Office are currently reviewing the initial training course for DCOs and will consider this recommendation as part of this review.