

**SUBMISSION TO THE ALL PARTY PARLIAMENTARY GROUP
INTO THE USE OF IMMIGRATION DETENTION**

By Birnberg Peirce & Partners

Birnberg Peirce & Partners are a long established civil rights firm that have considerable expertise in representing people subjected to unlawful detention and other abuses by state agencies. This submission is made by solicitors in the civil litigation department at Birnberg Peirce who, over the last ten years, have represented numerous people subjected to immigration detention. We would be able to comment on all the issues raised in your Inquiry but for the purposes of this submission we focus specifically on a recent scandal that has taken place at Yarl's Wood Immigration Removal Centre involving what appears to be a systemic failure to protect vulnerable women from sexual abuse by guards and others employed by Serco (the company currently contracted by the Home Office to run Yarl's Wood).

We currently represent three women who were victims of this abuse two of whom have previously spoken out to the media and brought claims against Serco, the third of whom has recently raised this issue with us. All three women would be willing to provide oral evidence to your Inquiry detailing the nature of the abuse that they were subjected to. We provide at the foot of this submission links to significant press coverage concerning these allegations. As all three women are victims of sexual offences we shall, for the purposes of this submission, refer to each woman by anonymised initials in accordance with court Orders. We provide below summaries concerning each of the three allegations raised and make reference to the potential evidence relating to a wider systemic failure by either / both Serco and the Home Office to protect detainees from this abuse. We also make some suggestions as to reforms which might be put in place to prevent the recurrence of such abuse at least on a widespread or systemic basis.

Case Study 1:

NAB – Detained at Yarl's Wood between October 2010 and February 2011

NAB is a Pakistani woman who was brought over to England following an arranged marriage when aged 17. She was subsequently abandoned by her husband following

domestic violence and her immigration status became de-regularised. In due course she made an application for asylum and was detained in October 2010 at Yarl's Wood in order for her case to be decided under the Fast Track. Whilst detained at Yarl's Wood, NAB was subjected to three incidents of sexual assault by a member of healthcare staff employed at Yarl's Wood. There were a number of barriers which stopped her complaining immediately. Firstly, she was too frightened to complain as she feared that this would adversely affect her immigration situation and that she would face immediate deportation. Secondly, she was concerned that if she complained whilst still in detention, she did not know whether she would continue to have contact with the alleged perpetrator and was concerned that other staff would know of her complaint and treat her unfavourably. Thirdly, she faced the usual barriers that all women subjected to sexual assault face, which is the shame and fear that you will be disbelieved or blamed for leading him on.

However, following the third occasion on which she was subjected to an assault by this male member of the healthcare team, a detention custody officer became aware she was really distraught and encouraged her to disclose information. A formal complaint was then submitted. Her complaint was investigated but found to be "unsubstantiated" primarily because it was argued that if this had really happened she would have complained straight away. As predicted by her, shortly after she made the complaint she was served with Removal Directions. When the complaint was not upheld she suffered victimisation from officers and felt unable to attend healthcare when the nurse was re-instated.

During the civil proceedings brought by this firm against Serco, their internal investigation report was disclosed which revealed a very concerning approach. It also indicated exactly how hard it is for those detainees brave enough to complain to actually obtain justice and accountability. The civil claim was in due course settled by Serco and we sought permission to disclose the report to a number of potentially interested bodies such as the chief inspector of prisons and the Home Affairs Select Committee. Serco refused – although it has since agreed to a request by the Home Affairs Select Committee to see the report. Guardian news and media then made an application to the High Court that it was in the public interest to see this report. Serco

strongly resisted this but in due course the court ordered disclosure and the Observer newspaper led another large expose story on the subject. Although the complaint was also investigated by UKBA and the police, it transpired that the police relied almost entirely on the information given to them by Serco. The UKBA investigation, which concluded that the complaint was unsubstantiated, was criticised by the Prison and Probation Ombudsman and in a linked claim against the Home Office, which went to trial, the UKBA investigator stated that she had never been shown the PPO report and admitted that the evidence was in fact “finely balanced”. NAB recovered damages by way of settlement from Serco in relation to her allegations, although the member of healthcare staff remains still in post.

Case Study 2:

MXM - Detained at Yarl's Wood between August 2012 and March 2013

MXM is a highly vulnerable young Roma woman of no fixed nationality. She came to the UK with her family when aged 10 and received virtually no schooling as her father removed her from education when social services were alerted to serious violence from her father she was subjected to as a child. As a result she cannot read or write. Her father also taught her to steal and as an adolescent she obtained a number of convictions which ultimately resulted in her imprisonment at a time shortly after she had just given birth to her first child. A decision was made that she should be deported following the conclusion of her criminal sentence despite the fact that there was no evidence as to which country she had originated from. Her child was put up for adoption .

Following completion of her prison sentence MXM was transferred to Yarl's Wood and whilst there was targeted by three different detention custody officers for sex. MXM confided in a female officer about one of these relationships and this officer told her she must not tell anyone or the officer would lose his job and she would be sent to prison. Eventually however she did make complaints and was told these would be investigated. However, shortly after the complaint was lodged she received Removal Directions to Kosovo which she was able to challenge, however she remained in detention. Her complaints were investigated by the Professional Standards Unit of the Home Office and several weeks later she was provided with a letter which informed her

that her allegations had been accepted on the balance of probabilities although she was not informed of what would happen as a consequence. MXM remained in detention for a further month before eventually being released in March 2013.

Subsequent to her release MXM reported her allegations to the police who had not previously investigated these. She provided a more detailed statement which clarified that although she had agreed to some of the sexual contact, some aspects were without her consent. The police started their investigation in around May 2013 and we have just been informed that following advice from the CPS the relevant officers are now being interviewed. MXM provided an account of her experiences to the Observer newspaper which resulted in a big article and public exposure. As a consequence of this article a number of other women came forward to disclose similar experiences.

Case Study 3:

ARF

Recently a third client of Birnberg Peirce has disclosed sexual abuse whilst detained at Yarl's Wood. ARF is a victim of sex trafficking. Her asylum claim is still under consideration. We are also representing her in relation to claim of unlawful detention and breach of Article 4 by the Home Office. The disclosure of sexual abuse was spontaneous to a psychiatrist and not in response to any questioning by solicitors at this firm. She alleges that a male cleaner used to flirt with her and he touched her breasts and told her to touch his penis. She did disclose this to a manager at Yarl's Wood but decided not to pursue any formal complaint or allegation as she was worried it would affect her immigration status. She also refers to being aware that other women may have been targeted by male staff and describes a time when she was on self harm watch and a different male officer said to her, "*I like black women, show me your pussy*". She was aware that officers often targeted mentally vulnerable women and was really concerned about one other detainee who was extremely mentally unwell that she believed officers were targeting.

General Comments

It is clear from all our clients' descriptions and those of others who have come forward that certainly up until the recent public exposure of some of these allegations there

appears to have been widespread inappropriate behaviour by some male members of staff employed at Yarl's Wood IRC. This detention centre contains some of the most vulnerable and socially excluded women in our society. [See, for example, the recent report by Women for Refugee Women on Detention in Yarl's Wood]. Serco have recently claimed that they have put into place lots of steps to prevent such abuse continuing but it remains to be seen how effective these new measures are and the Parliamentary Inquiry should be invited to seek ways to monitor this. However one major concern is the ability of complainants to have their allegations properly investigated and substantiated. Clearly, where allegations are of criminal assault, it is understood that there will be a high burden of proof, but this should not be taken to mean that such allegations where not proven are false. However, in the case of NAB, Serco's director at Yarl's Wood is reported as having said that "All parties concluded that the allegations made against our employee were false" (The Guardian, "Pressure grows for inquiry into Serco over Yarl's Wood sexual assault claim", 19 May 2014). This is in spite of the fact that Serco settled her claim, that the person investigating this allegation from the Home Office Professional Standards Unit admitted that actually her decision was finely balanced and the Prison and Probation Ombudsman Report also concluded that it would be wrong to say there was no evidence to support her allegations.

There appears to be a lack of clarity as to the number and nature of complaints made of inappropriate conduct by officers towards detainees, nor the number of complaints upheld. Different details have been provided to the complainants, to the Home Affairs Select Committee, in quotes from Serco to the media and in Freedom of Information requests.

An investigation by the Radio 4 programme File on Four and a further report by the Observer resulted in the emergence of a whistle blower, somebody who had worked at Yarl's Wood for a period of time who corroborated allegations regarding a culture of some male officers flirting with women, there being blind spots where sexual liaisons were able to occur.

The question of consent in the context of immigration detention

What is quite clear from all the allegations and from all the women who have had the bravery to speak out, is that the possibility of consenting to sexual contact in a detention environment is highly questionable. In the case of MXM, whilst she acknowledges that she did respond and 'consent' to some of the sexual contact with guards, it is clear that even these 'consenting' acts occurred in a context where her 'consent' should be questioned. She was very young and extremely vulnerable, and she believed that the officers feelings towards her were genuine. However, she began to realise that they were simply taking complete advantage of her, but by then she felt frightened to refuse. Many of the other women who have spoken out say that they were similarly frightened to reject a person in a position of authority making sexual advances towards them. They feared they might get into trouble and they all feared that if they complained about the conduct of the officer or member of staff afterwards they would suffer as a consequence, most notably that they might be threatened with deportation and/or that it would adversely affect their immigration status. They also were in an environment where those officers may continue to work whilst they were still detained and where the friends of those officers would have power and control over them. The fear of stigmatisation and victimisation was borne out by their experiences after they did complain. MXM and NAB both found the environment after they had complained extremely difficult.

Section 75 of the Sexual Offences Act 2003 sets out a number of evidential presumptions in respect of consent to sex. There are a number of circumstances in which consent can be said to be vitiated by the context, such as where the complainant feared violence or where the complainant was intoxicated. However, the list does not include the context of a complainant who is detained in immigration detention (or some other detention contexts such as prison or a mental institution) and the perpetrator is their custodian. It is our submission that there should be an amendment to this Act to add an additional factor which will vitiate consent and that is where sex takes place between a member of staff and a person who is in their custody. The power imbalance is so stark, and the detainees in such a vulnerable position, that it cannot be said that

consent could be meaningful in this context. Furthermore, if any sexual contact in this context was prima facie a criminal act, this might act as an effective deterrent.

Harriet Wistrich, solicitor for Birnberg Peirce 6 October 2014

<http://www.theguardian.com/uk-news/2014/may/24/serco-whistleblower-yarls-wood-pressure-immigration>

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<http://www.bbc.co.uk/programmes/b04795v7>

<http://refugeewomen.com/wp-content/uploads/2014/01/WRWDetained.pdf>