Dear Sarah,

I write further to my letter of 15 September which advised you of my intention to provide written evidence to your Inquiry and I attach what I hope will be helpful information covering the key detention issues listed in your commissioning letter of 10 July.

I look forward with interest to learning of the findings of the Inquiry once it has concluded.

Yours ever,

James Brokenshire
Written Evidence

Conditions within immigration removal centres (IRCs), including access to advice and services

1. Detention is used (a) to effect return (b) to allow further enquiries to be made into an individual's identity or basis of claim or (c) where there is reason to believe that an individual will fail to comply with any conditions attached to the grant of temporary admission or temporary release. It is also used for asylum seekers whose cases are deemed straightforward and capable of a speedy decision as part of the fast track process. In most cases, however, detention is used to effect an individual's return, where the person has failed to comply with attempts to encourage them to leave voluntarily, though it remains necessary to detain individuals to enforce their return where they have failed to cooperate. Decisions to detain are, however, always taken as a last resort.

2. The Home Office is required to comply with the Detention Centre Rules 2001 in the operation of IRCs. The Rules require that they are to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible consistent with the need to maintain safety and security.

3. The Home Office currently operates 11 IRCs. They are managed under contract with private suppliers or through service level agreements with the National Offender Management Service. All service providers are required to comply with the Detention Centre Rules, the operating standards for IRCs and Detention Services Orders.

4. Contracts with suppliers contain over 25 performance measures that relate to the provision of the requisite number of detention beds and the services to support the centres' operation and the regime for detainees. Service provider proposals are evaluated before contract award and then monitored throughout the life of the contract by the Home Office to ensure that safe levels are maintained and that a purposeful programme of activities is provided.

5. The activities programme in IRCs may vary but every IRC must provide the following facilities: library and detainee information room, cardio fitness areas, internet suites, education classes (including art and craft and English), outside recreational areas for sport, paid work opportunities and facilities for religious observance.

6. Communications with friends and family and legal representatives is facilitated by the use or provision of appropriate mobile phones, fax machines, email and managed access to the internet. Friends, families and legal representatives may also meet face to face with detainees with centres operating a daily social and legal visits schedule providing a minimum of five hours access a day. Out of hours visits may also be agreed.
7. Primary healthcare services are provided in all IRCs and are broadly equivalent to those available in the community. Dental and optician services are also provided to detainees in all IRCs.

8. Healthcare is provided 24 hours a day and seven days a week in all IRCs. Healthcare services for all IRCs in England except one (Campsfield House in Oxfordshire) are now commissioned by NHS England. Healthcare at Campsfield House will be commissioned by NHS England by next spring. The transfer of commissioning is expected to strengthen the service to detainees by providing greater consistency in the type and availability of treatments and improved links with the wider NHS, which should improve access to beds for detainees with mental health conditions, for example.

9. On arrival at an IRC all detainees are seen by a nurse within 2 hours of arrival for an initial health screening. The individual will be referred straight away to a GP if the nurse feels an issue has been identified which requires immediate attention. All detainees are nonetheless given an appointment to see the GP within 24 hours. Detainees can then access healthcare facilities on demand, subject to a triage service similar to those found in GP surgeries in the community. Detainees are made aware of their entitlement to be examined by a GP of the same sex prior to any examination.

10. Secondary and tertiary healthcare services are provided by the local Clinical Commissioning Groups (CCGs). Healthcare make referrals to the local CCGs in the same way as a GP surgery would in the community.

11. Detainees must be made aware of their right to legal advice within 24 hours of their arrival at an IRC. Access to legal advice is facilitated through the welfare offices in each IRC and information about advice services and legal services must be made available to detainees in the centre library and around the centre. Service providers are required to assist any detainee who cannot read or write to access advice.

12. Detainees are offered a free five minute telephone call on arrival in an IRC to enable them to inform a friend or family member of their whereabouts. They also have the use of a fax machine during their stay for legal advice purposes. In addition, the Legal Aid Agency runs weekly legal surgeries across the detention estate to assist detainees who do not have legal representation.

13. The Home Office operates a comprehensive complaints system for detainees based on the principles set down by Stephen Shaw, the former Prisons and Probation Ombudsman. These principles are: (1) that there are clear and easy complaints procedures, (2) there is a simple complaints investigation process, (3) complaints are investigated in a timely manner, (4) that confidentiality of complaints and investigations are respected, (5) there are no penalties for complaining, (6) that complaints are dealt with by the most appropriate person, (7) staff should take responsibility for their actions and be prepared to explain them with redress as necessary, and (8) there is a right of appeal to an Ombudsman.
14. Detainees who submit complaints are not disadvantaged in any way in relation to their treatment while in detention or in relation to the outcome of their immigration case.

15. Detainees who are not satisfied with the way in which their complaint has been handled may ask for it to be reviewed by the independent Prisons and Probation Ombudsman. Detainees are told how to refer a complaint to the Prisons and Probation Ombudsman at the same time as they are notified of the outcome of an investigation. Detainees who are dissatisfied with the outcome of a healthcare related complaint may refer their complaint to the Parliamentary and Health Service Ombudsman.

Independent Oversight

16. Independent oversight of the daily conditions in IRCs and treatment of detainees is provided by Independent Monitoring Boards (IMB). Board members are lay people appointed by the Home Secretary to monitor and report on the physical state of IRCs, their administration and the treatment of detainees. Both the Centre Manager and Home Office Manager meet with each Board on a monthly basis to listen to their views on the way the IRC is being operated. Boards additionally provide the Home Office Immigration Minister with an annual report about the operation of each IRC and these are published on the IMB website.

17. IRCs are part of Her Majesty’s Chief Inspector of Prisons’ (HMCIP) rolling inspection programme and are subject to unannounced inspections. IRCs score favourably against HMCIP’s published set of expectations, with most centres receiving scores under the four main categories of Safety, Respect, Activities and Preparation for Removal and Release of four and three, which translates to the following explanations respectively:

**Outcomes for detainees are good against this healthy establishment test.**
There is no evidence that outcomes for detainees are being adversely affected in any significant areas.

**Outcomes for detainees are reasonably good against this healthy establishment test.**
There is evidence of adverse outcomes for detainees in only a small number of areas. For the majority, there are no significant concerns. Procedures to safeguard outcomes are in place.

18. HMCIP inspection reports are used to produce auditable action plans to implement accepted recommendations.

19. The Children’s Commissioner for England also has a statutory right of access to those centres where minors may be accommodated with their families. At present, this is only Cedars pre-departure accommodation and Tinsley House.
20. Healthcare services in IRCs are subject to independent inspection by the Care Quality Commission and appeals for complaints regarding clinical care may be made to the Parliamentary and Health Service Ombudsman.

21. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment has also included IRCs in their visits to places of detention in the United Kingdom.

22. All deaths in detention are subject to independent investigation by the police, the Prisons and Probation Ombudsman and are subject to a coroner’s inquest.

The management of vulnerable detainees, including pregnant women, those suffering mental health conditions and age dispute cases

All decisions to detain are taken on an individual basis.

Pregnant Women

23. The Home Office does not normally detain pregnant women. Where pregnant women are detained it is only normally in two limited circumstances: where the woman’s removal is imminent and medical advice does not suggest her baby is due before the removal date, or for pregnant women of less than 24 weeks gestation as part of the detained asylum Fast Track process.

24. Detention is only considered in very exceptional circumstances for those with serious disabilities and / or the elderly. In exceptional cases where detention is decided on, careful consideration and assessment of need and risk is undertaken to ensure that the persons concerned are placed in the facility that is most appropriate and best able to meet their needs.

Mental health issues

25. The Home Office accepts that the experience of detention can be inherently stressful, particularly for those faced with the prospect of removal from the UK, and can therefore exacerbate mental health problems.

26. To make improvements in this area the Home Office commissioned the Tavistock Institute for Human Relations to undertake a review into mental health in the detention estate. We have received the Tavistock Institute’s draft report and have been working with them to get it ready for publication. We are aiming to publish the report soon. Furthermore, the recent transfer of healthcare commissioning in IRCs to NHS England will be expected to produce improvements in all aspects of detainee healthcare, including mental healthcare. One of NHS England’s key priorities is to ensure the development of a consistent and recognised approach to mental healthcare assessment and appropriate treatment for detainees.

27. Home Office detention policy states that “those suffering from serious mental illnesses which cannot be satisfactorily managed in detention” are only considered suitable for detention in very exceptional circumstances.
28. An example of exceptional circumstances is where the individual concerned poses a serious risk of harm to the general public.

Reports made under Rule 35 by medical practitioners in IRCs


30. There are three types of Rule 35 report: Rule 35(1) covers cases where a doctor has concerns that a detainee's health may be injuriously affected by continued detention or any conditions of detention; Rule 35 (2) covers cases in which a doctor has concerns a detainee may have suicidal intentions; Rule 35(3) covers cases where the doctor has concerns the individual may have been a victim of torture. However, the overwhelming majority of Rule 35 reports fall into the latter category.

31. Rule 35 reports are not medico-legal reports: in completing a Rule 35 report a doctor is only required to pass on their "concerns" about a particular detainee.

NGO criticisms of Rule 35 processes

32. There have been longstanding criticisms of the operation of Rule 35 by NGOs who consider that a doctor's production of a Rule 35 report should, in almost all cases, result in the detainee being released. They cite the few releases of detainees in respect of whom a Rule 35 report has been written to support their view that the system does not work.

33. The key point of contention surrounds Rule 35 (3) reports (relating to concerns that an individual may have been tortured). It is Home Office policy that, where there is independent evidence of torture, an individual's detention should be maintained only in very exceptional circumstances. However, as indicated above, a Rule 35(3) report does not necessarily amount to independent evidence of torture: this depends on the nature of its contents. Many rule 35 (3) reports simply pass on a detainee's allegation that they have been tortured, without any supporting medical evidence. It would be would be wrong therefore to equate completion of a report as automatically requiring the individual's release.

Rule 35 audits

34. In response to NGO criticisms of the Rule 35 process a Home Office audit of Rule 35 processes was undertaken in 2010. This identified a number of areas where the process required improvement, including timescales for consideration of such reports not being adhered to. The audit resulted in publication of a revised Detention Services Order providing guidance for IRC staff and doctors on Rule 35 processes, a revised Asylum Instruction for Home
Office case workers and associated training for both caseworker and doctors. It was also agreed that a further audit would be carried out in due course to measure the effectiveness of those measures.

35. A subsequent audit has recently been completed by the Home Office Quality Audit Team and a first draft of their findings has been put together. When finalised, we expect it to identify areas where we are already strong and some where there is room for improvement. We believe it will be a useful tool to ensure continued progress in improving the Rule 35 process.

Age Dispute cases

36. The Home Office operates a mixed immigration detention estate and decisions on allocation are based on the risk assessment of the individual rather than on their age, although that would be included as a factor in their allocation to an IRC.

37. Individuals frequently only claim to be a child after entering detention. Where there is doubt about a person's age they will not remain in detention pending a local authority age assessment being undertaken, but are instead released in to the care of a local authority. The Home Office would be failing in its safeguarding duty if release from detention were to take place before alternative arrangements were made for such a person's care. There are therefore clear procedures in place to ensure that such individuals are safeguarded in the interim.

38. There is comprehensive guidance on the care and management of age dispute cases where individuals who have been detained claim to be under 18. This can be found at: https://www.gov.uk/government/publications/managing-age-dispute-cases-in-the-detention-estate.

The impacts of immigration detention on individuals, family and social networks, and wider communities

39. We appreciate that detention has implications for individuals, their families, social networks and the community. Decisions to detain are therefore only ever taken as a last resort and after full and proper consideration of all the relevant information pertinent to the individual case.

Limitations on the time spent in immigration detention

40. Although there is no time limit in legislation on the period of time for which individuals can be detained, the power to detain is only exercised sparingly and for the shortest time necessary. The exercise of the power to detain, although not subject to any express statutory limitations, has nevertheless been held not to be unlimited in scope. It is subject to the “Hardial Singh” principles, set out in the case of R v Secretary of State for the Home Department ex parte Hardial Singh [1984] and upheld in the courts on numerous occasions in the years since. These principles are as follows:
i. The Secretary of State must intend to remove the person and can only use the power to detain for that purpose;
ii. The detained person may only be detained for a period that is reasonable in all the circumstances;
iii. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect removal within that reasonable period, she should not seek to exercise the power of detention; and
iv. The Secretary of State should act with reasonable diligence and expedition to effect removal.

41. All decisions to detain are taken on the individual merits of the particular case and alternatives to detention (temporary admission or temporary release) are used wherever possible.

42. Once detention has been authorised it is kept under close review at least at monthly intervals for the duration of the period of detention and if there is a change in circumstances to ensure it continues to be justified and in line with Home Office policy. If this ceases to be the case the individual will be released from detention. The precise scheduling of detention reviews varies across different business areas. Those schedules are set out in chapter 55.8 of the Home Office Enforcement Instructions and Guidance. Detention reviews are undertaken at successively higher levels throughout the course of detention, rather than by the official who made the original decision to detain: this provides additional assurance about not only the original decision to detain but also the appropriateness of continued detention.

43. Detained persons can apply to an Immigration Judge for bail and are able to challenge the lawfulness of their detention by judicial review or by seeking a writ of *habeas corpus*. Legal aid is available for those seeking bail, subject to the "merits" test.

**Current arrangements for the authorisation of immigration detention**

44. An officer of at least Chief Immigration Officer (CIO) or HEO caseworker level must give authority for an individual’s initial detention. Authorisation of initial detention takes place at higher levels than this in particularly sensitive cases, e.g. the decision to detain families with children is taken at a minimum of Inspector or SEO level.

45. As indicated previously, following an initial decision to detain, an individual’s continued detention remains under review at least at monthly intervals. The seniority of the officer reviewing the appropriateness of continued detention increases in line with the length of time an individual has been detained.

**Effectiveness of current alternatives to detention**

46. The Home Office policy on the use of detention operates with a presumption in favour liberty. It is the case that the majority of individuals who are liable to be detained at any one time are not actually detained but are managed in the community through a range of measures.
47. Published statistics on detention showed that at the end of March 2014, 2,991 people were in detention. Available at: https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2014/immigration-statistics-january-to-march-2014#detention-1).

48. The Home Office’s primary default alternative to detention is reporting, which provides a cost effective method of dealing with the non-detained cohort. We also use bail and electronic monitoring.

49. Reporting and Offender Management teams manage the reporting population with a view to overseeing meaningful contact, encouraging voluntary return, as well as driving compliance and progressing cases towards enforced return, completing applications for emergency travel documents and detaining if appropriate. They gather intelligence and liaise with other government departments to ensure individuals are not receiving services to which they are not entitled. This contributes towards the wider strategic approach to remove incentives for people to remain illegally in the UK.

50. The reporting population is approximately 60,000. 86% of the reporting population attend one of the fifteen Home Office reporting centres, leaving approximately 9,500 people reporting to circa 300 police stations.

51. Those who have been served enforcement papers, or who have claimed asylum in the United Kingdom, are legally required to report. Reporting to police stations is in place for those individuals who pose a risk of harm/disruption or because of the distance an individual lives from a Home Office reporting centre.

52. Effectiveness of reporting can be measured in a number of ways:

   • **Cost** – placing low risk individuals on reporting restrictions represents a cost effective alternative to detention. The accommodation costs for reporting and offender management are circa £1.6 million per annum, and staffing costs are circa £7 million per annum.

   • **Compliance** – current statistics show that on a week by week basis in approximately 95% of cases reportees comply with reporting restrictions, although this may fluctuate. Those that fail to report on one occasion may do so for a legitimate reason, e.g. illness, and report at their next scheduled event.

53. Individuals who successfully apply for bail may be required (as part of the conditions of bail) to report to one of the fifteen Home Office reporting centres, or a police facility.

54. The Home Office has used electronic monitoring for a decade. There are currently just over 500 cases that are electronically monitored using a radio frequency ankle bracelet. The current high cost of electronic monitoring (approximately £515 per month to tag one individual) means that this
alternative to detention is used for the highest risk cases, generally as a condition of bail when an individual is released from detention.

55. The subject’s ankle is fitted with a tag which operates on a radio frequency to correspond with a home monitoring unit. This monitors the subject’s whereabouts and reports any breaches in curfew and equipment tampering direct to the contract provider.

56. The current caseload has a 90/10 split between criminal casework and non criminal cases.

57. As an electronic monitoring restriction cannot guarantee an individual will not abscond, it has not been regarded as a fully effective alternative to detention. The biggest benefit around its use is as an enhanced mechanism for improving contact with individuals, particularly those that pose a risk and therefore warrant additional restrictions.

58. The Home Office actively promotes voluntary return, which is significantly cheaper than an enforced return. Data held by the Home Office indicates that the average cost of a voluntary removal is £1,000 and the average cost of an enforced removal is up to £15,000.


Data on voluntary returns is available at:


Are viable alternatives to immigration detention in operation in other countries?

59. The European Migration Network (EMN) conducted a study this year entitled “The use of detention and alternatives to detention in the context of immigration policies”. A number of EU countries contributed to this study and further details are available on the EMN website. http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/irregular-migration/index_en.htm

60. The EMN states that: “EU legislation provides for and encourages the use of alternatives to detention, entailing that detention should be used as a ‘last resort’. The alternatives can include regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring, community management programmes, residence requirements, etc”. The EMN Synthesis Report produced in relation to the study referred to above indicates that persons issued with a return decision can be placed in detention in all EU Member States.