



## **Submission to the Parliamentary Inquiry into the use of Immigration Detention**

### **1 Introduction**

1.1 Kent Refugee Help (KRH) is a small charity supporting immigration detainees held in Dover Immigration Removal Centre and in HMP Wormwood Scrubs, Pentonville, Wandsworth and Elmley. We are a user-led organisation working with detainees to help them obtain their liberty. Their ideas, experiences and active involvement with our organisation inform our outreach work. We offer individual casework helping detainees find sureties for immigration bail, access legal advice and representation and obtain medical reports to strengthen or re-start asylum claims. Our support continues after release, if requested, as former detainees face many barriers to integration due to isolation, poverty and insecure immigration status.

**1.2 KRH opposes the administrative detention of immigrants and supports reform to the current system. We support calls for a time limit on detention.**

1.3 We argue that immigration detention is inhuman and degrading and that detention, without time-limit, has serious negative effects on the health and well-being of detainees. These effects continue beyond walls of detention centres as many detainees are released with strict bail conditions and most remain under threat of re-detention, destitution and deportation. Former detainees connected with our group have lived in poverty and homelessness for many years while they wait for the resolution of their cases.

### **Specific points of concern**

#### **2. Detainees held in Prisons under Immigration rules**

2.1. KRH's work shows that migrants detained under Immigration rules in prisons are particularly vulnerable. We concur with BiD's recent report<sup>1</sup> that immigration detention in prisons is "fundamentally flawed". We also agree with

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<sup>1</sup> BiD (2014) Denial of justice: the hidden use of UK prisons for immigration

<http://www.biduk.org/971/news/new-bid-report-on-the-hidden-use-of-prisons-for-immigration-detention.html>

HMIP Nick Hardwick's view of Pentonville that "The prison was not an appropriate place in which to hold a large number of immigration detainees<sup>2</sup>." We argue from our experience that this conclusion applies to many prison establishments.

2.2 Despite having completed their sentences, immigration detainees in prisons are routinely held under the same regimes as serving prisoners. This means they are not allowed mobile phones, access to the Internet, visits etc. as would be the norm in IRCs. They cannot receive calls, even from lawyers. Translated information, interpreting and independent immigration advice services are also inadequate or unavailable in Prisons.

2.3 The cost and inconvenience of communication with legal advocates, supporters, families and other networks undermines their challenges to detention and deportation as well as their asylum and human rights appeals. Calls from a prison payphone to an external mobile cost £0.375 per minute; Emails via <http://emap.prison-technology-services.com/index.cfm?country=uk> cost £0.40 each, so the post remains the cheapest means of communication.

2.4 We are very concerned about the lack of application of **Detention Centre Rule 35**<sup>3</sup> in prisons holding immigration detainees. Rule 35 recognises that detainees' health can be "injuriously affected by continued detention" and requires measures to be put in place to identify immigration detainees who are survivors of torture or have suicidal ideation. In our experience, this Rule is **not** applied in prisons with consequent negative effects on the health of detainees and on their asylum and anti-deportation appeals.

2.5 Furthermore we hold that the HO's own guidance<sup>4</sup> should be adhered to and "*persons unsuitable for detention*" should not be detained in prisons or in IRCs. Detaining authorities should take heed of the "*very exceptional circumstances*" in which these categories may be detained. These include people suffering serious mental illness and people who have suffered torture. In our experience both of these categories are currently detained.

2.6 The lack of adequate immigration advice has been noted by HM Inspector of Prisons, Nick Hardwick in several inspection reports including his report on HMP Wormwood Scrubs, May 2014. At the time, fifty-three foreign nationals were held under immigration powers in HMP Wormwood Scrubs. One

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<sup>2</sup> <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/prison-and-yoi-inspections/pentonville/Pentonville-2013.pdf>

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300366/17.2012\\_v2.0\\_-\\_Application\\_of\\_Detention\\_Centre\\_Rule\\_35\\_ext.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300366/17.2012_v2.0_-_Application_of_Detention_Centre_Rule_35_ext.pdf)

<sup>4</sup> Home Office Enforcement Instructions & Guidance: Persons Unsuitable for Detention, cited in DSO 17/2012, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307995/Chapter55.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307995/Chapter55.pdf)

immigration detainee had been held for 18 months after completing his sentence.

### **3 Legal Aid and access to justice**

3.1 Legal aid in relation to **Article 8, the right to family life**, is no longer available to immigration detainees.

We concur with Sheona York of the Kent Law Clinic that “Foreign national prisoners who have family here or have lived most of their lives here face a punishment which amounts to Transportation.”

3.2 Even with some access to legal aid, detainees and people at risk of detention struggle to find good legal advice. Cases KRH has worked with have included Mr A., a 24-year-old Zimbabwean who has been in the UK since he was 9. All his family are resident in the UK and he has an EEA partner. Mr. A has no known family, friends, significant cultural experience or support network of any kind in Zimbabwe. Until the removal of Article 8 L.A.A. support rights early in 2013, he had good legal representation. Without legal aid his representation ended, much to the regret of his individual solicitor who was powerless to help him further. After 2 years in immigration detention, with no sign of removal, he was finally granted bail, unrepresented and with the insistence of the judge that he agreed to cooperate with his removal.

3.3 New regulations in force from April of this year ended legal aid for **judicial review** without permission at the High Court. **An exception was made for Judicial Review for unlawful detention** after determined public campaigning. Currently, judicial review can only be carried out with legal aid with the High Court’s permission and it is this element which is so significant in judicial review applications. A great deal of preliminary work is done by solicitors prior to permission being granted for the judicial review to proceed, historically this would have been recoverable under Legal Aid, but now, if permission is not granted, no payment for this work is recoverable. This means **that there is a reluctance on the part of solicitors to initiate judicial review**. The importance of maintaining legal aid is demonstrated by the following case study.

3.3.1 Mr X, an Algerian, has spent long periods in immigration detention due to the Home Office being unable to deport him. He has had a drug addiction and suffers from depression, hearing voices and insomnia. Most recently he had hoped to be released from prison after completing a short sentence. On the day his sentence was completed he was told he would remain in prison under immigration powers. He began self-harming and cut his arm with a razor to cope with his disappointment. The Home Office had not obtained a travel document to deport him but opposed bail arguing that he was not cooperating. In despair he went on hunger strike, refusing food for 37 days. KRH contacted a legal aid solicitor who had previously represented him for unlawful detention and the firm took the case. Eventually he was released on Temporary Admission by a High Court Judge after an application for JR was made on the basis of unlawful detention. The intervention of KRH and Mr X's solicitors were instrumental in bringing his hunger strike to a close and potentially saved his life. Our work shows that many immigration detainees,

especially those held in prisons are unable to get the help they need; this in part, accounts for high levels of self-harm and suicide in prisons.

#### **4. Bail hearings**

4.1 KRH supports the recommendations of the Judicial Oversight Working Group of the Detention Forum and particularly wish to emphasise the following points in relation to bail from immigration detention.

4.2 In our experience of attending bail hearings with our clients, the fundamental presumption of release over continuing detention is not upheld in all bail hearings.

4.3 We find a lack of accountability for decision-making in bail hearings. Some judges seem to take a harsher view and are less minded to release detainees than others. This lack of accountability is compounded by the lack of record keeping in bail tribunals which are not 'courts of record'.

4.3 We oppose the common practice of excluding Sureties from the court. In our experience Sureties have important insights into the detainees that are relevant to the proper working of the court. This practice is inconsistent and seems to depend on individual Judge's preference.

4.4 We find the video links used to connect the detainee with the bail courts dehumanising, ineffective and inefficient. In many instances, communication between the detainee and the Judge, the Home Office Representing Officer and the Interpreter is problematic and unclear. This undermines confidence in the hearings.

4.5 We refer the Inquiry to the two Bail Observation Project<sup>5</sup> reports which we fully endorse.

#### **5. Rates of movement around the detention estate and temporary admission**

5.1 We are concerned about the so-called 'churn' rate in IRCs. 'Churn' is a term used to refer to the movement within and out of the detention estate.

5.2 Figures from one IRC show that in one month approximately as many detainees were transferred between detention centres as were removed while almost twice that number were released from the IRC on Temporary Admission. We are concerned at the circumstances of these releases and expect that the majority of these detainees will have been released without support or accommodation and will have been made effectively destitute.

#### **6. Conditions post-release**

6.1 KRH's work of more than seven years leads us to be very concerned for the well-being of detainees released without adequate support while still under threat of further detention and deportation. We refer the Inquiry to the

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<sup>5</sup> <http://closecampfield.wordpress.com/bail-observation-project/>

attached paper (Klein and Williams 2012), which considers the position of these vulnerable people in detail.

## **7. Recommendations**

7.1 The administrative detention of immigration detainees should be strictly time limited.

7.2 Immigration detainees should not be held in prisons.

7.3 The Home Office and immigration caseworkers should clarify the *exceptional circumstances* in which immigration detainees who fall under established definitions of people considered unsuitable for detention may be detained in prisons or IRC's.

7.4 Access to legal advice and representation including Legal Aid, should be improved in all institutions where immigration detainees are held. Cuts to legal aid should be reversed and legal aid safeguarded for the future.

7.5 The work of the Bail tribunals should be urgently reviewed to ensure that the presumption of release is in place and that proceedings are transparent and decisions fully accountable.

7.6 Support for former detainees released from detention should be reviewed and thoroughly overhauled. Former detainees should be given permission to work and should be eligible to and able to access publically funded health care and welfare support.

## **8. Contact and further information**

8.1 KRH can be contacted on 01233 812533

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