



The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom

A Joint Inquiry by the All Party
Parliamentary Group on Refugees & the
All Party Parliamentary Group on Migration

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During our first oral evidence session there was a moment when the audience in the room gasped. The official transcript doesn't capture it. But the moment sticks in my mind.

We were taking evidence from detainees directly from inside Colnbrook IRC. Taking evidence in this way into a committee room of the House of Commons for an inquiry hearing had never been done before, and the combination of broken English, patchy mobile phone reception and committee room speakers meant the panel often had to strain to catch every word. But we heard this answer, loud and clear: three years. Three years was the length of time the man giving evidence to us had been locked up in limbo – counting the days up, as another witness memorably described his experience of detention.

The UK is an outlier in not having a limit of how long we can detain people under immigration powers. We are also an outlier on the scale of our immigration detention estate. We detain a lot of people, some for a very long time, all with huge uncertainty, and we have very limited processes for individuals to challenge that detention.

Every few months there is a fresh news report about poor treatment of individuals in the detention estate. These reports shine a light briefly on the inmates of immigration detention, but the interest is fleeting, and little seems to change for those who languish there, hidden from public view.

Crucially, this panel believes that little will change by tinkering with the pastoral care or improving the facilities. We believe the problems that beset our immigration detention estate occur quite simply because we detain far too many people unnecessarily and for far too long. The current system is expensive, ineffective and unjust.

The recommendations we make in this report require a very radical shift in current thinking. They go much further than putting a time limit on detention. They are about a wholesale change in culture, towards community models of engagement and better caseworking and decision making. It will require substantial

leadership to achieve. But other countries have managed to implement such models, and indeed in the UK we ourselves have successfully changed the way we work with children in the immigration system, demonstrating that change is possible.

It may well surprise many people that this group of parliamentarians have made such radical recommendations on a difficult topic, so close to an election. Our panel makes for a diverse group – cutting across all shades of the political spectrum, encompassing a wide range of former ministerial experience as well as including a former chief inspector of prisons and former law lord amongst our number. We have different views as a panel on immigration policy in general, but we were all united in the view that the current system of immigration detention is not working and must be substantially changed. We hope that our coming together on this point, at a time of significant political division, will underlie how strongly we feel about the need for change.

Finally I want on behalf of the panel to say thank you to all of those who gave evidence to us in this inquiry and those who gave us

support and guidance. I would like especially to record my personal gratitude to my parliamentary office who worked tirelessly to administer this inquiry, and in particular to Jonathan Featonby who prepared our report.

Our hope is that this cross party report will provide political courage to whoever wins the general election to look in detail at the way we use immigration detention. For the country and for those we detain, we cannot go on as we are.

Sarah Teather MP

*Chair of the Inquiry
into the Use of
Immigration
Detention in the
United Kingdom*



ABOUT THE INQUIRY

In July 2014, the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration launched an inquiry into the use of immigration detention in the UK. The inquiry was held as a joint inquiry as the topic of immigration detention crosses the remits of both groups.

The inquiry was formed following a number of high profile incidents within Immigration Removal Centres and amid plans to increase the size of the detention estate. The topic of detention has occasionally been the subject of debate within Parliament and has, in part, been covered by select committees in the past. However, the panel members were mindful that what scrutiny there has been has usually been narrowly focused and there was a need for a wider piece of work looking at the whole operation.

The panel identified that an inquiry into the use of detention within the immigration and asylum systems was required. A call for written evidence was issued on July 17 2014 with a deadline of October 1 2014. The call for evidence asked for submissions regarding the conditions within detention centres, the impact on individuals and their families, the financial and social consequences of detention, and the future use of detention within the immigration and asylum system. This report is the result of that inquiry.

182 written submissions were received and the panel also held three oral evidence sessions hearing from 26 witnesses in person, including current and former-detainees. The panel are extremely grateful to all those who gave evidence during the course of the inquiry, and in particular the individuals who have a personal experience of being in detention. The written submissions and the transcripts of the oral evidence sessions are available on the inquiry's website: www.detentioninquiry.com.

During the course of the inquiry, the Chair of the panel, Sarah Teather MP, spent a day inside Yarl's Wood Immigration Removal Centre, experiencing the daily routine of a detainee in the centre as well as going through the process detainees face on arrival, having previously made shorter visits into Colnbrook and Harmondsworth IRCs. Sarah Teather MP, Paul Blomfield MP and David Burrowes MP also visited the Swedish Migration Board in Stockholm to discuss with officials and parliamentarians the role that detention plays within the Swedish immigration system. Paul Blomfield MP and David Burrowes MP further visited Colnbrook and Harmondsworth IRCs. Lord Ramsbotham has extensive prior experience of visiting detention centres having served as the Chief Inspector of Prisons for England and Wales between 1995 and 2001.

The Panel

The Panel consisted of members of the House of Commons and the House of Lords. They were:

Paul Blomfield MP (Labour),
Vice-Chair of the Inquiry
David Burrowes MP (Conservative)
Jon Cruddas MP (Labour)
Richard Fuller MP (Conservative)
Baroness Sally Hamwee (Liberal Democrat)
Julian Huppert MP (Liberal Democrat)
Baroness Ruth Lister (Labour)
Lord Anthony Lloyd (Crossbench)
Lord David Ramsbotham (Crossbench)
Caroline Spelman MP (Conservative)
Sarah Teather MP (Liberal Democrat),
Chair of the Inquiry

The Report

The report is split into two parts. In **Part 1**, we focus on the way detention is used in the United Kingdom. This covers the evidence we received on the lack of a time limit on the length of time an individual can be detained, the use of alternatives to detention, and the use of the Detained Fast Track.

Part 2 covers the conditions within detention centres. In this part we cover the design of IRCs, restrictions on internet usage, access to legal representation, the ability for detainees to challenge their continued detention, access to health care, treatment of detainees with mental health conditions, the protection of individuals who have been trafficked or who are victims of torture, Rule 35 reports, movement around the detention estate, the detention of women, and the detention of LGBTI individuals.

In both parts we make recommendations based on the evidence we received and the personal testimony of those who have experienced being detained in the United Kingdom.

Key Recommendations

- There should be a **time limit of 28 days** on the length of time anyone can be held in immigration detention.
- Detention is currently used disproportionately frequently, resulting in too many instances of detention. The presumption in theory and practice should be in favour of **community-based resolutions** and against detention.
- Decisions to detain should be very rare and detention should be for the **shortest possible time and only to effect removal**.
- The Government should learn from international best practice and introduce a much wider range of **alternatives to detention** than are currently used in the UK.

Part 1

Practice and Culture

Home Office guidance currently states that detention must be used sparingly and for the shortest possible period. What became clear during the course of the inquiry is that the standard working practices and the enforcement-focused culture of the Home Office are resulting in this guidance being ineffective. This is compounded by the lack of a maximum time limit and a lack of effective means for those detained to challenge their continued detention.

We believe that depriving an individual of their liberty for the purposes of immigration control should be an absolute last resort, should be comparatively rare, and should only take place for the shortest possible time. To achieve this, not only are changes to the procedural practices of the Home Office required, but also a radical move away from a focus on enforcement to one of engagement.

In this report, we recommend that a maximum time limit of 28 days should be introduced and that this should be set in statute. Decisions to detain should be taken much more sparingly and only as a genuinely last resort and to effect removal.

To prevent the 28 day time limit from becoming the default period individuals are detained for, we also recommend that the Government should introduce a robust system for reviewing the decision to detain early in the period of detention. This system might take, for example, the form of automatic bail hearings, a statutory presumption that detention is to be used exceptionally and for the shortest possible time, or judicial oversight, either in person or on papers.

To accommodate these changes, the Government will need to introduce a much wider range of alternatives to detention affecting

EXECUTIVE SUMMARY

the entire process of the immigration system. We were told of numerous examples of alternatives to detention being used in other countries which focus on intensive engagement with individuals in community settings, rather than relying on enforcement and deprivation of liberty. These alternatives not only achieve high compliance rates, but they are also considerably cheaper than our current system which, particularly in the case of asylum, could be characterised as low-level initial engagement and support, lengthy decision-making of variable quality, and expensive ineffective end-stage enforcement. We recommend that the Government learn from the alternatives that work elsewhere and make much more extensive use of these schemes.

Given the scale of the task, we recommend that the incoming Government after the General Election should form a working group to oversee the implementation of the recommendations of this inquiry. This working group should be independently chaired and contain officials from the Home Office as well as representatives from NGOs in order to widen the thinking and approach. The working group should produce a time-plan for introducing a time limit on detention and the creation of appropriate alternatives to detention, drawing on the best practice that is already in place in other countries.

Asylum Applicants and the Detained Fast Track

The Detained Fast Track (DFT) was introduced to deal with a sharp rise in the number of asylum seekers entering the UK by deciding straightforward cases quickly. We are concerned that the DFT has become too focused on utilising detention for administrative convenience rather than speedy, high quality

decision making. Additionally, many individuals who are detained within the DFT are, by the Home Office's own guidance, allocated to it incorrectly.

Failures of the DFT screening process and the inherent stressful environment of being detained are not generally conducive to allowing asylum seekers to receive the support they need and are entitled to, as well as being counter-productive to high quality decision making. We recommend that the Government takes urgent steps to reduce the number of outstanding claims. While the need for a fast-track procedure still exists, we do not believe that this necessitates a presumption of detention and we reiterate our belief that detention should be a last resort and for the shortest possible time.

Part 2

Literature Review

Over the last twenty years, many inquiries and reports have been published into the workings of the current immigration and asylum system as well as into the operation of the detention estate specifically. Few of these reports appear to result in meaningful action by the Home Office and the repetitive nature of the constructive suggestions for improvement can lead to fatigue and unwillingness to engage among those who want to see an effective system. We recommend that a literature review is undertaken by the Home Office to collate the recommendations for improvement of the immigration and asylum systems, including case-working and the use of detention, that have been made in successive reports, drawing out common themes with a view to analysing

what progress has been made against these recommendations.

Immigration Removal Centres should not be prisons

Individuals detained under immigration powers are increasingly being held in prison-like conditions. The most populated IRCs are either converted high security prisons or have been built to that specification. However, IRCs are not prisons and detainees should not be held in prison-like conditions. **We recommend that detainees are held only in suitable accommodation that is conducive to an open and relaxed regime.**

Fewer restrictions on internet access in IRCs

Individuals detained in IRCs have access to the internet, but we were told that this access is severely limited. We were particularly shocked to learn that in some IRCs detainees could not access the website of this parliamentary inquiry. Additionally, the Home Office's blanket ban on the use of social media appears to be counter-productive and unjustified, particularly for those who will subsequently be returned to their home country and who want to make connections in order to prepare for return. **We recommend that detainees are allowed to access social media and filtering should be akin to the parental controls that are used in households across the country.**

Better access to legal representation

Detainees require legal advice for a number of reasons, and often have complex legal cases. However, individuals are frequently unable to

secure high quality and timely advice within IRCs. The contracts for providing publically funded legal advice in the IRCs are very restrictive and do not allow detainees to receive the support they need, or allow legal practitioners the time and resources to properly represent their clients.

We recommend that the Legal Aid Agency and the Immigration Services Commissioner carry out regular audits on the quality of advice provided by contracted firms in IRCs, and this must involve talking to detainees about their experiences.

Detainees should only be moved around the detention estate when absolutely necessary

Many detainees who gave evidence to the inquiry had been moved between IRCs. One detainee likened his experience to being treated like a piece of furniture. When the Home Office were asked for information relating to how often such moves are made, the information was not available, making it difficult to effectively scrutinise.

Frequent moves around the detention estate can be extremely disruptive and distressing for detainees, as well as their friends and families. We recommend that the Home Office ensures that detainees are only transferred between IRCs when absolutely necessary and that legal representatives are informed. We also recommend that the Home Office ensures information relating to the number of transfers is collated and published as part of the quarterly immigration statistics.

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Challenging ongoing detention

Detainees need to be able to challenge their ongoing detention, particularly given the lack of a time limit. Unlike in the criminal justice system there is no automatic judicial oversight of the decision to detain or the decision to continue to detain. Challenges to detention must be instigated by the detainee. The main mechanism for doing so is through asking for a bail hearing.

The evidence we received shows that this mechanism is not currently working. Not only do detainees struggle to get legal support, but bail hearings also appear to operate in a way that creates a presumption against release. **Until the time limit recommended in Part 1 of this report is implemented, we recommend that automatic bail hearings, as contained in section 44 of the Immigration and Asylum Act 1999 when it gained Royal Assent, be introduced.**

There is a lack of adequate healthcare in detention centres

Detainees told us that the healthcare they have access to while in detention is inadequate. Additionally, the screening interviews that take place at the start of a period of detention, which are supposed to gain information about any health issues, are routinely tick-box processes that do not allow detainees to talk about possible concerns.

NHS England have recently taken over the commissioning of healthcare services within IRCs in England and we hope that this leads to improvements in the standard of care. We recommend that NHS England ensure that screening processes are suitable and that detainees have access to the healthcare they are entitled to.

Detainees with mental illnesses are detained too often

Immigration Removal Centres are not conducive to the treatment of individuals with mental illnesses. Many individuals who are currently detained have experienced trauma in their past and detention is wholly unsuitable. Furthermore, healthcare professionals do not appear to have either the resources or the training to be able to identify and treat mental health issues in detention.

We recommend that individuals with a mental health condition should only be detained under very exceptional circumstances. In addition, we recommend that NHS England work with experts who have experience of working with detainees to produce a training programme on identifying and treating mental illnesses that should be mandatory for all staff in detention centres.

Victims of trafficking or torture should not be detained

A number of the detainees who gave evidence to the inquiry were victims of trafficking or torture. They should have been referred to the National Referral Mechanism (NRM) rather than being detained. Given the Government's focus on supporting victims of these crimes, this is especially worrying.

We recommend that screening processes are improved before a decision to detain is taken so as to ensure that victims of trafficking are not detained for immigration purposes and that Home Office caseworkers understand the NRM. Additionally, as part of the ongoing reform of the NRM, detention centre staff must be given more training about identifying victims of trafficking.

Rule 35 Reports are not protecting vulnerable detainees

Rule 35 Reports are supposed to provide protection for vulnerable detainees for whom continued detention is detrimental to their health, or who are victims of torture. Currently this safeguard is failing – in too many cases GPs are either simply passing on the details of claims made by detainees rather than giving a clinical opinion or Home Office staff are failing to act on the evidence they receive.

We recommend that when completing a Rule 35 report GPs should give a clinical opinion rather than just passing on what they have been told by the detainee. Caseworkers should be properly trained in how to respond to Rule 35 reports, so that responses are in accordance with Home Office policy.

Women in Detention

The nature of detention is often particularly distressing for women, who report feeling intimidated by male staff and lacking in privacy. **We recommend that gender-specific rules are introduced for all IRCs where women are detained to prevent such intimidation.**

Additionally, Home Office guidance lists groups of people who should not be detained as it is unsuitable. **We recommend that women who are victims of rape and sexual violence should not be detained and should be added to this list and pregnant women should never be detained for immigration purposes.**

Lesbian, Gay, Bisexual, Trans and Intersex detainees

We were extremely concerned to hear that LGBTI detainees face bullying, harassment and abuse inside detention centres. This is not acceptable. There is a lack of information available about the extent to which LGBTI individuals face detention and the Enforcement Instructions and Guidance make no mention of assessments of the risks to detaining LGBTI individuals.

We recommend that the Home Office works with the Home Office National Asylum Stakeholder Forum to properly assess what risks there are and to ensure that those LGBTI individuals who do face detention do not also face harassment.

Detainees should only be held in prisons in the most exceptional circumstances

Around 10% of individuals detained under immigration powers are held in prisons, usually after serving a custodial sentence. Failures in Home Office procedures are resulting in delays in removing those who should be removed at the end of their sentences, and we agree with the Public Accounts Committee recommendation that the Home Office and the Ministry of Justice should undertake a full review of the end-to-end process of removing foreign national offenders.

We recommend that where it is necessary to detain individuals at the end of a criminal sentence this should be done on the basis of a risk assessment showing that community alternatives are not appropriate. Detention should only continue in prisons under the most exceptional of circumstances.

BACKGROUND TO THE INQUIRY

Immigration Detention in the UK

There are currently 11 Immigration Removal Centres (IRCs) in operation in the UK.¹ There are an additional two short-term holding facilities for holding individuals and families at the border, as well as Cedars pre-departure accommodation located near Gatwick airport, which is solely for accommodating families with children prior to departure.

The power to detain for immigration purposes was created by the Immigration Act 1971. Detainees are held by the administrative authority of Home Office officials and there is no time limit on how long individuals can be detained under these powers. Detention is normally used in the following circumstances: initially to establish a person's identity or basis of a claim; to effect removal; and where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release. Migrants can also be detained while awaiting a decision by the Home Office on whether or not to grant them leave to enter the UK.

Some specific categories of people who can be detained are outlined below:

1. Asylum Seekers (including new arrivals) awaiting outcomes of their applications

Asylum seekers are those who have requested protection as a refugee. In 2013, 49% of immigration detainees were asylum seekers.²

1(a). Detained Fast Track: If an immigration official believes that a person's asylum case is 'straightforward' their claim for asylum can be processed through the 'Detained Fast Track' system. The Fast Track

process usually takes several weeks, and imposes very tight deadlines for appeals. Asylum applications considered likely to be 'clearly unfounded' can be routed onto the 'Detained Non Suspensive Appeal'. This means that the Home Office can 'certify' their application, meaning that at the end of their 10-14 day asylum process the person has no right of appeal in the UK to an independent court or tribunal.

1(b). Unsuccessful asylum applicants:

Asylum-seekers whose claims have been refused may be detained to facilitate removal.

2. Other migrants pending removal

2(a). Newly Arrived Migrants: Newly arrived migrants who have been refused permission to enter the UK can be detained.

2(b). Visa overstayers: Overstayers are those who have previously had a visa allowing them to be in the UK, but this has then run out. Some may have unsuccessfully applied for this to be extended.

2(c). Breach of conditions of visa: Those who have not complied with the terms of their visa can have their visa cancelled and be detained.

3. People considered likely to fail to comply with any conditions attached to the grant of temporary admission or release

3(a). Concerns a person might abscond: If the government has grounds to believe that an asylum seeker or migrant might abscond or not abide by the conditions for entry then the asylum seeker or migrant can be detained.

1. At the time of the launch of the inquiry, there were 11 IRCs in operation. During the course of the inquiry, HMP The Verne completed its redesignation as an IRC.

2. Table dt_01, Immigration Statistics – July to September 2014

Over the last two decades the capacity of the detention estate has expanded rapidly. In 1993 there were 250 places available, rising to 2,665 by the end of 2009.³ Now at the beginning of 2015, 3,915 individuals can currently be detained in the immigration estate⁴ and Cherwell District Council is considering a planning application that would increase the capacity of Campsfield IRC from 276 to around 600 places. In addition, detainees can also be held in prisons under an agreement between the Home Office and the National Offender Management Service.

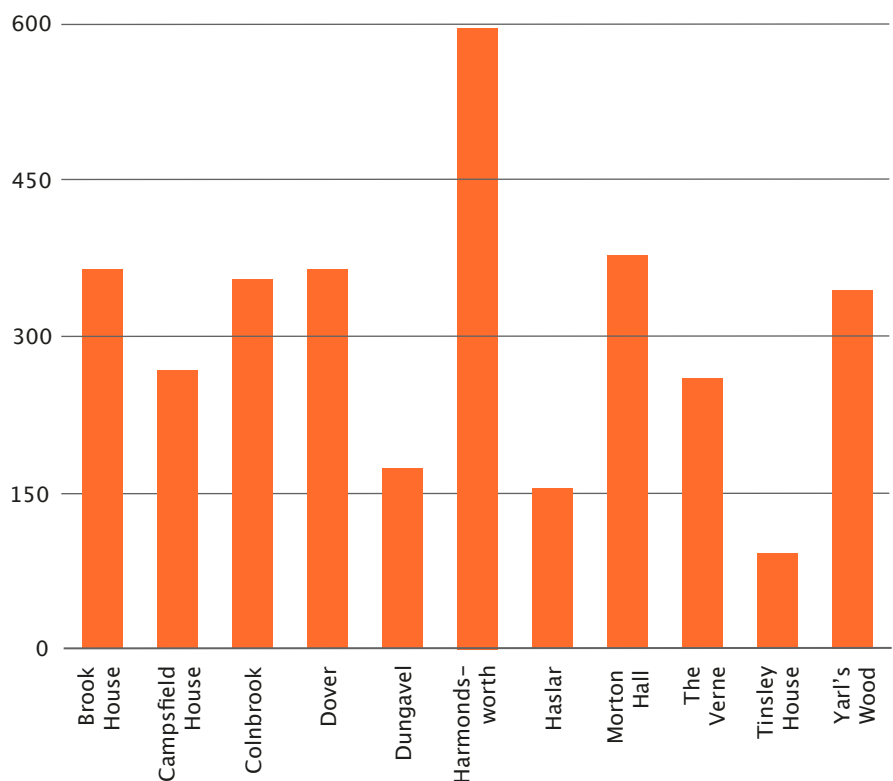
The conditions of detention in the IRCs is governed by statutory instrument,⁵ primarily The Detention Centre Rules (2001).⁶ Detention

service orders provide instructions outlining procedures to be followed by UK Visas and Immigration staff,⁷ while Chapter 55 of the Enforcement Instructions and Guidelines covers the use of detention.⁸

The quarterly immigration statistics released by the Home Office provide data on the use of detention in the detention estate. At the time of writing, the latest statistics available show that 3,378 people were in detention at the end of September 2014, while 29,492 people had entered detention over the previous 12 months, an increase of 10.6% from four years earlier.⁹ **Chart 1** shows the place of detention for those detained on 30 September 2014.

Chart 1: Detainees across the detention estate as of 30 September 2014

Source: Table dt_12_q, Immigration Statistics – July to September 2014



3. Bacon, Christine (2005) The evolution of immigration detention in the UK: the involvement of private prison companies – available at http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:4343; Deb, 17 November 2014, cW

4. HC Deb, 17 November 2014, cW

5. Bail for Immigration Detainees (2014) Denial of Justice: the hidden use of UK prisons for immigration detention

6. Detention Centre Rules (2001) – <http://www.legislation.gov.uk/ukxi/2001/238/contents/made>

7. Detention Service Orders – <https://www.gov.uk/government/collections/detention-service-orders>

8. Enforcement Instructions and Guidance, Chapter 55 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307995/Chapter55.pdf

9. Table dt_12_q, Immigration Statistics – July to September 2014

THE USE OF DETENTION IN THE UNITED KINGDOM

In Part 1 we focus on the use of detention in the United Kingdom: why are people detained; how long are people detained for; does detention meet the aims of the Home Office? This part also focuses on alternatives to detention that are used successfully in the United Kingdom and abroad.

For the shortest period necessary?

The guidelines governing the use of detention state that “[d]etention must be used sparingly, and for the shortest period necessary.”¹⁰ They also say that “[t]he power to detain must be retained in the interests of maintaining effective immigration control. However, there is a presumption in favour of temporary admission or release and, wherever possible, alternatives to detention are used.” The Immigration Minister, James Brokenshire MP, also said that although there is no time limit, “the power to detain is only exercised sparingly and for the shortest possible time.”¹¹

The subject of a limit on the length of time an individual can be detained for immigration purposes was the most common subject raised in evidence received by the inquiry panel. Much of it questioned the Immigration Minister’s assertion that the power to detain is a power used sparingly and that time in detention is kept to a minimum.

The United Kingdom is one of only a few countries within the Council of Europe not to have an upper time limit on detention. In the EU, the EU Returns Directive 2008/115/EC introduced a maximum time limit of six months, extendable by a further 12 months where the detainee is not cooperating with the process. **The UK is one of**

Time limits around the world

Ireland	21 days
France	45 days
Belgium	Two months
Portugal	60 days
Spain	60 days
Taiwan	15 days
Georgia	90 days
USA	180 days

Sources: Grant Mitchell, International Detention Coalition, 3rd Oral Evidence Session, 18 November 2014; UNHCR, Written Evidence; Bingham Centre for the Rule of Law, Supplementary evidence.

only two countries within the EU not to take part in the Directive. The other country not to take part is Ireland, which has, nonetheless, set a time limit of 21 days.¹²

In response to a Parliamentary Question, the then Minister of State for Borders and Immigration, Phil Woolas MP, set out the Government’s reasons for not adopting the Directive:

“The UK has not participated in and has no plans to implement the EU Returns Directive 2008/115/EC. We agree that a collective approach to removal can have advantages. However, we are not persuaded that this Directive delivers the strong returns regime that is required for dealing with irregular migration. Our current practices on the return of illegal third country nationals are broadly in line with the terms of the Directive, but we prefer to formulate our own policy, in line with our stated position on retaining control over conditions of entry and stay.”¹³

10. Enforcement Instructions and Guidance, Chapter 55

11. The Immigration Minister, Written Evidence

12. Bingham Centre for the Rule of Law, supplementary evidence

13. HC Deb, 2 November 2009, c690W

Reviewing continued detention

The UNHCR Detention Guidelines describe the importance of maximum time limits: “Without maximum periods, detention can become prolonged, and in some cases indefinite.”¹⁴

In his written evidence, the Immigration Minister, James Brokenshire MP, said that the power to detain, although not subject to a statutory limitation, was nonetheless subject to the “Hardial Singh” principles, which limit the scope of how detention can be used.¹⁵

The Hardial Singh principles are:

- 1. The Secretary of State must intend to remove the person and can only use the power to detain for that purpose;**
- 2. The detained person may only be detained for a period that is reasonable in all circumstances;**
- 3. 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**
- 4. The Secretary of State should act with reasonable diligence and expedition to effect removal.**

The Minister went on to say that once detention has been authorised, that decision is kept under close review at least at monthly intervals to ensure that it continues to be justified under Home Office policy.

However, the Chief Inspector of Prisons, Nick Hardwick, said that he had concerns about the way in which the reviews were carried out:

“...reviews that happen, if they do happen, are often cursory, and ... the requirement that there should be a reasonable prospect of someone actually being removed if they’re going to be detained isn’t met. And an example of that is that at least a third, and getting on for half, of all detainees are released back into the community. And this poses the question: if they’re suitable to be released back into the community at that point, why do they need to be detained in the first place?”¹⁶

This echoed a finding of the joint thematic review of immigration detention casework carried out by Nick Hardwick and John Vine, the then Chief Inspector of Borders and Immigration. In their report they say: “There was inconsistent adherence by case owners to the Hardial Singh principles that removal of detained people must occur within a ‘reasonable period’. Many monthly progress reports appeared to have been provided as a matter of bureaucratic procedure rather than as a genuine summary of progress, and some detainees found them difficult to understand.”¹⁷

14. UNHCR (2012) Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention – <http://www.unhcr.org/505b10ee9.html>

15. The Minister for Immigration, Written Evidence. A similar point was made by Lord Taylor of Holbeach during a debate in the House of Lords on the Immigration Act 2014. In response to an amendment tabled by Baroness Williams of Crosby, which sought to introduce a 60 day time limit, Lord Taylor said “The courts have been satisfied for some 30 years that the Hardial Singh principles are appropriate and do not lead to what might be described as indefinite detention” (HL Deb, 1 April 2014, c877).

16. Nick Hardwick, 3rd Oral Evidence Session, 18 November 2014

THE USE OF DETENTION IN THE UNITED KINGDOM

The Immigration Minister also told us that detainees can challenge the lawfulness of their detention through judicial review or by seeking a writ of *habeas corpus*. Inquiry member Lord Lloyd of Berwick raised this issue during the first evidence session when discussing the recommendation of Detention Action that a time limit of 28 days be introduced:

“The problem, as I see it, is that the judges who have interpreted [the Hardial Singh principles] have arrived at very long periods of what they regard as reasonable, and in one case they regard it as, I think I’m right in saying, 41 months as reasonable. I won’t mention the name of the case. In another, three years and nine months. Therefore, simply applying that test and relying on the judges, we’re not going to get down to anything like the 28 days which you would like.”¹⁸

In response, Jerome Phelps, Director of Detention Action, said:

“I think your point around not relying on the judges is absolutely correct. What we’ve seen with the proliferating unlawful detention litigation over the last five years is judges initially being horrified that migrants are being detained for administrative convenience for these periods and then becoming increasingly inured to it. The 41 months judgment that you cited, the first line is: “this is yet another case of a long term detention”.

The judges are reluctant to, it’s becoming normalised, this is precisely why we need a clear lead from parliament about what parliament considers acceptable. We can’t simply rely on the very vague case law that makes it impossible in any given case to be sure, either for the Home Office or for the lawyers, whether detention has become unlawful.”¹⁹

The vagueness described by Jerome Phelps, together with its impact on the mental health of detainees, was a constant theme of the evidence received on the subject of time limits. Nick Hardwick told us: “What detainees say to us repeatedly is that the cause of their distress and anxiety in detention is not particularly how they’re being treated while they’re there; it’s the uncertainty over what’s going to happen to them.”²⁰

Without a firm time limit, detainees do not know how long they might be in detention for. Souleymane, who gave oral evidence to the panel, had served a prison sentence for working illegally before being held in detention centres and spoke about the difference between being in prison and being in detention. He said: “in prison, you count your days down, but in detention you count your days up.”²¹ Penny and Mortada, who gave evidence at a later session, also spoke about the uncertainty the lack of a time limit causes for those detained.²²

Dr Melanie Griffiths, who has been visiting IRCs for over six years, told us:

17. HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (December 2012) *The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration*, p.8 – <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

18. Lord Lloyd of Berwick, 1st Oral Evidence Session, 17 July 2014

19. Jerome Phelps, 1st Oral Evidence Session, 17 July 2014

20. Nick Hardwick, 3rd Oral Evidence Session, 18 November 2014

21. Souleymane, 1st Oral Evidence Session, 17 July 2014

“By being detained indefinitely, without knowing how long for and with the continual possibility of both imminent release and removal, detainees worry that detention will continue forever and also that it will end in unexpected deportation the next morning. They have the simultaneous concern both that there will be sudden change and never-ending stasis. It is the lack of temporal predictability that prevents deportable individuals not only from being able to plan for the future, but also from having the ‘stability’ of knowing that the present will remain uncertain for a protracted length of time.”²³

Dr Katy Robjant of the Helen Bamber Foundation told us about the impact that a lack of a time limit has on the mental health of detainees:

“Certainly our clients talk about that being a major problem and increasing their sense of hopelessness and despair and wondering how on earth, when on earth they are ever going to get out of here, if they are ever going to get out of detention. And of course they may have already experienced, before going into detention, torture situations where they didn’t know whether they would leave the prison alive or not, so it can also act as a reminder for that.”²⁴

One of the more striking statistics quoted by a witness during this session was from Dr Robjant, who told us that the extent of mental health problems could be directly correlated to detention beyond one month. She said that “those who were detained for over 30

days had significantly higher mental health problems than those who were detained for under 30 days” adding further that this means “there is a very good reason to limit [length of detention] to around that time.”²⁵

The evidence discussed above shows that there is a considerable mental health cost to detainees caused by the lack of a time limit in detention. Detainees are left counting the days they have been in detention, not knowing if tomorrow their detention will continue, if they will be deported, or if they will be released.

We were also presented with evidence that the lack of time limit, far from aiding Home Office effectiveness, was itself an incentive to poor case-working: the lack of any external pressure to complete cases within a set time-frame led to sloppy practice. Hindpal Singh Bhui, an inspector team leader from the Prisons Inspectorate, said a quarter of the cases of prolonged detention that they looked at were a result of inefficient case-working. He added “In virtually every immigration centre that we’ve inspected, we find cases which we are absolutely certain should have been dealt with more quickly and more efficiently.”²⁶

We were concerned that a number of the individuals who gave evidence told us that they had been detained on more than one occasion. One former detainee from the Democratic Republic of Congo came to the United Kingdom in 2010 after being tortured in his home country. Between 2011 and 2013, he was detained on three separate occasions for a total of five months. He told us that he

22. Penny and Mortada, 2nd Oral Evidence Session, 6 November 2014

23. Dr Melanie Griffiths, Written Evidence

24. Dr Katy Robjant, 1st Oral Evidence Session, 17 July 2014

25. Dr Katy Robjant, 1st Oral Evidence Session, 17 July 2014

26. Hindpal Singh Bhui, 3rd Oral Evidence Session, 18 November 2014

What detainees told us about the lack of a time limit

“You are not given any information about how long you will have to stay. It feels like you will be there forever. It feels like prison. I was worried about being taken to a plane.”

(Anonymous 21, Written Evidence)

“The uncertainty is hard to bear. Your life is in limbo. No one tells you anything about how long you will stay or if you are going to get deported. I could have been there any time or they could take me to the plane.”

(Anonymous 20, Written Evidence)

“...the lack of time limit is the worst part of it as you don't know when/if you will get out. You can't say to yourself tomorrow I'll be OK. Tomorrow you will be locked in, or flown back to the country where you are afraid for your life.”

(Sarah, Written evidence)

“All these people here, and no one knows how long they will be there. Some lose hope, and they try to kill themselves. Some try burning themselves with whatever they can get. Some try hanging themselves in the shower. They think it's the only way out. I've seen this with my own eyes. Detention is a way to destroy people: they do not kill you directly, but instead you kill yourself.”

(Anonymous 6, Written Evidence)

“No one knew when they would be released, so in that sense detention was even worse than prison. Families were broken.”

(Mariam Mansare, Written Evidence)

“Indefinite detention can definitely affect your mental health, and make any existing problems worse.”

(Anonymous 29, Written Evidence)

is currently being supported by the charity Freedom from Torture and is awaiting a decision on his asylum application.²⁷

Another former detainee spent two months in Yarl's Wood IRC on two different occasions. She told us that she has been supported by the Helen Bamber Foundation for a number of years due to ongoing mental health conditions. She is also awaiting a decision on her asylum application.²⁸

27. Anonymous 1, Written Evidence

28. Anonymous 10, Written Evidence

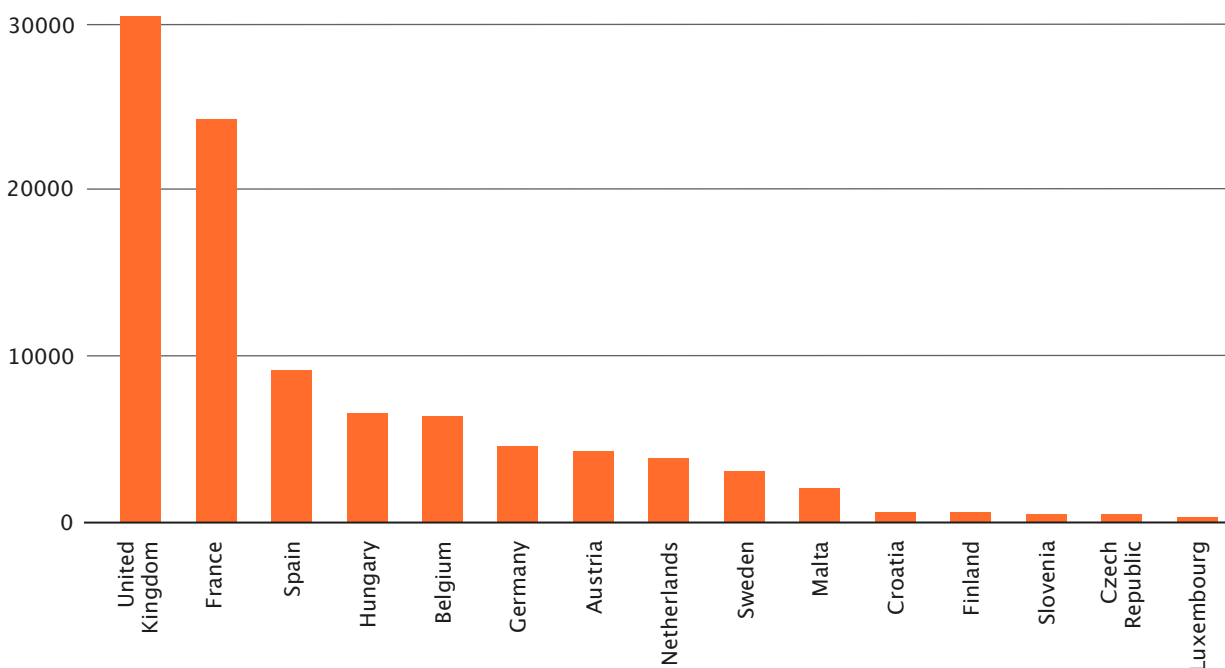
The Financial Cost of Detention

The lack of a time limit also has a financial cost. Dr Alice Edwards, from UNHCR, told the panel that one of the reasons for adopting a time limit is to avoid litigation costs arising from unlawful detention cases.²⁹ Between 2011 and 2014, the UK Government paid nearly £15 million in compensation following claims for unlawful detention.³⁰

Such pay-outs are of course additional to the financial cost to the state of detaining

those individuals in the first place. The cost of running the immigration estate in 2013/14 was £164.4m,³¹ with the cost of detaining one person for one year being £36,026.³² At the end of the third quarter of 2014, 50 people had been detained in IRCs for between one year and 18 months, 22 between 18 months and two years, 14 between two and three years, two between three and four years, and two people had been detained for more than four years.³³ This means that the cost of detaining these 90 individuals was at least £4.5m, an average of just over £50,000 each.

Chart 2: Number of Individuals Entering Immigration Detention in 2013*



*Data for France relates to 2011

Sources: **United Kingdom:** Table dt_01, Immigration Statistics, July – September 2014; **Malta:** UNHCR Malta ‘Malta and Asylum’ – available at <http://www.unhcr.org.mt/statistics>; **France:** Point of No Return ‘Factsheet – The Detention of Migrants in France’ – available at http://pointofnoreturn.eu/wp-content/uploads/2013/12/PONR_Factsheet_FR_HR.pdf; **All other countries:** European Migration Network Country Reports ‘Use of detention and alternatives to detention 2014’ – available from http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/index_en.htm#filter_detention/c_

29. Dr Alice Edwards, 3rd Oral Evidence Session, 18 November 2014

30. HC Deb, 1 December 2014, cW

31. HC Deb, 24 November 2014, cW

32. HC Deb, 17 November 2014, cW

33. Table dt_11_q, Immigration Statistics – July to September 2014

THE USE OF DETENTION IN THE UNITED KINGDOM

In 2013, 30,418 people entered detention in the United Kingdom. **Chart 2** compares the number of people detained in the United Kingdom with other countries in Europe. For example, during 2013, Germany detained 4,309 people, Belgium 6,285, Sweden 2,893 and Hungary 6,496. Germany detained 3 people for every 20 that the UK detained, despite receiving over four times as many applications for asylum.³⁴

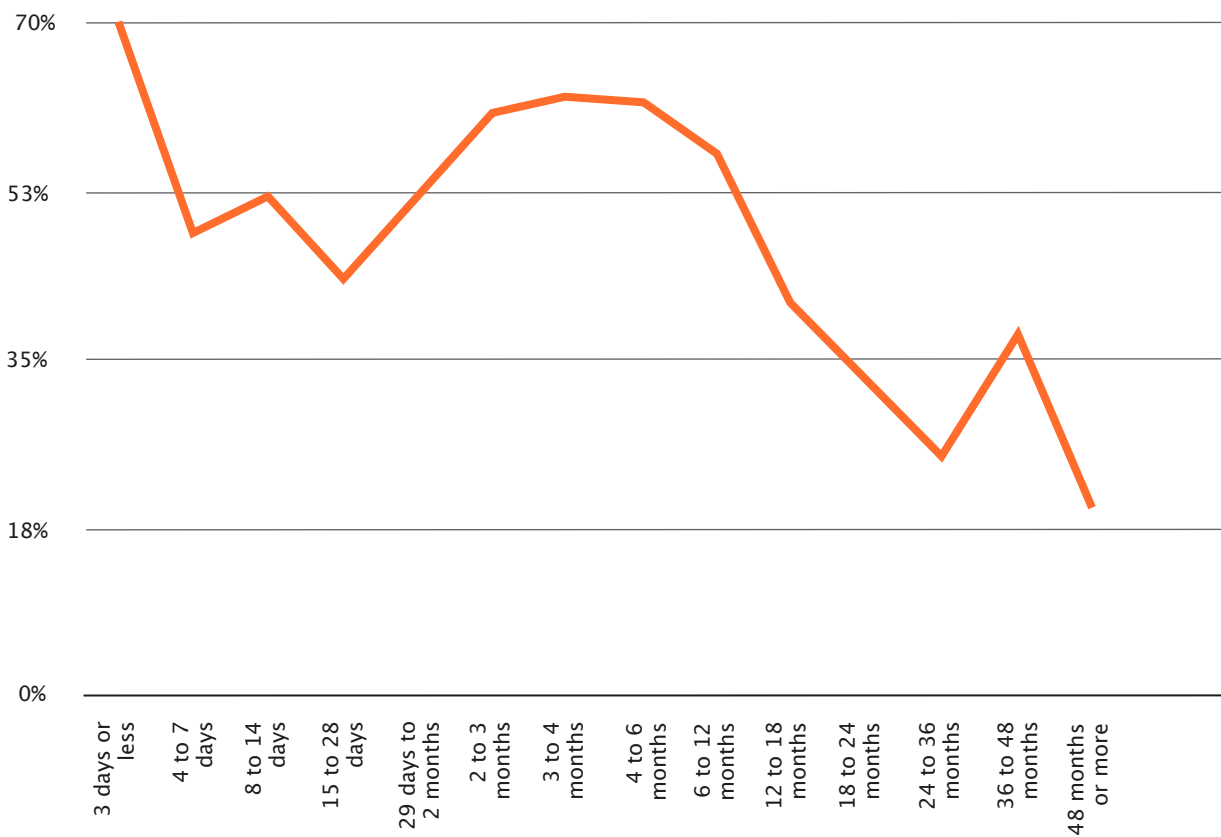
The Immigration Minister told us that the principal use of detention is to effect removal.

However, in their written evidence Liberty argued that there is an inverse relationship between the likelihood that an individual will be removed and the length of time that individual has spent in detention. **Chart 3** shows the percentage of detainees who left detention because they have been removed from the UK during 2013 by cumulative time spent in detention.

Chart 3 indicates that the longer an individual is detained, the less likely it is that that person’s detention will end with their removal

Chart 3: Percentage of detainees leaving detention due to being removed from the UK in 2013, by length of detention.

Source: Table dt_05, Immigration Statistics – July to September 2014



34. In 2013, Germany received 126,705 applications for asylum, while the UK received 29,875 (Eurostat, ‘Asylum applicants and first instance decisions on asylum applications: 2013 – Issue number 3/2014’)

from the UK.³⁵ Liberty described this relationship as “rendering their detention a human tragedy and a futile violation of the right to liberty.”³⁶ They also argued that given the cost of detaining an individual (as described above), this represents a waste of public funds. In 2012, Matrix Evidence estimated the cost savings associated with providing timely release to individuals detained for long periods, only to be released into the community on temporary admission or bail.

Matrix Evidence found that:

“In the UK, over the next 5 years the benefits of timely release of detainees who would have eventually been released anyway exceed the cost of timely release by £377.4 million. Timely release will generate £344.8 million in cost savings due to reduced time spent in detention. In addition,

another £37.5 million will be saved due to reduced unlawful detention costs. When analysing by length of detention, the potential savings range from £11,628 per person for those spending 3 to 4 months in detention, to £72,118 per person for those spending greater than 24 months in detention”³⁷

Shami Chakrabarti, Director of Liberty, argued that a time limit would not place a great demand on the Home Office. She said:

“To look at what a sensible time limit might be according to practice, I’m told that in 2013 there were about 30,000 people who left detention, and of those 30,000 people just under 2,000, that’s 6%, had been detained for more than 4 months. And then, horrifically, 249 had been detained for more than a year, and 50 had been in detention for more than 2 years.

Unlawfully detained

In July 2009, the High Court found a Dutch national to have been detained unlawfully for 128 days while the Home Office tried to deport him to Somalia. Despite the man’s Dutch passport being held on the prison file, which was persistently drawn to the Home Office’s attention, attempts to deport him continued. The claimant was awarded substantial damages of around £60,000 for false imprisonment and misfeasance in public office, which included a substantial award of exemplary damages.

Muuse v Secretary of State for the Home Department [2009] EWHC 1886 (QB)

The Court of Appeal found that a 33 year-old man, whose nationality was unclear (the authorities of three different countries having refused to acknowledge that he was one of theirs) was unlawfully detained for a six month period. He had already been detained for 16 months, he had applied to revoke his deportation order and this, as well as the difficulties in establishing his nationality, meant that there was an insufficient prospect of removing him within a reasonable period of time to justify continued detention.

Bizimana, R (on the application of) v Secretary of State for the Home Department [2012] EWCA Civ 414

35. See also Independent Monitoring Board – Colnbrook, Written Evidence³¹. HC Deb, 24 November 2014, cW

36. Liberty, Written Evidence

37. Matrix Evidence (September 2012) An economic analysis of alternatives to long-term detention – available at <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/Matrix-Detention-Action-Economic-Analysis-0912.pdf>

THE USE OF DETENTION IN THE UNITED KINGDOM

“But if you look then at them, so 6% for more than 4 months, so that means 94% had been detained for less than 4 months, and I don’t know how that would break down to less than 28 days, but I don’t think 28 days on that context is such an outrageous time limit to be considering, particularly when you set it alongside the parallels in the criminal justice system, where people are actually accused of committing offences and they get the benefit of the automatic bail hearings and independent reviews from the magistracy.”³⁸

The Home Office’s statistics break down the figures to stays of fewer than 28 days. In the first three quarters of 2014, 63 percent of detainees left detention after spending fewer than 28 days being held and 93 percent of detainees spent less than four months in detention.³⁹

The United Kingdom is an outlier in not having a time limit, both within the EU and further afield, on the length of time an individual can be detained for immigration purposes. The evidence received from the Immigration Minister and the Home Office’s guidance on detention show that the Government’s stated policy is that detention should be used sparingly and for the shortest possible time. However, in practice this guidance is not being adhered to. As a result, detainees are held indefinitely, which creates a stressful and anxious environment. This has significant mental health costs for detainees. Additionally, long-term detention is not correlated with an increase in the likelihood that the Government will be able to effect removal – indeed the opposite is true.

38. Shami Chakrabarti, 1st Oral Evidence Session, 17 July 2014

39. Table dt_11_q, Immigration Statistics – July to September 2014

ALTERNATIVES TO DETENTION

Given the costs, both individually to the detainee and to the public purse, of long-term detention, and the evidence that long-term detention does not necessarily assist the Government in fulfilling its intention of using detention to effect removal, we were interested to learn what approaches were being adopted by other countries and to understand what alternatives to the use of detention were being used successfully. The International Detention Coalition defines alternatives to detention as:

“any legislation, policy or practice that allows for asylum-seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.”⁴⁰

Current alternatives in use in the UK

The Immigration Minister provided information about the alternatives to detention already used in the UK.⁴¹ The first two were the requirement to report, usually to an immigration office or a police station, and the use of electronic monitoring. The Minister told us that the reporting population is approximately 60,000, with a total cost of £8.6 million per year and that on a week by week basis around 95% of people comply with their reporting restrictions. There are also just over 500 individuals currently monitored using a radio frequency bracelet, with a cost of £515 per month. The Minister described this as “high cost”, although it should be noted that

this represents a sixth of the cost of detaining an individual for one month. The third option classed by the Home Office as an alternative to detention is bail, although as Bail for Immigration Detainees argued, bail is only an alternative to detention for those already detained, and is more properly considered to be a mechanism for release.⁴²

The Home Office policy contained within the Enforcement Instructions and Guidelines states that “wherever possible, alternatives to detention are used”.⁴³ However, we were told that in practice this policy is not acted upon. The Chief Inspector of Prisons told us:

“We see little evidence during inspection of casework files that existing alternatives to detention have been considered and assessed prior to a decision to detain and on an ongoing basis when it is reviewed periodically. Once detention is authorised, detainees often struggle to access bail or temporary admission due to a lack of information about these and the lack of advice.”⁴⁴

Dr Alice Edwards of UNHCR described the types of alternatives to detention currently in use by the Government as lacking a cutting edge approach. She described them as “very traditional”.⁴⁵ Detention Action told the panel that the UK has typically used enforcement-based alternatives to detention and said that these are “typically applied at the end of the process, once the migrant has been refused leave to remain, and after they have been detained or identified as liable for detention.

40. International Detention Coalition, Written Evidence

41. The Immigration Minister, Written Evidence

42. Bail for Immigration Detainees, Written Evidence 3

43. Enforcement Instructions and Guidance, Chapter 55.1.1

44. Nick Hardwick, 3rd Oral Evidence Session, 18 November 2014

45. Dr Alice Edwards, UNHCR, 3rd Oral Evidence Session, 18 November 2014

ALTERNATIVES TO DETENTION

They operate at the individual level, as a way for the individual migrant to be released or not detained.” They told us that there has been very little evaluation of the success of the alternatives used in the UK, where success measures overall compliance with the immigration system.⁴⁶

Detention Action also highlighted the two pilots of residential alternatives to detention for families which were run between 2007 and 2009, at Millbank in Kent and in Glasgow, which they said were poorly designed and executed, leading inevitably to poor results, and told us that there is a risk that poor research then entrenches previous positions. Both pilots focused on families who had reached the end of the immigration process and involved moving families into accommodation prior to their removal, rather than allowing the families to remain in their communities. As described by Detention Action, “[o]utcomes were poor, from the point of view both of individual welfare and voluntary return and absconding rates. Evaluations have suggested that the coercive and end-of-process nature of the alternatives led to a lack of trust between families and the project staff.”⁴⁷

Alternatives to Detention – International Best Practice

Dr Edwards told us that the options classed by the Home Office as alternatives to detention are not the alternatives that are typically found to be the most successful approach from work in other countries. Rather than focusing only on the end-stage enforcement, she described five factors that

make up an effective alternative approach:

1. Treating people humanely and with dignity throughout the process;
2. Ensuring that people are given the information they need to understand the process and to understand their rights and responsibilities and the consequences for not complying with those responsibilities;
3. Ensuring that adequate legal advice is available;
4. Providing material support to allow the individual to live in the community;
5. Individualised case management.⁴⁸

The International Detention Coalition told us that the most successful alternatives to detention in terms of effective immigration control were in fact community-based models, focusing on constructive engagement rather than enforcement. The International Detention Coalition told us that successful alternatives have a number of benefits, including high levels of compliance, cost savings, and high levels of voluntary return (see **Box 1**).

Research carried out by the International Detention Coalition has found that:

“asylum seekers and irregular migrants are more likely to accept and comply with a negative visa or status decision if they believe they have been through a fair refugee status or visa determination process; they have been informed and supported through

46. Detention Action, Supplementary Written Evidence

47. Detention Action, Supplementary Written Evidence

48. Dr Alice Edwards, 3rd Oral Evidence Session, 18 November 2014

Box 1: The benefits of successful alternatives to detention

(Source: International Detention Coalition, written evidence)

“Compliance – alternatives to detention maintain high rates of compliance and appearance, on average 90% compliance. A study collating evidence from 13 programs found compliance rates ranged between 80% and 99.9%. For instance, Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community, and in Belgium, a pilot working with families facing removal had an 82% compliance rate.

“Cost Savings – alternatives to detention cost less than detention, on average 80% cost savings with an annual daily cost of around \$100/day. A cost saving of 93% was noted in Canada and 69% in Australia on alternatives to detention compared to detention costs. In addition independent returns in the EU and Australia save approximately 70% compared to escorted removals.

“Voluntary Return – alternatives to detention increase independent departure and voluntary return rates for refused cases, an average of 65% with up to 82% reported. Examples in Canada, Australia and the US of both refused asylum seekers and irregular migrants demonstrated return rates of between 60% and 69%, while Sweden reported an 82% rate of return from the community among refused asylum seekers.

“Additionally, successful alternatives to detention programs can reduce wrongful detention and litigation; reduce overcrowding and long-term detention; better respect, protect and fulfil the human rights of migrants; improve integration outcomes for approved cases; and improve migrant health and welfare.”

the process; and they have explored all options to remain in the country legally. In contrast, those individuals who believe their case has never been heard properly or who have felt that the process has been unfair are more likely to appeal a negative decision or find another avenue to remain in the country”.⁴⁹

Dr Alice Edwards provided an example of the Toronto bail programme, where individuals have to sign a contract to say that they agree to comply with the programme. She told us that “one of the interesting things, apart from the contract, is that they agree to

engage in meaningful activities ... they need to be engaged in vocational training and education or, in the Canadian context it’s possible to work or engage in other meaningful activities.” We were told of the people to enter into this programme only 3.75% abscond.⁵⁰

Sweden and Australia – the case management model

Also highlighted were the case management systems used in Australia and Sweden, where a case manager, who is not a decision-maker, works with the migrant to provide a link between the individual, the authorities and

49. International Detention Coalition (2011) *There Are Alternatives: A handbook for preventing unnecessary immigration detention*, p.2947. Detention Action, Supplementary Written Evidence

50. Dr Alice Edwards, 3rd Oral Evidence Session, 18 November 2014

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the community. The case manager ensures that the individual has access to information about the process and can engage with their case, and that the government has up-to-date and relevant information about the person.⁵¹ The systems used in Sweden and Australia are expanded in more detail in the relevant boxes below.

In order to examine the Swedish case further, three of the panel members, the Chair Sarah Teather MP, Vice Chair Paul Blomfield MP, and David Burrowes MP visited the Swedish Migration Board to meet with officials and to see their facilities.

Prior to 1997, the Swedish National Police were primarily responsible for implementing detention policy in Sweden. Following public and international criticism of the use of detention accompanied by critical press reporting of breakout attempts, hunger strikes and rioting, responsibility switched to the Swedish Migration Board, which is accountable to the Ministry of Justice.

During the visit, the panel members were told that the goal of this transfer of responsibilities was to give the detention premises a more civil character and that detainees should not be perceived as unlawful. This was evident both in the way Migration Board staff talked about detainees as “customers” and the way in which the detention centre was run and designed. The statistics show that the average length of time spent in detention is low by international standards – in 2013 it was just five days. This reflects the role that detention plays in the immigration system as the end point, and last resort, in an early-intervention case management system (see **Box 2**).

Box 2: Case Study – Sweden

The Swedish caseworker system for asylum seekers uses a case management model based on early intervention and a welfare and rights framework. In Sweden, there is a presumption against detention for asylum seekers, who are normally registered at a regional reception centre and supported with basic needs, legal assistance and in some cases have work rights. Asylum seekers meet regularly with a case worker, who is responsible for informing clients about the process and their rights, as well as ensuring their well-being through assessment, case planning and referral.

A strength-based approach is used to support and build trust with asylum seekers as they are prepared for all possible immigration outcomes. This assists individuals to feel they are given a fair hearing and are empowered and supported to make their own departure arrangements with dignity.

The effectiveness of this early-intervention case management model means that Sweden rarely has to resort to coercion when removing unsuccessful asylum seekers. Indeed, there are only 255 detention places available in the entirety of Sweden and the detention capacity has been stagnant for the last decade.

In 2013, of the 14,011 asylum applicants whose claim was unsuccessful and then left Sweden, 76% left voluntarily or through assisted voluntary programmes. For the UK, the comparable figure was 46%. This was despite Sweden receiving 54,259 asylum applications that year, compared with 23,584 applications in the UK. During 2013, 2,893 people were held in detention in Sweden, while 30,418 people entered detention in the UK during the same year. The average length

51. Detention Action, Supplementary Written Evidence

Box 3: Case Study – Australia (from Detention Action further evidence)

Australia introduced case management-based alternatives to detention in 2006, enabling it to move away from detaining all in-country asylum-seekers and irregular migrants.

Australia still maintains a policy of indefinite mandatory detention for all non-citizens who do not have a valid visa, yet in practice many asylum-seekers and irregular migrants are supported to resolve their immigration cases in the community.

Australian alternatives programmes work with migrants to better understand their circumstances and resolve their immigration cases. A single dedicated case manager ensures that each migrant has appropriate access to welfare assistance, legal advice and advice on voluntary return. The programmes had a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily, despite often long periods in Australia and significant barriers to return.

Community-based alternatives to detention have since become established as a routine part of Australian immigration control. The majority of irregular migrants in Australia (24,273 as at 30/04/14) have been released on short-term Bridging Visas, which allow them to live in the community pending the resolution of their cases.

The Australian government now works closely with a large number of civil society organisations, including the Australian Red Cross and the Salvation Army, to deliver these programmes.

of detention in Sweden in 2013 was five days.⁵²

In 2015, Sweden expects to receive around 100,000 asylum applications, but has no plans to expand its use of detention. Furthermore, there were significant differences in the style of detention. In stark comparison to the way in which IRCs in the UK are increasingly being designed as category B prisons (a topic we cover in more detail in Part 2 of this report), the detention centre the panel members visited in Stockholm was focused on accommodation rather than detention. Staff did not wear uniforms and there was a focus on dynamic security – staff remain safe through focusing on detainees as individuals and building good relationships, rather than through discipline.

The United States

Grant Mitchell from the International Detention Coalition told us that there has recently been a big shift in the use of detention in the United States. The United States is the highest detainer of people for immigration purposes in the world – in 2011, 429,000 individuals were detained at some point - and we were told that President Obama wanted to reduce the use of detention so that only high-risk cases were detained. Grant Mitchell added that to do this, a new position was created within the Department of Homeland Security that was an NGO liaison. A working group with NGOs was formed to find “the middle ground of two issues ... How does the state resolve the case that they think something needs to happen; and then for the individual how can we be sure all their options are explored?”⁵³

52. <http://www.migrationsverket.se/English/About-the-Migration-Board/Facts-and-statistics-/Statistics.html>); Table as_01, Immigration Statistics – July to September 2014; Table rv_06, Immigration Statistics – July to September 2014; EMN Sweden (2014) The use of detention and alternatives to detention in the context of immigration policies in Sweden

ALTERNATIVES TO DETENTION

The Department of Homeland Security set out the principles of their detention reform, which included prioritising “efficiency throughout the removal process to reduce detention costs, minimize the length of stays and ensure fair proceedings.”⁵⁴

The US also developed a risk assessment tool designed “to balance vulnerabilities with others factors, such as risk of flight and danger to the community, enabling decisions to be taken in respect of release and the types of conditions, if any, to be imposed”.⁵⁵ Additionally, the action plan included exploring alternatives to detention. The fact sheet produced by the Department of Homeland Security set out the cost advantages of using alternatives to detention (ATD):

“ATD costs substantially less per day than detention: the most expensive form of ATD costs only \$14 per day compared to the cost of detention, which varies per facility but can exceed \$100 per day.”⁵⁶

The evidence received by the panel shows that alternatives to detention utilised by other countries are able to fulfil the government’s desire to maintain effective control of their borders without detaining a large number of people for considerable amounts of time. Key to these successful alternatives is a focus on front-loaded case-working, where individuals and families are engaged with right at the start of the process. The process needs to be clear, with applicants receiving all the relevant information in an understandable and digestible way. The evidence we received shows that suc-

Box 4: Case Study – The United States (From Detention Action further evidence)

The Lutheran Immigration and Refugee Service (LIRS) has developed a supervised release and assistance programme based on individualised assessments of community ties, risks and previous compliance. LIRS coordinates a network of 20 local NGOs in seven communities around the United States. Immigration officials identify detainees as suitable for release, and LIRS coordinates referrals to local partner organisations. The local NGOs provide community support to enable compliance with conditions of release, in particular appearance at removal hearings. Case management enables migrants to access services including legal, medical, mental health, housing and education.

The United States Conference of Catholic Bishops also conducts assessments of migrants in detention who may be suitable for release. In most cases, immigration officials agree to use discretion available to them to release. Released migrants, of whom around a third are ex-offenders, receive support and information, including on voluntary return, from partner organisations in the community.

cessful systems are able to maintain high levels of compliance at a considerably lower cost to individuals, communities and the public purse.

From what we were told throughout the course of the inquiry, the experience of detainees and those who represent them is that currently the

53. Grant Mitchell, International Detention Coalition, 3rd Oral Evidence Session, 18 November 2014

54. U.S. Department of Homeland Security (2009) ICE Detention Reform: Principles and Next Steps http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf

55. UN High Commissioner for Refugees (UNHCR), Canada/USA Bi-National Roundtable on Alternatives to Detention of Asylum Seekers, Refugees, Migrants and Stateless Persons, February 2013, available at: <http://www.refworld.org/docid/515178a12.html>

56. U.S. Department of Homeland Security (2009) ICE Detention Reform: Principles and Next Steps

system in the UK is overly focused on end-stage enforcement, without investing in good decision-making, quality human interactions and accurate risk assessments. As we explore in more depth in the second part of this report, detainees frequently report that they do not know what the status of their case is and that they do not receive the information they need to successfully navigate the system. They also report that they experience being treated with mistrust and disrespect, both in their one-on-one interactions with staff discussing their case and when subject to enforcement, and that the system as a whole feels indifferent to the context and difficulties of their lives. The panel believe that it is not good enough to treat anyone at any stage of the immigration process with a lack of basic human courtesy and respect, even when they have exhausted all stages of appeal to remain in the UK.

During discussions with officials working in detention centres in Sweden, one official remarked to the panel members that their focus was on “allowing people to leave with their heads held high.” The evidence we heard during this inquiry suggests that the experience of detainees in the UK is the opposite.

We believe that there needs to be a shift in the way that the Home Office approaches immigration casework, away from a reliance on end-stage enforcement and towards engagement and compliance.

A UK Precedent – The Family Returns Process

There also exists within the UK context a precedent for reforming the use of

immigration detention. In 2009, 1,119 children entered immigration detention in the UK⁵⁷ and, in the lead up to the General Election in 2010, a number of organisations campaigned to end the use of detention of children for immigration purposes. Following the formation of the Government, the Coalition Agreement included a commitment to end the detention of children for immigration purposes. In December 2010 the Government announced a new process for working with families who are applying for asylum in the UK including strengthening decision-making by working with UNHCR to improve decisions and created a specialist group of family case-owners.

The main reform was the creation of a new approach to working with families where an adult family member is liable for removal. The House of Commons briefing note on the policy says that the approach aimed “to encourage refused families to comply with instructions to depart from the UK at an earlier stage, such as by giving them more control over the circumstances of their departure.”⁵⁸

The new system introduced a stepped approach for working with these families:

1: Assisted returns: families have a dedicated family conference to discuss future options and the specific option of assisted return.

2: Required return: families who do not choose to take up the offer of assisted return are given at least two weeks’ notice of the need to leave and the opportunity to leave under their own steam.

57. Table dt_02, Immigration Statistics – July to September 2014

58. House of Commons Library (4 September 2014) Ending child immigration detention – <http://www.parliament.uk/business/publications/research/briefing-papers/SN05591/ending-child-immigration-detention>

ALTERNATIVES TO DETENTION

3: Ensured return: only once all appeal rights have been exhausted and the assisted and required return stages have been exhausted can enforcement action be considered. An Independent Family Returns Panel was created to help to ensure that individual return plans take full account of the welfare of the children involved.

4: Pre-departure Accommodation and the Family Returns Panel: As a last resort, the Independent Family Returns Panel will have the option of referring families to pre-departure accommodation. Families sent there on the Panel's recommendation will already have had the option of other ensured returns. The pre-departure accommodation is only for use by families with children and stays that are for a maximum of 72 hours.

This new approach has resulted in a steep decline in the number of children detained for immigration purposes. In the year to September 2014, 131 children entered detention.⁵⁹ This included 50 entering Cedars, and 65 at the Family Unit at Tinsley House (usually border cases where a decision is pending regarding admission or removal). The remaining 16 cases involved children being detained either at Short Term Holding Facilities or in adult IRCs. In his report following an inspection of Campsfield House IRC in August 2014, the Chief Inspector of Prisons stated that three children had been held in the IRC since the beginning of 2013, two of whom had been incorrectly assessed as adults. Disappointingly, the third child was detained at the IRC for

three days despite the Home Office's records showing that they were 17 years old as an official had deemed their detention 'appropriate'.⁶⁰ **While the inquiry panel welcomes the considerable reduction in the use of detention for children, we are concerned that a number of children are being detained in adult facilities and urge the Government to address this issue.**

Nevertheless, there is no doubt that this new process is a very significant step forward. No longer detaining children and their families has not resulted in a collapse in enforcement. Indeed, the opposite appears to be true. The Home Office's evaluation of the family-returns process found that most families complied with the process and there was no increase in absconding. The evaluation also found that, although voluntary and assisted-voluntary returns had not increased under the new process, the level of assisted-voluntary returns had stayed level contrary to wider trends in the immigration system which saw a decrease in voluntary and assisted-voluntary returns.⁶¹

The new process was put into legislation when the Immigration Act 2014 received Royal Assent. **While the panel is aware that there are legitimate concerns over the operation of the family-returns process,⁶² we believe that it shows that reform is possible within the UK context and indeed that this reform does not prevent immigration control. We recommend that the Home Office actively seek to learn from this example and apply the lessons more widely to the use of detention of adults.**

59. Table dt_02, Immigration Statistics – July to September 2014

60. HM Chief Inspector of Prisons (2014) Report on an unannounced inspection of Campsfield House Immigration Removal Centre, p.23 – <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/02/Campsfield-House-web-2014.pdf>

61. Home Office (2013) Evaluation of the new family returns process – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264658/horr78.pdf

62. See, for example, Bail for Immigration Detainees, Written Evidence, Refugee Council, Written Evidence, Barnardos (April 2014) Cedars: two years on – available from http://www.barnardos.org.uk/16120_cedars_report.pdf

LOOKING TO THE FUTURE IN THE UNITED KINGDOM

Detention used sparingly and for the shortest amount of time necessary

We are concerned that there is currently no maximum time limit on the length of time individuals can be detained for immigration purposes. This lack of a time limit has several negative consequences, including, in far too many cases, protracted detention. As the evidence considered above shows, longer periods of detention are less likely to result in that individual being removed from the United Kingdom, making that period of detention fruitless. Furthermore, the cost for the individual is considerable, as is the cost to the state.

We agree with the Immigration Minister who, while giving evidence to the Home Affairs Select Committee responding to a question from inquiry panel member Julian Huppert MP, said “I certainly do not want to see people sitting in immigration removal centres for extended periods of time because I do not think this does anybody any good.”⁶³

Current Home Office policy, to a large extent, reflects this where it refers to detention being for the shortest possible time and that alternatives to detention must be considered. Detention should be used as a last resort. However, the evidence heard by the inquiry is clear that in practice this policy is not being adhered to or having its desired effect.

We believe that the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk. The medical evidence available shows that detention beyond one month has significant mental health impacts. Furthermore, the statistics show that, while the majority of detainees are held for fewer than 28 days, prolonged periods of detention

are unlikely to result in removal. International best practice shows that it is possible to detain fewer people for shorter amounts of time while maintaining effective border controls. **We recommend that a maximum time limit of 28 days should be introduced and that this should be set in statute. This is in line with international best practice. Additionally, decisions to detain should only be taken as a genuinely last resort and to effect removal.**

Witnesses told us that in some cases, where a time limit has been set, “there’s a tendency to let people stay until the maximum time limit rather than perhaps the time limit that they should have been in detention.”⁶⁴ We are concerned that with current Home Office practice, setting a time limit alone could result in setting a new norm for all periods of detention, when in fact detention, where used, should always be for the shortest possible time. We therefore also recommend that, as well as introducing a 28 day time limit on detention, the Government should introduce a robust system for reviewing the decision to detain early in the period of detention. This system might take, for example, the form of automatic bail hearings, a statutory presumption that detention is to be used exceptionally and for the shortest possible time, or judicial oversight, either in person or on papers. We recommend that the Government pilot these approaches and evaluate their effectiveness.

To accommodate these changes, the Government will need introduce a much wider range of alternatives to detention affecting the entire process of the immigration system. There are numerous examples of alternatives being used to good effect in other countries

63. Home Affairs Select Committee, Oral Evidence: The work of the Immigration Directorates 2014 Q2, HC712, Q135

64. Dr Alice Edwards, UNHCR, 3rd Oral Evidence Session, 18 November 2014; see also Bingham Centre for the Rule of Law, written evidence

LOOKING TO THE FUTURE IN THE UNITED KINGDOM

that achieve high levels of compliance with the immigration system through a more intensive, front-loaded casework system, a focus on the dignity of the applicant and opportunities to connect in the community in normal human ways that make absconding unlikely and compliance more usual. These systems are based on a common sense approach to working with people. These alternatives not only result in high levels of compliance, but they are also considerably cheaper than our current system which, particularly in the case of asylum, could be characterised as low-level initial engagement and support, lengthy decision-making of variable quality, and expensive ineffective end-stage enforcement.

To achieve this, there will need to be a change in culture, from relying only on enforcement to achieve results, to investing in engagement. Given the scale of the task, we recommend

that the incoming Government after the General Election should form a working group to oversee the implementation of the recommendations of this inquiry. This working group should be independently chaired and contain officials from the Home Office as well as representatives from NGOs in order to widen their thinking and approach. The working group should produce a time-plan for introducing a time limit on detention and the creation of appropriate alternatives to detention, drawing on the best practice that is already in place in other countries.

A key task of the working group will be to create a method for transferring to a system where there is a time limit. Those currently held in detention should have their detention reviewed and if there is no prospect of removal within 28 days from that review, arrangements for their release should be initiated.

ASYLUM APPLICANTS AND THE DETAINED FAST TRACK

The Detained Fast Track (DFT) operates within the detention system but, whereas most detention decisions are taken to effect the return of an individual with no right to stay in the UK, the DFT can be used to detain asylum seekers while their case is being decided.

The Detained Fast Track has its roots in a scheme introduced in 2000 known as the Oakington scheme. In a written statement to Parliament, the then Minister for Immigration, Barbara Roche, explained that asylum seeking adults, families and children would be detained under the scheme at Oakington Reception Centre “where it appears that their application can be decided quickly, including those which may be certified as manifestly unfounded.”⁶⁵ In 2003, the Oakington scheme was expanded to single male applicants detained at Harmondsworth and in 2005 women began to be processed through the DFT at Yarl’s Wood. Initially, cases considered suitable for the DFT were limited to those from countries where the Home Office deemed there to be no general risk of persecution. In May 2005, this limitation was removed.

The DFT originally formed part of the then Government’s response to a sharp rise in asylum applications. In 2000 the UK received over 80,000 asylum applications and these peaked two years later when 84,132 applications were made.⁶⁶ This increase was largely driven by an increase in applications from Afghanistan and the Middle East. In a recent

High Court judgment regarding the lawfulness of the DFT which is discussed in more detail below, Mr Justice Ouseley set out the purpose of the scheme:

“...the purpose of detaining 13000 out of some 84000 asylum applicants in the year, was to obtain speedy decisions for those in the fast track and those in the increasing queue behind them. Their detention was necessary to achieve the objective of holding 150 interviews a day-which required the avoidance of even small delays; cases were selected as suitable for fast-tracking.”⁶⁷

This echoes the House of Lords ruling on the lawfulness of the DFT in 2002:

“In a situation like the present with huge numbers and difficult decisions involved, with the risk of long delays to applicants seeking to come, a balancing exercise has to be performed. Getting a speedy decision is in the interests not only of the applicants but of those increasingly in the queue.”⁶⁸

Since then the number of applications has declined and since 2005 has been relatively stable. In 2013, 23,584 applications were made. In contrast, allocation to the fast track has increased from 1,672 applicants in 2008, to 2,571 in 2010, and to 4,286 during 2013.⁶⁹ **At the end of September 2014 there were 22,879 asylum applications pending a decision, an increase of 48% over the previous 12 months.**⁷⁰

65. HC, 16 March 2000, Vol 364, Col 385WS

66. Table as_01, Immigration Statistics – July to September 2014

67. R (Detention Action) v Secretary of State for the Home Department [2014] EWHC 2245 (Admin), paragraph 31

68. R(Saadi and Others) v SSHD [2002] UKHL 41, [2002] 1WLR 3131

69. HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (December 2012) The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, p.8 – <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf> and Table as_11, Immigration Statistics – July to September 2014

70. Table as_01_q, Immigration Statistics – July to September 2014

ASYLUM APPLICANTS AND THE DETAINED FAST TRACK

The panel is extremely concerned that despite the stable number of asylum applications, as well as the Government's increasing reliance on the Detained Fast Track, the number of outstanding applications has almost doubled.

The DFT runs in parallel to the 'Detained Non-Suspensive Appeal' (DNSA) procedure. Under the DNSA, an asylum applicant from a list of designated safe countries is detained while their application is determined. If it is refused, there is no in-country right of appeal.

The timescales for the DFT and the DNSA are set out in Home Office guidance: "For DNSA cases, the indicative timescale from entry to the process in the appropriate Immigration Removal Centre (IRC) to decision service will be around 10-14 days. For DFT cases, the respective indicative timescales for decision service will usually be quicker."⁷¹ Cases in the DFT are also subject to the fast-track appeals process governed by The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005. Under those rules, an individual who is refused asylum has two days to give notice of their intention to appeal. The appeal should then be determined within the next two days, with a decision served within 48 hours. In September 2013, the average time between entry onto the DFT and exhaustion of appeal rights was 23.5 days.⁷²

Refusal rates for cases decided within the DFT are much higher than those considered in the non-detained asylum system. In 2013, 84% of the initial decisions taken resulted in refusal and a further 12% were withdrawn prior to

the decision. In the non-detained process, 63% of applications that received a decision were refused.⁷³

We were told that the timescale faced by those in the DFT leaves asylum seekers "confused and disorientated" as a result of "limited or late information, lack of interpreters or translated materials, lack of literacy, the stress of detention and isolation from support and their communities."⁷⁴ Witnesses also explained how asylum seekers become distressed by the lack of time they are given to gather evidence to support their case.⁷⁵

'J' fled The Gambia as she came from a family of cutters for female genital mutilation but did not want to be a cutter herself. She was detained on the DFT in Yarl's Wood and told us about her experience:

"I was in fast track, I have my interview, my screening interview was in Croydon, that's when they detained me. So I have my big interview after two days when I was in detention, I have my big interview without a lawyer, without an interpreter. I asked for an interpreter with three different languages in my country because I can speak those languages very comfortably, Mandinka, Sunna and Wolof. But I didn't have any of those interpreters. They said that my English is good so that I can go on with my screening. I know one hundred percent that it's not good for me to go for a screening. It's getting better because I'm talking a lot and I'm having English classes. The legal process in detention is just bad because I

71. Detained Fast Track Processes – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370322/Detained_Fast_Track_Processes_v6_0.pdf

72. Liberty, Written Evidence

73. Tables as_01 and as_12, Immigration Statistics – July to September 2014

74. Detention Action, Written Evidence

75. Independent Monitoring Board, Harmondsworth, Written Evidence

think they just made fast track just to get rid of people”.⁷⁶

A number of witnesses did not believe that the screening process for the DFT was able to prevent individuals who, according to the Home Office’s own guidance, aren’t suitable to be detained on the fast-track from being allocated to it. This guidance sets out the groups of people who are unlikely to be suitable:

- Women 24 weeks pregnant or over;
- Applicants with health conditions needing 24 hour medical care;
- Disabled applicants, except the most easily manageable
- Applicants with infectious and/or contagious diseases;
- Applicants with severe mental health problems
- Where there is evidence that applicants have been tortured;
- Children (under 18 years old) and families with dependent children;
- Victims or potential victims of trafficking as decided by a ‘competent authority’⁷⁷

The Home Affairs Select Committee came to the view in 2013 that one third of all cases allocated to the fast-track had been allocated incorrectly. UNHCR told us that the screening process failed to prevent vulnerable and traumatised people, including victims of torture, from being detained on the DFT:

“DFT safeguards to identify vulnerable and traumatised individuals are not adequate. UNHCR noted that a high number of individuals who enter the DFT are later released. Even among those who remained within the DFT, UNHCR identified that vulnerable people and applicants with complex cases which are not suitable for being decided quickly were routed into the DFT. This includes individuals who claim to be victims of rape or trafficking. UNHCR considers that the DFT is not a suitable procedure for [refugee status determination], and as it is accompanied by detention, is particularly inappropriate for certain categories of asylum-seekers.”⁷⁸

These concerns were shared by the Chief Inspector of Borders and Immigration when he inspected the DFT in 2011. In that inspection, the Chief Inspector looked at 114 files and out of that 114, nine had been released before a decision had been made and a further 25 left detention without being removed from the UK. The Chief Inspector, in a telling remark, said that “we accept that the screening process, however tailored to the specifics of the DFT, *cannot fully prevent unsuitable people from being placed in the DFT.*”⁷⁹ The report also said that case owners told the inspection team that it was not until the asylum interview that complexities could emerge and it was known whether a claim was suitable for the DFT or not.

Last year, a legal challenge to the operation of the DFT was launched in the High Court. In the judgment, Mr Justice Ouseley found

76. ‘J’, 1st Oral Evidence Session, 17 July 2014

77. Independent Chief Inspector of Borders and Immigration (2011) *Asylum: A thematic inspection of the Detained Fast Track – July – September 2011* – http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf

78. UNHCR, Written Evidence

79. Independent Chief Inspector of Borders and Immigration (2011) *Asylum: A thematic inspection of the Detained Fast Track – July – September 2011* – emphasis added

ASYLUM APPLICANTS AND THE DETAINED FAST TRACK

that the current screening process is “not as focused on the issue of fairness as it should be”.⁸⁰ Liberty told us that the screening process must become more focused on the suitability of individuals for detention. It is perhaps telling of the failures of the screening process that Liberty felt they had to recommend that “in the case of potential trafficking victims ... screening officers must be trained to be alert to trafficking indicators and must ensure that individuals are directed to the National Referral Mechanism, rather than onto the DFT”.⁸¹

We were told that, in the same legal challenge mentioned above, the most severe criticism of the DFT related to effective access to legal assistance. Detention Action said that asylum-seekers on the DFT in Harmondsworth were having to wait, on average, for a week before being allocated a lawyer. Given the timescales of the DFT, this means that the lawyer is allocated shortly before the substantive interview resulting in the asylum-seeker often having only 30 minutes with their lawyer to explain their case to receive advice.⁸²

In the judgment, Mr Justice Ouseley said:

“I am satisfied that all the evidence taken together shows that the need for time for proper advice with time to act on it, beyond what the DFT allows, and the need for time for the effective safeguards properly to operate, is not fully appreciated at all stages and levels, partly through a desire to keep a case on track once it is in the fast-track. The upshot is that the DFT as

operated carries an unacceptably high risk of unfairness...”⁸³

In answer to a written question in the House of Lords, Lord Bates set out the steps the Government were taking in response to the judgment. Of the screening process, he said:

“The judgment observed that the current asylum screening process did not do enough to identify and exclude from DFT vulnerable people or those with particularly complex claims. We have since changed the questions asked in the screening interview to help address this issue and there is an ongoing review of the screening process that incorporates discussions and input from external stakeholders.”⁸⁴

On access to legal representation, he added that the Home Office had implemented new arrangements “that ensured that legal representatives are allocated to asylum claimants that require them ... on the day of induction to DFT or, where that is not possible, no later than 2 working days after induction.” Furthermore, the new arrangements would make sure that “there are 4 clear working days between the allocation of a lawyer and the asylum interview except where the asylum claimant and lawyer advise that they want an earlier interview.”⁸⁵

Over and above the criticisms of the way the DFT process operates, a number of those who submitted evidence to the inquiry told us that the principles of the DFT were flawed. Liberty described the DFT as “detention for adminis-

80. *R (Detention Action) v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), paragraph 112.

81. Liberty, Written Evidence

82. Detention Action, Written Evidence

83. *R (Detention Action) v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), paragraph 197

84. HL Deb, 6 January 2015, c112W

85. HL Deb, 6 January 2015, c112W

trative convenience” and argued that it is “an unacceptable departure from our best traditions of liberty.”⁸⁶

Dr Alice Edwards, of UNHCR, said that the DFT was unique in the world:

“There are some other industrialised countries that have mandatory detention but it’s not related to accelerated processing. So the UK is somewhat unique in having a detained fast-track – in other words, accelerated processing with detention, automatic detention attached, and, in fact, you can only really say that it’s rather perverse that persons who have manifestly founded cases – in other words are highly likely to be successful – would be the ones also in detention. That seems to be highly counterintuitive of a good practice and that’s something that we would like to see changed.”⁸⁷

We believe that there remains a need to decide straightforward asylum applications through an expedited procedure and are alarmed by the increase in outstanding claims. However, we are concerned that within the Detained Fast Track the focus is on detention rather than making quick, high quality decisions. Additionally, the failures of the screening process and the inherent stressful environment of being detained are not generally conducive to allowing asylum seekers to receive the support they need and are entitled to and are counter-productive to high quality decision making.

We recommend that the Government takes urgent steps to reduce the number of outstanding claims. While the need for a fast track procedure still exists, we do not believe that this necessitates a presumption of detention and we reiterate our belief that detention should be a last resort and for the shortest possible time.

86. Liberty, Written Evidence

87. Dr Alice Edwards, UNHCR, Oral Evidence Session, 18 November 2014

In Part 1 of the report we recommended that the immigration system is reorganised and refocused so that far fewer people are detained and that those who are detained are subject to a maximum time limit in detention of 28 days. Part 2 of this report focuses on the conditions of detention in the current system operated by the Home Office. Many of the most serious problems we discuss below are exacerbated by the number of people detained, the indefinite nature of detention, and the focus on enforcement. Where appropriate, we make recommendations relating to the current system.

Over the last twenty years, many inquiries and reports have been published into the workings

of the current immigration and asylum system as well as into the operation of the detention estate specifically. Few of these reports appears to result in meaningful action by the Home Office and the repetitive nature of the constructive suggestions for improvement can lead to fatigue and unwillingness to engage among those who want to see an effective system. We recommend that a literature review is undertaken by the Home Office to collate the recommendations for improvement of the immigration and asylum systems, including case-working and the use of detention, that have been made in successive reports, drawing out common themes with a view to analysing what progress against these recommendations has been made.

CONDITIONS IN DETENTION

‘J’ told the panel about her first thoughts when she arrived at Yarl’s Wood:

“So I was scared for the first time. I was very scared. Until when I got to Yarl’s Wood. So getting inside Yarl’s Wood, the process before you even reach inside Yarl’s Wood, showed me that this place you are going to, I don’t think it will be easy to come out from here because it was very tough to get in. So in that case you always think it will not be very easy to come out. And then I start thinking of what happened, why am I in this prison? Then all that fear and all those thoughts came back to me as anger. I was so angry in detention.

“The thing is, why I was angry is I always think that I hadn’t committed a crime in this country. Only thing I was asking was for protection. But I ended up seeing myself in prison. People call it Yarl’s Wood detention, it’s not detention, it’s prison. They just want to make the name beautiful from outside but it’s not a detention, it’s a prison.”⁸⁸

Mortada, who spent eight months in detention, said “all they do, they let you go into the courtyard. Nothing to do to occupy you. There’s no internet; there’s no pool table or game facilities. There’s nothing. Even the library – it’s a very small library and there’s just not that much to do in there. Just sitting doing nothing.”⁸⁹

88. ‘J’, 1st Oral Evidence Session, 17 July 2014

89. Mortada, 2nd Oral Evidence Session, 6 November 2014

While spending a day in Yarl’s Wood IRC, Sarah Teather MP was allocated a cell to experience the living conditions of detainees in the centre. In comparison to the living conditions in the detention centre in Sweden, the cell was bare, shabby, impersonal and the centre noisy. Of particular note were the sanitary towels stuck to the air vents in the walls. When she inquired why women do this, she was told it was to stop the noise travelling from one cell to another. Dr Katy Robjant told us that many of the sounds people hear in detention centres, such as screaming and keys jangling, act as reminders of previous traumatic experiences.⁹⁰

The purpose of Immigration Removal Centres, or detention centres as they were known at the time, was set out in the Detention Centre Rules 2001:

“3.—(1) The purpose of detention centres shall be 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 maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression.

(2) Due recognition will be given at detention centres to the need for awareness of the particular anxieties to which detained persons may be subject and the sensitivity that this will require, especially when handling issues of cultural diversity.”⁹¹

IMMIGRATION REMOVAL CENTRES OR PRISONS?

Given this purpose of IRCs, we are concerned about the increasing use of facilities that are either built to Category B prison standards (such as Harmondsworth, Colnbrook and Brook House), or that were previously designated as prisons (such as The Verne and Morton Hall). The Association of Visitors to Immigration Detainees told us that “we are concerned that the trend towards use of high security physical spaces to hold people for administrative purposes is exacerbated by an increasingly punitive approach inside.”⁹²

In their written evidence, the Church of England described recently built IRCs:

“What has been built ... is not just prison-like. It looks like a prison: harsh straight lines, built to high-security standards, bare of anything to soften the feel of the interior. It sounds like a prison – large echoing open wings. It feels like a prison: the attempts to call the places where the detainees sleep a ‘room’ is confounded by the fact that they are manifestly cells. The toilets have no

90. Dr Katy Robjant, 1st Oral Evidence Session, 17 July 2014; see also African Community Centre, Written Evidence

91. The Detention Centre Rules 2001 – <http://www.legislation.gov.uk/ukxi/2001/238/contents/made>

92. The Association of Visitors to Immigration Detainees, Written Evidence

CONDITIONS IN DETENTION

seats, just a solid steel bowl. It smells like a prison: that toilet is inside the cell. In many cases, the detainees – who are prisoners, in any normal sense of the word – have to eat in those cells beside the toilet.”⁹³

Nick Hardwick talked about the redesignation of prisons as IRCs and said that “their physical security and the culture in the establishment is still very much that of a prison rather than immigration removal centre.”⁹⁴ Shami Chakrabarti, when reflecting on her visit to Colnbrook IRC, told the panel that “these places feel like prison, let’s be clear about that, you can call them whatever you like these places are places of custody and they feel like prison, and these people are prisoners.”⁹⁵ The Chair of the Inquiry, Sarah Teather, on visiting Colnbrook herself was surprised that the toilets in cells do not have doors, just a curtain that was often poorly fixed to the wall.

Home Office statistics show that the five most populated IRCs at the end of September were Harmondsworth, Morton Hall, Dover, Brook House and Colnbrook. Between them, 2,049 people were detained in these centres, which was 60% of the total number of detainees in IRCs.⁹⁶ All of these centres are either former prisons (Dover and Morton Hall), or have been built to Category B standards (Harmondsworth, Brook House and Colnbrook), which would appear to contradict the Home Office’s own policy of maintaining a relaxed regime.

During their visit to Harmondsworth and Colnbrook, the management team from Mitie

told David Burrowes MP and Paul Blomfield MP that they took steps to impress upon their staff that the IRCs are not prisons and in a written response to the panel they said that they did not want to create “a management culture based upon prison delivery.”⁹⁷ The panel members were shown the improvements to the IRCs that Mitie have implemented since taking over the running of the centres in September 2014. These included the redecoration of the centres in lighter colours and the extension of a hairdressing training programme. However, while these improvements are welcome, such improvements focus on making a better community within the centres and are only required due to the prolonged detention of detainees. They do not, nor can they, address the problems caused by prolonged detention discussed throughout this report. Furthermore, despite the cosmetic changes that have been made, it is impossible to escape the fact that both centres are built to Category B standards and the cells are exactly that, cells.

We are concerned at the increasing use of detention centres that make use of conditions tantamount to high security prison settings to detain people who are being held solely under immigration powers and we agree with the Chief Inspector of Prisons when he says that such conditions are “inappropriate for immigration detainees and contribute to worse outcomes for those held there.”⁹⁸ We recommend that detainees are only held in suitable accommodation that is conducive to an open and relaxed regime.

93. Church of England, Written Evidence

94. Nick Hardwick, 3rd Oral Evidence Session, 18 November 2014

95. Shami Chakrabarti, 1st Oral Evidence Session, 17 July 2014

96. Table dt_11_q, Immigration Statistics – July to September 2014

97. Letter dated 6 January 2015 from Colin Dobell, Managing Director, Care and Custody, Mitie to Sarah Teather MP

98. Chief Inspector of Borders and Immigration, Written Evidence

INTERNET ACCESS FOR DETAINEES

A number of witnesses said that the current restrictions on internet access in IRCs are inconsistent and disproportionate.⁹⁹ In response to a Parliamentary Question, the Minister for Modern Day Slavery and Organised Crime set out the current policy regarding internet access:

“Internet access is not standardised across all IRCs although a review of access is being undertaken to address this.

“Suppliers operating IRCs on behalf of the Home Office use specialised software which screens out prohibited categories of sites or sites whose addresses contain prohibited key words rather than blocking individual website addresses.

“Prohibited categories are based on safety and security concerns, for example potential terrorist or pornographic sites.”¹⁰⁰

We were told that, in practice, detainees are often blocked from accessing sites that appear to have no security risk. These include the websites of Amnesty International, the BBC, IRC visitors groups, foreign language newspapers and other NGOs. The panel were particularly alarmed by reports that areas of the inquiry’s own website were not accessible in some IRCs. It is difficult to see what security risk a cross-party parliamentary inquiry could pose.

Some of the restrictions were covered in HM Chief Inspector of Prison’s report following an inspection of Haslar IRC in February 2014.¹⁰¹

The report described how “some relevant websites were inappropriately blocked” and that “there was no access to Skype or social networking sites.” The report goes on to say that: “The officer on duty in the internet suite could unblock any site. When we visited, the officer agreed to unblock the Bail for Immigration Detainees’ website but not Amnesty International’s without more senior approval.” Additionally, when visiting Harmondsworth and Colnbrook IRCs, David Burrowes MP and Paul Blomfield MP were told that while Mitie, the private contractor who run the two centres, maintain the filter, it was Home Office policy to prevent access to social media.

This practice is in contrast to that witnessed by panel members who visited a detention centre in Sweden. When the issue of internet access was raised with officials at the detention centre, the panel members were told that access to social media was facilitated as it made it easier for detainees to stay in contact with family and friends both in Sweden and abroad. This made it easier for detainees to plan for their return home.

The restrictions on internet access in IRCs in the UK appear to be excessive, unnecessary, counter-productive and contribute to the prison-like atmosphere of the centres. The restrictions to sites of groups who offer advice and support to detainees is inexplicable, particularly given the problems many detainees have accessing legal representation and advice inside the centres, a topic we discuss in more detail below.

99. AVID, Written Evidence

100. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-07-11/205397/>

101. HM Prisons Inspectorate (2014) Report on an unannounced inspection of Haslar Immigration Removal Centre – available at <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/07/Haslar-2014-Web.pdf>

INTERNET ACCESS FOR DETAINEES

The restrictions on the use of social media should be lifted, with detainees allowed to use resources such as Skype and Facebook to keep in touch with friends and family outside the centres. This is particularly vital for those who will subsequently be returned

to their home country and who want to make connections in order to prepare for return. We recommend that the restrictions on internet access should be far less restrictive and akin to the parental controls that are used in households across the country.

LEGAL REPRESENTATION IN DETENTION

Individuals detained in IRCs may face any number of legal processes. They may have an ongoing immigration case with the Home Office, an ongoing asylum case, be facing a deportation order, applying for immigration bail or challenging the lawfulness of their continued detention.

“...in detention I never had a lawyer, never had access to any lawyer. Any lawyer that I tried they all said that my case is weak and they cannot take me. So they were dropping me. So I was so stressed in Barry House because by then I was always thinking that I could go back to detention any minute or that I could be deported at any minute”.¹⁰³

Accessing legal support and advice

We were told of a number of barriers to accessing legal representation in detention. Bamidele told us that while he was in detention: “For a period of 7 months, I did not have a single solicitor. I had to see them by myself, to write, to caseworker, to High Court, to asylum tribunal, I write by myself. I was prevented from having a solicitor. I didn’t have any solicitors.”¹⁰²

Similar accounts were given by others with experience of being detained. ‘J’ told us that:

Statistics relating to how many detainees have legal representation are usually only made available when the Chief Inspector of Prisons carries out a survey during an inspection of an IRC. In 2013, following an inspection of Brook House the Chief Inspector said that “61% of detainees said that they had a lawyer, 31% that they received legal aid and 39% that they received a legal visit.”¹⁰⁴ He added that “[t]he legal advice surgeries were unable to meet demand, and some detainees were unable to seek legal advice before they were removed.” For Harmondsworth, the Chief Inspector reported that 60% of detainees had a

102. Bamidele, 2nd Oral Evidence Session, 6 November 2014

103. ‘J’, 1st Oral Evidence Session, 17 July 2014

104. HM Chief Inspector of Prisons (2013) Report on an unannounced inspection of Brook House Immigration Removal Centre – available at <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/brook-house-2013.pdf>

lawyer, 48% received legal aid, and 33% had been visited by their lawyer.¹⁰⁵

For most people in detention, the only way to access a publicly funded lawyer is through a legal surgery. Legal firms are granted contracts to provide legal advice at the surgeries and Kay Everett from the Immigration Law Practitioners' Association, who is also a solicitor at one of the firms with an exclusive contract, told us about the problems detainees face seeing a solicitor:

“...detainees are not getting access to us immediately; they're not being informed about the surgeries; they're not being given information about how to sign up for a surgery and what a surgery means and what it could lead to.

“Particularly there are vulnerabilities for detainees who are in health care. Those who are disabled and those who have been segregated – often they're segregated because of mental health problems, risk to others, risk to themselves.

“And then they don't get to sign on to the surgery. The surgery list is held in the library. They have to go along and put their name down. If they can't get to the library, they can't sign up. Even if they are assisted to sign up, they're not necessarily produced when they've signed up for the surgery. So there are very practical problems with that infrastructure itself.”¹⁰⁶

Bail for Immigration Detainees told us that even those detainees who do get to see a solicitor are then left in a state of limbo as, following the meeting at a surgery, they then do not hear from the solicitor for an extended period of time, if at all (see **Box 5**).¹⁰⁷ This state of limbo clearly leaves detainees in a very vulnerable position and can result in them remaining in detention when they have a strong legal case not to be there.

Concerns about the quality of legal advice available were raised by detainees and NGOs. Aderonke told us:

“...when we do get lucky to have [a solicitor] take up our case, they then come across as if they're not working for us. For instance, in my situation I had to do every little job for my solicitor. It was clear to me that my solicitor didn't understand my case. So it is my responsibility to make my solicitor understand my case and produce all the evidence that I think will be in support of my case.”¹⁰⁸

Tacko told us he was told the day before a hearing that his lawyer would not be representing him. He said:

“My lawyer gave me my file back and I wasn't invited to have another one. So, I was without a lawyer and I was better off without a lawyer. That's how crap and how bad the lawyers are in the detention centres. Because they do nothing for you.”¹⁰⁹

105. HM Chief Inspector of Prisons (2013) Report on an unannounced inspection of Harmondsworth Immigration Removal Centre – available at <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf>

106. Kay Everett, ILPA, 2nd Oral Evidence Session, 6 November 2014

107. Bail for Immigration Detainees, Written Evidence

ble at <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/Haslar-2014-Web.pdf>

108. Aderonke, 3rd Oral Evidence Session, 18 November 2014

109. Tacko, 3rd Oral Evidence Session, 18 November 2014

Box 5: Comments given to Bail for Immigration Detainees on not hearing back (see Bail for Immigration Detainees written evidence)

“I had an appointment with a female lawyer from [provider firm]. She said my case looked good and she would return to visit me with an interpreter - but she never came back. I thought she had taken my case, and tried to contact her repeatedly, but got no response - no call, letter, nothing. It's been 6 months since I saw her.”

“All my friends in here have the same problem as me. We meet the lawyers, they tell us not to worry, and then they never come back or even tell us if they've taken our case or not - and for a few months we are hopeful and think they have. They don't respond to our calls and we lose hope. I have no money, so I have nothing to do but wait” [translated from Urdu].

“I tried contacting legal aid solicitors; they never respond to tell me whether they will take my case or not. No money to pay privately, no family in this country with funds.”

“I heard nothing from [provider firm] since agreeing to take on case. In the beginning it seemed easy, then I got [provider firm], they did nothing after signing despite numerous phone calls I heard nothing for 11 months.”

“One visit to Dover by my solicitor to get the legal help form signed two months ago. No contact at all since then.”

We were told that when these concerns about quality and delivery of advice were raised with the Government by NGOs, there was a lack of leadership shown and a failure on the part of the Legal Aid Agency to manage the contracts.¹¹⁰ Additionally, we were informed that the legal aid manager responsible for the contracts in the IRCs had never himself been to a centre to witness the operation of a legal surgery.¹¹¹

Kay Everett of ILPA also told us of some of the practical issues that solicitors face when meeting detainees at a surgery. Chief among these were that, under the contracts, they are limited to a 30 minute meeting. During this time, they are required to do a full financial

eligibility and merits test to check that that the detainee qualifies for legal aid, as well as gathering all the information they may need to progress the case. Considering some individuals in detention will have complicated cases where they have been in the UK for extended periods of time, and are also likely to be very anxious, gathering this information within a 30 minute period would appear to be challenging. When the possible language difficulties are also considered, even for the most experienced and highly skilled solicitors the time allowed would, in many cases, be insufficient.¹¹²

The lack of availability and poor quality of legal advice was a theme throughout the inquiry. Given the importance of having legal repre-

110. ILPA, *Written Evidence*

111. Dr Adeline Trude, *2nd Oral Evidence Session, 6 November 2014*

112. Kay Everett, *2nd Oral Evidence Session, 6 November 2014*

resentation to challenge continued detention (an issue we cover in detail below), it should be of the upmost importance that high quality representation is available to all detainees. All too often it seems that detainees are reliant on legal support from charities and NGOs. Detainees are supposed to be made aware of their legal rights when first detained and have this information readily available throughout their detention and this needs to be enforced.

We recommend that the Legal Aid Agency and the Immigration Services Commissioner carry out regular audits on the quality of advice provided by contracted firms in IRCs, and this must involve talking to detainees about their experiences. The contracts should be amended to allow contracted solicitors to spend more than 30 minutes with a client.

MOVEMENT AROUND THE DETENTION ESTATE

A related issue raised by ILPA and Asylum Network in their written evidence related to movement around the detention estate, where individuals are transferred between different IRCs, often with very little notice.¹¹³ As the legal aid contracts are location specific, this causes particular problems for detainees maintaining legal representation. Bamidele, during his evidence to the inquiry, said that during the 10 months he was detained he was moved eight times and held in five different IRCs.¹¹⁴ Souleymane told us that during the three and a half years he spent in detention, he was held in a number of different IRCs, saying that he was “moving like furniture.” One of the moves he experienced was from Dungavel in Scotland to Colnbrook near Heathrow:

“[A solicitor] came on a Thursday and took my case and said on the Friday I’m going to take your statements. That Thursday night the UK Border Agency sent me off. They said I’m going for an interview in Colnbrook. So they sent me in the night to Colnbrook. I was stuck, there was no interview for two years. So I was stuck, I was isolated, there’s no friend. I called my solicitor in Scotland. He said to me “the only thing, you have to come back to Scotland and I can represent you because the Scottish law and the English law is different. While you are there you have to find your own solicitor.”¹¹⁵

From the perspective of the solicitor, Kay Everett told us that the first they know of a move is when they receive a phone call from their client saying that they’re now in

113. ILPA, *Written Evidence and Asylum Network, Written Evidence*; see also *Assist Sheffield, Written Evidence*

114. Bamidele, *2nd Oral Evidence Session, 6 November 2014*

115. Souleymane, *1st Oral Evidence Session, 17 July 2014*

MOVEMENT AROUND THE DETENTION ESTATE

a different IRC having travelled potentially for several hours. ILPA told us that such moves were common.¹¹⁶ We tried to obtain information regarding how many people are moved between detention centres through a Parliamentary Written Question, but were told that “the information requested cannot be provided without collation and examination of individual records at disproportionate cost.”¹¹⁷

The panel asked the Immigration Minister about repeated moves around the detention estate in a letter dated 12 December 2014. In his response of 26 January 2015, the Minister said: “The Detainee Escorting and Population Management Unit, who manage the population within the detention estate, do not move detainees unnecessarily but only in response to operational need, including positioning for removal, or to facilitate requests from detainees on compassionate grounds.” He added that detainees had adequate access to telephones, fax machines and the internet to

notify friends, family and legal representatives that they have been moved.¹¹⁸

The experience of detainees and legal representatives who gave evidence suggests otherwise. Moves happen more frequently and the panel recognises the problems caused by frequent movements around the detention estate and these are not just limited to retaining legal representation. Many detainees build relationships with local visiting groups and charities, and being moved removes these vital ties. We were disappointed that the Home Office could not tell us how many people are moved between IRCs.

We recommend that the Home Office ensures that detainees are only transferred between IRCs when absolutely necessary and that legal representatives are informed. We also recommend that the Home Office ensures that information relating to the number of transfers is collated and published as part of the quarterly immigration statistics.

CHALLENGING DETENTION

Unlike in the criminal justice system, there is no automatic judicial oversight of a decision to detain an individual for immigration purposes. Instead it is up to the individual to initiate proceedings. This also occurs within a detention system where there is currently

no time limit, statutory or otherwise, on the length of time an individual may be detained under immigration powers.

We believe that it is a vital safeguard that detainees are able to challenge their continued

¹¹⁶. Kay Everett, 2nd Oral Evidence Session, 6 November 2014 and ILPA, Written Evidence

¹¹⁷. HC Deb, 31 October 2014, Written Question – 212824

¹¹⁸. Letter from The Immigration Minister to Sarah Teather, 26 January 2015

detention. In 2013, The Bingham Centre for the Rule of Law, who supplied written and oral evidence, brought together existing legal instruments, promulgated standards, working illustrations and judicial observations to produce 25 safeguarding principles to promote the accountability of immigration detention under the rule of law.¹¹⁹ Principles 21 and 23 in that collection relate to automatic court-control and judicial review of the decision to detain.

In their written evidence, the Immigration Law Practitioners' Association highlighted two of the international statutes that underline these principles:

UN Commission on Human Rights Resolution 2004/39: Arbitrary Detention, 19 April 2004, E/CN.4/RES/2004/39, §3: “Encourage the Governments concerned: (c) To respect and promote the right of anyone who is deprived of his/her liberty by arrest or detention to be entitled to bring proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful, in accordance with their own international obligations.”

European Convention on Human Rights (1950), Art 5(4): “Everyone who is deprived of his liberty by arrest of detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

Individuals detained under immigration powers in the UK can apply for bail under Schedules 2 and 3 of the Immigration Act 1971. An application for bail can be made to an immigration officer or by a civil servant acting on behalf of the Secretary of State, or by immigration judges of the First Tier Tribunal, Immigration and Asylum.¹²⁰ As described by paragraph 21 of Schedule 2 of the 1971 Act, the main question of a bail hearing is whether the detainee is likely to abscond. A number of conditions, including reporting and electronic tagging, can be imposed.

Laura Dubinsky from Doughty Street Chambers, compared the bail systems for those held in the detention system to those within the criminal justice system:

“So, if we think about how it operates in the criminal justice system, in pre-charge detention, if you’re going to be held more than 36 hours, you’ve got to be brought before a court.”

“You’re entitled to legal representation and you’re entitled to disclosure about why you’re being held. Terrorist detention is 48 hours and yet we have this extraordinary situation where immigrants who have such difficulties in obtaining legal representation have barriers of literacy, other vulnerabilities, are expected to instigate their own bail applications before the tribunal and even instigate their own challenges in the high court to the legality of their detention, and that’s an extraordinary state of affairs, and it’s one that’s an anomaly in our own legal system and an anomaly also in the EU.”¹²¹

119. Fordham, M, Stefanelli, J and Eser, S (2013) *Immigration Detention and the Rule of Law* (British Institute of International and Comparative Law; London)

120. *Bail for Immigration Detainees, written evidence and Enforcement Instructions and Guidance, Chapter 57*

121. Laura Dubinsky, 2nd Oral Evidence Session, 6 November 2014

CHALLENGING DETENTION

Justine Stefanelli, from the Bingham Centre for the Rule of Law, contrasted the British system to procedures in other European countries:

“We’ve got Danish law which requires that a non-citizen deprived of liberty be brought before court within three days, and the court must then rule on the lawfulness of detention and whether it should be continued.

“In Switzerland, the detention must be reviewed within four days – at an oral hearing, so again, I think that’s an important point to mention. It shouldn’t just be based on a paper review; they should have the opportunity to be heard by the judicial authority.

“And in France, similar laws require an oral hearing within 120 hours.”¹²²

In 1999, the then Government legislated for automatic bail hearings within Part III of the Immigration and Asylum Act 1999. During the Second Reading debate in the House of Commons on the bill as it then was, the Home Secretary Rt Hon Jack Straw said:

“[Detention] is necessary in a small number of cases, but there must be proper safeguards. Part III fulfils the commitment in the White Paper to introduce a more extensive judicial element in the detention process. That will be achieved by introducing routine bail hearings for those detained under immigration legislation.

“At present, there is little in statute that governs the operation and management

of immigration detention centres. That is accepted in all parts of the House as unsatisfactory.”¹²³

Section 44 of the Immigration and Asylum Act 1999 would have allowed for automatic bail hearings within the first eight days of detention, and then another before the 38th day of detention. However, the provisions in Section 44 were never enacted and were later repealed by the Nationality, Immigration and Asylum Act 2002.

During the passage of the Immigration Act 2014, the House of Lords debated an amendment, tabled by Lord Roberts of Llandudno and Lord Ramsbotham, which would have reintroduced the provisions of Section 44 of the 1999 Act. In responding to the amendment for the Government, Lord Taylor of Holbeach said, if passed, “it would have the effect of creating many unnecessary bail hearings in the tribunal, increasing the inefficiency and complexity of the system. An individual can still apply for immigration bail at any time or challenge the legality of their detention by way of judicial review.”¹²⁴

As detainees are not automatically brought before a court to have their continued detention examined, the ability to apply for bail is of great importance. However, the inquiry was told of a number of barriers experienced by detainees. The first of these is that detainees face problems obtaining legal representation, an issue we covered above. Unsurprisingly, we were told that those detainees with legal representation were far more likely to be granted bail than unrepresented applicants (31% compared with 11%).¹²⁵ It also appears

122. Justine Stefanelli, 2nd Oral Evidence Session, 6 November 2014

123. HC 22 Feb 1999, c39

124. HL Deb, 3 March 2014, c1166

125. Bail for Immigration Detainees, Written Evidence

that solicitors are not actively considering bail as an option for their clients, reflected in the finding from Bail for Immigration Detainees’ survey showing that only 46% of represented detainees had had at least one application for bail made during their time in detention.¹²⁶

A Joint Inspection by the Chief Inspector of Borders and Immigration and the Chief Inspector of Prisons found that 56% of detainees had made at least one bail application. Of detainees who had been in detention for 6 months or more they said: “we were surprised that of those detainees held for more than six months, nine (19%) said they had never made a bail application. This may have been because detainees were unaware of bail processes and/or had poor legal advice. A number of detainees said they did not know how to apply for bail or clearly needed help to navigate the process.”¹²⁷

Delays are also caused by a failure of the Home Office to provide Section 4 bail addresses in a timely manner. Under Section 4(1) (c) of the Immigration and Asylum Act 1999, if detainees do have a suitable address, for instance with friends or family, to be bailed to then they can apply to the Home Office for a bail address. Dr Adeline Trude from Bail for Immigration Detainees told us that the average wait time for a self-contained bail

address was 14 weeks, and that the range was from 1 week to 72 weeks.¹²⁸ This means that some people are having to wait for over a year before they can even put in an application for bail. Additionally, while legal aid may be available for advice on making applications under Section 4(1)(c), publically funded work in this area can only be carried out under housing and public law contracts. As a result, any work carried out by practitioners working under an asylum and immigration contract, as would be the case of those working in detention centres, has to be done *pro bono*.¹³⁰

Witnesses also said that the bail process itself also created a barrier to bail acting as a protection against unnecessary detention. For example, for most bail hearings, the detainee takes part via video link, rather than being physically present at the Tribunal.¹³¹ The Bail Observation Project, in their written evidence, argued that detainees appearing in person are considerably more likely to be granted bail than those appearing via video-link.¹³²

There was also some criticism of the way judges adjudicate in bail cases. As per the guidance to judges on how to conduct a bail hearing, the burden of proof in the hearing lies with the Home Office. The guidance states: “In essence, a First-tier Tribunal Judge will grant bail where there is no sufficiently

126. Bail for Immigration Detainees, Written Evidence

127. HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (December 2012) The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, p.22 – <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

128. Dr Adeline Trude, 2nd Oral Evidence Session, 6 November 2014

129. Legal Aid is made available for advice on applications for immigration bail in paragraph 31 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Bill

130. Bail for Immigration Detainees (2014) No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation; and Legal Aid Agency Category Definitions 2013 – available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312768/laa-category-definitions-2013.pdf

131. Bail Guidance for Judges Presiding over Immigration and Asylum Hearings (June 2012) – available at <http://www.judiciary.gov.uk/wp-content/uploads/2014/07/bail-guidance-immigration-judges.pdf>

132. The Bail Observation Project, Written Evidence

CHALLENGING DETENTION

good reason to detain a person and lesser measures can provide adequate alternative means of control.”¹³³ However, Dr Trude said that in practice, this was not happening:

“when you look at bundles of evidence that are being prepared by a solicitor or a legal advisor, the evidence is all offered up by the detainee. There’s often no supporting evidence at all from the Home Office. They’re providing a document called a bail summary which contains their case against release.

“Increasingly, these are produced using standard paragraphs and these are available online and anybody can see them. And what is not happening is that evidence supporting assertions around things like risks of absconding or availability of a travel document and hence the imminence of removal are simply not provided to the tribunal.”¹³⁴

The judicial oversight working group of the Detention Forum said:

“...immigration judges too readily accept in many cases that removal is ‘imminent’ when it is not (and so detention may not therefore be justified), they too readily accept statements in the Home Office’s Bail Summary that are not supported by any evidence, and they fail to require the Home Office to show why detention is necessary and that all alternatives have been exhaustively pursued.”¹³⁵

A number of organisations who submitted evidence highlighted the changes to bail proceedings included in the Immigration Act 2014.¹³⁶ Section 7 of the Act provides that an individual may not be granted bail if removal directions requiring removal within 14 days are in force, unless the Secretary of State gives her consent. Additionally, Section 7 also compels the First Tier Tribunal to dismiss without a hearing any bail application made within 28 days of a previous application unless a material change can be demonstrated.

Bail for Immigration Detainees said that these restrictions “removed the independence of the First Tier Tribunal”.¹³⁷ Given that there is no appeal against a bail decision, Bail for Immigration Detainees argued that where the First Tier Tribunal has made a mistake, the detainee will have to wait for 28 days before they can challenge that error. Both Bail for Immigration Detainees and Liberty raised concerns regarding the possibility that repeated removal directions, although never enforced, could prevent a detainee from ever being able to submit a bail application. Additionally, they both question the premise that removal directions being in place should necessarily prevent bail from being granted.¹³⁸

Given the current lack of a time limit on immigration detention, being able to apply for bail is a vital safeguard against arbitrary detention. Currently, this safeguard is not operating as it should for a number of reasons, including the lack of access to suitable legal representation discussed above.

133. Bail Guidance for Judges Presiding over Immigration and Asylum Hearings (June 2012) – available at <http://www.judiciary.gov.uk/wp-content/uploads/2014/07/bail-guidance-immigration-judges.pdf>

134. Dr Adeline Trude, 2nd Oral Evidence Session, 6 November 2014

135. Detention Forum, Judicial Oversight Group, Written Evidence

136. Immigration Act 2014 – <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>

137. Bail for Immigration Detainees, Written Evidence

138. Bail for Immigration Detainees, Written Evidence, and Liberty, Written Evidence

In Part 1 of the report we recommended a time limit of 28 days be introduced with automatic judicial oversight within seven days. While this time limit is being introduced, we recommend that automatic bail hearings, as contained in section 44 of the Immigration and Asylum Act 1999 when it gained Royal Assent, be introduced.

We were also concerned at the evidence that bail hearings operate in a way that appears to create a presumption towards detention. We recommend that for all bail hearings detainees should be able to request to be present in the room, and that the First Tier Tribunal works with the Home Office to ensure that the tribunal is provided with evidence supporting the Home Office’s case for continued detention.

HEALTHCARE

While in detention, detainees have a right to at least a basic level of healthcare. Since September 2014, responsibility for commissioning health services in IRCs lies with NHS England. The exceptions are Campsfield House, which is due to transfer in April 2015, and Dungavel IRC in Scotland.

All detainees should, on arrival at an IRC, be seen by a nurse within two hours of arrival for an initial health screening and be offered an appointment to see a GP within 24 hours.¹³⁹ The Government stated in their written evidence that after admission, detainees can access healthcare facilities “on demand” and that referrals to local Clinical Commissioning groups providing secondary and tertiary health services are made by the healthcare teams in IRCs as they would be in GP surgeries.

However, a large number of those who gave

evidence to the inquiry raised concerns about health provision.¹⁴⁰ Access to necessary treatments is frequently delayed or not available, and the screening process at the beginning of a period of detention does not allow for health conditions to be identified. They often take place following a long journey to the IRC, in open conditions with little or no privacy, and ask closed questions.

Of the initial screening, Medical Justice said that they should take around 30 minutes but in practice are usually around 10 minutes and that interpreters are not always available or used when required.¹⁴¹ Additionally, Dr Naomi Hartree, of Medical Justice, told us that:

“...[the detainee] probably had a very long journey from wherever they have been detained from, so a lot of the screening takes place in the middle of the night, so between

139. The Detention Centre Rules 2001; and The Immigration Minister, Written Evidence

140. See, for example, Refugee Radio, Written Evidence; Medical Justice, Written Evidence; Sylvia, Written Evidence; Scottish Detainee Visitors, Written Evidence

141. Written evidence, Medical Justice

10a.m. and 6 a.m. when the person's just arrived and they're feeling bewildered and exhausted. So it's not a good time for confiding intimate health problems."¹⁴²

Dr John Chisholm of the British Medical Association echoed these concerns, saying that "the evidence that has come to the BMA from reports we've received is that the initial assessment is frankly very often inadequate."¹⁴³ We were told that initial assessments do not take place in settings that are conducive to detainees feeling able to talk about potentially intimate issues with a stranger and that, in any case, the questionnaires used for the assessments are not designed to elicit detailed responses. Dr Danny Allen, a psychiatrist with experience of working in an IRC, described the questionnaires as "extraordinarily rudimentary", while Dr Hartree said they appeared to be designed with closed questions. The screening process was also accused of not identifying and diagnosing communicable diseases, such as TB, despite many detainees coming from countries where there is a high incidence of such conditions.¹⁴⁴

The panel also heard evidence that, following the initial assessment, on-going healthcare, particularly relating to mental health, was inadequate and inappropriate. A number of individuals with experience of detention told us that they felt IRC staff and healthcare staff failed to respond properly when they reported health issues.

Medical Justice gave evidence that access to

medication is sometimes delayed if it needs to be collected from a hospital. Dr Naomi Hartree cited the example of a case where a man with HIV was without his treatment for several days due to delays in getting his medication.¹⁴⁵ The man developed resistance to the medication which was 'probably' due to the interruption.

When Bamidele gave evidence to the panel, he told us about his experience when visiting Hillingdon Hospital:

"The first time I went there I was handcuffed with my two hands and they used a long chain to ... one of my hands. So, all the officers that escorted me to cardiologists, they came into the private room with the consultant. The consultant was very annoyed. He said, look, I cannot treat my client like this. You handcuff him; you want to hear my conversation with him. This is not allowed.

"He said he will not be able to continue with my treatment. So he was talking to them. They have to release one of the hands for him. He asked me to lie down. All the officers. Four officers that took me in to the appointment, they were there. I have to undress in the presence of the officers. He was asking them that two should go out and two should stay in. They refused. They said they were doing their job. So, the consultant asked to discharge me, that he will not be able to continue, because they were interfering into the medical treatment that was given to me."¹⁴⁶

142. Dr Naomi Hartree, 2nd Oral Evidence Session, 6 November 2014

143. Dr John Chisholm, 2nd Oral Evidence Session, 6 November 2014

144. Dr Danny Allen and Dr Naomi Hartree, 2nd Oral Evidence Session, 6 November 2014

145. Dr Naomi Hartree, 2nd Oral Evidence Session, 6 November 2014. The written evidence from the National Aids Trust provides further detail on the problems faced by detainees with diagnosed HIV

146. Bamidele, 2nd Oral Evidence Session, 6 November 2014

Mortada also told the inquiry about his experience of visiting hospital:

“After three months I was in such pain that I asked an officer to call an ambulance for me. He refused, not believing it was an emergency. I called an ambulance myself, but again they didn’t believe me and they cancelled it. I was in such pain that I spent that night screaming. It was only when my condition deteriorated and I collapsed the next day that they took me to Hillingdon hospital. I was taken there in handcuffs and chained to my hospital bed ... I was watched over by two officers at all times during my stay in the hospital, for a total of three days. I was given morphine to manage the pain of my condition.”¹⁴⁷

Many of the negative experiences of healthcare provision are caused by the numbers of people detained and the length of time individuals are held within IRCs. The recommendations made in Part 1 of this report – to detain fewer people for much shorter periods of time – will help to alleviate some of these issues.

NHS England has recently taken over the commissioning of health services within IRCs in England and we hope that this will improve healthcare provision. We recommend that NHS England produce screening processes that allow detainees to talk about any health problems they may have. Screening should

take place when detainees are well rested and in private.

The experiences of hospital treatment that Mortada and Bamidele shared with us were shocking. The use of restraint and lack of privacy between doctor and patient undermines what access to treatment may, in theory, exist. When hospital treatment is required, detainees should be able to speak privately and confidentially with health professionals, free from restraint.

Additionally, we were alarmed to hear Dr Danny Allen say that detainees are often asked on arrival to consent to their medical records being shared with the Home Office.¹⁴⁸ Dr John Chisholm from the BMA described it as “non-consent obtained under duress” and that health care records obtained by health staff within IRCs should not also be used by the Home Office to decide an immigration case.¹⁴⁹

We do not believe that detainees should be asked to consent to allow their medical records to be shared with the Home Office. This strikes us as completely unacceptable. If doctors have concerns regarding a detainee’s health, then they should use the Rule 35 mechanism described below. Information obtained by health professionals as part of consultations within IRCs should not be used by the Home Office for the purpose of deciding an immigration case.

147. Mortada, Written Evidence

148. Dr Danny Allen, 2nd Oral Evidence Session, 6 November 2014

149. Dr John Chisholm, 2nd Oral Evidence Session, 6 November 2014

DETAINEES WITH MENTAL HEALTH CONDITIONS

Of particular concern to us were the number of concerns raised regarding the treatment of detainees with mental health conditions. As the Minister for Immigration stated in his written evidence to the inquiry, “the experience of detention can be inherently stressful ... and can therefore exacerbate mental health problems.”¹⁵⁰ Despite this acknowledgement, the inquiry was frequently told that the provision of mental healthcare services is very poor. A number of these issues were highlighted in the recent report prepared for the Home Office by the Tavistock Institute.¹⁵¹

We spoke to a number of detainees in Colnbrook via phone link. ‘A’, who had been in detention for 99 days at the time of the evidence session, discussed his experience:

Paul Blomfield: And what support have you had in the centre in terms of access to doctors and medical help?

A: There is a healthcare unit here but it’s quite difficult to get an appointment with the doctor and you have you wait for a long time. For example, I’ve been with a counsellor for quite a long period and she suggest that I should be seen by a mental health nurse or psychiatrist, which is so odd because they are different, the mental health nurse and the psychiatrist. They are far from each other. But anyway I was waiting for almost 10 weeks to get an appointment.

Paul Blomfield: 10 weeks to get an appointment.

A: Yeah. And I was telling them to get my appointment, to sort my mental health issues out. At least I get some comfort by doing that. I’ve got other problems, I’m a diabetic person.

Paul Blomfield: And you’ve had the appointment now and were they able to offer help?

A: I got an appointment luckily last Saturday.

Paul Blomfield: And has that appointment led you to being offered help?

A: No it was very quick appointment and I [felt] like they were rushing me a lot. They said that I should just go and try these tablets and they will see me again. I wasn’t happy with the service.¹⁵²

The weaknesses in the screening system described above also meant that mental health illnesses were not picked up quickly. Dr Danny Allen told us that, from his experience working in an IRC, there was no routine mental health screening and that healthcare professionals working in IRCs were not given adequate training.¹⁵³ The Chief Inspector of Prison’s 2012-13 annual report said that although there had been an overall improvement in mental health services, during the inspection of Harmondsworth it was found that:

“...detainees’ mental health needs were under-identified, and staff describe the in-

150. Minister for Immigration, Written Evidence

151. Immigration and Border Policy Directorate (2015) Review of Mental Health Issues in Immigration Removal Centres – available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402204/tavistock_institute_report_final.pdf

152. Paul Blomfield and ‘A’, 1st Oral Evidence Session, 17 July 2014

153. Dr Danny Allen, 2nd Oral Evidence Session, 6 November 2014

patients department as a ‘forgotten world’. There had been no mental health needs assessment, no staff training in mental health awareness and there was no counselling service, despite increasing numbers of detainees with high anxiety and low-level depression.”¹⁵⁴

Suicide watch

We were told by current and ex-detainees that they found it very hard to receive treatment, even after trying to commit suicide. Christine told us that after she tried to commit suicide, she had no access to counselling. On the occasion that she did see someone, a nurse told her that she was very sorry but that there was nothing she could do.¹⁵⁵

Noel Finn, who worked at Yarl’s Wood between 2012 and 2013, told us that detainees who had attempted suicide or who were self harming were treated with a lack of urgency.¹⁵⁶ Additionally, those placed on suicide watch often found that that process in itself was distressing and dehumanising.¹⁵⁷

About suicide watch, ‘J’ told us:

“Suicide watch, I think, they just made it to put you under even more mental torture. If you’re on suicide watch and your health is not good, but it’s not that bad, suicide watch can make it more bad. And I can tell you, anybody who is suicide watch has sexual harassment in Yarl’s Wood,

because those male guards they sit in there watching you at night, sleeping and being naked. You can hear them talking it. So, that suicide watch, people who are on suicide watch don’t need officers, they need doctors, not officers sitting at their door, they need doctors or psychologists who will sit at their door and talk to them.”¹⁵⁸

Noel Finn said in his written evidence that “there was only one dedicated mental health professional working 30 hours a week for a population of over 400 residents both male and female young and old with different complex needs”. Mr Finn also told us that “Home affairs officers did not recognise symptoms of mental illness such as depression, schizophrenia, PTSD, personality disorder or at risk patients, self-harming behaviour, suicidal ideation, general anxiety etc. as according to NICE guidelines, this therefore meant patient went without full and proper assessments and treatment plans.”¹⁵⁹

Dr Katy Robjant of the Royal Society of Psychiatrists similarly said:

“...indicators of mental health are often not well understood. For example, people acting bizarrely, people laughing inappropriately, people acting with a large degree of hostility, are not recognised as being indications for mental health problems and are misunderstood as people trying to deliberately frustrate the process. And of course the people who are working in the detention centres are not trained

154. Chief Inspector of Prisons for England and Wales (2013) Annual Report 2012–13, p.67 – available at <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

155. Christine Nankya Nakato, Written Evidence

156. Noel Finn, Written Evidence

157. Dr Cornelius Katona, 1st Oral Evidence Session, 17 July 2014

158. ‘J’, 1st Oral Evidence Session, 17 July 2014

159. Noel Finn, Written Evidence

DETAINEES WITH MENTAL HEALTH CONDITIONS

sufficiently, and neither can they be, in order to look after people with severe mental health problems.”¹⁶⁰

A frequent accusation raised in evidence received by the inquiry was that there was a “culture of disbelief” on the part of IRC and Home Office staff. Dr Naomi Hartree, in her evidence, said:

“[There appears to be an] underlying assumption that if somebody is ill and talking about symptoms or behaving oddly that they’re doing it probably in a manipulative way. And it seems to be that if you’re in a community and you see a doctor, then your first thought is, well, this patient might have a genuine symptom, whereas the kind of general picture we get in detention is that the doctor or nurse’s first thought is, well, this might not be a real symptom; the person may be just playing up or trying to pretend they’re ill for some other gain.”¹⁶¹

Noel Finn described his experience of working in Yarl’s Wood:

“The contract manager alluded that most individuals within the centre complaining of mental health symptoms were putting it on to avoid deportation and removal, the same attitude included physical symptoms unless observable symptoms were present and due to a lack of outreach (from the healthcare staff to residents) the burden of reliance to recognise and report symptoms was placed on the officers within Yarl’s Wood.”¹⁶²

It was also an issue raised by those with experience of detention. ‘J’, in her oral evidence to the inquiry, said that the health service was the worst part of being in detention and that healthcare staff wouldn’t believe detainees when they said they were unwell, but instead want to say that detainees are “fit to fly”.¹⁶³ Dr Cornelius Katona of the Royal Society of Psychiatrists said that there is “no documented assessment underpinning that fitness to fly” relating to mental health conditions.¹⁶⁴

As highlighted in the Immigration Minister’s written evidence, Home Office 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.¹⁶⁵ The Royal College of Psychiatrists, in a position statement on the detention of people with mental disorders in Immigration Removal Centres, note that this policy was changed in August 2010. Prior to that date, the policy was that individuals with mental illnesses would “normally be suitable for detention in only very exceptional circumstances”. The Royal College in their position statement and Medical Justice in their submission to the inquiry, argue that this amendment reversed the presumption against detaining those with mental health conditions.¹⁶⁶

Dr Cornelius Katona told us that the Royal College of Psychiatrists did not believe that it was possible to treat serious mental illness satisfactorily in a detention setting. He argued that the current Home Office policy is based

160. Dr Katy Robjant, 1st Oral Evidence Session, 17 July 2014

161. Dr Naomi Hartree, 2nd Oral Evidence Session, 6 November 2014

162. Noel Finn, Written Evidence

163. ‘J’, 1st Oral Evidence Session, 17 July 2014

164. Dr Cornelius Katona, 1st Oral Evidence Session, 17 July 2014

165. Enforcement Instructions and Guidance, Chapter 55.10

166. Royal College of Psychiatrists, Position Statement on detention of people with mental disorders in Immigration Removal Centres; and Medical Justice, Written Evidence

on a false dichotomy and that treating serious mental illness was not possible in immigration detention as it is not a therapeutic environment.¹⁶⁷ Dr Danny Allen, who had experience of working for a healthcare provider in an IRC, said in his evidence that “it’s virtually impossible to treat depression or PTSD in detention in a meaningful way. You apply the some treatments you do on the outside but they don’t get better because the environment is actually counter-therapeutic.”¹⁶⁸

A number of submissions to the inquiry highlighted the six separate High Court judgments since 2011 that found mentally ill detainees were subjected to treatment that breached their rights under Article 3 of the European Convention on Human Rights.¹⁶⁹ The law firm Bhatt Murphy told us that in all six cases detention had continued despite expert diagnosis of mental health conditions.¹⁷⁰ In his written evidence, the Chief Inspector of Prisons stated that during an inspection at Tinsley House, a detainee continued to be held despite having been recommended for immediate release by both an independent doctor and a psychiatrist. The latter had also reported that the detainee’s conditions were being made worse by the continued detention.¹⁷¹

We believe that many of the issues relating to individuals with mental health conditions are exacerbated, and in some cases caused, by the lack of a time limit and the lack of front-loaded casework that we discussed in Part 1 of this report.

The panel were particularly shocked by some of the personal testimony we heard of people suffering from mental health conditions who were detained for prolonged periods of time. The evidence received from health professionals shows that it is not possible to treat mental health conditions in IRCs and we believe that the Home Office policy that individuals suffering from serious mental conditions can be managed in detention puts the health of detainees at serious risk. The panel believes that detention should in all cases be used only in exceptional circumstances, but this recommendation carries greater urgency for those with mental health conditions. While processes get underway to move to a position of detaining far fewer detainees, we recommend at the very least, that the policy around mental health should be changed to that which was in place before August 2010, which stated that individuals with a mental health condition should only be detained under exceptional circumstances.

It is also clear from the evidence that healthcare staff and other staff working in IRCs have not received adequate training in recognising and responding to mental health conditions, especially those which are likely to be more common among the IRC population than outside the centres. We recommend that NHS England, which is now responsible for commissioning services in IRCs in England, and management from Dungavel IRC, work with experts who have experience of working with detainees to produce a training programme that should be mandatory for all staff in detention centres.

167. Dr Cornelius Katona, 1st Oral Evidence Session, 17 July 2014

168. Dr Danny Allen, 2nd Oral Evidence Session, 6 November 2014

169. Dr Cornelius Katona, 1st Oral Evidence Session, 17 July 2014; Bhatt Murphy, Written Evidence; Medical Justice, Written Evidence; Detention Action Written Evidence.

170. Bhatt Murphy, Written Evidence

171. Chief Inspector of Prisons, Written Evidence

DETENTION OF VICTIMS OF TRAFFICKING AND TORTURE

The inquiry panel was told that screening processes both at the beginning of a period of detention and during ongoing periods of detention failed to identify and protect victims of torture or human trafficking.¹⁷² Under Chapter 55.10 of the Enforcement Instructions and Guidance policy on detention, both victims of trafficking and individuals who have been tortured should only be detained in very exceptional circumstances.¹⁷³

However, in written evidence to the inquiry the Chief Inspector of Prisons said that during an inspection of Yarl's Wood it was found that detainees displaying clear "trafficking indicators" were not always referred to the National Referral Mechanism and Hindpal Singh Bhui told the panel that "too many caseworkers ... don't necessarily understand the NRM".¹⁷⁴

Penny, who had been detained in Yarl's Wood, said that when she arrived at the IRC, she was asked if she had gone through any kind of trauma. Despite saying that she had been a victim of trafficking, her detention continued and she described being told that she had fabricated her trafficking experiences. Since leaving detention, Penny has been formally recognised as a victim of trafficking.¹⁷⁵

The weaknesses of the screening process at the beginning of a period of a detention discussed above are also of relevance to torture and trafficking victims. Dr Naomi Hartree told us:

"I think the screening is not really set up to pick up the most vulnerable people. So, for

example, they're supposed to be asked a question if someone is a victim of torture or not. But we often get people who very clearly are later found to be victims of very severe torture who have somehow been put down as no for that question. And it may be they couldn't understand the language; it may be they felt too scared to confide; they'd be tortured. It may be the question was asked about torture and some people think that torture is a very narrow definition – you have to be tortured by the police in your country, and that being a survivor of domestic violence or rape doesn't count as torture. So there are all kinds of reasons why vulnerability doesn't get picked up in that initial screening."¹⁷⁶

When giving evidence to the panel, Laura Dubinsky of Doughty Street Chambers, highlighted the case of an individual who had been identified as a victim of trafficking but who was then detained for 15 months.¹⁷⁷ The Poppy Project told us that there is a lack of awareness and adequate training among detention and UKVI staff about human trafficking and that this has led to a failure to respond to clear indicators of trafficking. The Poppy Project said that the service users they support who have experienced detention do not feel willing or able to cooperate with investigations into their traffickers as they do not trust the authorities.¹⁷⁸ **Given the Government's current aim to increase prosecutions of traffickers, including through the Modern Slavery Bill that is currently before Parliament, this evidence is**

172. Amnesty International, Written Evidence; Poppy Project, Written Evidence; Chief Inspector of Prisons, Written Evidence

173. Enforcement Instructions and Guidance, Chapter 55.10

174. Chief Inspector of Prisons, Written Evidence; Hindpal Singh Bhui, 3rd Oral Evidence Session, 18 November 2014

175. Penny, 2nd Oral Evidence Session, 6 November 2014

176. Dr Naomi Hartree, 2nd Oral Evidence Session, 6 November 2014

177. Laura Dubinsky, 2nd Oral Evidence Session, 6 November 2014

178. The Poppy Project, Written Evidence

a concerning consequence of the detention of trafficking victims.

We recommend that screening processes are improved before a decision to detain is taken to ensure that victims of trafficking are not detained for immigration purposes and that

Home Office caseworkers understand the NRM. Additionally, as part of the reform of the NRM, detention centre staff should be given more training about identifying victims of trafficking.

RULE 35 REPORTS

For those who are detained, there in theory exists a safeguarding mechanism for vulnerable detainees whose continued detention would be inappropriate. This mechanism was created by Rule 35 of the Detention Centre Rules 2001 and its purpose, as stated in the Enforcement Instructions and Guidance, is:

“The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case.”¹⁷⁹

A Rule 35 report must be completed by a general practitioner if they see a detainee:

1. Whose health is likely to be injuriously affected by continued detention or any conditions of detention;
2. Who they suspect of having suicidal intentions;

3. Who they are concerned may have been a victim of torture.

The Rule 35 report is then submitted to the Home Office where it is allocated to a caseworker. The caseworker must consider and respond to the Rule 35 report as soon as possible, but no later than the end of the second working day following receipt.

However, a number of organisations and individuals told us that the Rule 35 safeguard does not, in practice, operate as it should. Such concerns have been raised before, including by the Home Affairs Select Committee, the United Nations Committee Against Torture, and in a Joint Report by the Chief Inspector of Borders and Immigration and the Chief Inspector of Prisons.

The Immigration Minister told us that in response to NGO criticisms of the Rule 35 process, a Home Office audit of Rule 35 processes was undertaken in 2010 and that this identified a number of areas where improvement was needed. The Minister went on to say

¹⁷⁹. Enforcement Instructions and Guidance, Chapter 55.8A

RULE 35 REPORTS

that a subsequent audit has recently been completed by the Home Office Quality Assurance Audit Team and that the report is in the process of being finalised.¹⁸⁰ In a letter to the Chair of the Inquiry in January 2015, the Minister added that “We are considering the results of the Rule 35 audit conducted by the Home Office Quality Audit Team and will consider how best to make them available in due course; we cannot give a definite timescale yet.”¹⁸¹

However, Dr Cornelius Katona of the Royal Society of Psychiatrists said that there had been no consultation regarding the audit.¹⁸² Additionally, in their written evidence, Medical Justice said that while initially this subsequent audit was supposed to be a full audit that included the quality of reports and the reasons given by caseworkers for overruling recommendations made by doctors, the audit that was carried out was a quality marking standard exercise.¹⁸³

Medical Justice argued that this did not address questions over the decision making process and the reasons for why recommendations made by doctors are not always acted on. This appeared to be confirmed by the Immigration Minister when he said that the audit “did not extend to specific consideration of whether Rule 35 processes could be improved.”¹⁸⁴

While it is important to note that the making of a Rule 35 report by a medical profession-

al does not of itself mean that an individual is unfit for detention, Home Office statistics show that in the second quarter of 2014, 452 detainees were the subject of at least one Rule 35 report and that of those, 45 were released as a result of a report.

There are a number of potential reasons why less than 10 percent of Rule 35 reports result in release. Notwithstanding the point made above that a Rule 35 report does not necessarily mean that an individual should not continue to be detained, the evidence received highlighted two main areas of concern that mean Rule 35 reports are not acting as the safeguard they are meant to be. **The panel agrees with Hindpal Singh Bhui when he said that “a single [Rule 35] case that’s been badly dealt with is one case too many.”**¹⁸⁵

Firstly, it was argued that medical practitioners do not receive adequate training in completing Rule 35 reports. This echoed a finding of the 2013 HMIP inspection of Yarl’s Wood, which found that “none of the health services staff had been trained in the recognition of alleged acts of trauma, and this was evident in the varied quality of Rule 35 reporting.”¹⁸⁶

In relation to detainees who may be victims of torture, Medical Justice said that in their experience doctors are using the wrong definition of torture. The definition of torture that should be used during the Rule 35 process

180. The Immigration Minister Written Evidence

181. Letter from the Immigration Minister to Sarah Teather, dated 26 January 2015

182. Dr Cornelius Katona, 1st Oral Evidence Session, 17 July 2014

183. Medical Justice, Written Evidence

184. Letter from the Immigration Minister to Sarah Teather, dated 26 January 2015

185. Hindpal Singh Bhui, 3rd Oral Evidence Session, 18 November 2014

186. HM Chief Inspector of Prisons (2013) Report on an unannounced inspection of Yarl’s Wood – available at <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf>

was set out in EO & Ors. [2013] EWHC 1236 (Admin). In that judgment, torture was defined for Rule 35 purposes by Burnett J as:

“...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based upon discrimination of any kind.”¹⁸⁷

This is a broader definition than that frequently found in international human rights law, including the definition of torture given in Article 1 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Whereas the definition used in UNCAT refers to the involvement of state actors, the definition created by Justice Burnett includes non-state agents as torturers.

However, Medical Justice say that they frequently find doctors applying the UNCAT definition of torture:

“One client who disclosed a history of multiple-perpetrator rape by a violent gang was told her situation did not warrant a Rule 35 report. In the medical notes the doctor concludes: “*rape – private. No Rule 35.*”... Another client who reported being the victim of an ‘honour crime’ was told to ‘go and google torture’ – presumably a reference to the fact that as the ill treatment did not come at the hands of state actors it did not qualify as torture.”¹⁸⁸

Despite the guidance on Rule 35 reports saying that they should be completed by GPs, both the Chief Inspector of Prisons and Medical Justice told us that frequently nurses are writing them.¹⁸⁹ This suggests that there is a lack of training given to health staff in IRCs about who should be writing these reports.

Medical Justice also raised the case of Brian Dalrymple, an American citizen who after being detained in Harmondsworth and Colnbrook died from an aortic rupture caused by high blood pressure. Mr Dalrymple also suffered from schizophrenia. Following the inquest, the coroner reported that the GP who had seen Mr Dalrymple was unaware of the Detention Centre Rules 2001 or of the duties imposed on him by them. This included not knowing about Rule 35.

Nick Hardwick and Hindpal Singh Bhui told the panel that another issue regarding the completion of Rule 35 reports is that they frequently become a bureaucratic exercise as the medical professionals writing them do not give a clinical opinion. Instead, the report will describe the injuries as may be present without ever making a judgement over whether such injuries are consistent with the account of torture that the detainee may have given.¹⁹⁰ Given this information with a lack of a medical judgement, the Home Office caseworker handling the report may then, quite reasonably, decide no action is necessary.

The other main area of concern relates to caseworkers handling Rule 35 reports. In their written evidence, the Chief Inspector of Prisons gave the example of a caseworker who accepted that an individual who was detained in

187. EO & Ors. [2013] EWHC 1236, paragraph 82.

188. Medical Justice, Written Evidence

189. Hindpal Singh Bhui, 3rd Oral Evidence Session, 18 November 2014; Medical Justice, Written Evidence

190. Nick Hardwick and Hindpal Singh Bhui, 3rd Oral Evidence Session, 18 November 2014

RULE 35 REPORTS

Yarl's Wood has been a victim of torture in her country of origin. However, the caseworker maintained detention on the grounds that her condition could be satisfactorily managed in the IRC. This is not in accordance with Home Office policy, which says that torture victims should only be detained in exceptional circumstances.¹⁹¹ Following an inspection of Colnbrook in 2013, the Chief Inspector reported that "Responses [to Rule 35 reports] were prompt, but dismissive. For example, a female detainee claimed she was tortured in Iran. The caseworker stated that one of the reasons for refusing to release her was: 'You arrived without a valid travel document', ignoring the substantive issue."¹⁹²

In theory, Rule 35 reports should act as a protection against the continued detention of vulnerable individuals. However, the evidence we received suggests that a number of failings in the process means that the safeguard is not

working as it should. The panel were shocked by the reports that medical staff did not know that Rule 35 even existed and that Home Office caseworkers have ignored issues raised through the process. We recommend that the Home Office ensures that all detention staff are aware that Rule 35 reports must only be completed by GPs. Additionally, in line with the recommendation of the Chief Inspector of Prisons, when completing a Rule 35 report GPs should give a clinical opinion rather than just passing on what they have been told by the detainee.

We are also concerned by evidence that caseworkers respond to Rule 35 reports in ways that are not in accordance with Home Office policy. Caseworkers should be properly trained in how to respond to Rule 35 reports.

THE DETENTION OF WOMEN

As well as the difficulties in accessing legal representation, health care and the problems caused by indefinite detention, the evidence we received during the course of the inquiry highlighted a number of issues particular to decisions to detain women.

Women for Refugee Women told us 72% of

women they had spoken to with experience of being detained have been raped as part of the persecution they were fleeing. Almost all of the women had been victims of gender-related persecution in their home countries. Women for Refugee Women highlighted the fact that survivors of rape and sexual violence are not included in the categories of people

191. Chief Inspector of Prisons, Written Evidence

192. HM Chief Inspector of Prisons (2013) Report on an unannounced inspection of Colnbrook Immigration Removal Centre, p.29 – available at <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/conbrook/colnbrook-irc-2013.pdf>

not suitable for detention contained in the Enforcement Instructions and Guidance.¹⁹³

This runs counter to UNHCR guidelines on detention, which state that: “Victims of torture and other serious physical, psychological or sexual violence also need special attention and should generally not be detained.”¹⁹⁴ The Istanbul Convention of the Council of Europe on preventing and combating violence against women and domestic violence also states that: “Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum seekers as well as gender guidelines and gender-sensitive asylum procedures.”¹⁹⁵

Women for Refugee Women highlighted how the treatment of women fleeing gender-related persecution runs contrary to work being undertaken in other Government departments:

“The Foreign and Commonwealth Office is working to end sexual violence in conflict by protecting survivors and bringing perpetrators to justice. It is irrational for the Foreign Office to be working on this while Home Office policy retraumatizes those who have to cross borders to find safety.”¹⁹⁶

We recommend that women who are victims of rape and sexual violence should not be detained and this should be reflected in the Enforcement Instructions and Guidance.

We were also told women who are victims of rape and sexual violence find it hard to disclose their experiences, especially when faced with male staff in a prison setting.¹⁹⁷ Penny told us that when she first arrived at Yarl’s Wood she met with a male nurse who, because of her past experiences with men, made her feel very uncomfortable.¹⁹⁸

Sarah Teather spent the day at Yarl’s Wood and was processed through the admissions system as any other women would be after arriving very early in the morning. She too was surprised to be seen by a male nurse. This was all the more striking given the first interview on arriving at Yarl’s Wood was done in a public place with people walking past, when sometimes highly personal issues were interrogated with closed questions.

There has recently been a lot of coverage of abuse of female detainees by male staff at Yarl’s Wood. A report published in January 2015 by Women for Refugee Women reported that: “In June 2014 the management of Yarl’s Wood said that 31 allegations of sexual contact had been investigated and 10 staff had been dismissed. Six women in our sample said that staff at Yarl’s Wood had made sexual suggestions to them, and 3 said that they were touched sexually.”¹⁹⁹

This is of course utterly unacceptable and deeply shocking. **Serco and the Home Office must ensure women are treated with respect and dignity. This is clearly not the**

193. Women for Refugee Women, Written Evidence

194. UNHCR (2012) Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, p.33 – <http://www.unhcr.org/505b10ee9.html>

195. Article 60, Istanbul Convention of the Council of Europe on preventing and combating violence against women and domestic violence

196. Women for Refugee Women, Written Evidence

197. Women for Refugee Women, Written Evidence

198. Penny, 2nd Oral Evidence Session, 6 November 2014

199. Women for Refugee Women (2015) I am Human, p.2

THE DETENTION OF WOMEN

case currently. But we were also told that “alongside the issues of sexual abuse, it is important to look at the wider picture of staff behaviour in Yarl’s Wood.”²⁰⁰

For example, one woman told us that “On one occasion I was showering when a particular officer came into the room, using his key and without knocking. I was naked and vulnerable, he apologised but didn’t look away and started a conversation. I shouted at him to get out, which he did in the end.”²⁰¹

Another said that “There was a lock on the door that you could use from the inside but it was no good, the officers would unlock it from the outside. They [officers] didn’t knock. They were always checking on you. I’d be naked from the bathroom - men and women saw my body.”²⁰²

This lack of basic respect for privacy is unacceptable, made even more traumatic given the prior experiences of many women prior to detention.

During the third evidence session, the panel asked the Chief Inspector of Prisons about the male-female staff ratio at Yarl’s Wood. The Chief Inspector said that the ratio was 50:50 at Yarl’s Wood, compared to a 60:40 female: male ratio at HMP Holloway. The Chief Inspector reflected on this:

“I think that does make a difference in a common sense way. Often the nature of detention is that it’s very intrusive and personal. You’re dealing with the intimate details of people’s personal life, bodily func-

tions and all of that kind of thing, and if you don’t have enough staff of the same sex then that’s bound to be seen as intrusive.”

“I remember a very striking finding of Yarl’s Wood was that when some women talked about male officers doing searches of their rooms. Now, assume for the moment a search is necessary, but it still involves staff going through, in detail, a woman’s clothing – all of her clothing; it still involves looking at her most personal things. And of course that’s going to be humiliating and difficult for people. If you’re doing a search, a bodily search, even if that’s being done by two female. You might -- the procedure might be delayed so you can get two female staff there. And then even if it’s being done by women, you’re going to be concerned about who might be there or see it. So I think it creates a level of anxiety. And it’s just an awareness, I think, of the sort of -- because any detention or prison experience is so domestic nature -- it’s about the understanding that perception, of understanding of how a woman might be feeling in that situation.”²⁰³

In written evidence submitted to the panel, Serco, who run Yarl’s Wood IRC on behalf of the Home Office, told the panel that they “have taken significant steps in the last year to attract more female employees to operational roles in Yarl’s Wood.” The steps they have taken include making working at the IRC more family friendly. In their evidence, Serco say that this has resulted in an additional 18 female officers in the last 12 months, taking the gender balance to 49 per cent female to 51 percent male.²⁰⁴

200. Women for Refugee Women, Written Evidence

201. Written Evidence, Anonymous 10

202. Written Evidence, Anonymous 22

203. Chief Inspector of Prisons, 3rd Oral Evidence Session, 18 November 2014

204. Serco, Written Evidence

As discussed above, the experience of being detained is in and of itself traumatic. This is made worse for women, some of whom may have been raped or victims of sexual violence, who then feel intimidated by the men employed in the IRCs. We recommend that gender-specific rules are introduced for all IRCs to prevent such intimidation. We also believe that the long-term and at times repeated detention of women makes these problems worse, especially without proper resource to means to challenge continued detention. The recommendations in Part 1 of this report will address some of these issues. Serco should also continue to address the gender balance ratio of the staff it employs.

Pregnant Women

Women for Refugee Women drew attention to pregnant women detained in IRCs arguing that “being detained while pregnant can cause enormous emotional and psychological distress and serious physical discomfort.”²⁰⁵ The Minister for Immigration, in his written evidence, told us that pregnant women are only detained in two limited circumstances: 1) where the removal of the women is imminent and medical advice does not suggest her baby is due before the removal date; and 2) for pregnant women of less than 24 weeks as part of the detained fast track process.²⁰⁶

However, Hindpal Singh Bhui, a team inspector at HM Prisons Inspectorate, in his evidence said:

“...pregnant women are only meant to be detained in the most exceptional circumstances. And again, we look for evidence of this. And on the last couple of occasions that we’ve looked, we haven’t found those exceptional circumstances in the paperwork to justify their detention in the first place.”²⁰⁷

We were also told of pregnant women being forced to travel long distances, sometimes over several days, when initially being detained,²⁰⁸ and failures in receiving test results and obstetric records.²⁰⁹ In one case, we were told that an immigration interview was prioritised over a 20-week anomaly scan.²¹⁰

We are disappointed that the Home Office does not appear to be complying with its own policy of only detaining pregnant women in exceptional circumstances. We recommend that pregnant women are never detained for immigration purposes.

205. Women for Refugee Women, Written Evidence

206. Minister for Immigration, Written Evidence

207. Hindpal Singh Bhui, 3rd Oral Evidence Session, 18 November 2014

208. Nick Hardwick, 3rd Oral Evidence Session, 18 November 2014

209. Dr Naomi Hartree, 2nd Oral Evidence Session, 6 November 2014

210. Dr Naomi Hartree, 2nd Oral Evidence Session, 6 November 2014

LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX DETAINEES

The panel heard evidence of the particular problems faced by lesbian, gay, bisexual, trans and intersex (LGBTI) detainees within the detention system. The concerns about the quality of decision making on asylum applications on the grounds of persecution due to sexual orientation and/or gender identity are well known. Repeatedly, assessments of credibility have been crude and inappropriate, and this led to the Home Secretary commissioning the then Independent Chief Inspector of Borders and Immigration, John Vine, to conduct an investigation into the way the Home Office handles such cases.

There are no official statistics regarding how many LGBTI detainees there are in the detention system. However, the UK Lesbian and Gay Immigration Group (UKLGIG) told us that in 2013 it was estimated that at least 340 lesbian women find themselves in immigration detention each year, half of whom are in the Detained Fast Track.²¹¹

Within detention centres, LGBTI detainees told us that they face further persecution. Aderonke told us about the abuse she received:

“...when I was in detention I had a homophobic attack for a period of one year, which the Home Office knows about. Yarl’s Wood investigated it. They gave me a letter to say what I said was true, because half of the population of Yarl’s Wood is made up from people from my country, Nigeria, and I had this attack for over one year. Every day being abused, physically, emotionally, psychologically. And even people that I identify with who are of the

same orientation with me sexually were also prosecuted because of their association with me.

“And I thought it was wrong because that was hate crime but it was never, ever treated as hate crime. It was never reported. I was just left there to go through that torture again. What I’ve been through in my country, I was going through it again in detention centres”.²¹²

UKLGIG told us that Aderonke’s experiences were not uncommon. They said that “clients regularly report bullying, verbal abuse and threats of physical violence.” They added that while some staff members are sensitive to the needs of LGBTI detainees, this is not established across all the detention estate. Additionally, we were told that detainees who are victims of homophobic or transphobic attacks in detention are reluctant to make complaints as they believe this will negatively affect their asylum claim.²¹³

We were extremely concerned to hear that LGBTI detainees face bullying, harassment and abuse inside detention centres. This is not acceptable. There is a lack of information available about the extent to which LGBTI individuals face detention and the Enforcement Instructions and Guidance make no mention of assessments of the risks to detaining LGBTI individuals. We recommend that the Home Office works with the Home Office National Asylum Stakeholder Forum to properly assess what risks there are and to ensure that those LGBTI individuals who do face detention do not also face harassment.

211. UK Lesbian and Gay Immigration Group, Written Evidence

212. Aderonke, 3rd Oral Evidence Session, 18 November 2014

213. UK Lesbian and Gay Immigration Group, Written Evidence

DETAINEES IN PRISONS

As well as Immigration Removal Centres, individuals can be detained under immigration powers in prisons. The immigration statistics published in November reveal that, as of 29 September 2014, 425 people were detained in prisons in England and Wales for immigration purposes, the first time that this figure had been routinely published.²¹⁴ Prior to this statistical release, the figure of detainees held in prisons had been made available through answers to parliamentary questions.

The 425 figure marks a notable decrease from previous available figures. In June 2014, there had been 790 detainees held in prisons, down from 957 at the end of 2013.²¹⁵ The Home Office does not publish information regarding how long detainees have been detained in prisons – in response to a parliamentary question in 2013 asking for this information, the then Immigration Minister Mark Harper replied that the information requested could only be provided at disproportionate cost²¹⁶ – however, Bail for Immigration Detainees have reported that, from a survey of detainees held in prisons, the average length of detention post-sentence is 11.5 months.²¹⁷

Almost all of the detainees held in prison are foreign nationals who have completed a prison sentence for a criminal conviction and who the Government wishes to remove. Nick

Hardwick, the Chief Inspector of Prisons, expressed his frustration that arrangements for removal aren't in place when individuals complete their criminal convictions.²¹⁸ This echoed a recommendation made in a joint report with the Inspector of Borders and Immigration: "The UK Border Agency should resolve the cases of foreign national prisoners before the end of their sentences unless there are exceptional and clearly evidenced circumstances to prevent this."²¹⁹

This issue was the subject of a recent report by the House of Commons Public Accounts Committee.²²⁰ The Committee found that there are unnecessary delays in starting the process for removing foreign national offenders, saying that the Home Office "has not been making a decision on whether to deport foreign national offenders until 18 months before their earliest removal date from prison, even though it has not needed to apply this limit to individuals sentenced after 2008."²²¹ The Committee reported that more than a third of failures to remove foreign national offenders are due to factors within the Home Office's control.

Nick Hardwick told us that detainees held in prisons are "forgotten". He explained:

| "...lots of immigration detainees will be

214. Immigration Statistics, July to September 2014

215. HC Deb, 16 June 2014, cW Written Question – 199157; HC Deb, 12 December 2013, c319W

216. HC Deb, 12 November 2013, c545W

217. Bail for Immigration Detainees (2014) Denial of Justice: the hidden use of UK prisons for immigration detention – available at <http://www.biduk.org/971/news/new-bid-report-on-the-hidden-use-of-prisons-for-immigration-detention.html>

218. Nick Hardwick, 3rd Oral Evidence Session, 18 November 2014

219. HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (December 2012) The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, p.9 – <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

220. House of Commons Committee of Public Accounts (2015) Managing and removing foreign national offenders (HC 708)

221. House of Commons Committee of Public Accounts (2015) Managing and removing foreign national offenders (HC 708), pp.6–7

DETAINEES IN PRISONS

held just in the ordinary prison estate and it appears to me sometimes they've simply been forgotten rather than dealt with in a particular way. No one knows they're there. So I'm certain in some cases what happens is the men, usually it's men who are concerned, become institutionalised. They're not kicking up a fuss. The prison officers get used to them being there. The Home Office forgets them and they're just stuck."²²²

The Home Office has previously said that "Time served foreign national offenders are risk assessed for suitability to transfer into the immigration estate shortly after completion of their sentence."²²³ The inquiry panel would question why this risk assessment takes place after completion of the sentence, rather the earlier. Additionally, Nick Hardwick and Hindpal Singh Bhui both noted that many IRCs are now either built to category B standard or are converted prisons. Mr Singh Bhui said that "you can't build category B IRCs and then say [time-served foreign national offenders] have to be held in prisons."²²⁴

We agree with the Public Accounts Committee recommendation that the Home Office and the Ministry of Justice should undertake a full review of the end-to-end process of removing foreign national offenders.

More than one in ten individuals detained solely under immigration powers are held in prisons and a number of witnesses raised

concerns about this practice. Dr Trude from Bail for Immigration Detainees told us that "detainees held in prison post-sentence are held entirely outside the statutory centre rules."²²⁵ We heard that detainees in prisons faced considerable barriers to obtaining legal representation and access to healthcare. We were told that there are no on-site legal surgeries in prisons for immigration detainees and for those who do have legal representation, the lack of access to a mobile phone and the internet (both of which are, to some extent at least, available to detainees in IRCs) makes communication between solicitor and client extremely difficult.²²⁶

Dr Adeline Trude highlighted the problems that people detained in prisons face. She told us that details of the section 4 bail address supplied to detainees in prisons often don't reach the detainee until shortly before it expires, leaving people very short timescales in which to try and contact their solicitor to arrange a bail application. Dr Trude also told us for those who do succeed in obtaining bail, they often immediately face further problems:

"It's quite common for people to be released and they're not provided with a travel warrant to travel to their Home Office bail address, leaving them with no money, often with no possessions, and no means of getting to their bail address and standing in the tribunal entirely at the mercy of their barrister and at risk of being in breach of their bail conditions, and possibly their licence conditions as well. And that just

222. Nick Hardwick, 3rd Oral Evidence Session, 18 November 2014

223. HC Deb, 16 December 2013, c393W

224. Hindpal Singh Bhui, 3rd Oral Evidence Session, 18 November 2014

225. Dr Adeline Trude, Bail for Immigration Detainees, 2nd Oral Evidence Session, 6 November 2014

226. Dr Adeline Trude, Bail for Immigration Detainees, 2nd Oral Evidence Session, 6 November 2014; AVID, Written Evidence

227. Dr Adeline Trude, Bail for Immigration Detainees, 2nd Oral Evidence Session, 6 November 2014

hasn't been thought through by the Home Office before deciding to use the prison estate to hold immigration detainees."²²⁷

Medical Justice raised the lack of Rule 35 in prisons, saying that "there is no reason to think that detainees vulnerable to suffer harm as a result of detention would not suffer the same level of harm whether detained in an IRC or a Prison."²²⁸

In 2012, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that "foreign national prisoners, if they are not deported at the end of their sentence, be transferred immediately to a facility which can provide conditions of detention and a regime in line with their new status of immigration detainees."²²⁹

The panel agree with this recommendation and that of the Inspector of Prisons and Inspector of Borders and Immigration. We see

no reason why decisions regarding removal and transfer cannot be taken, in most cases, before the completion of custodial sentences. Detainees held in the prison estate face greater restrictions on applying for bail, accessing immigration advice and accessing healthcare. They are detained within a prison regime despite being detained under immigration powers.

We recommend that where it is necessary to detain individuals at the end of a criminal sentence this should be done on the basis of a risk assessment showing that community alternatives are not appropriate. Detention should only continue in prisons under the most exceptional of circumstances.

The panel also welcomes the recent inclusion in the immigration statistics of the number of individuals held in prisons under immigration powers. We recommend that future statistical releases also include a breakdown of these numbers by location and length of post-sentence detention.

228. Medical Justice, Written Evidence

229. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2012) Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CONCLUSION

We examined the current use of the detention within the immigration system over a period of six months. As a panel, we have very diverse views about the immigration system as a whole, cover a wide political spectrum and a significant range of parliamentary expertise. Two of us were Ministers in this Government, another is a former law Lord and one a former Chief Inspector of Prisons. However, we all came together to conduct this inquiry because of concerns about reports from within the detention system. We heard from 182 individuals and organisations, held three oral evidence sessions, and heard from detainees within detention, live through a phone-link.

We have made far reaching recommendations for reform based on the evidence that we heard. We believe that the UK uses detention disproportionately and inappropriately. When compared with other countries, we detain more than most other European countries and for longer. This practice cannot be justified based on the number of applications we receive to remain in the UK, or on evidence that it enables us effectively to persuade those who are refused leave to remain to leave the country. The system is hugely costly to the tax-payer and seriously detrimental to the individuals we detain in terms of their mental and physical well-being.

We welcome the review into the welfare in detention of vulnerable persons that was announced by the Home Secretary in February 2015, shortly before this report was published. However, the narrow scope of the review, particularly the restriction that it will not look at decisions to detain, means that it will not be able to deal with the issues raised by this inquiry and others.

It is time that we accepted that current practice is not working.

We have recommended in this report that detention should only be used genuinely as a last resort and that a new time limit of 28 days be adopted, coupled with a mechanism to ensure that this itself does not become a new norm for the length of stay. Furthermore we have recommended a process for reviewing all current cases held in detention with a view to removal or release.

However, the changes that we have recommended in this report go far further than simply imposing a time limit at the end of the process. The success of other countries in maintaining immigration control without using detention depends on a wholesale shift in approach, away from merely focusing on enforcement and towards quality engagement with individuals at all stages of their immigration process. This is particularly important in cases of asylum, where poor case-working and lack of sympathetic handling frequently hampers the ability of the system to obtain accurate information needed to make a good decision.

A focus on better quality engagement, coupled with community support has been highly successful in Sweden and Canada. Similar models are being adopted by Australia for in-country asylum applications and the US is moving away from its current focus on detention.

What was striking in our study of the system in other countries was that they achieved results not by imposing greater and greater restrictions on individuals in an effort to grind them into submission, but instead by engaging with them and treating them with dignity.

For the UK, so heavily invested in enforcement processes, this would require a significant shift in practice.

However, there is precedent. In May 2011, the Government changed the way it handled children within the detention system. While there remain legitimate concerns regarding the detention of children (for example, there is a need to improve the way age assessments are carried out to prevent children from being detained in the adult detention estate) the changes have nevertheless resulted in a sharp decline in the numbers of children entering detention and in the length of that detention. The Home Office did not give up immigration control in order to achieve this. Instead, the Home Office has been able to maintain immigration control by engaging better with families, earlier in the process. We recommend that the Home Office learn the lessons of this largely successful change in culture and extend it to other areas of the system.

We have also made recommendations about the conditions within the detention estate and the processes for working with individuals held within it. However, it should be noted that most of the very serious allegations around poor conditions and mistreatment of detainees arise largely because of the sheer scale of the estate, the number of individuals held within it, who should more properly be managed elsewhere, and the length of time individuals are held with significant associated anxiety and uncertainty. We make concrete recommendations for changes to the estate, but most problems could be resolved simply by not detaining most of the people currently held under immigration powers.
