



People in prison: Immigration detainees

A findings paper

by HM Inspectorate of Prisons

November 2015

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Printed and published by:
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Introduction

- 1.1** This findings paper is part of a series which focuses on people in prisons and other types of custody. The series explores the differing needs and experiences of different sub-groups within the prison and custody population. We hope these findings papers will build into a useful resource on the backgrounds and experiences of groups within the prison population who might otherwise be overlooked, and encourage further research and the development of services to meet their needs.
- 1.2** This paper draws together findings and survey results from HM Inspectorate of Prisons inspection reports published between 1 April 2013 and 31 March 2015. It aims to set out the experiences of immigration detainees in prisons and compare it with the experiences of those in immigration removal centres (IRCs).

Background

- 1.3** On 30 June 2015, about 9,300 foreign nationals were held in prisons in England and Wales; about 11% of the total prison population. On completion of their criminal sentence, foreign nationals¹ of interest to the Home Office are either:
- removed or deported from the UK
 - released into the community while their immigration case is concluded
 - detained in an immigration removal centre (IRC)²
 - detained in prison³.
- 1.4** Of these 9,300 foreign nationals, the Home Office was considering or pursuing deportation action against 5,242 individuals. Three-hundred-and-fifty-seven people were held in prisons under immigration powers⁴. Almost all immigration detainees held in prisons are ex-prisoners⁵.
- 1.5** The National Offender Management Service (NOMS) and the Home Office have a memorandum of understanding setting an agreed number of beds in the prison estate that can be used for immigration detainees. On 31 March 2015 the number of beds was 400.
- 1.6** Immigration enforcement caseworkers, based in units around the UK, manage prisoner's immigration cases. Cases are allocated to units based on their type and where the prisoner was living when they first came in contact with immigration enforcement. These caseworkers decide whether the prisoner will be detained under immigration powers on completion of

¹ A foreign national prisoner is a prisoner who is not British. The Home Office's immigration enforcement directorate are not interested in all foreign national prisoners. Some foreign nationals have a settled immigration status (for example indefinite leave to remain) and may have committed a minor offence. In such cases, the Home Office may not pursue removal or deportation.

² There are 10 IRCs in the UK. Seven are run by private contractors: Brook House, Campsfield House, Colnbrook, Dungavel, Harmondsworth, Tinsley House and Yarl's Wood. Three are run by NOMS: Dover, Morton Hall and the Verne.

³ Two prisons in England and Wales are dedicated to holding only foreign nationals: HMP Huntercombe and HMP Maidstone. During our 2013 HMP Huntercombe inspection one immigration detainee was held.

⁴ NOMS offender management statistics quarterly <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

⁵ A small number of unconvicted or unsentenced foreign nationals are held in prisons under immigration powers. These detainees have been bailed in relation to their criminal matter, but detained by the Home Office. They are held under immigration powers awaiting trial or sentence. In exceptional circumstances, NOMS may also hold foreign nationals who are unsuitable for detention in an immigration removal centre, some of whom may not have served a custodial sentence.

their custodial sentence or released. The objective of immigration enforcement is to remove or deport individuals, not prepare them for community rehabilitation or reintegration.

- I.7** The Home Office's Detainee Population Management Unit (DEPMU) decides if immigration detainees are to be held in a prison or an IRC⁶. The decision to keep individuals in prison is made not by an immigration judge, but by a junior civil servant. DEPMU follows Home Office policy⁷ when making this decision. There are two types of immigration detainee held in prison: those presenting risks and those not presenting risks.
- I.8** The following risks are assessed when deciding to hold someone in prison:
- national security
 - seriousness and nature of the index offence
 - risks to children
 - risks to victims
 - security
 - control
 - behaviour in custody
 - health.
- I.9** Detainees presenting risks are more likely to be held in prisons than those without risk factors, and are generally not transferred to an IRC. Detainees not presenting risks are normally transferred to an IRC on completion of their sentence. There are a fixed number of allocated bed spaces in IRCs for ex-prisoners. If all of these spaces are full, the detainee remains in the prison estate and will only be transferred to an IRC when a space becomes available. Priority for transfer to an IRC is given to those without risk factors who have been held in prison under immigration powers the longest. However, not all immigration detainees are transferred to an IRC before leaving detention. In March 2014, the last month for which figures are available, 42 immigration detainees were removed from the UK directly from prisons. A further 20 were granted bail or temporary admission directly from prisons.
- I.10** In almost all our inspections of men's prisons we find immigration detainees. The numbers vary between prisons but we often find more in large urban areas, especially London. For example, in our 2014 inspection of Wormwood Scrubs, a 'hub' prison for foreign national prisoners, we found 53 immigration detainees, one of whom had been held for 18 months after completing his sentence.
- I.11** The regimes under which immigration detainees are held differ according to the type of establishment they are in. The management of immigration detainees in prisons is governed by the Prison Rules, while detainees in IRCs are managed according to Detention Centre Rules. The two sets of rules differ significantly and impact greatly on detainees' experiences of custody.
- I.12** In theory it is NOMS policy to treat immigration detainees as unconvicted prisoners. In practice not all detainees are treated as such. NOMS only applies this policy in prisons where unconvicted prisoners are held: normally local prisons serving local courts. In general, local prisons tend to be less safe and respectful due to their age (many are Victorian jails based in city centres) and the high turnover of prisoners. Many immigration detainees are held in non-local prisons. On completion of their sentence they are asked if they wish to transfer to a local prison or remain in the prison they are in under prison rules. Many

⁶ DEPMU do not routinely give reasons to immigration detainees explaining why they are held in prisons rather than in IRCs. Immigration detainees can request a transfer from prison to an IRC by writing to DEPMU. If the requested is rejected, DEPMU will give reasons.

⁷ Chapter 55.10.1 of the Home Office's enforcement instructions and guidance

prisoners choose the later as they feel settled, have good relationships with staff and other prisoners, and know conditions are likely to be worse if they transfer. Others choose to stay because they are held close to their family members. If a detainee elects to stay they have to confirm in writing that they are happy to forfeit their right to be treated as an unconvicted prisoner and be managed as a convicted prisoner. Choosing to transfer to a local prison will not always guarantee better treatment than sentenced prisoners. In our remand thematic report in 2012⁸, we found that *'despite a long established principle that remand prisoners... have rights and entitlements not available to sentenced prisoners, we found that many had a poorer regime, less support and less preparation for release'*.

- I.13** We recognise that a small number of individuals are not suitable for IRCs due to the high risks they pose. A brief period of detention in a prison may be necessary in a handful of cases before removal. However, these risks are not currently clearly documented, regularly reviewed or explained in writing to detainees. Immigration detainees tell us that they experience little change in their treatment when they transition from being held under criminal to immigration powers. Indeed prison officers are sometimes unaware that they are holding immigration detainees. Some detainees spend too long in prison: at HMP Lincoln in 2013, for example, six prisoners had been held for more than a year and the longest for more than two years. These were very long periods of time, especially since detention is not authorised by immigration judges⁹.

Our expectations

- I.14** We inspect against independent criteria known as *Expectations*¹⁰. These are based on international human rights standards. We assess the conditions in which detainees are held and how they are treated. Our inspections focus on outcomes for detainees and we aim to understand their real experience. Expectations are underpinned by indicators which set out evidence that may suggest that an expectation has been achieved. In the equality and diversity section of our prison *Expectations* we state:

'Prisoners of all nationalities are treated equitably and according to their individual needs.'

- I.15** The following are examples of indicators that may tell us if the expectation has been achieved:

'Immigration detainees held solely under administrative powers are not held in prisons other than in exceptional circumstances following risk assessment.'

'Prisoners have access to accredited, independent immigration advice and support agencies.'

Differences between IRCs and prisons

- I.16** A number of material differences between prison and IRC regimes affect immigration detainees' experiences of their custody.

⁸ HM Inspectorate of Prisons (2012), *Remand prisoners: A thematic review*

⁹ Detention under Immigration Act powers is administrative. It is authorised by a Home Office caseworker and not by an immigration judge.

¹⁰ HM Inspectorate of Prisons (2012), *Expectations: Criteria for assessing the treatment of prisoners in prisons*

Access to legal advice and representation

- I.17** Immigration detainees in prisons have much poorer access to publically funded legal advice and representation than those held in IRCs. All detainees in IRCs can receive 30 minutes of free legal advice from accredited immigration advisors.
- I.18** The Legal Aid Agency (LAA) commissions legal representatives to provide advice services in all IRCs. The LAA pays legal representatives to travel to the centres. In addition to giving free legal advice, representatives must:
- assess the merits of detainees' substantive protection claims¹¹ and, if there is merit, provide representation
 - make meritorious temporary admission or bail applications
 - continue to advise detainees in relation to future bail applications.
- I.19** Through the LAA all detainees who lack sufficient means to pay for it themselves should be guaranteed free ongoing bail advice as a minimum. In our surveys 31% of detainees in IRCs said it was easy to get bail information, far more than in prisons where the figure was just 6%.
- I.20** While there are failings in the operation of the LAA duty advice service in IRCs (often waiting times are too long and centre staff do not always understand how it should function¹²) it is better than what is available to detainees in prison.
- I.21** As there is no duty advice scheme, detainees in prisons have no guaranteed access to a legal advisor. Instead they have to contact lawyers themselves. Many such immigration detainees rely on word of mouth recommendations from other prisoners or the advertisements in the prisoner newspaper, *Inside Time*, to source a lawyer. The terms of the contract with the LAA mean that lawyers may be reluctant to visit immigration detainees in prisons because of the long travel times associated with getting to some prisons. In addition, lawyers will only visit detainees if they know they will get paid by the LAA. However, the LAA will only fund a protection case if it has a 50% chance of success. To assess whether the case meets this threshold a face-to-face interview is required between the lawyer and the detainee. In an IRC this assessment can be conducted in the free 30 minute advice slot. But for prisons lawyers find themselves in a catch 22 situation: they are unlikely to risk travelling, sometimes long distances, to take instructions from a detainee if there is a chance they will not be paid.
- I.22** Furthermore, unlike at the LAA-funded advice surgeries in IRCs, lawyers visiting detainees in prisons are not required to keep the prospects of success of a bail application under review. In an IRC advice surgery, if a detainee's bail application is deemed not to have a 50% chance of success, the lawyer cannot apply for bail. However, the lawyer is obliged to review this merits assessment at a later stage¹³. These funding arrangements mean that detainees held in prisons have less access to justice than those in IRCs.
- I.23** In our prison inspections we found that few prisons had arrangements for independent immigration advisors to attend. At HMP Swaleside in 2014, *There was no access to accredited, independent immigration advice, and foreign national prisoners expressed frustration at the lack of*

¹¹ A protection claim is one where a detainee claims they:

- are a refugee as defined in the 1951 Refugee Convention;
- would be subject to torture or to inhuman or degrading treatment or punishment if removed from the UK; or
- would face a serious and individual threat to their life or person by reason of indiscriminate violence in situations of international or internal armed conflict

¹² See our 2014 Haslar IRC report. <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/07/Haslar-2014-Web.pdf>

¹³ The prospects of success will increase with time. The longer someone is detained, the stronger their bail case becomes.

information provided about their immigration status post-sentence.’ At HMP Hindley in 2014, we found ‘... a small number of foreign nationals who were no longer able to obtain legal aid for advice and representation. We were told they were “confused, anxious, in panic or in denial” about their immigration status.’¹⁴ These difficulties in accessing justice are compounded by poor communication facilities.

Communication with the outside world

- I.24** It is harder for immigration detainees in prisons to communicate with the outside world than for those in IRCs. These communication difficulties impact on detainees in a number of ways.
- I.25** Detainees in IRCs are allowed to retain mobile phones that do not have a camera or internet access. As few phones now do not have cameras, IRC staff lend out suitable mobile phones into which detainees can insert their own SIM cards. Detainees can also purchase new mobile phones in IRCs. Despite some difficulties with SIM card compatibility and poor reception, detainees in IRCs can generally communicate with the outside world by telephone whenever they want, providing they have appropriate credit.
- I.26** In contrast, telephone provision for immigration detainees in prisons is much more restricted. Detainees are issued with a PIN which they use to make calls from phones normally located on wings. Detainees apply to have phone numbers added to their PIN phone account and only numbers that have been approved by prison security staff are added. Detainees in prisons, unlike in IRCs, cannot receive incoming calls. They must also be out of their cells to make the calls as most phones, except in a minority of prisons where they are in cells, are located on wings.
- I.27** A further key difference between IRCs and prisons is internet access. Immigration detainees in prisons are forbidden internet access. Detainees in IRCs, however, can browse the internet and access web-based email accounts such as Hotmail and Yahoo. Despite difficulties with overzealous filtering software which results in legitimate websites being blocked and a lack of access to social networking websites, we find that access to the internet in IRCs is reasonably good.
- I.28** Communication restrictions in prisons impact on detainee outcomes in four important respects. First, it impacts on access to justice. It is more difficult for detainees in prisons to identify, instruct and maintain contact with a lawyer than it is for detainees in IRCs. Immigration detainees only have five days in which to appeal against negative protection and deportation decisions. Removal directions are often served 72 hours before removal. Given these tight deadlines, delays in contacting legal representatives can cause serious problems. In our surveys, fewer detainees in prisons than those in IRCs (28% compared with 66%) said that it was easy to communicate with their legal representatives. For detainees applying for asylum, good internet and telephone access allows them to research information about their country of origin to inform their cases. For those challenging their deportation on family life grounds, good communication allows them to contact friends and family and gather evidence to show the strength of their family and social ties in the UK.
- I.29** Second, poor communication with the outside world may influence reoffending rates. Around 45% of immigration detainees are released back into the community, many under licence. NOMS has a duty to ensure they are prepared for their resettlement. In our recent joint thematic paper published with HM Inspectorate of Probation and Ofsted, *Resettlement provision for adult offenders*, we found that ‘an offender’s family are the most effective resettlement strategy’ and that ‘helping offenders maintain or restore relationships with their family

¹⁴ Similar findings were made at HMP Brixton, HMP Risley, HMP Wayland and HMP Wormwood Scrubs.

and friends, where this is appropriate, should be central to the resettlement effort. Detainees in IRCs are better equipped to maintain these family ties, largely due to communication facilities.

- I.30** Third, poor communication may impede voluntary return. Some detainees want to return voluntarily and internet access allows them to better prepare for their return. There are also a number of detainees who are considering whether to contest their removal or return home voluntarily. Up-to-date and accurate information that the detainee can research assists them in making an informed decision on their future: to stay and fight their case in the UK, or to return voluntarily.
- I.31** Fourth, detainees cannot properly prepare for their return without good means of communication with their country of origin. Many ex-prisoners have lived in the UK for years, some for most of their lives. Rebuilding their lives in their country of origin requires finding work, accommodation, contacting family and friends, and arranging transport. All of these are more straightforward if the detainee can communicate easily with those in their country of origin.
- I.32** We recognise that some detainees' licence conditions restrict who they can contact. Any changes to detainees' means of communication would have to involve appropriate monitoring to make sure licence conditions are not breached. Equally it is important to remind ourselves that British nationals who have committed exactly the same crime and given the same licence conditions, would be released into the community where telephones and internet are freely available.

Feelings of safety and respect

- I.33** Prisons are more violent establishments than IRCs, with more reported fights and assaults. Immigration detainees in prisons report high levels of victimisation. In our surveys, the numbers of detainees in prisons who said they currently felt unsafe was comparable to those in IRCs (29% compared with 32%). However, more detainees in prisons said that they had been victimised by other inmates than those held in IRCs (34% compared with 19%). This may not be surprising given that, in general, those held in IRCs have not committed offences. By definition, prisons hold those who may not have addressed their offending behaviour. What is more surprising is that 41% of detainees in prisons say they had been victimised by staff, far more than the 15% in IRCs. These findings may reflect the fact that detainees in prisons are likely to include those whose behaviour is difficult to manage and this may be reflected in poorer relationships with staff.
- I.34** In our surveys detainees in prisons reported more negatively in terms of respect than those held in IRCs. For example, fewer detainees in prisons than those in IRCs (63% compared with 76%) said that staff treated them with respect. In many IRCs relationships between detainees and staff were good. At Haslar IRC in 2014 we found: *'Survey results relating to relationships were very positive and had improved since our last full inspection. Detainees in our groups reported that staff treated them with respect and were helpful.'* This contrasted with the sometimes very poor relationships we found in prisons. For example at HMP Elmley in 2014, we found: *'Staff-prisoner relationships had deteriorated since our previous inspection. Staff had little time to interact meaningfully with or support prisoners. The personal officer scheme did not function properly.'* At HMP Nottingham in 2014, we wrote: *'... a recent redeployment of staff from other establishments had resulted in a lack of consistency and knowledge about prisoners. Many staff routinely addressed prisoners by their surnames, and we observed generally low levels of engagement between staff and prisoners.'*

I.35 Feelings of safety are influenced by detainees' ability to communicate with other detainees and staff. A detainee who can communicate with staff and other inmates will feel safer. Three factors influence detainees' communication abilities: their competence in English, the number of fellow nationals held in the establishment and the staff's use of professional interpretation. English for Speakers of Other Languages (ESOL) is taught in all IRCs but not all prisons. Even when taught in prisons, the courses are sometimes inappropriate. For example at HMP Gartree in 2014, we found non-English speakers were unable to study ESOL beyond entry level. Detainees often rely on fellow nationals with better English skills to communicate. A detainee who cannot speak English has more chance of finding a fellow national who speaks English in an IRC than a prison, given the numbers held in each type of establishment. We often criticise prison staff for not using telephone interpretation adequately. Again at HMP Gartree in 2014, we noted, *'Other than at sentence planning boards... the prison did not use telephone interpreting to speak with prisoners who did not speak English.'* In 2014, at HMP Wormwood Scrubs, where 31% of the population were foreign nationals, we found that *'professional interpretation was not used enough'*.

Access to Home Office staff

I.36 Immigration detainees in IRCs have more contact with staff from the Home Office's immigration enforcement directorate than those held in prisons. Decisions regarding detainees' detention and their substantive immigration cases are made not by staff in IRCs, but by decision makers in various caseworking units based around the country. The unit involved depends on the detainee's immigration case and where they lived in the UK before detention. Each IRC has a team of immigration enforcement staff tasked with facilitating communication between detainees and the decision makers. Typically, these contact teams will see all detainees shortly after arrival and then at least once a month. Decision makers are obliged to update detainees on case progress once a month. These reports are faxed to IRCs and are normally served face-to-face on detainees. The reports are always in English and the local contact staff are obliged to summarise the report using professional telephone interpreting where necessary. Detainees in IRCs can request to see the contact team at anytime to have their queries answered.

I.37 For immigration detainees in prisons, access to immigration enforcement officers is more infrequent. Prison Operational and Removal Teams (PORT) assist in managing detainees' immigration cases¹⁵. These uniformed officers are of a higher grade than staff in IRC contact teams. PORT officers conduct asylum screening and substantive interviews as well as interviews for emergency travel documents, so can help progress detainees' cases. However, not all immigration detainees in prisons have sufficient access to PORT officers. Access to immigration enforcement officers, unsurprisingly, is better in hub prisons than in spoke prisons¹⁶. For example at HMP Wandsworth in 2013 we found, *'Immigration enforcement was based on site and surgeries were held daily.'* At Wormwood Scrubs in 2014, *'Five immigration enforcement officers were based in the prison, and an officer visited most wings weekly.'* At other prisons, attendance was infrequent. At HMP Kenet in 2013 immigration enforcement officers *'did not visit the establishment regularly'*. At HMP Wymott in 2014, we found *'... there appeared to have been little, if any, meaningful contact between the prison and the Home Office...'* and at HMP Durham in 2013, despite being a busy local prison, *'The Home Office only carried out a day surgery each quarter and saw a limited number of foreign national prisoners each time.'*

¹⁵ PORT teams are based at seven male prisons (Wormwood Scrubs, Pentonville, Wandsworth, Hewell, Risley, The Mount and Moorland), one female prison (Peterborough) and one IRC (the Verne). There are immigration enforcement teams at the two foreign national offender prisons (Huntercombe and Maidstone). Additional resource is provided by two mobile teams that work out of Croydon and Leeds.

¹⁶ A hub prison is one where a PORT team are permanently based. They will be responsible for assisting with the immigration cases of prisoners and detainees in that particular prison and other local prisons known as 'spoke' prisons.

I.38 Foreign national prisoners are too often only informed at the last minute that they will be detained under immigration powers. Immigration enforcement officers frequently serve notice of detention a day or two before the end of detainees' custodial sentences. We have even met detainees who were notified of their continuing detention on the day they expected to be released.

Safeguards for torture survivors and other vulnerable groups

I.39 It is Home Office policy to only detain the following groups in a prison or detention centre in very exceptional circumstances:

- those suffering from serious medical conditions which cannot be satisfactorily managed within detention
- those suffering from serious mental illness which cannot be satisfactorily managed within detention
- those where there is independent evidence that they have been tortured.¹⁷

I.40 Detention Centre Rule 35 obliges an IRC medical practitioner to report to the Home Office decision maker where the following detainees are held:

- those whose health is likely to be injuriously affected by detention
- those suspected of having suicidal intentions
- those who may have been a victim of torture.

I.41 On receipt of a Rule 35 report, the Home Office decision maker must review detention. We have regularly criticised failings in Rule 35 reports and Home Office responses: reports often fail to offer meaningful commentary and replies are dismissive. Despite these criticisms, Rule 35 reports have led to the release of some vulnerable detainees from IRCs. For example, at Harmondsworth IRC in 2013, 5% of the 234 Rule 35 reports submitted in the year to our inspection led to release. No equivalent safeguard is available in prisons¹⁸. There is no obligation on prison medical practitioners to communicate information regarding a detainee's health, risk of suicide or history of torture to the Home Office decision maker. This could mean that a torture survivor, or detainee who has suicidal intentions or whose health is being injured by detention, is unnecessarily detained.

Support from third sector organisations

I.42 Support services in IRCs are more tailored to immigration detainees' needs than those found in prisons. At Harmondsworth IRC in 2013, representatives from Bail for Immigration Detainees (BID) advised and supported detainees in making bail applications, Hibiscus Initiatives assisted detainees with resettlement needs, and Detention Action supported detainees. With the exception of HMP Peterborough, where Hibiscus Initiatives works with foreign national women, we find very little targeted provision for foreign nationals, let alone immigration detainees. Poor access to telephones and internet means that detainees in prisons find it difficult to contact these groups.

¹⁷ Chapter 55.10 of the Home Office's *Enforcement Instructions and Guidance*.

¹⁸ Rule 21 of the Prison Rules requires a prison governor to report to the Secretary of State for Justice on any, 'prisoner whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment'. This rule does not apply to torture survivors or those with suicidal intentions. Moreover, there is no obligation for the governor to report to immigration enforcement. Chapter 55 of the Home Office's *Enforcement Instructions and Guidance* does not refer to Prison Rule 21.

- I.43** This third sector support can assist immigration detainees in a variety of ways. Befrienders can help detainees cope with the stresses of detention. Hibiscus Initiatives can help with preparing detainees for their removal and reintegration in their country of origin. BID assists detainees with making bail applications and Detention Action often assists detainees in contacting legal representatives. All of these benefits are harder for detainees in prisons to access.

Welfare provision

- I.44** In November 2013, the Home Office published its first detention service order (DSO) on welfare provision in IRCs¹⁹. The order states:

'Part of the role of removal centres... is to support detainees prior to their removal. In addition IRCs should seek to minimise any unnecessary stress factors and to ensure that the transition from detention, to removal and through to re-settlement is as supported as possible, leading to detainees feeling more prepared, more informed and better able to accept the outcome of their application to remain in the country... This welfare DSO additionally seeks to provide detainees with support to return to life in the community.'

The overall objective of setting out minimum requirements for welfare provision in IRCs through this DSO is:

- *Helping detainees to prepare for their removal from the United Kingdom;*
- *Providing information on the benefits of voluntary returns schemes;*
- *Providing information on accessing legal services.*
- *Assisting detainees who are released by signposting them to services and organisations which may be able to offer them support and assistance with any aspect of resettlement into the community*
- *Offering detainees support and guidance to ease their experience of being in detention.'*

- I.45** The order goes on to require centres to ensure welfare services are easily accessible seven days a week for at least five hours a day.

- I.46** While we are critical of some centres for the way in which these services are provided, there is no obligation on NOMS to provide specific welfare services to immigration detainees. Immigration detainees in prisons are expected to rely on their personal officers for welfare support but we find many personal officer schemes are failing. Even where personal officer schemes work well, staff often do not have the specialist knowledge of immigration procedures or detainee needs to effectively support them.

Time out of cell and free movement

- I.47** Detainees in prison spend less time out of their cells than those in IRCs. In general, detainees in IRCs also have far greater free movement. At our inspections of HMP Wandsworth in 2013, where 69 immigration detainees were held, we found prisoners and detainees were out of their cells for about five to six hours a day during the week, and only three to four hours a day at weekends. At HMP Wormwood Scrubs in 2014, the 53 immigration detainees

¹⁹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286865/2013_11_29_DSO_Welfare_Provision_07_2013.pdf

could spend up to six hours out of their cell if they were employed and only three hours if they were unemployed.

- I.48** These figures compare poorly with IRCs. For example, at our 2014 inspection of Campsfield IRC detainees were never locked in their rooms. They could move around the centre until 11pm, after which they were locked onto their units. They could stay outside until it was dark. At Yarl's Wood IRC in 2013, women were not locked in their rooms but were confined to their residential units between 9pm and 9am.
- I.49** Free movement and time out of cell help detainees to access services. In our surveys, only 66% of immigration detainees in prisons said that they could normally shower every day, compared with 91% of those in IRCs. Fewer detainees in prisons than those in IRCs (21% compared with 49%) said they could normally get their stored property.

Education and vocational training

- I.50** Education and vocational training are the only areas where provision is better in prisons than in IRCs. In our surveys, more detainees in prisons than in IRCs (41% compared with 23%) said that they were currently involved in education. The range of education activities is often more restricted than in prisons. It is rare to find any vocational training in IRCs. For example, at Campsfield House in 2014, where we judged activities to be good, detainees could only study ESOL, arts and crafts, and information and communication technology (ICT). At HMP Huntercombe, a foreign national prison, detainees could study mathematics, literacy, ESOL, art, ICT, business enterprise, retail, mentoring, bookkeeping and graphic design. In addition, vocational training was available in catering, PE, horticulture, painting and decorating, tiling and flooring, radio production, environmental studies, industrial cleaning and barbering. These are skills that detainees may be able to use on their return to their country of origin.

Summary of differences

- I.51** The table below summarises the main differences for immigration detainees in IRCs and prisons.

	IRC	Prison
Access to legal advice and representation	30 minutes of publically funded advice. Merits assessment of bail application. Ongoing merits review.	No guarantee of legal advice.
Communication with outside world	Allowed to use mobile phones. Free access to the internet and online email services.	Detainees reliant on PIN phones. No facility to receive incoming calls. Generally can't make calls when locked in cells. No internet access.
Feelings of safety and respect	Lower levels of violence. Few detainees report victimisation.	Higher levels of violence. Many detainees report victimisation.

	Many detainees report that staff treat them with respect.	Fewer detainees than those held in IRCs say staff treat them with respect.
Access to Home Office staff	Guaranteed face-to-face meeting with onsite immigration enforcement staff.	Irregular and infrequent. Dependent on where the detainee is held.
Safeguards for torture survivors and other vulnerable groups.	A GP will report to the decision-maker where a detainee may have suicidal intentions, be a victim of torture, or their detention is injurious to health. The decision maker will automatically review detention in light of the report.	No guaranteed means of alerting the decision maker to special circumstances.
Support from third sector organisations	Variable levels of support from organisations with tailored services for detainees. Depends on the particular IRC.	Tailored support is rarely available.
Welfare provision	Guaranteed access to welfare support, seven days a week.	No targeted welfare provision. Reliant on largely ineffective personal officer schemes.
Time out of cell and free movement	Good time out of cell and free movement.	Poor time out of cell and little free movement.
Education and vocational training	Range of education courses is very limited. Little vocational training.	Wider range of educational courses and vocational training.

Recommendations

Recommendation to the Home Office and the Ministry of Justice

Immigration detainees should only be held in prison in very exceptional circumstances following risk assessment and with the authority of an immigration judge.

NOMS and the Home Office should negotiate with the Legal Aid Agency to provide a telephone advice service to immigration detainees in prisons. The service should provide advice and representation comparable to that offered in IRC detention advice surgeries.

Recommendation to the Home Office

There should be a strict time limit on the length of detention and caseworkers should act with diligence and expedition.

The Home Office should review the risks of transferring a detainee from prison to an IRC each month. The risk assessments should be clearly documented and communicated to the detainee in writing.

The memorandum of understanding between NOMS and the Home Office should be amended to make clear only high-risk detainees should be held in prisons. Low-risk immigration detainees should be released or transferred swiftly to an IRC.

Recommendation to NOMS

Immigration detainees in prisons should be held in a relaxed environment and afforded as much freedom as possible. They should be able to access services and facilities comparable to those available in an IRC. Subject to public protection requirements, detainees in prisons should have access to incoming and outgoing telephone calls and to the internet. Detainees should not have to transfer to another prison to acquire these benefits.

The Prison Rules should be amended to afford immigration detainees the same protections of Rule 35 of the Detention Centre Rules.

Acknowledgements

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