



Alternative approach to scrutiny of immigration removal centres during the COVID-19 pandemic

Statement of purpose

- To fulfil HM Inspectorate of Prisons' statutory duty to report on treatment and conditions effectively, without adding unreasonable burdens to a system currently dealing with unprecedented challenges.
- To promote transparency about the response to COVID-19 in places of detention and ensure that lessons can be learned quickly.
- To use an adapted methodology which provides effective independent scrutiny while adhering at all times to the 'do no harm' principle. This means that HMI Prisons will not put detainees, detention centre staff or its own staff at unreasonable risk and will work in line with national guidance.

Specific concerns about places of detention in light of COVID-19

HM Inspectorate of Prisons' (HMI Prisons) experience and recent guidance issued by bodies such as the United Nations Subcommittee on Prevention of Torture (SPT) and World Health Organization (WHO) indicate that places of detention are unusually high-risk environments during the current outbreak, for detainees, staff and the wider community. Specific concerns include:

- sharing of confined spaces and potential difficulties in maintaining personal hygiene, which heighten the risk of person-to-person transmission
- the negative impact of detention on the physical and mental health of detainees, which may be exacerbated by isolation, withdrawal of visits and lack of activity (see note i)
- the risk of stigmatisation and victimisation of detainees showing symptoms
- staff shortages and deteriorating morale which may affect the centre's ability to care for detainees
- the challenge of providing suitable accommodation for detainees released into the community, making it difficult for them to self-isolate if necessary.

It is also well-established that without external scrutiny, closed institutions can develop their own unique norms and standards, leading in some cases to a deterioration in the treatment of detainees.

Proposed scrutiny approach during this time

We will undertake the following three strands of oversight activity.

I. Maintain a strong strand of policy analysis.

- Examine new legal powers relating to detention introduced as part of the response, and their impact on treatment and conditions.
- Examine how existing legal powers relating to detention are being used during the crisis.
- Monitor whether new places of deprivation of liberty/detention are opened or the functions of places of detention change, and what governance is in place for these establishments.
- Examine the impact of policy responses. For example, how restrictions on association and freedom of movement affect the ethos and stated purpose of detention centres as set out in the Detention Centre Rules (see note ii).

2a. Establish lines of communication to ensure that the following information is received regularly and collated centrally within HMI Prisons. (This is a non-exhaustive list.)

- Daily information from central government (COBRA)
- Daily situation reports from the Home Office and HM Prison and Probation Service (HMPPS) (see note iii)
- Daily establishment-level information from the Home Office and HMPPS
- Daily incident reports
- Information received via correspondence and phone calls to the Home Office and HMPPS
- Information from Independent Monitoring Boards (IMB), including via the IMB Secretariat
- Information from partners, NGOs and other stakeholders
- Information from the media
- Intelligence from detention centre staff
- Intelligence from Twitter and other social media (see note iv).

2b. Organise and analyse the information gathered to assess risks and determine priorities (see note v).

- Identify specific problems and concerns at individual establishments such as:
 - acute staffing shortfalls
 - clusters of COVID-19 infection
 - spikes or increases in indicators such as self-harm, use of force and concerted indiscipline
 - emerging concerns about local capability and proportionality of response.
- Identify emerging themes across establishments such as:
 - shortages of equipment
 - lack of escort staff to facilitate transfer to hospital.
- Use the information to make risk-based recommendations for further monitoring and/or site visits. These recommendations will be judgement-based rather than algorithmic, as the quality, quantity and consistency of the available information is likely to be variable.

3. A more active scrutiny approach informed by the analysis above. This could involve:

- informing the Home Office of our concerns in writing and asking for a response
- undertaking short scrutiny visits based on risk information gathered.

Approach to short scrutiny visits

The rest of this paper elaborates on our short scrutiny visits methodology, which is tailored to the current circumstances. It is a specific methodology developed as a response to the COVID-19 crisis (see note vi). Such visits will have the following main characteristics.

- A one-day visit.
- The Home Office will be notified of the visit(s) as soon as possible. It will decide when to communicate with establishments.
- Close communication with a nominated member of staff in each establishment, who should be known to HMI Prisons by the Thursday preceding each visit.
- Continuous assessment before the HMI Prisons' team enters the establishment, with particular account taken of factors such as sudden critical staff shortages and increase in virus cases.
- Examination of key risk areas only (see below).
- We will look at some broad indicators around detention. If we have safeguarding concerns, we may exceptionally look at an individual case in more detail.
- Concerns will be described as part of a constructive commentary that takes account of context. Short scrutiny visits are not inspections.
- Account will be taken of any health risks and national guidance, and there will be adherence to the 'do no harm' principle.
- Two or three inspectors only, including one health inspector.

What will HMI Prisons look at?

We will focus on a limited number of key areas, all of which are based on our existing human rights-based Expectations (see note vii). We will aim to capture the institutional response to the crisis and describe the day-to-day experience of detainees and staff. Inspectors will use the following checklist.

Safety

Leadership and management

- What are the pressures on the centre's population and what is being done to address them?
- Are restrictive measures proportionate?
- Is the centre being managed in line with guidance? Is staff movement between units minimised to prevent the potential spread of the virus?
- Are entry and exit procedures for staff clear, proportionate and always followed?
- Are detainees, staff and managers socially distancing?

- What do staff think about the proportionality and adequacy of the centre's response to the crisis?
- Is communication with detainees and staff clear and effective? Are detainees and staff fully informed about the actions the centre is taking and do they understand their importance?

Arrival and early days

- How do detainees experience arrival and early days?
- Are new detainees given clear and comprehensive information about COVID-19 and the regime in place at the centre?
- Are normal reception processes still implemented, including a safety interview in private?
- What restrictions are placed on detainees following arrival and are they proportionate?

Support for the most vulnerable detainees, including those at risk of self-harm

- What is done to monitor and address psychological deterioration of detainees, including those being managed under the adults at risk policy, those with mental health problems and those at risk of self-harm?
- Are concerns under Rule 35 raised and responded to in a timely manner, and are arrangements for safeguarding adults who may be at risk in detention in place?
- Are detainees being removed or released if removal is not possible?
- Do detainees have access to representation and to bail?
- Are those in isolation given regular and meaningful human contact?
- Has the level of self-harm changed in recent weeks and what has been done to respond to it? Are ACDT processes still being delivered?

Respect

Living conditions

- Can detainees maintain personal hygiene? Do all detainees have daily access to showers, hot water, soap and cell cleaning materials?
- Are communal areas (e.g. kitchens, showers, work areas, exercise equipment) regularly cleaned and disinfected to a good standard?

Health care

- Do detainees have access to safe and effective health, social care and dental services?
- Do detainees have access to safe and effective medicines?

Activity

- Do detainees have daily access to the open air?
- Do detainees have an adequate range of activity?
- Where possible, are some detainees continuing to be employed?

Preparation for removal and release

Family contact

- Can detainees maintain contact with their family and friends and other significant people, including legal advisors?
- Are restrictions on visits compensated for by increased access to alternative means of communication (e.g. telephone, email, video-calling, extra free letter writing materials)?

Leaving the centre

- Is discharge managed safely and effectively?
- Where needed, is there prompt provision of accommodation for detainees being released?
- Has anybody been released homeless recently?

Expectations relevant to the checklist

- Processes are in place to identify adults who may be at risk of harm in detention. (Adapted 8)
- Detention of people who may be at particular risk of harm is only maintained in exceptional circumstances. (Adapted 9)
- Detainees at risk of self-harm or suicide receive personal and consistent care and support to address their individual needs and have unhindered access to help. (13)
- Detainees are held in a safe environment where security is proportionate. (Adapted 16)
- Casework is progressed promptly and reviewed effectively to reduce the potential harmful impact of ongoing detention. (22)
- Detainees have effective access to independent legal representation and are easily able to make applications for release. (Adapted 23 and 24)
- Detainees are treated with humanity and with respect for their human dignity at all times. Relationships between detainees and staff are positive and courteous. (26)
- Detainees live in a clean, decent environment which is in a good state of repair and is fit for purpose. (28)
- Patients are cared for by services that accurately assess and meet their health, social care and substance use needs and receive treatment from competent staff in an environment that promotes dignity and maintains privacy. (Adapted 54 and 55)
- Detainees have regular and equitable access to facilities and activities that meet their needs, and any restrictions are proportionate and justified by clear evidence of risk. (Adapted 65)
- Detainees can maintain access to the outside world, including good contact with their families. The impact of separation on both children and their parents is recognised and addressed (Adapted 72 and 73)
- Detainees are given all necessary practical support ready for their release, transfer, or removal. In the case of their release, this should include prompt provision of suitable accommodation. (Adapted 76 and 77)

Visit methods

There will be no local data request to minimise burdens. Instead inspectors will use the following methods.

- Observations. This could be through walking around centres.
- Speaking to detainees. This will be done while adhering to social distancing guidelines and in the following ways.
 - On units if detainees are unlocked.
 - If they are locked in cells/rooms, inspectors will unlock doors where it is safe to do so and after staff have been consulted. The detainee will be advised to stand at the back of the room.
 - In work or education areas.
 - At mealtimes when detainees are collecting their food.
 - By telephoning detainees.
 - Isolating detainees will normally only be spoken to by phone. If that is not possible and inspectors consider it important to speak to an isolating individual, this will be done

only with HMI Prisons' own personal protective equipment (PPE) and normally by the HMI Prisons health inspector only.

- Speaking to staff. This will also be done while walking around establishments and while maintaining suitable distance. In addition, a link to an online staff survey will be issued before every visit.
- Review of detainee's case notes after leaving the establishment in individual cases of concern.
- Maintaining a direct link with independent monitoring boards (IMBs), which may be actively gathering information, for example, through daily establishment reports. This information will feed into our visits and we will provide them with our reports. We will also maintain contact with the Association of Visitors to Immigration Detainees.

Health and safety

A clear and defensible position has been established for undertaking visits. Risks and mitigations have been extensively documented in HMI Prisons' new COVID-19 health and safety guidance. This draws substantially on HMPPS guidance, but also identifies additional measures that are necessary because of HMI Prisons' work and methodology. Inspectors will take account of guidance issued by the Home Office and individual centres. A separate specific risk assessment has been developed and published.

HMI Prisons may also identify concerns that promote more effective and safer practices in immigration removal centres (IRCs), thereby supporting public health.

Thematic reporting

IRC visits will form one part of a programme of short scrutiny visits organised by establishment and sector. HMI Prisons will report back to individual establishments and the Home Office after our visits. We will not publish individual reports but a summary report on the IRCs we visit, which will highlight key themes. This approach will allow HMI Prisons to:

- deliver a relevant, current commentary, and inform Home Office decision-making
- avoid undermining legitimate operational activity during a time of crisis
- fulfil our commitment to transparency and preventive inspection by publishing findings and ensuring relevant lessons are identified.

The reports will include:

- a short narrative (approximately 1,500 words) on the experiences of detainees and the way that centres are managing pressures and risks
- concerns that are clearly articulated, but reporting that is credible and constructive, and tells the story of what is happening
- no overarching judgements
- no recommendations.

When we have completed all the planned visits and reports, we may produce a longer report bringing together the main findings and learning points from previous reports.

Conclusion and implementation

HMI Prisons is implementing a layered approach to scrutiny, entailing data collection and analysis, and remote oversight in the first instance. This will run parallel to short scrutiny visits organised by type of establishment and sector, with reports encompassing three visits. One week of visits will be

dedicated to IRCs. The aim is to fulfil our statutory duty to report on treatment and conditions, without adding unreasonable burden. HMI Prisons aims to identify concerns that promote more effective and safer practices in places of detention.

In addition to IRCs, the other categories of establishment to be visited are:

- youth custody
- male adult local prisons
- training prisons (not including prisons holding those convicted of sexual offences)
- prisons holding those convicted of sexual offences
- prisons holding women
- long-term and high security prisons
- open prisons.

The version of this methodology that applies to prisons is available on the HMI Prisons website at <https://www.justiceinspectors.gov.uk/hmiprisons/2020/03/covid-19-update/>. A successful pilot visit was undertaken on 14 April 2020 and learning has been incorporated into our approach. The first set of short scrutiny visits is on 21 April 2020. IRCs will be visited in the coming weeks. The approach set out in this document will be reviewed and amended in line with changing circumstances.

Notes

- i. In his review into the welfare of vulnerable people in detention, Stephen Shaw said, ‘No issue caused me more concern during the course of this review than mental health. That concern embraces both the detection and treatment of mental illness, and the impact that detention itself may have on mental wellbeing.’ *Review into the Welfare in Detention of Vulnerable Persons*, January 2016.
- ii. Rule 3. (i) Detention Centre Rules state:

‘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.’
- iii. HMPPS reports provide information on Morton Hall.
- iv. The following suggestions by the SPT may be incorporated when the initial level of information gathering work is in place:
 - establishing HMI Prisons’ ‘hotlines’ within places of detention and secure email and postal facilities
 - distributing more information on the work of HMI Prisons and ensuring there are channels allowing prompt and confidential communication
 - electronic communication with detainees.
- v. There are significant limitations to what can be learned from data alone. During inspections, we view data as a starting point and our final conclusions often diverge from the direction in which it was initially taking us. The quality of information also depends on careful recording; in the current situation we may be able to rely less on full and thorough records given that staff will have other urgent priorities.
- vi. A number of National Preventive Mechanisms (NPMs) in other countries are continuing to undertake visits and there is support from bodies such as the SPT and Committee for the Prevention of Torture (CPT). At times of crisis and operational pressure, the risks of both conscious and unintentional mistreatment increase, and external perspective and oversight of closed institutions can be even more important than usual. The SPT guidance stresses these points and states that NPMs, ‘should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken.’ The CPT states that, ‘Monitoring by independent bodies, including National Preventive Mechanisms... remains an essential safeguard... States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine.’
- vii. For information, relevant human rights standards (specific to or closely related to infectious disease) are set out below.

Standard Minimum Rules

Rule 30

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period.

Rule 27

1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.
2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Rule 33

The physician shall report to the prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

European Prisons Rules

Rule 42.2

The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

Rule 42.3

When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

- (f) isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment.

Rule 43.2

The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

Rule 43.3

The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

Rule 46.1

Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

Rule 46.2

Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.