

Submission to the Joint Committee on Human Rights inquiry on Immigration Detention

by Her Majesty's Chief Inspector of Prisons

Introduction

1. We welcome the opportunity to submit a response to the Joint Committee on Human Rights inquiry on Immigration Detention.
2. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a duty to report on the conditions for and treatment of those in prisons, young offender institutions and immigration detention facilities. HMI Prisons also inspects court, police (jointly with HM Inspectorate of Constabulary and Fire & Rescue Services) and customs custody, and secure training centres (with Ofsted).
3. HMI Prisons coordinates, and is a member of, the UK's National Preventive Mechanism (NPM), the body established to comply with the UK's obligations from the UN Optional Protocol to the Convention Against Torture. The NPM's focus is to prevent torture and ill-treatment in places of detention.
4. The following response is based on inspection evidence from inspections of immigration removal centres (IRCs) and prisons; HMI Prisons' 2017–18 annual report; HMI Prisons' findings paper 'People in prison: immigration detainees', published in 2015; and HMI Prisons' thematic report 'The effectiveness and impact of immigration detention casework', published in 2012.
5. Our response provides information which we hope may assist the Committee in examining areas in the terms of reference where they fall within the remit of HMI Prisons. The submission begins by addressing whether current legal and policy frameworks are sufficient in preventing people from being detained wrongfully. We have then grouped areas in the terms of reference and addressed each as follows: areas two and three (whether the initial decision to detain an individual should be made independently, such as by requiring prior judicial approval; and the operation of arrangements for bail), areas four and five (whether immigration detention should be time-limited; and how far current policies ensure that people are only deprived of their liberty if it is necessary, rather than for administrative convenience) and areas seven and eight (detainees' access to legal advice and their ability to engage with the legal processes to challenge their detention; and detainees' access to health services). Finally, we address area nine (conditions in detention).

Current legal and policy frameworks which prevent wrongful detention

6. Inspectors regularly encounter people in detention who appear to have a high degree of vulnerability, including those who state that they are victims of torture or are experiencing mental health difficulties. The Home Office's adults at risk policy and rule 35 procedures are

often not sufficiently effective in preventing such people from being detained or guaranteeing their speedy release.

7. During our 2017 inspection of Harmondsworth IRC, we found that the Home Office's adults at risk policy was not working effectively. Nearly a third of the population was considered by the Home Office to be vulnerable under its at risk in detention policy. Home Office and Mitie Care and Custody records of adults at risk did not align, and not all relevant staff knew which detainees were at risk. Troublingly, staff were not aware of a detainee on the highest risk level until we raised his case with them.¹
8. In our 2017–2018 annual report we stated that 'the quality of rule 35 reports had improved, but too many still failed to provide sufficient information and judgements to decision-makers. At Yarl's Wood, about 30% of reports led to release, but at Harmondsworth it was only 10%. Detainees at both centres had their detention maintained despite professional evidence of torture.'² The Home Office often fail to explain the exceptional circumstances for detention that we expect to see in cases where there is professional evidence of torture. At our 2018 inspection of Tinsley House IRC, rule 35 reports we looked at were vague, lacked detail and did not address possible symptoms of post-traumatic stress disorder.³

Decision to detain and arrangements for bail

9. HMI Prisons does not routinely examine the initial decision to detain. However, in considering the impact of detention, we examine cases where individuals may be unfit for detention and the reasons for ongoing detention. We have found decisions to maintain the detention of vulnerable people where detention reviews failed to demonstrate a balanced judgement. For example, at our 2017 Harmondsworth inspection, a man who had been detained for over a year was registered blind and relied on staff and his peers to move around the centre but the detention review stated that he was completely self-caring and able to manage, and detention was maintained.⁴ One of the most egregious cases we have found was at our 2013 Harmondsworth IRC inspection, when an 84-year-old man suffering from dementia was held in detention instead of being provided with the social care he needed. This man later died in hospital while handcuffed.⁵
10. Inspections have also shown that Home Office staff do not always advise detainees of their bail rights during IRC induction interviews.⁶ This leaves some detainees believing that they cannot apply for bail or requiring help to navigate the process.⁷ Further, there are cases where bail summaries are not served by the required deadline and some summaries do not provide a balanced consideration of the factors for and against detention.⁸

Detention for administrative reasons and time limits

11. HMI Prisons regularly finds individuals held in detention for extended periods of time. At Harmondsworth and Brook House we found 23 men in each centre held for more than a

¹ Paragraph S6, HMI Prisons, 'Report on an unannounced inspection of Harmondsworth IRC' 2017.

² Page 74, HMI Prisons, 'Annual Report 2017–18' 2018.

³ Paragraph S8, HMI Prisons, 'Report on an unannounced inspection of Tinsley House IRC' 2018.

⁴ Paragraph I.67, HMI Prisons, 'Report on an unannounced inspection of Harmondsworth IRC' 2017.

⁵ Paragraph I.3, HMI Prisons, 'Report on unannounced inspection of Harmondsworth IRC' 2013.

⁶ Paragraph I.64, HMI Prisons, 'Report on an unannounced inspection of Morton Hall IRC' and Paragraph I.76 'Report on an unannounced inspection of Brook House IRC' 2016.

⁷ Paragraph 4.9, HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, 'The effectiveness and impact of immigration detention casework: a joint thematic review' 2012. .

⁸ Paragraph I.68, HMI Prisons, 'Report on an unannounced inspection of Yarl's Wood IRC' 2017.

year.⁹ At Harmondsworth, the longest detention was for more than four and half years, and at Yarl's Wood, it was three years; these are unacceptably long times to hold people in administrative detention.¹⁰

12. Inspections show that the Home Office inconsistently manage and progress cases where people have been detained for extended periods. In cases of prolonged detention, impasses may develop; the Home Office cannot remove without the detainee's cooperation and the detainee may refuse to comply. Rather than using its powers to prosecute detainees who they consider are not complying and thereby placing the case before an independent judge, the Home Office usually maintains administrative detention over a prolonged period.¹¹ We also find that the Home Office regularly ignores the advice of its own case progression panel. For example, in Harmondsworth in 2017, the panel had recommended the release of five detainees in the 12 cases we sampled, sometimes more than once, yet detention was maintained every time.¹²
13. During inspections, HMI Prisons regularly encounters individuals whose mental well-being is affected by prolonged and open-ended detention. A clear time limit on detention is needed but it is not for HMI Prisons to specify length. We will continue to comment on the experience of detainees regardless of whatever limits may be in place.

Access to legal advice and health services

14. Legal Aid Agency-funded duty advice surgeries are available to detainees in all English IRCs, although access can still be problematic. At Brook House in 2016, most detainees had to wait nine days to attend one, which was too long given that many were shortly expecting to be removed.¹³ Even when detainees are able to attend a surgery, they are only guaranteed to receive brief advice rather than representation. In our survey of detainees at Brook House, a third had no solicitor and only a third of those who did had received a legal visit.¹⁴ Immigration detainees in prisons have much poorer access to publicly funded legal advice and representation than those held in IRCs. It is therefore harder for detainees in prisons to challenge their detention than those in IRCs.¹⁵
15. Detainees generally have reasonably good access to health services but these services often do not meet the needs of the many detainees with low-level mental health problems. A notable exception was Yarl's Wood, which had developed an excellent psychological well-being service.¹⁶

Conditions in detention

16. Conditions vary greatly between centres. Colnbrook, Brook House, Morton Hall and parts of Harmondsworth look and feel like prisons and not enough has been done to adapt them for a detainee population. In our interviews with detainees, we are often told that prison-like conditions are one of their main concerns. Living conditions at Harmondsworth were well

⁹ Paragraph 1.65, HMI Prisons, 'Report on an unannounced inspection of Harmondsworth IRC' 2017 and paragraph S35, HMI Prisons, 'Report on unannounced inspection of Brook House IRC' 2017.

¹⁰ Paragraph S12, HMI Prisons, 'Report on an unannounced inspection of Harmondsworth IRC' 2017 and Paragraph S12, HMI Prisons 'Report on an unannounced inspection of Yarl's Wood IRC' 2017.

¹¹ Paragraph 1.75, 'The effectiveness and impact of immigration detention casework: a joint thematic review' HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration' 2012.

¹² Paragraph 1.68, HMI Prisons, 'Report on an unannounced inspection of Harmondsworth IRC' 2017.

¹³ Paragraph 1.60, HMI Prisons 'Report on an unannounced inspection of Brook House IRC' 2017.

¹⁴ Paragraph S11, HMI Prisons, 'Report on unannounced inspection of Brook House IRC' 2017.

¹⁵ Paragraph 1.17, HMI Prisons, 'People in prison: Immigration detainees' 2015.

¹⁶ Paragraph 2.78, HMI Prisons, 'Report on an unannounced inspection of Yarl's Wood IRC' 2017.

below an acceptable standard during our two most recent inspections in 2015 and 2017.¹⁷ At Campsfield, Tinsley House, Yarl's Wood and Dungavel House, the atmosphere was more relaxed and detainees enjoyed reasonably good free movement. However, much of the Dungavel House accommodation required refurbishment.¹⁸

Conclusion

17. This submission has provided an overview of our inspection findings of IRCs where they are relevant to the terms of reference of the inquiry. I hope that you find this information useful and should you require anything further, please do not hesitate to contact me.

Peter Clarke CVO OBE QPM
HM Chief Inspector of Prisons

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¹⁷ Paragraph 2.1 and 2.4, 'Report on an unannounced inspection Harmondsworth IRC' 2017.

¹⁸ Paragraph 2.3, 'Report on an unannounced inspection of Dungavel House IRC' 2015