



Short thematic review

# **The experience of immigration detainees in prisons**

by HM Chief Inspector of Prisons

September 2022

# Contents

Introduction.....	3
Key concerns.....	5
Section 1 Background.....	7
Section 2 Key findings .....	10
Appendix I Methodology .....	28
Appendix II Glossary .....	30
Appendix III Progress against recommendations .....	31
Appendix IV References .....	33

## Introduction

The number of detainees held in prisons under immigration powers rose sharply during the COVID-19 pandemic and immigration detainees continue to be held in most prisons in the country, although they comprise a very small proportion of each prison's population. However, they face distinct challenges when compared with prisoners serving criminal sentences and immigration detainees held in immigration removal centres (IRCs).

This short thematic report aims to increase understanding of their experiences. We visited eight prisons and interviewed 45 immigration detainees and 33 key staff in the prisons where they were held during March and April 2022. This included on-site Home Office staff, and prison managers or other staff whose roles involved supporting immigration detainees or foreign national prisoners. We also examined a sample of case records for 11 of the detainees we spoke to. We aimed to assess:

- What immigration detainees thought about their experiences in prison, including whether they felt safe and respected, and how helpful they found any available support.
- How promptly immigration detainees' cases were progressed during the time they were in custody.
- How effectively vulnerability was identified among immigration detainees, and how well safeguarding processes worked.
- The robustness of the arrangements for immigration detainees in prison to access due process, including contact with the Home Office and legal representation.
- The extent and nature of the support services that are available to help detainees held in prisons.

Our principal finding is that immigration detainees held in prisons were substantially disadvantaged in terms of legal safeguards and welfare when compared with those in IRCs, and that the impact of detention on their well-being was considerable.

The progression of detainees' immigration cases was not adequate in too many of the cases we reviewed, which meant that people were subject to avoidable periods of often lengthy immigration detention. This, combined with a lack of meaningful information from the Home Office regarding their case progression, had led to frustration and feelings of helplessness in detainees, who told us they were often confused about what was happening. Slow case progression within the immigration system in general, and the restrictions on face-to-face contact during the pandemic, had compounded this problem.

This lack of communication was often exacerbated by language barriers. In many prisons we visited, telephone interpretation services were not routinely used when updating prisoners on their cases, and immigration papers were

routinely served in English. Many detainees had to ask other prisoners to translate and explain information, which could lead to further confusion.

Obtaining adequate legal advice was a problem. Most establishments could provide a list of legal representatives, but many detainees said they had difficulties in contacting them and had struggled to find a representative who would take on their case. Detainees' access to new policy initiatives – such as an additional allowance that could be used to buy PIN phone credit to contact legal representatives and a free 30-minute appointment with a solicitor – was patchy. Not all prisons were aware of these entitlements, and some detainees had not received them at the time of our fieldwork.

There was an overall lack of understanding and use of important safeguarding mechanisms within prisons. We spoke to vulnerable prisoners who had been detained for long periods despite being classified by the Home Office as adults at risk in detention, and staff understanding of what the adults at risk policy meant for detainees was generally poor. The Home Office had accepted that several of the detainees in our sample were victims of torture or trafficking, but detainees' access to consequent referral and support services was weaker than in IRCs.

There was wide variation in the knowledge of staff and support available across the establishments we visited. Immigration detainees' experiences depended too much on where they were held.

While immigration detainees make up a small proportion of foreign national prisoners and the prison population overall, they have distinct needs and entitlements. This review suggests that, in many cases, being held in a prison means that detainees have poorer access to fundamental legal rights and support than those held in IRCs. This disparity has day-to-day consequences for detainees, including feelings of confusion and hopelessness and a lack of access to much needed support. If detainees are unable to fairly access the legal process and their vulnerabilities are not monitored and addressed effectively, there is an increased risk that they will come to harm while in custody and that the integrity of the decision-making in their immigration cases will be undermined.

Finally, the prolonged detention of people under immigration powers, especially when it is because of inefficiencies in Home Office case-working procedures, is inexcusable given that so many prisons are already overcrowded. Prison leaders face substantial difficulties in managing and supporting their core populations, particularly in the inner-city local establishments where many immigration detainees are held and resources are particularly scarce.

We set out our key findings and provide case studies and quotations from many of the detainees we interviewed, identifying nine key concerns to be addressed by leaders in all agencies.

## Key concerns

1. **Many immigration detainees were held in prisons for long periods despite minimal progress in their cases.** There was little prospect of removal within a reasonable period for many detainees and some continued to be held in prisons after their release was agreed in principle because of a lack of bail accommodation. Several were also held despite the Home Office's own Case Progression Panels repeatedly recommending release. (To the Home Office)
2. **Detainees routinely encountered difficulties in obtaining legal representation for their immigration cases.** Some had difficulties in adding solicitors' phone numbers to their list of approved contacts and very few had been informed that they were now entitled to half an hour of free legal advice in line with the provision in immigration removal centres. Many of the prison and Home Office staff we spoke to were not themselves aware of this entitlement. (To the Home Office and HMPPS)
3. **Serving prisoners were usually given very little notice that they would be subject to indefinite immigration detention, causing significant distress among many.** Many prisoners were served with detention paperwork just before or on their planned release date. (To the Home Office)
4. **Neither Home Office nor prison staff understood or applied the Adults at Risk in Detention policy that was intended to protect the most vulnerable detainees.** Communication between the Home Office and prisons was often poor, and information-sharing was weak. Prisons were generally unaware of which immigration detainees were classed by the Home Office as adults at risk in detention, nor were they informed of important changes in detainees' cases. This lack of understanding and application of the policy directly affected detainees' prospects of release and access to crucial support services. (To the Home Office and HMPPS)
5. **The lack of an equivalent to Detention Centre Rule 35 meant that vulnerable detainees, including victims of torture, were not routinely being identified and the Home Office was not considering their release in the same way as they were obliged to for those held in IRCs.** (To the Home Office)
6. **Detainees found it difficult to contact Home Office staff based in prisons.** Many detainees reported difficulties in arranging face-to-face contact with Home Office staff, and those who were able to arrange it told us that they struggled to get timely and meaningful updates on their case. (To the Home Office)

7. **Professional interpretation was often not used when prison and Home Office staff communicated with immigration detainees.** Detainees reported that this was particularly problematic when it came to discussing complex legal matters, the progress in their cases, and legal documents. (To HMPPS and the Home Office)
8. **There was a poor understanding of the National Referral Mechanism (NRM) among prison and Home Office staff.** Several detainees we spoke to had experiences of trafficking and been referred to the NRM, but they remained in prison without access to any specialist support. (To the Home Office)
9. **The support available to immigration detainees in prison from non-governmental organisations (NGOs) and outside organisations was variable at best.** While some establishments had good links with NGOs and community organisations who could provide tailored support to immigration detainees and foreign national prisoners, there was little support available in others, and detainees were not provided with any information about how to contact organisations. (To HMPPS and the Home Office)

## Section 1 Background

- 1.1 On 31 March 2022, 621 people were held in UK prisons under immigration powers. Immigration detainees are distinct from prisoners in that they held for administrative, rather than judicial reasons – they are not serving criminal sentences but are held in prison while the Home Office attempts to remove them from the UK. The detainees held in prisons in the UK are former offenders who have completed their criminal sentence, and whom the Home Office has decided to hold in prison rather than an immigration removal centre (IRC). While HMI Prisons only inspects prisons in England and Wales, our immigration mandate covers the whole of the UK, and the data cited in this report refers to all four UK countries.
- 1.2 The overall number of people held in immigration detention dropped during the COVID-19 pandemic, but the number of detainees held in prisons increased. Following the easing of COVID-19 restrictions across the prison estate, the number of immigration detainees declined slightly, but remained high and far exceeded the 300–400 spaces that the prison service usually makes available to the Home Office for accommodating immigration detainees.
- 1.3 Most immigration detainees are usually held in IRCs, which specialise in managing this population. The Home Office’s Detainee Population Management Unit (DEPMU) decides whether a detainee will be held in prison or an IRC, based on a risk assessment process and the spaces available in IRCs. Individuals who are considered to pose a risk – for example due to their index offence (see glossary) or history of offending – are more likely to remain in prison under immigration powers. According to Home Office policy, this decision is made with reference to dynamic elements, such as an individual’s recent behaviour. However, in the cases we reviewed, decisions were predominantly based on static risk factors such as historical assessments and the nature of the offence or offences committed. Some detainees are never transferred to an IRC and spend long periods in prisons, and some are removed from the UK or bailed into the community directly from prison. During the COVID-19 pandemic, the number of transfers between prisons and IRCs was drastically reduced due to public health restrictions, contributing in part to the rising numbers of detainees held in prisons.
- 1.4 In our inspections of men’s prisons in England and Wales, we find immigration detainees in almost every establishment. Local prisons – particularly in London – often hold the highest numbers. We regularly find detainees being held in prison for very long periods. In March 2022, published Home Office figures showed that there were 31 people who had been held in prison under immigration powers for over a year. While there is currently no legal limit on the amount of time someone can be held in immigration detention, Home Office guidance states that detention must be used for the shortest period necessary. Judicial guidance from the First Tier Tribunal for Immigration and Asylum on

periods of detention considers three months to be a substantial length of time, and six months to be a long period – after which imperative conditions of public safety may be necessary to justify detention.

- 1.5 The Home Office reviews detention monthly, and detainees – including those held in prisons – must be given an update each month on the reasons for their continued detention. Since 2017, the Home Office has also run ‘Case Progression Panels’ (CPPs) during which detainees’ cases are reviewed after they have been held for a period of three months to establish the appropriateness of continued detention. Case Progression Panels include at least one independent panel member who does not work for the Home Office. They can only make recommendations to the Home Office and have no power to compel release.
- 1.6 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 detainees’ experiences of custody. It is HM Prison and Probation Service (HMPPS) policy to regard immigration detainees as unconvicted prisoners, but in practice not all detainees are treated as such. Many are held in prisons which do not normally hold unconvicted prisoners and they are subject to the same rules and regime as convicted prisoners. Detainees held in this type of setting should be given the choice to transfer to a local prison or remain in their current establishment, but the reduced level of transfers during the COVID-19 pandemic meant that this option was not available to many detainees held at the time of this thematic review.
- 1.7 Beyond the fundamental variations in regime in IRCs and prisons, there are other significant differences in the treatment of detainees held in prisons and IRCs. Detainees held in IRCs are given mobile phones and permitted access to the internet, which is not the case in prisons. Safeguarding measures such as Detention Centre Rule 35 – which ensures that vulnerable detainees are brought to the Home Office’s attention and that the appropriateness of detention is reviewed – do not apply in the prison estate. While the Home Office’s Adults at Risk in Immigration Detention policy applies to those held in prisons, the Independent Chief Inspector of Borders and Immigration (ICIBI 2020) noted they were disadvantaged due to a widespread lack of understanding and use of the policy in prisons. The ICIBI also found a dearth of legal advice for immigration detainees in prisons compared with those detained in IRCs.
- 1.8 A 2015 paper from HM Inspectorate of Prisons, based on a review of inspection reports, identified the key areas of disparity as: access to legal advice, communication with the outside world, feelings of safety and respect, access to Home Office staff, safeguarding and support services, and access to activities and time out of cell. This report made seven recommendations, progress against which is assessed in Appendix III.

- 1.9 A 2014 report by Bail for Immigration Detainees noted similar differences in the conditions and services available to detainees held in prisons and IRCs. However, further discussion of this population and the issues they face in custody has been limited.
- 1.10 Following the Shaw Review's recommendation that the Home Office undertake a comparative analysis of the conditions for immigration detainees in IRCs and prisons, the Home Office has been working on a 'parity project' since 2019 which seeks to address the gaps in policy and operational practice. This work has identified 12 key areas of disparity, including improving communication between prisons and the Home Office, improving the provision of information to immigration detainees held in prisons, and clarifying the status of these detainees so that they can access a regime and entitlements akin to detainees held in IRCs.
- 1.11 Following delays caused by the COVID-19 pandemic, a policy framework was being developed. Some policy instructions have been issued to prisons as a result, including on access to legal aid and a special weekly payment of £5 for detainees held in prisons.

## Section 2 Key findings

### Lengthy detention despite little prospect of removal

- 2.1 If there is no prospect of removal within a reasonable period, detention ceases to be lawful. The length of detention varied widely among the interviewees we spoke to. Twelve people had been held for a month or less and 23 had been held for between one and six months. However, we were concerned to find that seven people had been held for between six months and a year, and two had been held for over a year. The longest detention under immigration powers we found was 33 months at the time we interviewed the detainee, which was an unacceptable length of time to hold anyone in administrative detention.
- 2.2 These proportions are roughly in line with published Home Office data which provides a breakdown of the length of detention for all immigration detainees in prisons. In March 2022 approximately 35% of detainees had been held for under a month, 50% for between one and six months, 10% for six months to a year, and 5% for over a year.
- 2.3 Home Office policy allows detention to be maintained where removal is possible within a reasonable period and there is a lack of suitable bail accommodation. While a detainee's behaviour in custody may influence whether they are held in a prison or an IRC, it should not be factored into decisions to prolong detention itself. Nor should people be detained when there are significant barriers to them being removed from the UK, such as a lack of travel documentation or outstanding immigration claims. Despite this, detainees in our sample were often held for long periods where there was little prospect of removal. In some of these cases, minimal progress had been made and the Home Office's own independent case progression panel had recommended that the detainees be released.

#### Case study 1: delays in obtaining emergency travel documentation

Mr A had previously been detained for a four-month period in 2020, during which the Home Office was unable to make any progress in securing an emergency travel document to return him to his home country. He was returned to prison following further offending and detained once again in November 2021 when the Home Office resumed the attempt to remove him. However, the Home Office was not in a position to contact the relevant embassy to obtain travel documentation until February 2022. Mr A had met with Home Office staff in prison and was frustrated that they were unable to provide any meaningful update: 'Whatever question I put to [the member of Home Office staff], he says, "I cannot answer that." I don't get anywhere with them.' His embassy was eventually contacted in March 2022. At this stage Mr A had been detained in prison for over five months, not counting his previous detention. A case progression panel had determined that his

detention remained lawful, but at the time of our case review no material progress had been made.

### **Case study 2: lack of suitable bail accommodation**

Mr B had first been told that the Home Office intended to remove him from the UK in April 2021 and was formally detained when his custodial sentence ended in February 2022. At the point of his planned release, the Home Office had not finalised the legal processes required to remove him, which meant that removal was unlikely to happen within a reasonable amount of time. He had been detained for immigration reasons just over two months when we met him. However, there were significant barriers to removal in his case, and in March 2022 the Home Office accepted that removal within a reasonable period was not a realistic prospect and that work should begin to identify a suitable release address. No suitable accommodation was found and he remained in detention. Mr B was also assessed as being suitable for transfer to an IRC but was not transferred for reasons that were not specified in Home Office records.

### **Case study 3: severe mental illness and little prospect of removal**

In a small number of cases, immigration detainees were held in prisons for prolonged periods of time, despite experiencing significant mental health problems which could have been exacerbated by ongoing detention.

One detainee we spoke to, Mr C had lived in the UK for most of his life and had previously been granted asylum, which had been withdrawn due to his offending. He had severe mental health problems and had at one point been classed as a level 3 adult at risk in detention; he was currently classed as level 2 (see Glossary). When we spoke to him in 2022, Mr C was being detained under immigration powers for the third time – previous attempts to remove him from the UK had not been successful.

Mr C had twice been issued with removal directions, which had been cancelled on both occasions. He was detained throughout the COVID-19 pandemic due to his previous criminal activity, despite there being no prospect of removal within a reasonable period as his home country was not allowing returns at this time. His prison records state that throughout this time he had significant mental health difficulties and displayed challenging behaviour. While in custody, Mr C was sectioned under the Mental Health Act and spent time in a secure hospital, after which he was returned to prison.

Since mid-2021, an independent Case Progression Panel had consistently recommended Mr C's release due to a lack of progress in his case and the political situation in his home country preventing returns, but at the time we spoke to him, Mr C had been detained for almost three years. Moreover, we could not see evidence of meaningful monitoring which would have allowed the Home Office to assess the impact of ongoing detention on the health of a detainee with significant mental health problems.

Following the completion of this review, the Home Office informed us that a suitable release address had been identified for Mr C and that he was due to be released with a care plan in place.

- 2.4 Home Office staff acknowledged that case progression often took a long time and that this was frustrating for detainees, but pointed to a range of structural problems with the system, including delays in case working and delays in the wider criminal justice system. Many prisoners spent long periods on remand meaning that once they were sentenced, the Home Office had very little time to begin the removal process before a prisoner had completed their sentence.
- 2.5 Some prison staff spoke of their exasperation with the detention process. In many establishments, operational staff bore the brunt of detainees' frustration and queries about their immigration cases, which they were unable to answer. While many equality and diversity managers and foreign national offender leads in prisons told us that they got along with the Home Office staff working in their establishments, staff from every prison we visited cited the frustration created by long delays as one of the main issues facing immigration detainees.

### **Poor communication and uncertainty**

- 2.6 The inability to easily communicate with and receive meaningful updates from the Home Office was the main concern raised by detainees. Decisions about detention and immigration cases are not made by the Home Office staff working in prisons, but by case workers based in units around the country. The role of Home Office staff working in prisons is to assist communication between these decision-makers and detainees, providing detainees with monthly updates and answering queries about their cases. Some staff based in prisons can perform additional duties such as conducting asylum interviews and interviews for emergency travel documents.
- 2.7 The amount of time that Home Office staff spent in the prisons we visited varied and depended on the number of immigration detainees and other foreign nationals held at each location. At the time of our visits, members of the Home Office's Immigration Prison Team (IPT) covered the whole prison estate in the UK, with a permanent embedded presence in 11 prisons and a daily presence at three more. The prisons with embedded teams functioned as 'hubs' from which IPT staff would visit other establishments in the area, both for regular scheduled visits and to fulfil ad hoc requests. However, despite the Home Office's presence in the prison estate, detainees and prison staff in the establishments we visited commonly told us that they were unable to communicate with the Home Office and receive regular, relevant updates on their cases.
- 2.8 The staff we spoke to – both from the Home Office and the prisons we visited – echoed these concerns. Home Office staff working in prisons

told us that a lack of staff and pandemic restrictions often prevented them from making regular, in-person contact with detainees, and that delays in decision-making by caseworkers meant they were unable to provide updates on case progression as nothing had changed.

- 2.9 At some prisons, Home Office staff told us they were gradually moving back to conducting more face-to-face contact and general surgeries following the lifting of COVID-19 restrictions – an assertion supported by findings from our recent inspections. However, staff from the Home Office IPT who were based in prisons were not themselves caseworkers and did not necessarily have an in-depth knowledge of detainees' immigration cases.
- 2.10 At some establishments, delays in case working or general systemic issues meant Home Office staff were unable to inform detainees of meaningful progress. For example, at one prison eight detainees had been approved for a transfer to an IRC and were awaiting a place, but the moves had been delayed due to restrictions around transfers from prisons where there were outbreaks of COVID-19.

### **Little notice of detention**

- 2.11 For many detainees, the lack of communication began early in their experience of immigration detention. Prisoners approaching the end of their sentence should be told that they will continue to be detained under immigration powers 30 days before their planned release date and served with IS91 paperwork authorising immigration detention before release.
- 2.12 Home Office records showed that while case workers were often aware that individuals would be issued with an IS91, inexplicably detainees were not routinely being informed of this until the point of release. Only 17 of the 45 detainees we spoke to had been notified of the decision to detain them and served with an IS91 before their scheduled release date, and two detainees said they had not been told this news in person at all. Ten people said that they were only told they were going to be detained on the day of release, and five that they were not officially informed they would be detained until after their planned release date. Eleven detainees were unclear when they had been told they would remain in prison, suggesting that this was not always communicated effectively. Many detainees told us that they had been making plans for their release and were left shocked and anxious when they were told, at the last moment, that they would not be leaving prison.

*'It was a massive shock and I was not expecting it. I didn't know they could do this...I felt very, very bad. I was crying and anxious.'*

- 2.13 Other detainees said that they had heard from fellow prisoners or legal representatives that ongoing detention was a possibility, but still did not receive formal notice from the Home Office until close to the time of their planned release – sometimes on the day of release itself.

- 2.14 Many detainees told us that they were confused and nobody had taken the time to explain what the paperwork meant or used telephone interpretation to help them understand. In some cases, we found that wing staff in the prison or other prisoners were left to deliver information or try to explain IS91 paperwork to detainees.

'The letter wasn't read to me, nothing was explained to me apart from other Albanian people tried to translate for me.'

'I was feeling bad, but staff were good with me. I went to the CSU [care and separation unit] because they thought I was going to harm myself. I was told immigration staff want to keep me here. [Wing] staff told me they can't do anything about this, it's for immigration staff, not prison staff.'

#### **Case study 4: not being informed of detention**

Mr D said that the judge in his case had told him that he could go home and that he was therefore not anticipating detention. On the day of his release, he was ready in his cell, waiting to be released from the establishment. Despite repeatedly asking wing staff what was going on, no one could tell him. The day after his proposed release date, one of the wing staff told him he was going to be held under immigration powers. Later in the day, Home Office staff came to see him and served him the IS91. He found it hard to understand the paperwork and had to read it a few times because 'they say things in a different way'. He described his detention as having been a big shock because the judge had told him he was going home.

Following the completion of this review, the Home Office informed us that Mr D's release had been agreed and suitable accommodation was being identified.

- 2.15 Prison staff we spoke to told us about their own frustration with such late notifications because of the confusion it caused for them and the distress to detainees. Prison staff in one establishment holding a high number of immigration detainees said that only around half were given advance notice that they were going to be held under immigration powers, and that 'in terms of decency, this is a fail.'

#### **Lack of contact with Home Office staff in prison**

- 2.16 While most interviewees described having some form of contact with Home Office staff in prison, this was usually limited to the delivery of monthly progress reports which were in English. Detainees told us that these did not usually contain meaningful information on the progress of their cases.

'... [the monthly reports] repeat everything from the last month, there is no point reading it, always the same thing... it makes you feel insignificant, like you aren't important, because nothing is happening.'

- 2.17 Several detainees told us that they were served with paperwork 'under the door' and very few described being given the opportunity to speak to an official or ask questions.

'They just do everything through the door, [the Home Office staff] come at lunchtime and shout through the door, they don't help me at all. They always give me paperwork.'

'No one came to see me. A lady came with my IS91 and slid it under my door, then she was gone. I've never seen immigration.'

'[Home Office staff] are always too busy and it is always the same answer, that they are waiting on an outcome. We are always waiting.'

- 2.18 This also affected detainees who wanted to return to their home country, which was the case for six of our interviewees. In one case, a detainee told us that she had agreed to return and had offered to fund her own flight costs, but that over six weeks later she had not received any clear updates about when it would be possible for her to travel back. She stated that her children – who were in her home country with relatives – were 'suffering mentally' due to the uncertainty.

'I just can't understand why it takes so long. I'm happy to go, I'm just waiting. I'm quite scared – I don't understand why it takes so long or what they are doing.'

- 2.19 This lack of communication was an ongoing feature of immigration detention for many of our interviewees. Prison and Home Office staff recognised that case progression was often slow, but there was little infrastructure in place to ensure that detainees could regularly seek updates or ask questions. Most detainees we spoke to said they wanted to speak to someone from the Home Office about their case but that face-to-face conversations, if they happened at all, were infrequent and that the Home Office staff who worked in prisons did not know the details of their case progression.
- 2.20 Some detainees told us that the only time they had spoken to a Home Office official was when they were initially served with IS91 paperwork; others said that they had been unable to speak to Home Office staff despite making several applications to do so. The electronic records we reviewed supported this – although Home Office and prison records

showed that detainees were being given monthly updates, most of the records we looked at documented no or very few meetings with Home Office officials embedded in prisons, and most of the meetings that were recorded were to ask detainees to sign paperwork rather than to provide updates on their case. At the time of our review, ongoing COVID-19 restrictions meant that surgeries where detainees could speak to Home Office staff informally about their cases had only resumed in some prisons. All of this contributed to a sense of frustration and confusion.

'I feel like the Home Office don't know anything about me and they don't see any of the things I have done. I want them to come and see me, it would be helpful if they can explain to me why this is happening, right now I am in the dark and I don't know what is going on with my life... I spend my nights without sleep because I am not knowing what is happening and I don't know when it will end.'

### **Lack of understanding of why detainees remained in prison**

- 2.21 Many detainees we spoke to told us that they did not understand why they were held in prison rather than an IRC. The Home Office informed us that all foreign national prisoners who have completed their sentence and who it plans to detain are risk assessed by the Detainee Population Management Unit (DEPMU) for their suitability to be transferred to an IRC, based on the nature of their index offence (see glossary), sentence length, behaviour in custody and any medical conditions. The Home Office policy underpinning this decision states that an individual can continue to be held based on the presence of risk factors, including posing a risk to national security, previous criminality, posing a risk to children or victims, security risks (such as attempted escape from prison), or engaging in or planning disorder or violence. Detainees who present one or more of these risk factors are likely to remain in prison, rather than being transferred to an IRC.
- 2.22 While risk assessments were documented in online Home Office records, we found that they were often not communicated to detainees. Moreover, while Home Office risk assessments were routinely recorded in online records, they were not always regularly reviewed during a period of detention. Home Office policy states that detainees who are told they are not suitable for transfer to an IRC should be given written reasons, but few of the detainees we spoke to said that they had received a clear explanation of why they were being held in a prison, beyond being told that it was due to their previous offences.
- 2.23 Although some individuals may not be suitable for transfer due to behaviour that cannot be managed in the more open environment of an IRC, it was unclear why other detainees remained in prison. In some cases, the reasoning we saw appeared to be based on initial offending or outdated sentence plans, rather than up-to-date assessments of detainees' behaviour or progress in custody (such as any courses, interventions or work they had completed in prison). One prison

manager complained that it was not possible to negotiate transfers with IRCs directly as he could do with prisons, and that he did not understand the risk assessment process.

‘When you drill down to it, maybe someone was disruptive in custody 3–4 years ago, but not now, but that is reason for non-transfer.’

- 2.24 Home Office policy outlining the risk assessment process for transfer from a prison to an IRC states the criteria for refusing transfers, but does not outline any formal process through which detainees held in prisons can challenge the decision or request a transfer. None of the detainees we spoke to who wished to be moved to an IRC were aware of how to do this.

### Language barriers

- 2.25 Many detainees we spoke to said that difficulties communicating about their immigration cases and day-to-day needs were exacerbated by language barriers. Fifteen of the 45 detainees we spoke to told us that they were not able to communicate their needs effectively in English.
- 2.26 While telephone interpretation services were available in each of the establishments we visited, they were not regularly used when staff needed to speak with detainees who could not speak English.

‘No wing staff use an interpreter with me. They don’t speak to me at all. If I had a problem, I don’t know what I would do.’

‘Staff never speak to me with an interpreter. They speak to me in English, and I may understand them, or may not. It’s not an issue to them.’

- 2.27 Staff knowledge of how well detainees could speak and understand English was sometimes poor – on several occasions, we were told by prison staff that a detainee could speak English when an interpreter was clearly required. Many of the detainees who could not speak English told us that they relied on cell mates or other prisoners for help. While Home Office staff in some establishments said they regularly used interpretation when engaging with detainees, this was not the case in all the prisons we visited, especially for more routine contact such as serving paperwork.
- 2.28 Some of the detainees we interviewed explained that, while they could speak relatively good English and understand most of what was said to them, they struggled to understand more complex information and written documents, including legal information. One told us that he did not need an interpreter for day-to-day interactions but that he used interpreters during court hearings ‘as that was technical’. Complicated information about immigration cases or legal status, including immigration paperwork, was routinely served in English at each of the

establishments we visited. Several detainees told us that they were not able to fully understand the information presented on their immigration papers.

‘I understand many words from [my] papers, but not all. But if I don’t understand, maybe it’s important for me? Or maybe [the Home Office] asked me to sign something and I say yes... maybe I sign something and I don’t understand what I sign?’

### **Poor communication between prisons and the Home Office**

- 2.29 We found that communication between prisons and the Home Office was also often inadequate. This manifested in a lack of information-sharing about detainees’ case progression, vulnerabilities and risk.
- 2.30 Most prison managers working as equality and diversity and foreign national offender leads told us that they did not have close relationships with the Home Office staff working in their establishments and that the lines of communication between them were not always clear.

‘... we are informed about any major changes in processes or cases, but otherwise communication is not good.’

‘... pretty good in terms of the working relationship, but when I talk to my team there are times that we are not given information.’

‘Immigration staff will fly in, issue what relevant paperwork they need to issue... then they’re gone again.’

- 2.31 The result of this lack of communication was that prison staff were frequently not updated about important progress in detainees’ cases and could not answer questions from detainees. While prison staff recognised that much of this was down to Home Office caseworkers taking a long time to respond to queries from staff working with detainees, they said it often added to detainees’ frustrations, and many expressed a wish for more consistent lines of communication. Prison staff told us that they were not usually informed of any detainees who had been judged to be at risk by the Home Office, and that when this information was shared, it was not always up to date. Of the eight establishments we visited, only two were able to provide us with information on whether the detainees they held were classed as adults at risk by the Home Office, and in some establishments, prison staff were not aware of the policy at all.
- 2.32 Many of the Home Office staff we spoke to agreed with this assessment, telling us that their communication with prison staff was

not always good and, in some establishments, had deteriorated during the pandemic. In one establishment, Home Office staff were unclear about who in the prison was responsible for submitting concerns about detainee welfare.

- 2.33 We found evidence that this lack of communication could lead to significant confusion around detainees' status. At one prison we were told that a man we spoke to was an immigration detainee, but his records showed that he had not yet been served with IS91 papers as he was on remand for a further offence. Neither prison staff nor the Home Office were aware that he had been miscategorised in this way.

#### **Case study 5: the value of good communication between the Home Office and prison staff**

At a smaller number of establishments where the communication between the Home Office and prison staff was better, outcomes for detainees also improved. At the women's establishment we visited, staff worked more closely together and shared information about detainees effectively; they had confidence in one another and were able to provide information and support to the detainees in their care. While this did not mitigate delays in Home Office decision-making or case progression, it meant that prison staff could offer more targeted support: in one case where a detainee was eligible for bail, prison staff were able to support her to make the application and find suitable sheltered accommodation in the community. Although delays in finding a space at the accommodation meant she was still detained, which was frustrating for her, more productive working relationships between the Home Office and the prison meant that the process of applying for bail and locating accommodation had been reasonably smooth.

- 2.34 A lack of communication did not just affect detainees' individual case progression; it meant that changes to Home Office policy about the treatment of immigration detainees in prison were often not communicated effectively. In October 2021, HMPPS introduced new guidance that immigration detainees in prisons should be allocated a weekly special payment of £5 which could be used to purchase additional phone credit to maintain contact with their families and legal representatives. This guidance was sent to prisons, but was often not communicated well and had not always been implemented. A lack of robust communication between the Home Office and prisons had led to a tangible difference in outcomes for some detainees, who were deprived of a resource intended to aid family contact and legal support.

### **Problems accessing legal representation**

- 2.35 Access to legal representation was an issue raised by many of the detainees. Twenty-one of the 45 we interviewed did not have any legal representation for their immigration cases, and many of these said it was due to being unable to afford a lawyer.

'I can't get a lawyer. I don't know how to find out. I don't have any money, and you can't get legal aid in prison.'

- 2.36 A smaller number told us they had chosen not to seek legal representation as they hoped to return to their home countries voluntarily.
- 2.37 According to HMPPS policy, prison staff should provide immigration detainees with a list of at least 10 legal firms which provide legal aid-funded advice for immigration matters. However, we found that this information was not routinely being provided in most of the establishments we visited. In some prisons, detainees were given information that was outdated, for legal firms which were far away or did not routinely deal with immigration cases, or for firms that were not able to take on additional cases. This meant that, for many detainees, trying to identify a legal representative who was willing to work on their case became a significant problem. One told us that he had contacted 45 different solicitors without success, and another said:

'I have gone through the solicitor list the prison have given me but nobody will take my case. Everyone is saying they are private or they don't answer their phone.'

- 2.38 Most of the detainees who had legal representation were self-funding or receiving support from friends and family. Just seven of the 45 told us that they were receiving legal aid to fund their representation. Positively, none of the detainees we spoke to said they were discouraged from contacting their legal representatives from prison, and many of the case records we reviewed demonstrated that detainees were regularly working with legal representatives to progress their cases. However, some detainees described difficulties with adding solicitors' telephone numbers to their approved list, leading to delays in contacting them.

'... the problem here though is that how visits and calls work is really confusing. Sometimes you add someone to your PIN list or you try to book it the normal way and it won't let you, and you don't get told why. So sometimes it can take a long time and be stressful to organise stuff like that because it doesn't work sometimes.'

- 2.39 In November 2021, HMPPS introduced a policy facilitating 30 minutes of free legal advice for immigration detainees in prisons, intended to address the disparity between those held in prisons and those held in IRCs, who were already entitled to 30 minutes of free advice under the government's Detained Duty Advice scheme. However, much like the weekly allowance that could be used to buy phone credit, many detainees had not been informed of this entitlement: of those we spoke to, only nine said they had been made aware of this service. Many of

the detainees we spoke to said that this would have been helpful to them. One told us that although he had been informed he was entitled to 'legal aid' and given a list of providers, nobody explained that this initial advice would be free of charge, so he had not made contact with a legal firm.

- 2.40 More concerningly, prison and Home Office staff we spoke to also had a patchy knowledge of this service, and of detainees' entitlement to it. In one prison we attended, Home Office staff told us that they had only recently become aware of the entitlement despite it having been in place for several months. In another we were told that the Home Office did not get involved in facilitating access to legal representation beyond telling detainees they were entitled to have a solicitor. Prison staff were generally similarly uninformed about this service, telling us at one prison that they had 'no idea' about access to legal advice for detainees. Prison staff were only able to demonstrate familiarity with this scheme at one of the establishments we visited, although even here they were unable to tell us how many times it had been accessed.
- 2.41 The issues surrounding access to legal advice were significant for the immigration detainees we spoke to. An inability to access and contact legal representatives – and significant variation in the knowledge of prison staff and the support provided in different establishments – created a risk that detainees were unable to fairly challenge the Home Office's decision to remove them. In addition, the lack of understanding of changes to detainees' entitlements to legal aid among staff meant that detainees in prisons were disadvantaged when compared with those held in IRCs.

## **Losing sight of vulnerability and safeguarding needs**

- 2.42 Twenty-seven of the 45 detainees we interviewed reported having current mental health needs, ranging from low mood and anxiety to serious mental illness. Most of the detainees who described low mood and anxiety linked this to their detention, and their lack of knowledge over what would happen to them and when they would be released.

'I know it is mostly to do with the stress of the situation that I'm in and that I probably won't feel better until I am back at home.'

- 2.43 For the smaller number of detainees with severe mental health needs, the experience of detention was likely to have a greater impact on their health and well-being. Detainees had mental health conditions including schizophrenia, personality disorders and substance misuse problems, and on two occasions we encountered detainees who were too mentally unwell for us to interview them. Others reported suicidal thoughts or having attempted suicide previously.

'I'm in a bad place. I talked about killing myself. All just since had deportation paper.'

## Adults at risk in detention policy

- 2.44 Home Office policy states that immigration control considerations can outweigh the presumption towards releasing detainees. However, where detention may cause harm to individuals, this should take precedence in decision-making. The Home Office's Adults at Risk in Immigration Detention policy, implemented in response to the Shaw Review, allows case workers to identify detainees who may be harmed by ongoing detention, assess the extent of the risks, and where it is deemed necessary, to recommend release. Risk factors can include physical and mental health problems, as well as previous experiences of trauma – such as torture or trafficking – which would be likely to render an individual vulnerable to harm if detention was maintained. The Home Office can allocate detainees as being at one of three levels of risk in accordance with this policy (level 1 being the lowest and level 3 the highest), which should lead to release in all but the most exceptional circumstances.
- 2.45 We reviewed nine Home Office records for detainees interviewed in our sample who had been judged to be adults at risk – six of whom were level 2 and three who were level 1. We did not speak to any detainees who were judged to be level 3 adults at risk at the time of the interviews, but two had previously been categorised at this highest level of vulnerability.
- 2.46 We found cases in our sample where vulnerable people had been held in prisons, including Mr C (see case study 3): while Home Office records acknowledged his vulnerability, he was not subject to any prison processes to manage vulnerable or challenging prisoners and had not yet seen prison mental health services. In another case, a detainee who had previously made a successful Rule 35 claim (see glossary) showing that the Home Office accepted he was a victim of torture, was classed as a level 2 adult at risk and had been held in custody since late 2021, despite little progress in obtaining a travel document for him to be removed.
- 2.47 A prominent theme across almost all the establishments we visited was a lack of staff awareness of the Adults and Risk policy and its practical ramifications in caring for detainees. Neither the Home Office nor prison staff were able to provide a list of immigration detainees in prison who fell under the Adults at Risk policy. The functional heads of safety and equality and diversity within prisons, and most of the embedded Home Office staff we interviewed, had a poor understanding of the policy and how it might affect detainees held in prison, and some were not aware of the policy at all. Concerningly, this included Home Office staff who were generally unaware of individuals whom their caseworker colleagues had assessed to be vulnerable.
- 2.48 Most prison and health care staff said that they would manage detainees identified as vulnerable under normal prison policies. We were told that any vulnerabilities, including being a potential victim of torture or trafficking, would be identified during the prison reception process when they first came to the establishment. Staff described the

support the prison could give for anyone identified, including the assessment, care in custody and teamwork (ACCT) process or detainees being discussed at the safety intervention meeting (SIM) if this was appropriate.

- 2.49 While the processes used to manage vulnerable people held in prisons can, if used well, safeguard vulnerable detainees and provide multidisciplinary care, they do not act as a mechanism that can lead to consideration of a detainee's release in the same way as the Adults at Risk policy, nor do they ensure that Home Office caseworkers making decisions about their immigration status are aware of any vulnerabilities that could be exacerbated by ongoing detention or removal.

### **Detention Centre Rule 35 and Prison Rule 21**

- 2.50 Another shortcoming in the prison estate was the lack of an equivalent to the Rule 35 process. In IRCs, this process ensures that vulnerable detainees – those with debilitating illnesses, suicidal thoughts, or previous experiences of torture – can receive a medical assessment of the impact of ongoing detention on their health and well-being, which can then feed into decision-making about continued detention or release.
- 2.51 Rule 35 does not apply in prisons and the Home Office could not tell us how many detainees held in prisons had previously been subject to Rule 35 procedures. In 2021, a Court of Appeal judgement criticised a case in which the Home Office had not sought to obtain medical information about the torture claims of two vulnerable men detained under immigration powers in prison. In response, the Home Office stated it was in the process of developing a system equivalent to Rule 35, which would offer similar protections to immigration detainees held in prisons.
- 2.52 The closest to the Rule 35 process in the prison estate is Rule 21 of the Prison Rules, but it is neither used nor an adequate substitute. Rule 21 states that medical practitioners working in an establishment shall report to the governor about any prisoner whose health is likely to be injuriously affected by continued imprisonment. However, this Rule contains no specific provision for victims of torture and health care staff we spoke to in prisons told us that they did not make referrals using this mechanism for prisoners or immigration detainees. The Home Office holds no data on the use of Rule 21.

### **Case study 6: Losing sight of vulnerability**

In our casework sample of 11 of the detainees we interviewed, we found that two had previously made successful Rule 35 claims while in an immigration removal centre based on past experiences of torture, both of which had been accepted by the Home Office. Despite this, both had subsequently been re-detained under immigration powers, and their prison records contained no reference to their vulnerability as victims of torture. In one case, the Home Office offered the detainee an interview to inform him

of various avenues of support for his vulnerabilities, but there was no evidence that such a meeting took place, or whether the Home Office had followed this up with the detainee. Both had significant barriers to removal, including a lack of travel documentation. One of the men was a level 2 adult at risk and had been held in prison under immigration powers for almost six months when we interviewed him. He told us that he had been prescribed anti-depressants during his time in prison, and that despite his vulnerability he did not currently have a legal representative for his immigration case and had received little support in identifying and obtaining a solicitor. In the other case, Home Office staff had asked prison staff to explain the Adults at Risk policy to the detainee but had not taken any recorded steps to engage with him or to re-assess his level of vulnerability.

Following the completion of this review, the Home Office told us that one of the detainees had been transferred to an IRC.

## **The National Referral Mechanism for victims of trafficking and modern slavery**

- 2.53 The Home Office could not provide data concerning the number of immigration detainees held in prisons who had claimed to be victims of trafficking or modern slavery and had been referred to the National Referral Mechanism (NRM, see glossary) in the year leading to our visits. Receiving a 'positive reasonable grounds' decision from the NRM – meaning that the Home Office recognises a person as having been a potential victim of trafficking or modern slavery – acts as a barrier to removal from the UK and entitles victims to access a range of support services. Detainees recognised by the NRM are also routinely classed as adults at risk. Receiving a positive 'reasonable grounds' or 'conclusive grounds' decision – meaning that the individual has been formally recognised as a victim of trafficking – from the NRM should feed into consideration on whether a detainee should be released.
- 2.54 A Home Office report from 2021 noted that referrals of foreign national prisoners into the NRM had risen consistently from early 2019, but a breakdown of the data showed that referrals from those held in prison custody remained consistently lower than those in detention, suggesting that those held in prisons were less likely to be referred into the scheme.
- 2.55 The health care and safeguarding staff we spoke with in prisons had a general awareness of trafficking as an issue for some immigration detainees, but usually had little understanding of the NRM process.
- 2.56 We spoke to detainees who told us that they had experienced trafficking. In one case, a detainee had received a positive reasonable grounds decision in May 2021, during his custodial sentence, but had nevertheless been detained under immigration powers at the end of his sentence and had only been raised to level 2 of the Adults at Risk policy in February 2022, nine months later. When we interviewed him, he had been waiting 10 months for a conclusive decision on his NRM

claim and remained in prison. He told us that he had not been offered any specialist support during his time in prison.

- 2.57 Overall, we found that the understanding of processes to identify and support vulnerable detainees was less well-developed in the prison estate than in IRCs, and that important safeguards were either less well used or absent.

### **Lack of specialist support**

- 2.58 In most of the establishments we visited, there was no targeted support to meet the specific needs of immigration detainees – either from the prison itself, or from external agencies who worked with immigration detainees. In our interviews with prison staff, most recognised that the resources and support for immigration detainees was limited and that more needed to be done.

‘They should have what they have access to in an IRC, but we are unable to offer all of this in a prison setting.’

#### **Prison Foreign National Lead**

- 2.59 In the establishments we visited, the level and quality of support depended on the availability and activity of equality and diversity staff or dedicated foreign national officer leads. In some prisons, proactive staff made regular contact with detainees to monitor their well-being and offer individual support. For example, in one prison a dedicated foreign national lead spoke to all immigration detainees regularly to check their welfare and in another, detainees were offered access to a virtual system which provided information about resettlement in other countries. Another prison had a dedicated wing for foreign national prisoners, including those held under immigration powers, which some detainees we spoke to valued. However, at most of the prisons we visited, there was little specific support for immigration detainees beyond them being offered the contact details for legal representatives.
- 2.60 Only two of the eight prisons we visited had external agencies routinely working in the prison to support detainees. While external support alone cannot mitigate an overall lack of support from the prison service and the Home Office, it can be helpful in allowing immigration detainees to understand their rights, access legal services and gain emotional support. In two of the prisons we visited, support was being provided by Genesis Advantage (an organisation offering immigration advice) and Hibiscus (an organisation which primarily supports migrant women), while another prison gave details of Bail for Immigration Detainees (BID) for detainees to contact. Other establishments allowed organisations into the prison to work with detainees on demand, but did not routinely facilitate support. There is some evidence from our recent inspections that external support agencies have been able to visit some prisons more often following the lifting of COVID-19 restrictions.

- 2.61 Many of the detainees we encountered felt that the support they were offered in prison was inadequate, and that existing services did not help them to address their needs. Most said they felt that their needs as immigration detainees were not met. Only one said he did not need any support, because he was simply waiting for his flight confirmation.
- 2.62 Many detainees we spoke to said that prison staff did not understand what their needs were. While some described receiving good general support from wing staff, such as help to resolve 'day-to-day issues' or via the key work system, this provision did not extend to specific support to meet their needs as immigration detainees. Those that had key workers appreciated it, but some told us that their key workers were not always available, and when they were, they were not able to help with immigration matters. Several detainees said that they felt as though they were not treated any differently than prisoners.

'... as prisoners they know what they are doing, but as an immigration detainee they don't.'

- 2.63 Only seven of the detainees we interviewed described receiving external support. In each case this was from a charitable organisation, either from within the prison or via phone or letter. Organisations included Medical Justice, BID, Genesis Housing, Hibiscus and Women for Refugee Women. Detainees often turned to family and friends for support, with 48% (21) saying they had contact (either visits, secure video calls or telephone contact) with family and friends while in prison. Those who had family or friends in the UK often relied on them to follow up on their immigration cases.
- 2.64 HMPPS had recently established an online 'Foreign National Hub' for prisons, which offers a valuable range of resources for staff and detainees. While this was a promising initiative, in our fieldwork for this project only one prison was making regular use of the hub, and some prison staff told us they were not aware of it.

## **Prison regimes compared to IRC regimes**

- 2.65 The interviews for this report were conducted while prisons were still operating under COVID-19 restrictions. While these restrictions were starting to be relaxed, many of the detainees we spoke to described spending most of their time locked in their cells. This varied across the prisons we visited, with some describing spending up to 23 hours a day in their cells, while others told us they were unlocked for upwards of four to five hours each day. One detainee told us that excessive time in cell made prison feel like 'a double sentence' while another said:

'... being locked up has dampened my brain. My mind is clouded and I don't feel happy about anything.'

- 2.66 Excessive time spent locked up has impacted all prisoners during the COVID-19 pandemic but had two specific effects on immigration detainees. First, interviewees told us that it had made it more difficult to access the help they needed to navigate their immigration cases. Second, while the IRC estate had also implemented some restrictions on detainees' movement during the COVID-19 pandemic, they were much less severe throughout the pandemic, and had been relaxed far more than in prisons by the time we carried out this work. In an inspection of an IRC conducted at around the same time as these interviews, we found that detainees were routinely unlocked for most of the day and could access facilities such as the gym and library on a daily basis.
- 2.67 Access to activities for immigration detainees in prison was a more mixed picture. Some detainees who were not employed or taking part in in-person education in prison told us that this made it more difficult to pass the time, and others commented that feelings of depression or hopelessness meant they had little motivation to participate in activities. At one establishment, immigration detainees – who cannot be subject to sanctions if they choose not to work – had been wrongly punished for refusing to participate in prison work, receiving negative entries on their prison record.
- 2.68 However, some prisons offered opportunities for vocational training that were not available in IRCs. One detainee told us that he had qualified as a personal trainer and was now able to lead exercise classes for other prisoners, and others reported taking part in construction courses. While not all detainees we spoke to were engaging in purposeful activity, the availability of paid work and educational courses which could benefit them in the future was nonetheless positive.

## Appendix I Methodology

The fieldwork for this report was undertaken in March and April 2022. Inspectors carried out 45 semi-structured interviews with men and women held under immigration powers at eight different prisons in England. The sites were chosen so that a range of different geographical locations and functional types of prison were represented. We selected some establishments that held high numbers of immigration detainees at the time of our visit, and some which held relatively few. We visited one establishment in the women's estate, and one establishment which exclusively held foreign national prisoners. Immigration detainees cannot be held in open prisons, so the fieldwork place entirely within closed establishments.

Detainees were selected to make sure that a wide range of demographics and experiences were represented during the interviews. At each establishment, we asked for a list of immigration detainees, which included their nationality, age, and the length of time they had been held under immigration powers. Detainees were then invited to attend a voluntary interview with an HM Inspectorate of Prisons inspector.

We conducted in-depth interviews with detainees, using an interview guide that had eight main questions. These questions related to different aspects of experience of immigration detention in prison, including the ability to contact the Home Office and legal representatives; health and well-being; access to support services; and activities and day-to-day life in prison. The interview questions were structured but allowed for a wide range of follow-up questions to explore the individual circumstances of each interviewee. This qualitative approach allowed interviewers to capture the experiences and feelings of each detainee in detail, and to better understand their individual cases and concerns.

Inspectors also conducted semi-structured interviews with a variety of members of staff working with immigration detainees at each establishment. This included Home Office Immigration Officers working in the prisons; equality and diversity leads; staff responsible for overseeing the support of foreign national prisoners; health care staff; and heads of safety within prisons. We selected these members of staff as they were working in positions which meant they had some responsibility for managing immigration detainees and their care. These interviews allowed inspectors to explore how well prison and Home Office staff understood the entitlements and experiences of immigration detainees, and what support was available to them at each establishment. We conducted 33 interviews with staff – seven with Home Office staff and 26 with prison staff.

In addition to interviews, inspectors also reviewed a range of other information to help better understand the cases of the detainees we spoke to, and the support available to immigration detainees at each of the establishments we visited. This included:

- A sample of records for detainees we interviewed from the online Prison National Offender Management Information System (NOMIS). These records charted detainees' experiences of prison, including any welfare concerns, behavioural issues, and contact with prison services.

- A sample of 11 records for detainees we interviewed from the online Home Office Case Information Database (CID). These records showed each detainee's immigration case history, including monthly detention reviews, bail applications, and any markers about vulnerability or risk.
- Information from each of the establishments we visited, outlining the number of immigration detainees about whom safeguarding concerns had been raised in the year prior to our visit, the legal provisions in place for immigration detainees, and any specialist support services available to immigration detainees in the establishment.
- Data provided by the Home Office concerning the number of individuals held as immigration detainees in prisons in the UK, how they managed, and how often various safeguarding concerns had been raised regarding immigration detainees in the year prior to conducting this review.

The project was conducted in line with HM Inspectorate of Prisons' ethical principles for research activities (see <https://www.justiceinspectorates.gov.uk/hmiprisons/about-our-inspections/research/ethical-principles-for-research>). Inspectors paid particular attention to the well-being of the detainees we spoke to, reporting any safeguarding concerns to prison staff, and adhered to the Inspectorate's safeguarding protocol for adults (see <https://www.justiceinspectorates.gov.uk/hmiprisons/wpcontent/uploads/sites/4/2019/12/HMIP-Safeguarding-Adults-Protocol-Nov-2019.pdf>).

## **Project team**

This report was written by Rebecca Mavin (Inspector) with assistance from Hindpal Singh Bhui (Team Leader). The project and fieldwork team included the following inspectors: Deri Hughes-Roberts, Martin Kettle, Ali McGinley, Steve Oliver-Watts, Tamara Pattinson and Chelsey Pattison.

## Appendix II Glossary

### **Adults at Risk in Detention Policy**

This Home Office policy sets out what is to be taken into account when determining whether a person would be particularly vulnerable to harm if they remained in detention, and is intended to reduce the risk of vulnerable people being detained. Home Office guidance stipulates that cases where detainees are classed as adults at risk should be assessed in an individualised, evidence-based manner to review the appropriateness of ongoing detention. A detainee is assessed at Level 1 where a vulnerability that places them at risk of harm in detention is self-declared. Level 2 applies where there is professional or other evidence of the vulnerability. Level 3 is the highest level of risk, where the Home Office fully accepts evidence that detention is likely to cause harm.

### **Index offence**

The criminal offence of which a prisoner was initially convicted.

### **IS91**

Authority to detain notification.

### **National Referral Mechanism (NRM)**

A framework for identifying and referring potential victims of modern slavery and making sure they receive the appropriate support.

### **Rule 35**

Rule 35 of Detention Centre Rules requires notification to Home Office Immigration and Enforcement if a detainee's health is likely to be injuriously affected by detention, including if they may have been the victim of torture.

## Appendix III Progress against recommendations

In 2015 HM Inspectorate of Prisons published a findings paper which drew together findings and survey results from HM Inspectorate of Prisons inspection reports published between 1 April 2013 and 31 March 2015. It aimed to set out the experiences of immigration detainees in prisons and compare it with the experiences of those in immigration removal centres.

The report made seven recommendations, progress against which is assessed below.

### Recommendations 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.

**Not achieved**

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.

**Partially achieved**

### 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.

**Not achieved**

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.

**Not achieved**

### 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.

**Not achieved**

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

**Not achieved**

## Appendix IV References

Bail for Immigration Detainees (2014) *Denial of Justice: The Hidden Use of UK Prisons for Immigration Detention. Evidence from BID's Outreach, Legal and Policy Teams*. Available here: [Denial of Justice.pdf \(hubble-live-assets.s3.amazonaws.com\)](#)

First Tier Tribunal Immigration and Asylum Chamber (2012) *Bail Guidance for Judges Presiding over Immigration and Asylum Hearings*. Available here: [FIRST-TIER TRIBUNAL \(IMMIGRATION AND ASYLUM CHAMBER\) - Bail Guidance for judges \(judiciary.uk\)](#)

HMIP (2015) *People in Prisons: Immigration Detainees*. Available here: [People in prison: Immigration detainees \(justiceinspectorates.gov.uk\)](#)

HMPPS (2011) *Prison Service Instruction 52/2011: Immigration, Repatriation and Removal Services*. Available here: [Repatriation and removal of foreign nationals: PSI 52/2011 - GOV.UK \(www.gov.uk\)](#)

Home Office (2019) *Update on modern slavery referrals from detention and prisons*. Available here: [Update on modern slavery referrals from detention and prisons - GOV.UK \(www.gov.uk\)](#)

Home Office (2022) *Detention: General Instructions, Chapter 55*. Available here: [Chapter 55 – Index \(publishing.service.gov.uk\)](#)

Home Office (2022) Immigration statistics, year ending March 2022. Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2022>

Independent Chief Inspector of Borders and Immigration (2020) *Annual Inspection of Adults at Risk in Immigration Detention (2018-2019)*. Available here: [Annual inspection of 'Adults at Risk in Immigration Detention' \(2018–19\) - GOV.UK \(www.gov.uk\)](#)

Independent Chief Inspector of Borders and Immigration (2021) *Second Annual Inspection of Adults at Risk in Immigration Detention*. Available here: [Inspection Report Published: Second Annual Inspection of 'Adults at risk in immigration detention' - GOV.UK \(www.gov.uk\)](#)

Shaw, S (2016) *Review into the Welfare in Detention of Vulnerable Persons*. Available here: [Review into the welfare in detention of vulnerable persons - GOV.UK \(www.gov.uk\)](#)

Shaw, S (2018) *Welfare in Detention of Vulnerable Persons Review: Progress Report*. Available here: [Welfare in detention of vulnerable persons review: progress report - GOV.UK \(www.gov.uk\)](#)