



House of Commons  
Home Affairs Committee

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# Immigration detention

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**Fourteenth Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

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## Home Affairs Committee

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## Summary

Detaining an individual for the purpose of immigration control is a deprivation of that person's liberty. The Government has a responsibility to use it sparingly, and for the shortest period possible. The power to detain can sometimes be necessary but should be used only if there are no other options, as a last resort prior to removal.

Detention powers are governed by processes set out in policy and guidance, which include directions on the power to detain, the decision and authority to detain, and detention procedures.

This policy and guidance is too often not being followed.

Our inquiry was prompted by the exposure of appalling physical and verbal abuse of detainees by some staff at Brook House Immigration Removal Centre (IRC) in 2017 and by persistent reports of the inappropriate use of immigration detention and its damaging effect on the mental health and wellbeing of detainees.

Over the course of our inquiry, we have found serious problems with almost every element of the immigration detention system. People are being wrongfully detained, held in immigration detention when they are vulnerable and detained for too long.

Immigration officials who are tasked with detaining and removing people from the UK face making difficult decisions on a daily basis. But too often the Home Office has shown a shockingly cavalier attitude to the deprivation of human liberty and the protection of people's basic rights. It needs to be more transparent in collating information about the number of people who are wrongfully detained, it must give evidenced explanations as to why decisions to detain have been made and it needs to admit where things have gone wrong, apologise, and seek to learn lessons.

Above all, it must do much more to ensure that all reasonable alternatives to detention have been considered before detention is authorised.

Our inquiry identified a weak administrative process and a serious lack of judicial oversight of the decision to detain. Decisions to hold an individual in immigration detention are taken by Home Office officials and not by a Judge or court, and immigration detention is overseen by the Immigration Enforcement directorate in the Home Office. In this process, there is no thorough pre-detention screening of individuals and other than in asylum interviews there is no face to face contact between immigration decision-makers and the detainee. As a result, in the immigration system, people can be deprived of their liberty through an entirely paper-based exercise by officials where no one involved in the decision ever interviews the potential detainee. Moreover, there is no requirement in UK law for those decisions to be subject to judicial oversight within a certain period after a detention order is made. This has to change. In the UK, there is no limit on the length of time for which someone can be held in immigration detention.

Our inquiry has found that Home Office caseworking inefficiencies—for example lengthy delays in asylum decisions, appeals and documentation—unnecessarily prolong individuals' detention. Evidence from a multitude of experts shows the harm that immigration detention inflicts on the detainee's mental health and well-being.

For some detainees to be held for more than three years is unacceptable. While the indefinite nature of detention traumatises those who are being held, it also means that there is no pressure on the Home Office and on the immigration system to make swift decisions on individuals' cases. There is a rapidly growing consensus amongst medical professionals, independent inspectorate bodies, people with lived experience and other key stakeholders on the urgent need for a maximum time limit. Lengthy immigration detention is unnecessary, inhumane and causes harm.

We found that the Adults at Risk (AAR) policy is not protecting the vulnerable people it was introduced to protect. Instead, the way evidence of risk is weighed against immigration factors has increased the burden on individuals to evidence the risk of harm that might render them particularly vulnerable if they were placed or remained in detention. The policy has significantly lowered the threshold for Home Office caseworkers to maintain detention of those most at risk. Rule 35, the process intended to act as a safeguard against the detention of vulnerable people by ensuring that particularly vulnerable detainees are brought to the attention of relevant staff, has failed to prevent too many injustices. It is not currently a fair or robust system.

The Home Office is ultimately responsible for oversight of the detention estate and has a responsibility to meet its obligations to those individuals it detains in Immigration Removal Centres (IRCs). This means that people should be able to access high quality healthcare, equivalent to that in the community. From the evidence we have heard, this is not always the case. To give one example, the disgraceful abuse of detainees by staff that was revealed by undercover journalism at Brook House IRC is sadly not the first of its kind. It is clear from the evidence we heard that the Home Office has utterly failed in its responsibilities to oversee and monitor the safe and humane detention of individuals in the UK.

As a result of these serious failings in almost every area of the immigration detention process, this report makes a series of recommendations for reforms, including:

- Stronger judicial oversight by subjecting the initial detention decision to review by a Judge within 72 hours. This would be in line with other areas of UK law, for example in the UK criminal justice system, where an upper limit for detention without charge exists.
- Requiring caseworkers involved in the decision to detain an individual in all cases to meet that individual at least once, in person, prior to finalising the detention decision or/and within one week of their detention.
- Introducing a thorough, face-to-face pre-detention screening process to facilitate the disclosure of vulnerability.
- Abolishing the three AAR levels of risk and reverting to the previous policy of a presumption not to detain individuals except in very exceptional circumstances. The Home Office should consult with a wide range of stakeholders who are affected by detention including people with lived experience, to develop an agreed grouping of categories of vulnerability.

- Bringing an end to indefinite immigration detention and implementing a maximum 28-day time limit. This time limit should be cumulative and accompanied by a robust series of regular checks and safeguards. Any extension should only be made in exceptional circumstances and with prior judicial approval.
- Urging the Government to undertake a consultation on how detention time limit maximums could be applied to different types of detainees, such as vulnerable individuals. The Home Office should also consult on the application of the time limit to Foreign National Offenders (FNOs), including assessment of specific public protection issues.
- Ensuring all IRCs have robust and effective whistleblowing procedures which IRC staff and detainees can use with complete confidence, knowing they will be fully protected.

We welcome the Home Office's agreement to conduct an independent inquiry into the maltreatment of detainees by some staff at Brook House IRC and urge the Government to publish the terms of reference with immediate effect.

# 1 Introduction

1. The Government has extensive powers to detain people for reasons of immigration control and there is currently no time limit on how long a person can be detained for such purposes. Home Office policy states that, “Detention must be used sparingly, and for the shortest period necessary”.<sup>1</sup> In 2000, UK immigration detention centres had capacity to hold 475 people with approximately 200 held under immigration powers in prisons.<sup>2</sup> The number of people held in detention increased as the UK immigration estate expanded. In 2010, 2,748 people were detained on average at the end of each quarter.<sup>3</sup> In 2018, the UK immigration detention estate was one of the largest in Europe with an average of 2,204 held in detention for 2018.<sup>4</sup> The appalling abuse of detainees by some staff at Brook House Immigration Removal Centre (IRC) in 2017 and the subsequent revelation of wrongful detention and deportation of Windrush citizens followed a series of historic scandals on the immigration detention estate.<sup>5</sup>

## Background to our inquiry

2. In recent years there have been four major reviews specifically into the operation of immigration detention in the UK: the joint APPG on Migration and APPG on Refugees’ inquiry into the use of Immigration Detention in the UK, Stephen Shaw’s first Review into the Welfare in detention of Vulnerable Persons, Shaw’s follow-up assessment of government progress in implementing that review and the Joint Committee on Human Rights report on Immigration Detention.<sup>6</sup> All four reports identified too many vulnerable people were detained for too long, inadequate healthcare provisions and failings in existing safeguarding policies.

3. Our inquiry was prompted by the exposure of abuse of detainees by staff in Brook House Immigration Removal Centre (IRC) and persistent reports of the inappropriate use of detention and its deleterious effect on the mental health and wellbeing of detainees.<sup>7</sup>

1 UK Visas and Immigration, [Enforcement Instructions and Guidance, Chapter 55: use of detention, paragraph 55.1.3](#)

2 [A Matter of Routine](#), Amnesty International (UK) report, 2017

3 [Home Office immigration statistics](#), year ending December 2018, Table dt\_13\_q. The most recent data is for Q4 2018.

4 *Ibid*; Data includes immigration detainees held under immigration powers in HM Prisons.

5 On 4 September 2017, a BBC Panorama documentary exposed the abuse of detainees by staff in Brook House IRC which is currently managed by G4S; the Windrush scandal was uncovered by an extensive investigation by The Guardian newspaper revealing that many children of the Windrush generation were being wrongly detained and deported: [Amelia Gentleman on Windrush: ‘I’ve felt like an immigration case worker’](#) 20 April 2018; various newspapers have reported on successive immigration removal centre scandals including at Yarl’s Wood IRC and Harmondsworth IRC : [Yarl’s Wood holding vulnerable women for too long, say monitors](#), The Guardian, 9 June 2015, [Yarl’s Wood: Years of misery and controversy](#) BBC News, 10 June 2015 and [Immigration detainee ‘died in handcuffs’](#), BBC News, 20 January 2014.

6 The Joint APPG on Migration and APPG on Refugees, [Inquiry into the use of Immigration Detention 2015](#); Stephen Shaw’s [Review into the Welfare in detention of Vulnerable Persons](#) January 2016, Stephen Shaw’s [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#) July 2018; and the [Joint Committee on Human Rights, Immigration Detention, Sixteenth Report of Session 2017–19 HC 1484, HL Paper 278](#) published 7 February 2019; Previous to these, numerous inquiries and reports were published on the operation of the current immigration and asylum system as well as immigration detention, for example in 2006–07, the Joint Committee on Human Rights expressed concern in its report on the [Treatment of Asylum Seekers](#) [HL Paper 134/HC790] on the detention of asylum seekers, “that there is currently no. maximum time limit [on immigration detention]”. The Committee recommended a time limit of 28 days.

7 On 4 September 2017, a BBC Panorama documentary exposed the abuse of detainees by staff in Brook House IRC. Brook House is currently managed by G4S. On 4 May 2018, the Government announced the extension of G4S’ contract to run Brook House for another two years.

We took oral evidence from G4S and former G4S employee Reverend Nathan Ward, the Gatwick Detainees Welfare Group and HM Inspectorate of Prisons, the current and previous Immigration Ministers and Stephen Shaw, following publication of his follow-up review. We also received many submissions of written evidence and visited Serco-run Yarl's Wood IRC. We are grateful to all those who assisted with our inquiry. We would like to pay particular tribute to Rev. Nathan Ward for his courageous evidence on some of the serious failings within our immigration detention system, and to those immigration detainees who gave evidence anonymously about their experiences in detention.

### *The cost of immigration detention*

4. In the quarter ending December 2018 it cost, on average, £87.71 per day to hold someone in detention.<sup>8</sup> The Home Office Annual Report and Accounts for 2017–18 recorded that detention cost the Government £108 million in that financial year.<sup>9</sup>

### Report structure

5. This report is the Committee's first substantial report on immigration detention in the UK.<sup>10</sup>

6. The report details our key concerns with the current UK immigration detention system, specifically the treatment of vulnerable people in detention. It focusses on the overall UK immigration detention process; recommendations made by Stephen Shaw in his two independent reports on immigration detention; how the Home Office currently identifies and addresses the welfare of vulnerable people in immigration detention; the management and independent oversight mechanisms of Immigration Removal Centres (IRCs) and the detrimental impact of prolonged periods of detention on individuals' wellbeing.

7. In the wake of the deplorable abuse scandal at Brook House IRC in 2017, chapter 6 explores some of the wide-ranging challenges and failings that exist in immigration removal centres across the UK, which if left unaddressed could lead to yet more catastrophic abuses taking place under the Government's watch. These include a lack of resources (understaffing, adequacy of healthcare and legal advice provision) and operational issues such as effective complaint mechanisms, organisational culture, and the effectiveness of the formal IRC oversight mechanisms currently in place.

8. On 7 February 2019, the Joint Committee on Human Rights published a report on Immigration Detention. The report examined the current UK immigration detention system and focussed on a number of issues that our Committee has also addressed.<sup>11</sup> We have taken account of that Committee's views in developing our own conclusions and recommendations.

8 [Home Office Immigration Enforcement data](#), Q4 2018, DT\_02: Average cost per day to hold an individual in immigration detention.

9 Home Office, [Annual Report and Accounts 2017–18](#), HC1136; According to [Bail for Immigration Detainees](#), 'detention costs' do not include the administrative costs, the cost of opposing bail and other legal costs which could amount to thousands of pounds per detainee, nor do they include the costs the Home Office has paid out in compensation for unlawful detention.

10 [The Work of the Immigration Directorates](#), Q3 2015 – this report referenced the [oral evidence](#) that Stephen Shaw gave to our predecessor committee on Tuesday 9 February 2016.

11 The Joint Committee on Human Rights, [Immigration Detention](#), Sixteenth Report of Session 2017–19, HC 1484 HL Paper 278 Published on 7 February 2019.

## 2 Operation of the detention estate

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### Overview of immigration detention

9. The key document governing the application of immigration detention is the Detention Centre Rules (2001). The Rules set out the purpose of detention as well as what detainees should have access to, including healthcare, access to welfare and privileges, safety and security.<sup>12</sup> The Home Office policy guidance to all staff dealing with immigration enforcement is set out in the Enforcement Instructions and Guidance which includes directions on the power to detain, the decision and authority to detain, and detention procedures. Importantly, it also contains policy guidance on who should not be detained. The key chapter on detention is Chapter 55 which states:

- The power to detain must be retained in the interests of maintaining effective immigration control. However, there is a presumption in favour of immigration bail and, wherever possible, alternatives to detention are used.
- Detention is most usually appropriate: to effect removal; initially to establish a person's identity or basis of claim; or where there is reason to believe that the person will fail to comply with any conditions attached to a grant of immigration bail.
- Detention must be used sparingly, and for the shortest period necessary. It is not an effective use of detention space to detain people for lengthy periods if it would be practical to effect detention later in the process, for example once any rights of appeal have been exhausted if that is likely to be protracted and/or there are no other factors present arguing more strongly in favour of detention.
- Detention can only lawfully be exercised under these provisions where there is a realistic prospect of removal within a reasonable period.<sup>13</sup>

10. The Home Office must specify the basis on which a decision to detain was made and “there must be a properly evidenced and fully justified explanation of the reasoning behind the decision to detain placed on file in all detention cases”.<sup>14</sup>

11. In response to the first Shaw review, the Government pledged to introduce a new ‘adult at risk’ concept into decision-making on immigration detention with a clear presumption that people who are at risk should not be detained. The new Adults at Risk (AAR) policy is

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12 The [Detention Centre Rules 2001; Q365](#) : In oral evidence to us on 8 May 2018, Rt Hon Caroline Nokes MP stated that a review of the Detention Centre Rules 2001 would be “occurring this year”.

13 [Home Office Enforcement Instructions and Guidance](#) ; [Chapter 55.10, “Adults at Risk” was removed from the Home Office Enforcement Instructions and Guidance following the introduction of the AAR policy and is now available at [Immigration Act 2016: Guidance on adults at risk in immigration detention](#), July 2018.

14 Home Office [Enforcement Instructions and Guidance](#), Chapter 55.6.3, Form IS91R Reasons for detention: This form must be “served” on every detained person. “In addition, there must be a properly evidenced and fully justified explanation of the reasoning behind the decision to detain placed on file in all detention cases”. The guidance states that there are “five possible reasons for detention” which are set out on the IS91R form, these are: “ • You are likely to abscond if granted immigration bail. • There is insufficient reliable information to decide on whether to grant you immigration bail. • Your removal from the UK is imminent. • You need to be detained whilst alternative arrangements are made for your care. • Your release is not considered conducive to the public good”.

underpinned by section 59 of the Immigration Act 2016. This required the Home Secretary to issue guidance for assessing whether an individual would be particularly vulnerable if detained and for making decisions to detain in such cases.

12. The Home Office Adults at Risk statutory policy guidance states that “being aged 70 or over” is an indicator of risk i.e. that a person may be particularly vulnerable to harm in detention.<sup>15</sup> Guidance also states that, “unaccompanied children (that is persons under the age of 18) must not be detained other than in very exceptional circumstances”.<sup>16</sup> The Home Office’s policy guidance on family separations allows for families to be separated by detention, for example if they intend to remove or deport one parent.<sup>17</sup> However, the guidance states that: “A child must not be separated from both adults for immigration purposes (or from one, in the case of a single-parent family, if the consequence of that decision is that the child is taken into care)”.<sup>18</sup>

13. Decisions to detain an individual are taken by Home Office officials and not by a judge or court and immigration detention is overseen by the Immigration Enforcement directorate in the Home Office.<sup>19</sup> There is no requirement in UK law for those decisions to be subject to judicial oversight within a certain period after a detention order is made.

14. The Home Office introduced a new Detention Gatekeeper Team in June 2016 to scrutinise all proposed detentions for evidence of vulnerability and advise caseworkers on detention decisions. There is no process for thorough pre-detention screening of individuals. On arrival at an IRC, all detainees receive a healthcare screening as part of the reception process, to identify the presence of vulnerabilities while the health needs of an individual are assessed.

15. Rule 35 of the Detention Centre Rules 2001 is intended to act as a safeguard against the detention of vulnerable people by ensuring that particularly vulnerable detainees are brought to the attention of relevant staff. It stipulates that the IRC medical practitioner must report on any detained person whose health is likely to be injuriously affected by detention, who is suspected of having suicidal intentions, or whom the practitioner is concerned may have been the victim of torture. Once a report has been completed, continued detention is reviewed by a Home Office caseworker, weighing immigration factors against evidence of vulnerability, within two working days of receipt.

16. In the UK, there is no limit on the length of time someone can be held in immigration detention. The length of time is heavily dependent on the efficiency of Home Office casework. Lengthy casework delays, for example regarding asylum decisions, appeals and documentation, can prolong individuals’ detention.

17. When a person is detained, the Home Office has a statutory duty regularly to review and provide written justification for their continued detention. Rule 9 of the Detention

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15 [Immigration Act 2016: Guidance on adults at risk in immigration detention](#), July 2018, p8.

16 [Home Office Enforcement Instructions and Guidance, Chapter 55.9.3](#); An unaccompanied asylum seeking child is defined as an individual who is: under 18 years of age when the claim is submitted; applying for asylum in their own right; separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so [[Home Office, Safeguarding Strategy Unaccompanied asylum seeking and refugee children, November 2017, p7](#)].

17 BID frequently asked questions, see number 5 <https://www.biduk.org/pages/88-frequently-asked-questions-faqs#>

18 Home Office, [Family separations guidance](#), 11 December 2017, p6.

19 [Home Office Enforcement Instructions and Guidance](#). Chapter 55.5, Levels of authority for detention.

Centre Rules 2001 sets out the statutory requirement for detainees to be provided “with written reasons for detention at the time of initial detention, and thereafter monthly”.<sup>20</sup> The Home Office introduced case progression panels in response to Shaw’s first review, to “provide an internally independent review of suitability for continued detention”. Cases are considered at these panels, staffed by other Home Office officials, at three-monthly intervals.<sup>21</sup> Detainees in IRCs, but not in prisons, are entitled to 30 minutes’ free initial legal advice through the Legal Aid Agency.<sup>22</sup>

18. All detainees, other than those detained pending deportation and persons pending removal in the interests of national security, are entitled to automatic bail hearings after four months of detention. The Home Office has announced that it will pilot an additional bail referral after two months.

19. IRC management are contracted by the Home Office to provide “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.”<sup>23</sup> The Home Office is ultimately responsible for oversight of the immigration detention estate.

**20. The application of immigration detention as set out in policy and guidance is meant to be carried out in line with the process described in this section. However, the evidence taken by the Committee shows that there are serious problems with almost every element of the process, which lead to people being wrongfully detained, held in detention when they are vulnerable and detained for too long. Substantial reforms are needed.**

## Analysis of government immigration statistics

21. The number of people held in immigration detention has been falling since 2015. However the picture is more complex than government statistics immediately suggest, which can be seen in the charts below. Despite the decrease in the number of people being detained, a higher proportion of people are being detained for longer periods of time: 12% of detainees are being held for periods of 6 months or more.<sup>24</sup> Stephen Shaw, in his follow-up review on immigration detention, found the time that many people spent in detention “remains deeply troubling” highlighting that “the number of people held for

20 [The Detention Centre Rules 2001, Rule 9; Chapter 55.8 of the Home Office, Enforcement Instructions and Guidance](#) advises Home Office staff on the management of monthly detention reviews. The guidance states that “Detention reviews are necessary in all cases to ensure that detention remains lawful and in line with stated detention policy at all times. Detention reviews must be carried out at prescribed points throughout the period a person remains detained under Immigration Act powers, whether the person is held in the immigration detention estate or elsewhere, for example, secure hospital or prison”.

21 [Immigrants: Detainees: Written question - 107470](#)

22 [The Legal Aid Agency \(LAA\)](#) is an executive agency of the Ministry of Justice (MoJ) established under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 to commission, procure and pay for legal aid services from providers (solicitors, barristers, mediators and the not for profit sector). The Legal Aid Agency and the majority of the provisions in the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) apply to detention in England and Wales only.

23 [The Detention Centre Rules 2001](#): Rule 3 (1) of the Detention Centre Rules 2001.

24 [Home Office immigration statistics](#), December 2018, detention tables, dt\_11\_q.

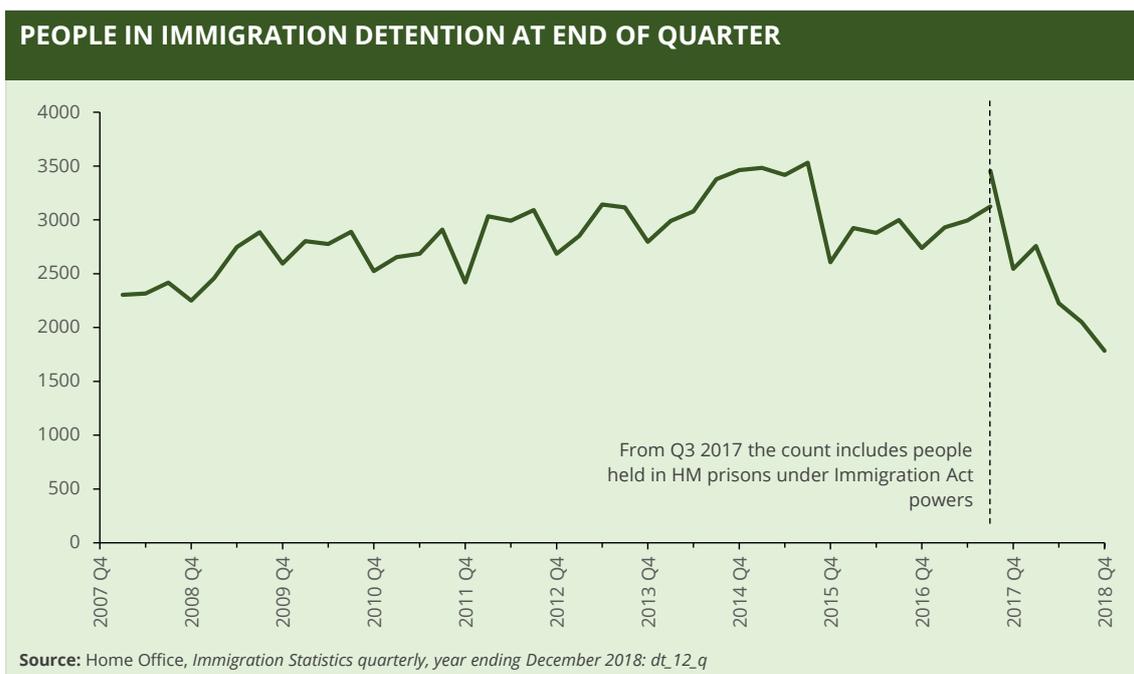
over six months has actually increased”.<sup>25</sup> In evidence to the Joint Committee on Human Rights the Immigration Minister, Rt Hon Caroline Nokes MP, acknowledged that the Home Office detains too many people:

Do I think we detain too many? I am saying that I want to detain fewer, so I think we can deduce from that that, yes, I probably do.<sup>26</sup>

### Number of people held in detention

22. Statistics on immigration detention are published by the Home Office in their quarterly Immigration Statistics release.<sup>27</sup> At the end of December 2018, there were 1,784 people held in immigration detention facilities across the UK (including HM Prisons), the lowest comparable level on record since 2008. Of these, 366 detainees were held in HM Prisons under immigration powers at the end of December 2018.<sup>28</sup> Figure 1 below shows a slight rise in the number of people held in detention between 2008 - 2017.<sup>29</sup> The number of people in detention fell in both Q3 2018 and Q4 2018.<sup>30</sup>

Figure 1: Number of people in immigration detention at end of each year from Q4 2008 to Q4 2018



- 25 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons, a follow-up report to the Home Office](#), July 2018, Foreword, viii.
- 26 [Q71](#), Joint Committee on Human Rights, oral evidence: Immigration detention, HC1484, Wednesday 5 December 2018.
- 27 [Home Office immigration statistics](#), year ending December 2018. The most recent data is for Q4 2018.
- 28 Ibid; data for detainees held under immigration powers in HM Prisons can be found here: [Table dt\\_13\\_q](#); the [Home Office User Guide to Home Office Immigration Statistics](#) 25 February 2019 stated that: "Data on the number of individuals held in HM prisons under immigration powers at the end of the period are included in the detention tables from the end of Q3 2017. These data include time served foreign national offenders (FNOs), those formerly on remand, and those unsuitable to be held in the immigration detention estate".
- 29 The facilities included in the count are the eight Immigration Removal Centres (IRCs), two short-term holding facilities (STHF) and one pre-departure accommodation (PDA).
- 30 Home Office Immigration Statistics, Detention tables, dt\_12\_q: the total number of detainees fell from 2,758 in Q1 2018 to 2,226 in Q2 2018. In Q3 2018 the total number of detainees was 2,049 and in Q4 2018 the number was 1,784 (including HM Prisons).

23. At the end of December 2018, foreign national ex-offenders ((ex) FNOs) made up around 53% of the detained population.<sup>31</sup> Home Office immigration statistics showed that there were 366 detainees held in HM Prisons under immigration powers at the end of December 2018 which included time-served FNOs but also may have included people who had never received a custodial sentence.<sup>32</sup> Time-served FNOs could be held anywhere on the immigration detention estate but the available statistics do not show exactly where.

### *Number of people entering and leaving detention*

24. In the year ending December 2018, 24,748 people entered the detention estate (down 10% on the previous year) and 25,487 left detention (down 10%).<sup>33</sup> Of those 25,487 leaving detention, 11,152 (43.8%) were returned from the UK to another country, compared with 46.6% in the year ending December 2017; in 2018 13,945 (54.7%) were released on bail and 47 (0.2%) were granted leave to enter/remain. A further 343 (1.3%) people were categorised in the 'other' category, which includes people who were returned to criminal detention, people released unconditionally, absconders, those sectioned under the Mental Health Act (1983) and people who died in detention.<sup>34</sup> The chart in Figure 2 below shows a steady increase in people entering immigration detention from 2010 to 2015 and then a steady decrease since 2015.

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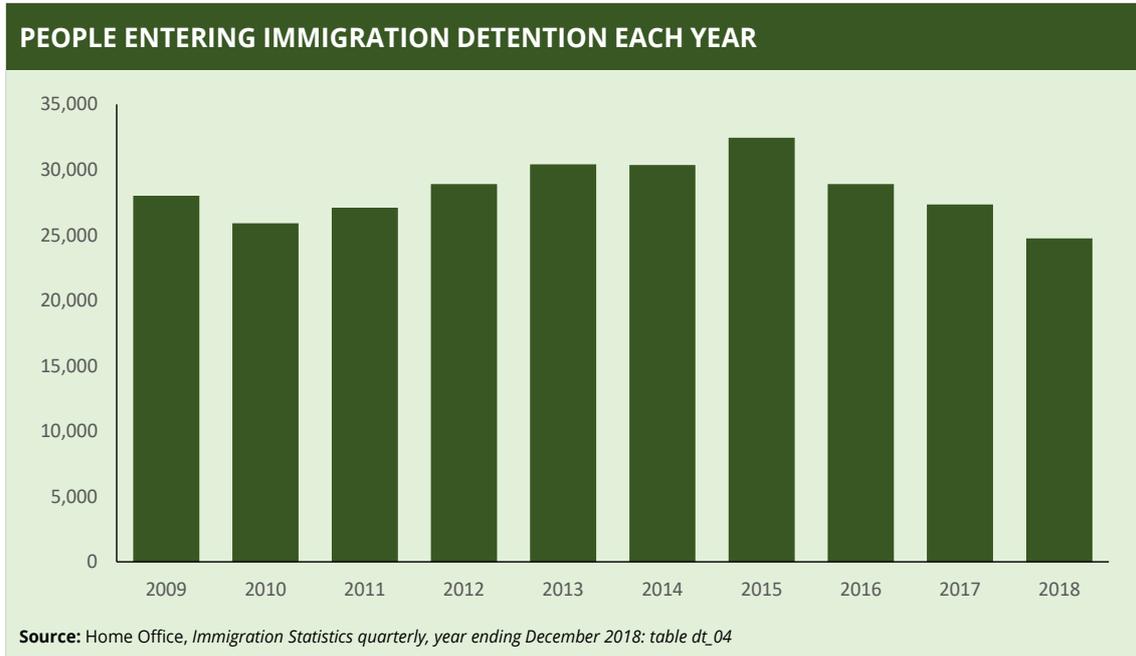
31 Home Office [Immigration Enforcement statistics, Q4 2018, table FNO\\_11](#), Time served foreign national offenders: there were 944 time-served FNOs in detention at the end of December 2018; Home Office Immigration statistics quarterly, year ending December 2018. Table dt\_12\_q; The Home Office statistics on the length of time spent in immigration detention are not disaggregated for (ex) FNOs and non FNOs.

32 [Home Office immigration statistics](#), year ending December 2018. Table dt\_13\_q; [User Guide to Home Office Immigration Statistics](#), 28 February 2019, p88: Data on the number of individuals held in HM prisons under immigration powers at the end of the period have been included in the detention tables from the end of Q3 2017. These data include time served foreign national offenders (FNOs), those formerly on remand, and those unsuitable to be held in the immigration detention estate. This includes HM prisons, IRCs, and Short Term Holding Facilities (STHFs). The User Guide (p86) states that. "the data may include a small number of individuals who have never served a custodial sentence. These individuals are held in prisons as they present specific risk factors that indicate they pose a serious risk of harm to the public or to the good order of an Immigration Removal Centre, including the safety of staff and other detainees, which cannot be managed within the regime applied in Immigration Removal Centres".

33 [Home Office Immigration statistics](#), as of December 2018. Table dt\_01\_q (entering detention) and dt\_05\_q (leaving detention).

34 [Home Office immigration statistics](#), Table dt\_05\_q: People leaving detention by reason and age.

Figure 2: Number of people entering detention by year



### Deaths in immigration detention

25. The September 2018 Home Office immigration statistics included, for the first time, data on the number of deaths in detention; the Home Office confirmed that this data would be reported on an annual basis.<sup>35</sup> The Home Office reported that “in 2017, 4 people died in the detention estate while being held solely under immigration powers. This does not include those who died while being detained solely under immigration powers in prison, or after leaving detention”.<sup>36</sup>

### Length of time in detention

26. The Home Office quarterly immigration figures capture the length of time spent in detention in categories (e.g. ‘3 days or less’, ‘4–7 days’, etc.). The latest, December 2018 snapshot of current detainees showed that just under half (42%) of immigration detainees had been in detention for fewer than 28 days.<sup>37</sup> In the same period, there were 54 people held in detention for one year or more.<sup>38</sup> Although the proportion held for fewer than 28 days has increased since 2015, from 37% (972 of 2,607) to 42% (754 of 1,784), the proportion being held for periods of 6 months or more has also increased, from 10% (263) to 12% (208) of detainees. This is shown in Figure 3.<sup>39</sup> In his 2018 follow up review, Stephen Shaw found that the “average time in detention has fallen by eight days (nearly 9 per cent) since

35 [Home Office Immigration Statistics quarterly release](#), ending September 2018; The Home Office clarified that “Data on deaths in detention include those who died while held solely under immigration powers in detention facilities (such as IRCs, STHF, and PDA). They do not include those who died while being held solely under immigration powers in prison, or after leaving detention”.

36 [Home Office immigration statistics](#), year ending September 2018; [User Guide to Home Office Immigration Statistics](#), 28 February 2019, from the third quarter of 2017, the Home Office began capturing data of those held in prisons under immigration detention powers in their system (p88).

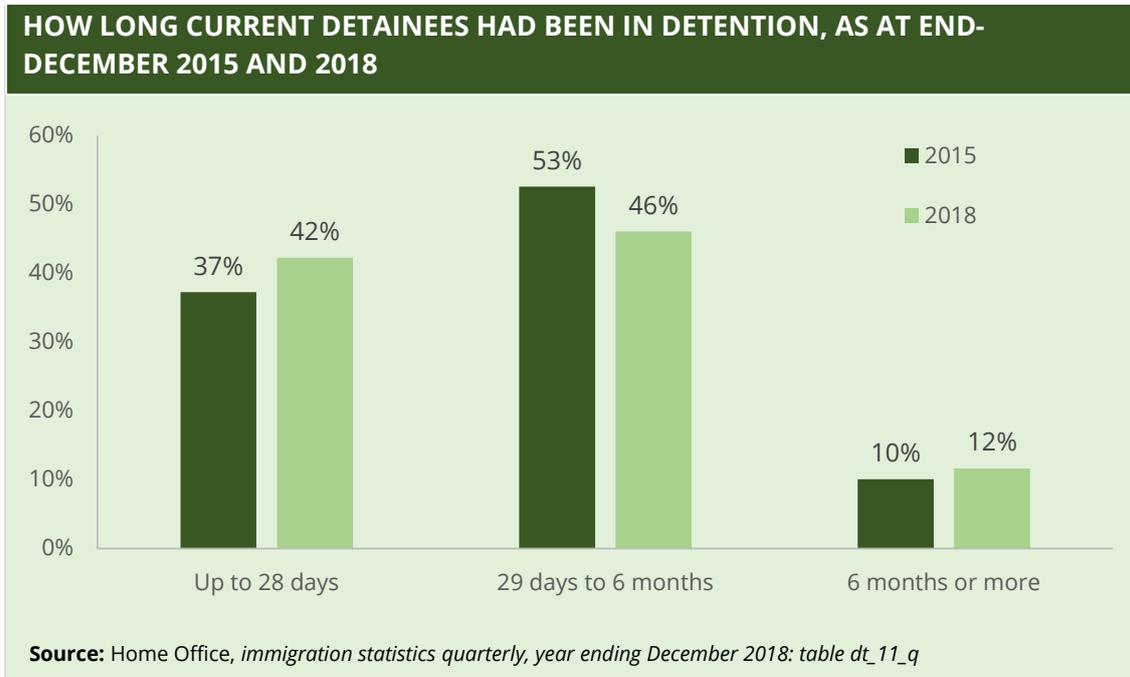
37 [Home Office Immigration Statistics](#), December 2018; Table dt\_11\_q: People in detention by sex and length of detention.

38 Ibid

39 [Home Office immigration statistics](#), December 2018, detention tables, dt\_06\_q.

early 2015”.<sup>40</sup> This was based on data that Shaw obtained from the Home Office, which showed the average number of nights spent in detention among the currently detained population. The average figure presumably reflects the increase in the proportion held for less than 28 days.

**Figure 3: People currently in detention in Q4 2015 and Q4 2018 broken down by length of detention.**



### *Categories of people who are detained*

27. Detainees are a mix of people who may be in the UK unlawfully such as overstayers, people seeking asylum, and foreign national offenders (FNOs). There also may be an overlap between these categories, for example an overstayer could make an asylum claim from within detention. As at the end of December 2018, 61% of people (1,085) held in immigration detention were asylum seekers; the number of asylum seekers as well the number of people in detention at the end of December 2018 was lower than in December 2017 and December 2016. However, as a proportion of the total number of people in detention, the proportion who were asylum seekers was higher than in previous years: 61% compared to 59% in both December 2017 and 2016. The proportion in June 2018 (64%) was the highest since December 2010.<sup>41</sup>

28. **The latest Home Office immigration statistics show a decrease in the number of people being detained. We welcome this recent reduction. However, we are deeply troubled that, beneath this headline figure, there is an increase in people being held in immigration detention for over six months, many of whom are foreign national offenders.**

40 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p26.

41 [Home Office immigration statistics quarterly, December 2018](#), Table dt\_13\_q

29. We are also concerned about the fact that more than half of the people being detained in the year to December 2018 were simply released again, raising important questions over whether the power to detain is being used appropriately. The power to detain is a necessary one, but should be used only if there are no other options, as a last resort prior to removal. The power should be exercised for the shortest possible time and only when there is a realistic prospect of removal within a reasonable period.

### 3 Decision to detain

30. Chapter 55 of the Home Office Enforcement Instructions and Guidance states that an Immigration Officer or “non-warranted” caseworker has the legal power to detain an “illegal entrant” under the authority of the Secretary of State but that “in practice, an officer of at least chief immigration officer [CIO] rank, or a HEO [Higher Executive Officer] caseworker, must give authority”.<sup>42</sup> The guidance also outlines special circumstances in which the authority to detain must be given by officers of specific rank (for example, spouses of British citizens or EEA nationals: CIO/ HEO).<sup>43</sup>

31. The Home Office must specify the basis on which a decision to detain was made and “there must be a properly evidenced and fully justified explanation of the reasoning behind the decision to detain placed on file in all detention cases”.<sup>44</sup> We heard from Bail for Immigration Detainees (BID) that the Home Office rarely justifies the necessity of its decision to detain, nor explains why alternatives to detention (such as bail with reporting restrictions or electronic monitoring) are inappropriate. They told us:

The result of this is that the burden of proof, in practice, unfailingly rests upon the detainee to demonstrate why they should be released in an application for bail, rather than upon the Home Office in demonstrating why they must be detained. This is contrary to the principle that the burden of justifying the use of detention is on the detaining authority and contrary to the right to freedom from arbitrary detention.<sup>45</sup>

32. In evidence to the Joint Committee on Human Rights, a number of barristers raised their concerns about the lack of transparency in the Home Office detention decision making process. Stephanie Harrison, a barrister at Garden Court Chambers, said that:

The decision-making process is opaque, so even if you are an expert lawyer and you are provided with the documentation, it does not tell you why; it just gives you a conclusion. It will say, “You are an abscond risk. Your removal is imminent”, but it does not say why you are an abscond risk. It does not say what the obstacles to removal are. It does not explain the underlying decision. It gives a conclusion, not the reasons for it, which obviously makes it very difficult to challenge.<sup>46</sup>

33. Laura Dubinsky, a barrister at Doughty Street Chambers, added her concerns about the lack of Home Office information provided to detainees about the decision for their detention:

42 [Home Office Enforcement Instructions and Guidance](#), Chapter 55.5, Levels of authority for detention.

43 *Ibid*, Chapter 55.5.3, Authority to detain - special cases.

44 Home Office [Enforcement Instructions and Guidance](#), Chapter 55.6.3, Form IS91R Reasons for detention: This form must be “served” on every detained person. “In addition, there must be a properly evidenced and fully justified explanation of the reasoning behind the decision to detain placed on file in all detention cases”. The guidance states that there are “five possible reasons for detention” which are set out on the IS91R form, these are: “• You are likely to abscond if granted immigration bail. • There is insufficient reliable information to decide on whether to grant you immigration bail. • Your removal from the UK is imminent. • You need to be detained whilst alternative arrangements are made for your care. • Your release is not considered conducive to the public good”.

45 Bail for Immigration Detainees ([IDD0002](#))

46 [Q23](#) Joint Committee on Human Rights, Oral evidence: Immigration detention, HC 1484, Wednesday 21 November 2018.

At the start of detention, detainees are not given a copy of the decision to detain. Nor are they given a copy of the evidence on which that decision is based. Under the current regime, what they get within 24 hours is what Stephanie referred to, the IS91R checklist, or sometimes a letter to the detainee. That will generally be far shorter than the decision to detain and may be brief and elliptical: “This detainee’s release is not conducive to the public good”, for example.<sup>47</sup>

34. In his most recent inspection of Yarl’s Wood Her Majesty’s Chief Inspector of Prisons noted: “During the previous six months 67% of women had been released into the community, which raised questions about the justification for detention in the first place”.<sup>48</sup> Tom Nunn, Legal Manager at Bail for Immigration Detainees (BID) told us that “many of the decisions to detain people are based on no logic at all”.<sup>49</sup>

35. During this inquiry our attention was drawn to several specific cases which call into question Home Office procedures. In one case a woman was placed in immigration detention and taken to Yarl’s Wood having contacted the police because of a threat to kill her from a violent ex-husband. She had an ongoing application for indefinite leave to remain which was later granted.<sup>50</sup> In response to concerns raised on that specific case the Minister for Immigration, Rt Hon Caroline Nokes MP, told the House of Commons “that we have in this country an immigration policy that seeks to implement the rules as they are set out”; she also said that people are only detained “when there is a real risk of absconding or of public harm”.<sup>51</sup>

### **Judicial oversight**

36. The Bingham Centre for the Rule of Law explained that there is “currently no requirement in UK law that the legality of an initial decision to detain be reviewed by a judicial authority within a certain period after the detention order is made”. They argued that “such a requirement would establish early in the process of detention and deportation whether an individual has been properly detained”.<sup>52</sup> Research commissioned by the Bar Council noted that under UK law, an immigration bail application does not provide for a review of the lawfulness of detention:

[ ... ] the most prompt and accessible way to secure release is via a bail application to the First-tier Tribunal’s Immigration and Asylum Chamber. This is not an independent or automatic review of the lawfulness of detention. Judicial review considers the lawfulness of detention, but is not automatic, can take some time, and typically considers cases where detention has already become unlawful, rather than being prospective.<sup>53</sup>

37. The Bingham Centre for the Rule of Law argued that prompt and automatic court control, which exists in many countries across Europe, not only provided appropriate

47 [Q23](#) Joint Committee on Human Rights, Oral evidence: [Immigration detention](#), HC 1484, Wednesday 21 November 2018.

48 HM Inspectorate of Prisons, [Report of an unannounced inspection of Yarl’s Wood IRC](#), 15 November 2017.

49 [Q28](#)

50 Independent, [Woman detained in Yarl’s Wood after calling police because ex-partner threatened to kill her, reveals MP](#), 6 March 2018.

51 [Commons Hansard](#), Urgent Question on Yarl’s Wood Detention Centre, 6 March 2018 col 186.

52 Bingham Centre for the Rule of Law ([IDD0014](#))

53 The Bar Council, Dr Ann Lindley, [Injustice in immigration detention](#), November 2017, p20.

protection for the individual detained but also ensured that detention was not arbitrary. They cited some examples of how a maximum time limit operated in other European countries including Denmark and Switzerland:

- Danish law requires that a non-citizen deprived of liberty be brought before a court of justice within three days (72 hours), and the court must rule on the lawfulness of detention and whether its continuance is appropriate.
- In Switzerland, the legality and appropriateness of detention must be reviewed at the latest within four days (96 hours) by a judicial authority on the basis of an oral hearing.<sup>54</sup>

**38. *The initial detention decision should be made by the Home Office but reviewed within 72 hours by a judge. This would be in line with other areas of UK law, for example in the UK criminal justice system, where an upper limit for detention without charge exists.***

### **Separation of families**

39. The Home Office's policy guidance on family separations states that a child must not be separated from both adults for immigration purposes if the child is taken into care as a result.<sup>55</sup> According to a Guardian newspaper article in July 2018, BID reported that children had been placed into the care of social services as a result of detention on three occasions in the last year and a half.<sup>56</sup>

40. On 9 March 2018, a Home Office decision to detain a father resulted in his three school-age children and autistic 17-year-old son being taken into care. The mother was out of the country at the time of his detention. He had been released on bail by a judge and had met all of his reporting duties.<sup>57</sup>

**41. *The Borders, Citizenship and Immigration Act 2009 places a statutory duty upon the Secretary of State to ensure that immigration, asylum and nationality functions “are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom”.*<sup>58</sup> *The Home Office’s guidance for caseworkers and Immigration Compliance and Enforcement (ICE) officers on family separations is founded upon this statutory duty and clearly states that the best interests of any child must be the “primary consideration” for officials in each case. Yet it is clear that this guidance is not always being followed. The Government should bring forward legislation specifically to prevent the separation of a nursing mother from the child they are nursing, and the separation of a child from one or both parents where the result would be that the child is taken into care.***

54 Bingham Centre for the Rule of Law (IDD0014)

55 Home Office, [Family separations guidance](#), 11 December 2017, p6; BID frequently asked questions, see number 5: <https://www.biduk.org/pages/88-frequently-asked-questions-faqs#FAQ5>

56 The Guardian, [UK immigration authorities separating children from parents](#), 3 July 2018.

57 The Guardian, [Home Office broke its own rules on avoiding family separations](#), 11 March 2018.

58 Home Office, Immigration Returns, Enforcement and Detention General Instructions, Family Separations, [Separation principles](#) p6; section 55 of the [Borders, Citizenship and Immigration Act 2009](#)

## Detention of older people

42. Published Home Office statistics do not provide a breakdown of the age of detainees, differentiating only between adult and child. Policy operational guidance states that “[ ... ] an individual aged 70 or over (regardless of any other considerations) should be regarded as being at risk. The fact of their age alone will automatically be regarded as amounting to, at least, level 2 evidence” (see explanation of evidence levels in Chapter 4).<sup>59</sup> While the Home Office Adults at Risk statutory guidance currently considers the age of 70 to be an appropriate threshold for considering age to be a factor in vulnerability, other bodies take a different view, notably the United Nations.<sup>60</sup>

43. Recent comments from the Home Office, which we record below, appear to indicate that it has conceded that the threshold in the Adults at Risk statutory guidance may be too simplistic, and too high, given that age-related vulnerability may be affected by a number of factors including occupation, physical and mental health. This was demonstrated in our inquiry into the immigration treatment of the Windrush generation where it became clear that the Home Office has been detaining older and potentially vulnerable individuals. We heard how Paulette Wilson, aged 61, was detained in Yarl’s Wood IRC and Anthony Bryan, aged 60, was detained twice, although both were lawfully resident in the UK when they were detained and presented no risk of absconding.<sup>61</sup> On 1 May 2018, Channel 4 news reported the case of Yvonne Smith, aged 64. Ms Smith, the daughter of a Windrush arrival, had been caring for her father who was in his 90s when she was detained. She was detained in Yarl’s Wood IRC for nine months.<sup>62</sup> When asked about the decision to detain individuals such as Paulette Wilson, the then Home Secretary told the Committee:

We are putting in more senior caseworkers, for a start, to ensure that any decisions of that type are referred higher up. I am also looking again at the type of profile of people. I do not think it is a good idea to lock up elderly people in that way. That is another change I am putting in place.<sup>63</sup>

44. Hugh Ind, the then Director General of Immigration Enforcement, told us that caseworkers faced making difficult decisions on individuals’ immigration cases:

Some of them have a very significant back story that is available to us that is hard to share, which means that our caseworkers are making a very difficult decision in relation to those cases. Not all of them, but some of them have a very serious criminal past that you and [I] would not be able to reconcile with the stories that we are told from the other side, but that has to be reconciled by my caseworkers. Sometimes they get it wrong and we have to have several safeguards in place to get it right.<sup>64</sup>

59 Home Office, [Adults at risk in immigration detention](#), 2 July 2018, p11; The AAR guidance states that: “Once an individual has been identified as being at risk, by virtue of them exhibiting an indicator of risk, consideration should be given to the level of evidence available in support, and the weight that should be afforded to the evidence, in order to assess the likely risk of harm to the individual if detained for the period identified as necessary to effect their removal”. There are three levels, with three being the highest. [P12].

60 Home Office, [Immigration Act 2016: Guidance on adults at risk in immigration detention](#), July 2018, p8, Indicators of risk; [United Nations, Ageing](#), accessed 26 January 2019.

61 [House of Commons, Home Affairs Committee, The Windrush Generation, Sixth Report of Session 201–19](#), 3 July 2018; paragraph 63.

62 [Channel 4 news, Grandmother, child of the Windrush, told she can’t stay in UK](#). 1 May 2018, Alex Thomson.

63 [Q82](#) Home Affairs Committee, Oral evidence: Windrush Children, HC990, Wednesday 25 April 2018. Evidence given by the then Home Secretary, Rt Hon Amber Rudd MP.

64 [Q385](#)

45. *We recognise that age-related vulnerability is complex and that perspectives on and definitions of ‘older people’ can differ widely. However, the Home Office does not define ‘older people’ in either the Adults at Risk statutory guidance or the Adults at Risk policy guidance; also it does not explain why an individual specifically aged 70 or over should be regarded as vulnerable. We recommend that the Government should have a clear policy which avoids detaining people over the age of 60 unless there are exceptional reasons to do so.*

### *Detention of LGBTIQ+ individuals*

46. In Shaw’s first report on the welfare of vulnerable people in detention, he examined the concept of vulnerability in determining whether certain groups of people would be particularly vulnerable to harm if detained. Following visits to all of the IRCs and consideration of evidence submitted to his review he concluded that IRCs were not able to provide an “appropriate, safe and supportive environment” for transsexual people and recommended a presumption against the detention of “transsexual people”.<sup>65</sup>

47. Following publication of Shaw’s report, the Government introduced an ‘adult at risk’ concept into decision-making on immigration detention with a clear presumption that people who are at risk should not be detained. The Government included “being a transsexual or intersex person” in the new Adults at Risk (AAR) “indicators of risk” which indicated a person’s vulnerability to harm in detention. We will discuss the AAR policy further in Chapter 4.

48. The Government does not currently recognise Lesbian, Gay and Bi-sexual people as adults at risk. The United Kingdom Lesbian & Gay Immigration Group (UKLGIG) expressed concern that the Home Office does not monitor the number of LGBTI people that are detained. This means that the effectiveness of the Government’s AAR policy cannot be evaluated in terms of reducing the number of trans and intersex people detained.<sup>66</sup> UKLGIG also highlighted inconsistencies in the Government’s recognition of LGBTI people as vulnerable. Being LGBTI is noted as an indicator of vulnerability in UKVI’s adult safeguarding strategy, the database used by asylum caseworkers, and in the Vulnerable Persons Resettlement Scheme from the Syrian region.<sup>67</sup>

49. The 2018 United Kingdom Lesbian and Gay Immigration Group (UKLGIG) report ‘Still Falling Short’ highlighted the direct impact that detention has on the prospects of LGBTIQ+ people seeking to claim asylum.<sup>68</sup> Often individuals arrive in the UK having come from a country where they have faced extreme persecution and, in many cases, physical or emotional abuse and/or trauma.

50. Some of these individuals arrive in the UK fearing having their sexual orientation or gender identity exposed, and yet Home Office caseworkers and decision makers frequently expect LGBTIQ+ asylum seekers to ‘prove’ their situation. This may include asking for witnesses who will provide a reference confirming that the asylum seeker is LGBTIQ+ as claimed, as well as asking the asylum seeker to provide evidence of attending LGBTIQ+ events, organisations, or online dating.

65 Stephen Shaw, [Review into the Welfare in Detention of Vulnerable Persons](#), a report to the Home Office, January 2016, 4.44, p90; *ibid*, recommendation 14, p194.

66 UK Lesbian and Gay Immigration Group ([IDD0026](#))

67 *Ibid*

68 United Kingdom Lesbian and Gay Immigration Group, [Still Falling Short](#), July 2018.

51. While legal aid is offered to all asylum seekers, advisers often do not have the specialist knowledge required for asylum claims based on sexual orientation or gender identity. LGBTQI+ asylum seekers are particularly limited in pursuing their legal claim due to the evidence that the Home Office requires of them.

52. Most detention centres in the UK offer the services of an Equality or LGBT Officer who is responsible for providing advice and support to any LGBTQI+ identifying detainees. However, the 2016 UK Lesbian & Gay Immigration Group (UKLGIG) and Stonewall report, *No Safe Refuge*, highlighted the systemic discrimination, abuse and harassment that LGBTQI+ people face from both staff and other people who have been detained.<sup>69</sup> Furthermore, the report noted that the visibility and availability of equality advice services was limited, and interviewees reported instances in which detention officers were reluctant to provide details on how to access the LGBT Officer.

53. While it is recognised that steps such as implementing Equality/LGBT Officers in detention centres have aimed to improve the experiences of LGBTQI+ asylum seekers, there is more work to be done.

54. *We recommend that the Government should recognise that LGBTQI+ people are vulnerable in immigration detention, thereby extending the recognition that it already affords to trans and intersex people to all LGBTQI+ individuals. Secondly, the Home Office should monitor and publish statistics on the number of LGBTQI+ people it detains.*

### *Detained asylum seekers*

55. From 2000 until July 2015 people making an asylum claim could be detained if a quick decision was likely in their case. This was known as the detained fast-track policy (referred to as ‘the DFT’).<sup>70</sup> In these cases, asylum decisions and appeals were made within a matter of days and weeks, rather than months (as is often the case for non-detained asylum cases). The DFT was suspended in 2015 after a series of legal challenges resulted in findings that the fast-track rules were unfair and unjust.<sup>71</sup> In response to the decision to suspend the detained fast-track, the Home Office formed a dedicated detained asylum casework team for examining asylum claims made by those in detention (known as the DAC team). Despite the suspension of the DFT, the Refugee Council reported that “some asylum seekers are still detained for the duration of the examination of their claim”.<sup>72</sup> During our inquiry we questioned the Home Office about the large numbers of asylum seekers held in immigration detention who were not foreign national offenders, and who did not pose a threat to the public.<sup>73</sup>

56. The Home Office reported that asylum-seeking detainees were usually those who claimed asylum after being detained for removal, or who were detained for public

69 UK Lesbian & Gay Immigration Group, Stonewall, [No Safe Refuge, Experiences of LGBT asylum seekers in detention](#), 26 October 2016.

70 House of Commons Library, Briefing Paper Number 7294, 12 September 2018 [Immigration detention in the UK: an overview](#) by Terry McGuinness and Melanie Gower, 1.4, p10.

71 Ibid

72 Refugee Council, [Detention in the Asylum System](#), February 2018.

73 As outlined in the [Home Office Enforcement Instructions and Guidance, Chapter 55.3.A](#), “public protection is a key consideration” which underpins Home Office immigration detention policy.

protection reasons. Refused asylum seekers may also be detained for removal if they refuse to leave the UK voluntarily.<sup>74</sup> Hugh Ind, the then Director General for Immigration Enforcement, told us:

You would not find somebody who appeared spontaneously—to use the United Nations expression—claiming asylum, having that asylum claim processed and in detention now unless there was a public protection reason alongside it.<sup>75</sup>

57. Following our evidence session with Mr Ind, Detention Action and Women for Refugee Women told us that the Home Office’s statement conflicted with what they had seen in their work. Detention Action highlighted the cases of five clients who “were detained after claiming asylum at the port, on the day of their arrival in the UK” with “no suggestion of public protection issues in any of the cases”. Detention Action confirmed that “Two of them were detained for three and five months respectively”.<sup>76</sup> Additionally, Women for Refugee Women told us that they were “aware of four cases of women who were detained after claiming asylum at the port. Again, there were no public protection issues in these cases”. Two of the women were released “after several weeks in detention”, one woman was detained for six months, and the other women had been detained for three months as of May 2018.<sup>77</sup>

58. In November 2018 the Immigration Minister, Rt Hon Caroline Nokes MP, wrote to us to reaffirm that the Home Office “do not detain people simply for having claimed asylum, whether on arrival in the UK or subsequently”. She added that:

Individuals who have their claim processed in detention have claimed asylum after being detained for removal, have been detained for public protection reasons, or have previously failed to comply with the UK’s immigration rules.<sup>78</sup>

**59. We are very concerned about the discrepancy in the evidence we have been given and we are not confident in the accuracy of the Home Office information. While we accept it is the intention only to detain people where there are public protection reasons to do so, in practice we are concerned that too many asylum seekers are being detained who may not need to be, and that inappropriate decisions are being taken to lock people up.**

### **Wrongful detention**

60. Throughout our inquiry we have sought to ascertain the numbers of people who are being wrongfully detained. We have requested this information directly from the Home Office and have also sought related information about compensation payments to individuals who have been wrongfully detained: while not being a direct proxy, this provides some indication of the likely numbers involved. On 14 November 2018 the

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74 Home Office ([IDD0044](#)); [Q387](#)

75 [Q378](#)

76 Women for Refugee Women and Detention Action ([IDD0039](#))

77 Women for Refugee Women and Detention Action ([IDD0039](#))

78 Home Office ([IDD0044](#))

Immigration Minister, Rt Hon Caroline Nokes MP, wrote to us that it would not be possible to provide figures on the number of people wrongfully detained between 2010–2017. She stated:

Providing the information requested would require a manual check of individual records and therefore I am not able to provide you with this information.<sup>79</sup>

61. In June 2018, Sir Philip Rutnam, Permanent Secretary to the Home Office, provided us with figures of compensation payments to those wrongfully detained between 2012–17.<sup>80</sup> The figures in Table C3 below show that between 2012 and 2015 the Government paid a total of £13.8m to more than 550 people after a period of unlawful immigration detention. The Home Office used the term ‘wrongful’ for Table C1 and ‘unlawful’ for Table C3; we understand from a parliamentary question [144298] on 15 May 2018 that the Home Office considers the terms interchangeable and therefore these figures are comparable.<sup>81</sup> Table C1 below shows that there were a further 171 cases of wrongful immigration detention in 2015–16, generating compensation payments totalling £4.1m, and 143 cases in 2016–17, generating a further £3.3m in compensation. These figures show that well over a hundred people are unlawfully detained each year.<sup>82</sup>

**Table C1:** Numbers of cases, total payments, averages and highest payments in relation to wrongful immigration detention during 2015-16 and 2016-17<sup>2</sup>

	2015-16	2016-17
<b>Number of cases</b>	171	143
<b>Total Payments (£m)</b>	£4.1m	£3.3m
<b>Average Payment (£)</b>		
<b>Mean</b>	£24,170	£22,957
<b>Median</b>	£20,000	£15,000
<b>Highest 5 payments (£)</b>	£120,000	£125,000
	£90,000	£114,000
	£80,000	£96,000
	£80,000	£95,000
	£75,000	£78,500
<b>Lowest payment (£)</b>	£1	£1

79 Home Office ([IDD0044](#))

80 [Letter to the Chair of the Home Affairs Committee from the Permanent Secretary of the Home Office, Sir Philip Rutnam](#) regarding wrongful detention, 25 June 2018. The Home Office correspondence referred to ‘wrongful’ and ‘unlawful’ detention, however in a parliamentary question [144298](#) answered by Rt Hon Caroline Nokes MP on 21 May 2018, she stipulated that “taking ‘wrongful’ to be equivalent to ‘unlawful’ compensation for unlawful detention claims for FYs 2012/13 onwards are included in the table”.

81 Parliamentary question to the Home Office: Compensation: Written question - [144298](#), asked by Mr Steven Reed (Croydon North) on 15 May 2018: To ask the Secretary of State for the Home Department, how much his Department has paid in compensation for (a) wrongful detentions and (b) wrongful deportations in each year since 2010. Answered by Rt Hon Caroline Nokes MP on 21 May 2018, she stipulated that “taking ‘wrongful’ to be equivalent to ‘unlawful’ compensation for unlawful detention claims for FYs 2012/13 onwards are included in the table”.

82 [Letter to the Chair of the Home Affairs Committee from the Permanent Secretary of the Home Office, Sir Philip Rutnam](#) regarding wrongful detention, 25 June 2018.

**Table C2:** Numbers of cases recorded as closed, in the Department's lawyers' case work system, in 2015-16 and 2016-17

Final outcome recorded	2015-16	2016-17
Lost	13	11
Settled	119	130
Withdrawn/settled	55	42
<b>Total</b>	<b>187</b>	<b>183</b>

**Table C3:** Numbers of cases and total compensation payments in 2012-13 to 2014-15, laid before the House in answer to PQ 47658, but with column three showing numbers of cases adjusted to correct for multiple payments in-year, in a small number of cases

Financial year	Total Unlawful Detention Compensation payments (£ million)	Number of claimants for the last 3 financial years
FY 2012-13	£5.0	<del>195</del> 187
FY 2013-14	£4.8	<del>199</del> 193
FY 2014-15	£4.0	<del>179</del> 173

Caveat to provided data [from the original PQ answer, in October 2016]: This is provisional management information that is subject to change. It has not been assured to the standard of Official Statistics.

**Table 1:** Home Office wrongful detention claims paid

HOME OFFICE WRONGFUL DETENTION CLAIMS PAID	
Year	£m
2012/13	5
2013/14	4.8
2014/15	4
2015/16	4.1
2016/17	3.3
2017/18	3

**Sources:** *Parliamentary question 144298*, 21 May 2018; *Home Office Annual Report and Accounts 2017/18*

Note: "Wrongful" is taken as equivalent to "unlawful" here.

62. Following the Immigration Minister's response to our question about the number of people wrongfully detained, the Committee further probed the issue with Sir Philip Rutnam, Permanent Secretary to the Home Office as part of a stand-alone evidence session on the work of the Home Office.<sup>83</sup> We highlighted the idiosyncrasy of the Home Office being able to provide us with detailed data on the compensation pay-outs, the average compensation pay-out, the average cost per day to hold someone in detention and the total cost (in millions) of wrongful detention—but still being unable to provide us with the

number of people who had been wrongfully detained.<sup>84</sup> In response, Sir Philip Rutnam asked if he could get back to us with “a fuller explanation”. On 18 December 2018, he wrote to us that, “The Department does not hold a single, consolidated record of this”. He reiterated much of what was already stated in both supplementary evidence to the Committee from the Immigration Minister on 14 November 2018, and in his letter to the Committee on 25 June 2018.<sup>85</sup> He said:

to compile one [a record] retrospectively would be disproportionately expensive. However, the Department has provided information about numbers of cases securing at least £1 in compensation. I think it is fair to regard the number of cases as a good guide to the number of people, but there may be some differences between them [ ... ].<sup>86</sup>

63. The number of cases Sir Philip referred to is outlined in Table C3 on page 24 of this report. We take this to mean that the Home Office understands ‘wrongful detention’ to refer to someone who has been proven to have been wrongfully detained through winning a case against the Home Office, and further that most individuals in this category would have secured at least £1 in compensation. This would however appear to exclude anyone who has an ongoing claim of wrongful detention, and anyone who was acknowledged to have been wrongfully detained but did not receive compensation (or whose compensation has not yet been paid for some reason, e.g. they appealed against the amount).

64. The Immigration Law Practitioners’ Association (ILPA) told us that their members “represent significant numbers of individuals who seek redress for unlawful detention and removal”. They argued that the statistical information provided by the Government on cases of unlawful detention is not a true representation of the numbers involved. They explained that this may be for a variety of reasons, including people “being removed without receiving advice from a lawyer, language and other barriers (e.g. mental illness)” as well as a fear that “pursuing litigation might prejudice their immigration position”. Significantly ILPA members reported that in general the Home Office would make its offer of compensation conditional upon the settlement “remaining confidential”. ILPA highlighted a number of cases where the High Court had found that “the immigration detention of mentally ill individuals was inhuman and degrading, in violation of article 3 ECHR” and no apology was given by the Home Office. ILPA told us that “the Home Office very rarely admits liability and apologises” for the unlawful detention or removal of the clients that ILPA represent. They added that many clients tell their members “that this is either all they want or it is one of the most important aspects of redress that they seek”.<sup>87</sup>

**65. Immigration officials tasked with detaining and removing people from the UK face making difficult decisions on a daily basis. However, cases drawn to our attention show that the Home Office is ignoring and breaching its own policy guidance. While the Government’s data can only provide an inexact picture of mistaken decisions, it is clear that people are being wrongly detained. We are appalled that the Home Office**

84 [Q178](#) Home Affairs Committee, oral evidence: Work of the Home Office, HC 1713.

85 Home Office (IDD0044); [Letter to the Chair of the Home Affairs Committee from the Permanent Secretary of the Home Office, Sir Philip Rutnam](#) regarding wrongful detention, 25 June 2018.

86 [Letter from Sir Philip Rutnam 18 December 2018](#); See Table C3 on page 24.

87 Immigration Law Practitioners’ Association (IDD0042); Four of the cases that were found in violation of article 3 ECHR were dealt with by ILPA member firm Bhatt Murphy: R (S) v SSHD [2011] EWCH 2120 (Admin), R (BA) v SHHD [2011] EWCH 2748 (Admin), R (HA) v SSHD [2012] EWCH 979 (Admin) and R (MD) v SSHD [2014] EWCH 2249 (Admin).

does not collate basic, transparent information about the number of people who are wrongfully detained. These are cases in which people have been wrongly deprived by the state of one of their most basic rights, potentially causing them great harm and distress. For the Home Office not even to collate this information so that ministers and senior officials can monitor or review the problem shows a shockingly cavalier attitude to the deprivation of liberty and the protection of people's basic rights. The Home Office needs to urgently change its recording systems and ensure there is a proper process to record and publish quarterly the number of people wrongfully detained and to publish annually the level of compensation paid out.

*66. Detaining an individual for reasons of immigration control is a deprivation of that person's liberty. Decisions to detain an individual are taken by Home Office officials and not by a judge or court. The Home Office must do much more to ensure that all reasonable alternatives to detention have been considered before detention is authorised. As we have seen from the Windrush scandal, wrongful Home Office decisions to detain have wrecked people's lives. The Home Office needs to be more transparent in its explanation to detainees and legal representatives of why a decision to detain has been made, and to support that decision with detailed evidence. Similarly, with regard to cases of wrongful detention and removal, the Home Office needs to change its approach to litigation, by admitting where things have gone wrong, apologising, and seeking to learn lessons. Furthermore, the Home Office must take remedial action in respect of officials responsible for cases of wrongful detention and removal, so that the same mistakes are not repeated and decision-makers understand the seriousness of getting cases wrong.*

## Detention gatekeeping processes

67. Consistently, more than 50% of those detained are released back into the community.<sup>88</sup> This raises questions about the initial decision to detain and is a particular concern where the individual is unsuited for detention under the Government's own vulnerability policies.<sup>89</sup> Following the recommendations of the 2016 Shaw review, a Detention Gatekeeper (DGK) team was set up in June 2016 to scrutinise all proposed detentions and to "ensure that there is no evidence of vulnerability which would be exacerbated by detention".<sup>90</sup> This team has responsibility for assessing vulnerability and advising caseworkers on detention decisions. In response to a parliamentary question on immigration detention the then Immigration Minister, Rt Hon Robert Goodwill MP, explained that the Detention Gatekeeper function would mean that individuals could "now only enter immigration detention with the authority of the Detention Gatekeeper, who will ensure that there is no evidence of vulnerability which would be exacerbated by detention, that return will occur within a reasonable timeframe and check that any proposed detention is lawful".<sup>91</sup>

88 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare of vulnerable persons: a follow up report to the Home Office](#), July 2018, 2.93.

89 In response to Stephen Shaw's first [Review into the Welfare in Detention of Vulnerable Persons](#) the Government introduced the adults at risk policy to protect vulnerable people from harm in detention. The Government said that its intention was that the [Immigration Act 2016: Guidance on adults at risk in immigration detention](#) would "lead to a reduction in the number of vulnerable people detained and a reduction in the duration of detention before removal", p5.

90 Medical Justice (IDD0020)

91 [Immigrants: Detainees: Written question - 71612](#), 21 April 2017.

### Face to face engagement with detainees

68. The Gatekeeper team does not have any face to face contact with the individual and works independently of caseworkers.<sup>92</sup> Information considered by the DGK includes administrative decisions, the outcome of any appeals to the courts in relation to someone's claim to remain in the UK and all information known about vulnerability, including medical information from the NHS or prison health care provider.<sup>93</sup> For a number of reasons there may be little information on an individual's Home Office file, particularly if the individual has not previously needed to self-identify a vulnerability. Freedom from Torture highlighted that enforcement officers are the only Home Office representatives who have direct contact with an individual prior to detention.<sup>94</sup> Consequently the first opportunity an individual has to disclose their vulnerability will be once they are detained.

69. Stephen Shaw told us that "in most cases" no one involved in the decision-making process to detain someone would meet that individual prior to detention.<sup>95</sup> He said that:

If somebody is detained at a reporting centre, the decision will have been made elsewhere. They will come to the desk and be invited into a separate room. That face-to-face contact between caseworkers making the decision and the individuals on whom they are making those decisions was absent at the time of my first report and, so far as I am aware, remains absent.<sup>96</sup>

70. Shaw added that caseworkers "tend not to talk about people" referring to his follow up report where he mentioned a caseworker who was "unnerved by the process of going to an IRC or meeting people about whom she may have made decisions, because it humanised them".<sup>97</sup>

71. On 14 November 2018 the Immigration Minister wrote to us on the question of how much face to face contact detainees have with immigration decision makers during the casework process. She said that following Mr Shaw's first review the Home Office had introduced a number of Pre-Departure Teams in order to "enhance interaction with detainees, with a focus on regular face to face interaction". She added that:

The Home Office is currently considering options on how it can improve further staff engagement and understanding of those it detains in line with Recommendation 29 of Mr Shaw's follow up review, where he recommends that all 'caseworkers involved in detention decisions should visit an IRC either on secondment or as part of their mandatory training'.<sup>98</sup>

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92 [Q538](#)

93 [Home Office \(IDD0037\)](#)

94 [Freedom from Torture \(IDD0011\)](#)

95 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: A follow-up report to the Home Office](#), 4.3, p72: In his latest review Stephen Shaw stated that: "Other than asylum interviews, most Home Office casework decision making is completed with no face-to-face engagement. Assessments on individual vulnerability are made at different decision points, by different Drafting amendment with different knowledge, skills and training".

96 [Q539](#)

97 [Q542](#); Stephen Shaw; p84, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#) p84, 4.66.

98 [Home Office \(IDD0044\)](#); Stephen Shaw's [Assessment of government progress in implementing the report on the welfare of vulnerable persons: a follow up report to the Home Office](#), July 2018, 4.67.

72. In his follow up review, Stephen Shaw welcomed the introduction of Pre-Departure Teams [PDTs] “as a genuine effort to improve the flow of information between caseworkers and detainees”. He explained that the purpose of PDTs was to embed staff in IRCs “to increase face-to-face interaction, to promote compliance and voluntary departure, and to facilitate communication between casework units and detainees”. However, PDT staff are not caseworkers, and cannot make decisions on cases.

### *Identifying vulnerability*

73. Gemma Lousley, of Women for Refugee Women, explained to us that it was generally only once women had been detained, often for quite significant periods of time, that it was identified that they were a survivor of rape or gender-based violence—something that a pro-active screening process could have picked up before the decision to detain had been made.<sup>99</sup> The British Medical Association and Medical Justice also raised concerns over the absence of an active screening process for vulnerabilities.<sup>100</sup> Medical Justice highlighted that:

[ ... ] the Gatekeeper Team makes decisions based purely on available information and does not invite submissions from the detainee or their representative. Even where there is evidence of vulnerability on file, we have seen individuals detained without apparent meaningful assessment by the Gatekeeper team.<sup>101</sup>

74. Medical Justice gave the following examples of individuals who were detained despite evidence of vulnerability on their file:

Q, a victim of torture with well documented diagnosis of depression and PTSD, was detained despite having previously attempted suicide in detention and having extensive medical evidence, which had previously deemed sufficient to justify a grant of discretionary leave to remain in the UK.

T was subjected to physical and sexual abuse as a child and as a result had significant mental health problems. She was detained in 2016 and released after a Rule 35 report set out her scarring and mental health problems. In 2017 she was re-detained, despite this well documented history, and released 20 days later following a second Rule 35 report.<sup>102</sup>

75. In 2017–18, 25,358 people were referred by case workers to the Gatekeeper team for detention. 24,339 recommendations were agreed, and 1,019 referrals (4%) were rejected. The Home Office explained that the low number of rejections was a positive sign:

The Detention Gatekeeper acts independently from case workers making recommendations about detention (who, themselves, develop their recommendations on a case-by-case basis, which is why the Department

99 [Q44](#)

100 [Medical Justice \(IDD0020\)](#)

101 [Medical Justice \(IDD0020\)](#)

102 [Medical Justice \(IDD0020\)](#)

would expect the Gatekeeper's rejection rate to be low). That ensures assessments of suitability for detention are always made in advance and independently.<sup>103</sup>

76. The then Director General of Immigration Enforcement, Hugh Ind, explained, "I know when I go around my teams, there is—for want of a better word—some friction between the teams because they know there is a process where they need to persuade the Gatekeeper they have done the correct checks".<sup>104</sup> However, Peter Clarke, HM Chief Inspector of Prisons, told us, "screening is not as perhaps effective or as thorough as it could be. Otherwise, the very serious decision to put somebody into detention, one would have thought would have led to a lower subsequent release rate than 50%".<sup>105</sup>

**77. It is shocking that, other than asylum interviews, there is no face to face contact between immigration decision makers and the detainee during the initial decision to detain. We believe this contributes to the cavalier attitude towards detention decisions. Had decision-makers ever met Paulette Wilson before deciding that she should be detained, it might have made them more likely to spot the injustice in her case or realise that there was a problem. It is a basic tenet of our legal system that when judges take the decision to detain, that person is brought before the court. Therefore it is extremely troubling that in the immigration and asylum system people can be deprived of their liberty through an entirely paper-based exercise by officials where no one involved in the decision ever interviews the potential detainee. We welcome the Government's recent introduction of pre-departure teams [PDTs] within a number of IRCs, but their coverage is currently very patchy and such teams are only relevant to those individuals already in detention. Further, their staff are not caseworkers and cannot make decisions on cases.**

**78. We strongly support Mr Shaw's recommendation that all "caseworkers involved in detention decisions should visit an IRC either on secondment or as part of their mandatory training" but we believe that is not the same as meeting someone as part of the decision-making process. We recommend that immigration caseworkers *involved in the decision-making process to detain an individual should meet that individual at least once, in person, prior to finalising the detention decision or/and within one week of their detention.***

**79. The introduction of the Detention Gatekeeper function is a welcome step forward, but the current approach still fails to provide sufficient safeguards to prevent inappropriate detention or the detention of vulnerable adults. As the latest Shaw report noted, large numbers of vulnerable people are still being detained. This indicates that vulnerable people are being wrongly routed into detention due to the Gatekeepers' incorrect validations or misplaced challenges of Home Office caseworkers' decisions. *There needs to be a thorough, face-to-face pre-detention screening process to facilitate the disclosure of vulnerability. Where there is no deemed risk of absconding, this screening should be undertaken at the point of enforcement activity, for example, as part of the reporting process where UK Visas and Immigration officials or Enforcement officers should feedback any concerns they have about a person's suitability for detention. Even***

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103 Letter from the Permanent Secretary to the Chair of the Committee, dated [14 May 2018](#).

104 [Q276](#)

105 [Q189](#)

*a short period of detention for someone who, for example, has been a victim of torture could be extremely traumatic. Therefore it is essential that a proper pre-screening assessment is done.*

### Screening on arrival

80. The absence of a thorough pre-detention screening means that the reception process is a critical opportunity to identify the presence of vulnerabilities while the health needs of an individual are assessed. All detainees entering an IRC receive a healthcare screening within two hours of admission to identify any previously unknown immediate or long-term healthcare issues. If any issues are identified they will be offered an appointment with a doctor within 24 hours.<sup>106</sup> Clinical pathways into other healthcare services (e.g. mental health) can be initiated at this point depending on the outcome of the screening. The British Medical Association (BMA) raised concerns that a reliance on self-reporting, which means asking individuals who may have experienced trauma or violence to share sensitive information with a stranger, during an often fraught or anxious reception process, can lead to vulnerabilities not being identified.<sup>107</sup>

81. Detainees are frequently moved at night, a practice criticised by the Independent Monitoring Boards of both Morton Hall and Yarl's Wood and by the HMIP. We heard from Janahan, a former detainee at Morton Hall IRC, that detainees arriving late may be denied food:

They put me in the room and it was 8 o'clock or something. They locked me in and I rang the bell. I was like, "Can I have something to eat?" They were like, "No, it has all been served and all been sent back. You cannot have anything until the next day morning". This is the first day.<sup>108</sup>

82. In his latest report on Harmondsworth IRC, the Chief Inspector of Prisons found that a fifth of detainees arriving at Harmondsworth had been transferred overnight and that "there was no first night support for new arrivals. The induction process was rushed and ineffective at engaging detainees".<sup>109</sup> The BMA raised particular concerns about the impact of night transfers on the effectiveness of the screening process. They argued that such moves should be avoided unless in exceptional circumstances:

There are reports that these initial assessments are taking place in the middle of the night, depending on the arrival time of the detainee. Individuals may be exhausted or disorientated after a long journey or scared and anxious about the prospect of being detained, thus inhibiting their ability or willingness to share detailed information.<sup>110</sup>

83. Professor Nick Gill, Dr Daniel Fisher, Jennifer Smith and Andrew BurrIDGE suggested that detainees may have only brief discussions with medical staff on arrival, limited to medication and other health needs: "As a result, many [detainees] claimed not to have

106 [Home Office Adults at Risk in immigration detention](#), 26 February 2019, p19; [The Detention Centre Rules 2001](#), Rule 34.

107 British Medical Association (BMA) ([IDD0019](#))

108 [Q3](#)

109 [HMIP report on Heathrow Immigration Removal Centre, Harmondsworth Site](#), 2–20 October 2017.

110 British Medical Association (BMA) ([IDD0019](#))

been informed of the Rule 35 process and of the need to request a report from medical staff on arrival”.<sup>111</sup> Voke, a former detainee at Yarl’s Wood, described her first night experience to us:

I was taken to Yarl’s Wood. I got there at 9pm in the night. When I got there, the nurse did ask me some questions but where they failed me is they did not ask me if I had been tortured before or whether I had been locked up before. They did not ask me that. The only thing they asked me was, “Have you been to prison?” and I said no. I asked the question, “Is this a prison?” because I am scared of the dark. That was my first question. She said to me, “No, this is not a prison. This is detention”. Immediately I heard that I started crying. I said, “Are you going to lock me up? Because I don’t like darkness, I cannot stay in the dark if you lock me”. They said, “No”.

That was the beginning of my experience in Yarl’s Wood. They did not ask me if I was tortured, if I have been trafficked, anything. These are key questions they did not ask me before taking me inside.<sup>112</sup>

84. The Gatwick Detainees Welfare Group (GDWG) reported that detainees are being asked on arrival to complete a Home Office form on whether they wish to opt in or opt out of the process for an automatic bail hearing after four months. The GDWG told us that it is unclear why detainees should be expected to opt in to something that is automatic nor why anyone would want to opt out.<sup>113</sup> There is also concern that detainees are being asked to make a crucial decision in the early moments of their detention when they will be anxious about their situation, may not be fully aware of what is happening and may yet to have sought legal advice. On 24 July 2018, the Immigration Minister, Rt Hon Caroline Nokes MP, told us that “The ability of detainees to opt out of the automatic bail referral is set out in primary legislation in Schedule 10 to the Immigration Act 2016”. She added that:

A detainee may benefit where they are preparing their own bail application but are not yet ready to submit it. For example, where they are still waiting for their financial condition supporters or accommodation to be confirmed, and the timing of the auto-referral cuts across this.<sup>114</sup>

**85. *The Home Office needs to improve its performance in capturing detainee vulnerability in the early days of an individual’s detention. We are concerned by reports that initial screening processes are rushed and that detainees are made insufficiently aware of their importance. Detainees arriving in detention for the first time are understandably reluctant to talk openly about traumatic past experiences but the crucial importance of reporting vulnerability to enable potential release should be made explicit. Similarly, immigration detention centre staff should explain to a newly arrived detainee that they may be automatically referred for a bail hearing after four months of detention, and at what other stages of their detention they can apply for immigration bail.***

**86. *The Government should stop night moves unless exceptional criteria are met, and the length of time detainees spend in transfer should be kept to a minimum. We recommend that future contracts concerning detainee transfers should stipulate a 7pm***

111 Professor Nick Gill, Dr Daniel Fisher, Jennifer Smith and Andrew BurrIDGE ([IDD0008](#))

112 [Q23](#); the name, “Voke”, was a pseudonym to protect the identity of the individual as requested.

113 Gatwick Detainees Welfare Group ([IDD0010](#))

114 Home Office ([IDD0043](#))

*cut-off for arrival and should require that prior approval must be sought from the Home Office for exceptional circumstances where that deadline will not be met. Requests for such approval should also be reported to the Independent Monitoring Board so that there is oversight of its use.*

### **Provision of legal advice**

87. People who are detained in Immigration Removal Centres (IRCS) can receive 30 minutes' free legal advice through the Legal Aid Agency (LAA) funded Detention Duty Advice Scheme (DDA).<sup>115</sup> However, the DDA scheme is not available to immigration detainees in prison.<sup>116</sup> The DDA provides legal advice through a range of solicitors' firms that have immigration and asylum contracts with the LAA and that "obtain additional and exclusive contracts to run regular DDA surgeries in IRCs".<sup>117</sup> The Home Office told us that "Detainees are entitled to receive up to 30 minutes of advice regardless of financial eligibility or the merits of their case".<sup>118</sup> However, we heard evidence which indicated a number of issues with detainees' access to legal advice under the DDA scheme.

### **Awareness of legal advice provision in IRCs**

88. The Home Office IRC Operating Standards stipulate that "Detainees must be advised of their right to legal representation, and how they can obtain such representation, within 24 hours of their arrival at the centre".<sup>119</sup> Nevertheless, a report commissioned by the Bar Council highlighted statistical data from BID, which showed that "in May 2017, awareness of the scheme [DDA] among respondents was around 67%, the lowest since it was introduced in 2010–11".<sup>120</sup> In BID's June 2018 Legal Advice Survey they found that, "Only 50% of detainees held in immigration detention currently have a legal representative, and of those, only 61% of those have a legal aid solicitor".<sup>121</sup> These recent figures from BID would suggest that detainees are either unaware of their right to access legal advice, or have experienced difficulties in accessing advice under the DDA scheme.

### **Barriers to accessing legal advice**

89. In their recent Legal Advice Survey, BID also found that, "57% of detainees without a legal representative cited money as the main reason they were unable to get legal

115 [Injustice in Immigration Detention Perspectives from legal professionals](#), Research report commissioned by the Bar Council Dr Anna Lindley, SOAS (University of London) November 2017, p38; [The Legal Aid Agency \(LAA\)](#) is an executive agency of the Ministry of Justice (MoJ) established under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 to commission, procure and pay for legal aid services from providers (solicitors, barristers, mediators and the not for profit sector). The Legal Aid Agency and the majority of the provisions in the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) apply to detention in England and Wales only.

116 [HM Inspector of Prisons, People in prison: Immigration detainees](#), November 2015, p6.

117 *Ibid*, p38

118 Home Office ([IDD0037](#))

119 Home Office, [Detention services operating standards manual](#), Published 14 September 2011, Access to Legal Services, p1.

120 [Injustice in Immigration Detention Perspectives from legal professionals](#), Research report commissioned by the Bar Council Dr Anna Lindley, SOAS (University of London), November 2017, p38; according to the Bar Council's report, "The only publicly available statistical data on legal advice in detention is BID's regular [Legal Advice Survey](#), which obtains responses of people who have open casework files with the organisation".

121 [Bail for Immigration Detainees, Six monthly survey reveals serious gaps in detainees' access to legal advice and representation](#), 21 June 2018; [this survey](#) was their 15th since BID first surveyed immigration detainees in 2010. A total of 103 detainees were interviewed between 3 April 2018 and 20 April 2018. Detainees held in prisons were not included in the interview sample.

assistance”.<sup>122</sup> Although detainees are eligible for 30 minutes’ free initial legal advice, this does not secure further representation. We heard that severe cuts to legal aid following the implementation of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 have made it more challenging for detainees to have their cases taken on by a solicitor beyond the initial 30 minutes advice surgery. The Bar Council told us that, “While cases with a strong human rights element are eligible for legal aid funding for bail and asylum, these are subject to stringent ‘means and merits’ tests. In practice, legal aid funding is very difficult to attain”.<sup>123</sup>

90. As well as the financial challenges facing detainees, access to online information in some IRCs was reported as a barrier to obtaining legal advice. In its June 2018 Legal Advice Survey, BID found that:

As many as 74% had worked on their own immigration case, but most of these detainees (73%) complained that important websites were blocked in detention. The websites they referred to were those that would have helped them to prepare their case: Home Office website, Government websites, solicitors’ websites, social media, BID and other NGOs.<sup>124</sup>

91. A recent article published by Freemovement also reported that some IRCs had blocked a number of legal websites. They stated that in response to a Freedom of Information request, the Home Office said that: “There is no policy or other documents outlining which websites are to be blocked or partially blocked for detainees in the immigration detention estate”.<sup>125</sup>

### *Delays in access to legal advice*

92. During our inquiry we also heard about delays in access to legal advice. James Wilson, Director of Gatwick Detainees Welfare Group (GDWG) told us that there was “a big problem” with prompt access to legal advice at Brook House IRC:

There is a weekly surgery, and two legal aid firms currently have the contracts to come into Brook and Tinsley and see people once a week. There are long waiting lists to see advisers. Sometimes people in detention have never seen a solicitor and might be removed from the country before getting any form of advice. You go on to have problems of very restricted advice anyway, with most of immigration being outside the legal aid scope, so someone may well in the end just see a representative for 30 minutes and then be told that for anything beyond this they would have to pay an amount of money, which in most cases is impossible.<sup>126</sup>

122 Bail for Immigration Detainees, [Six monthly survey reveals serious gaps in detainees’ access to legal advice and representation](#), 21 June 2018.

123 Bar Council (IDD0022)

124 Bail for Immigration Detainees, [Six-monthly survey reveals serious gaps in detainees’ access to legal advice and representation](#), 21 June 2018.

125 Conor James Mckinney, Freemovement, [Immigration detention centres continue to block legal websites](#), 14 January 2019.

126 Q29, Home Affairs Committee, Oral Evidence: [Brook House Immigration Removal Centre](#), HC 346, 14 September 2017.

93. Similarly, in his 2017 inspection of Brook House IRC, the Chief Inspector of Prisons, Peter Clarke, highlighted concerns about delays in detainees' access to legal advice. He reported that, "at that time of inspection, the next available routine appointment was in nine days, which was too long [ ... ]".<sup>127</sup>

94. The Ministry of Justice (MoJ) has undertaken a review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which was published on 7 February 2019. More than 130 organisations engaged with the review. When publishing the review the Government stated that it "does not make specific recommendations. The central purpose of the PIR was to carry out an evidence based objective assessment of the impact of the changes made under LASPO".<sup>128</sup> The response is accompanied by a Legal Support Action Plan.<sup>129</sup>

**95. It is evident from what we have heard that the Government's Detention Duty Advice scheme is flawed and is failing to provide adequate legal safeguarding to those who need it most. Under the DDA scheme, people who are detained in IRCs are eligible for 30 minutes' free legal advice. However due to severe cuts in legal aid following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), many detainees are not able to access legal advice. Rigorous means and merits tests, as well as a requirement for detainees to demonstrate a strong human rights case means that the harsh reality is, that legal aid funding is extremely difficult to obtain.**

**96. We deeply regret that the Government has failed to listen to the legal bodies that have submitted their views to the post implementation review of LASPO and to address radically the current failings in the system and provision of legal advice to some of the most vulnerable individuals who are held in immigration detention. We repeat the recommendation made in the Committee's report on the Windrush generation that legal aid arrangements should be restored for immigration matters in order to allow those with complex cases the access to legal advice they need.**

**97. People held under immigration powers in prisons subject to deportation procedures, i.e. foreign national offenders who are serving custodial sentences in prisons and who are liable to deportation at the end of their sentences, do not have access to the DDA scheme in prison. This means that they have no guaranteed access to a legal adviser and have to find and contact a lawyer themselves. Foreign national offenders should be afforded the same legal safeguarding provisions as immigration detainees held in IRCs so that, on completion of their custodial sentence, they can be deported or have their immigration status resolved rather than entering immigration detention. This should include access in prison to the DDA scheme.**

127 [Report on an unannounced inspection of Brook House Immigration Removal Centre by HM Chief Inspector of Prisons, 31 October–11 November 2016, p26.](#)

128 Gov.uk, [Post Implementation Review of Part 1 of LASPO.](#)

129 Ministry of Justice, [Legal Support: The Way Ahead, an action plan to deliver better support to people experiencing legal problems](#), February 2019.

## 4 Treatment of vulnerable adults in detention

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### Introduction

98. This chapter explains and examines the current government policies in place to safeguard adults who are at risk of harm in immigration detention. These include the Adults at Risk (AAR) policy and Rule 35 of the Detention Centre Rules 2001. The Chapter also addresses the alarming rise in alleged self-inflicted deaths in immigration detention and how the Government can provide greater transparency.

### The Shaw independent reviews

99. In 2015 Stephen Shaw, a former Prisons and Probation Ombudsman, was asked by the then Home Secretary to conduct a review of the welfare of vulnerable people in detention. His review was published in January 2016 and contained 64 recommendations for reform. Shaw concluded:

There is too much detention; detention is not a particularly effective means of ensuring that those with no right to remain do in fact leave the UK; and many practices and processes associated with detention are in urgent need of reform.<sup>130</sup>

100. To inform his thinking, Shaw commissioned Professor Mary Bosworth to conduct a literature review on the impact of immigration detention on mental health. Two of her key findings were:

- There is a consistent finding from all the studies carried out across the globe and from different academic viewpoints that immigration detention has a negative impact upon detainees' mental health and;
- The impact on mental health increases the longer detention continues.<sup>131</sup>

101. Shaw concluded that Bosworth's literature review, "demonstrates incontrovertibly that detention in and of itself undermines welfare and contributes to vulnerability [ ... ] a policy resulting in such outcomes will only be ethical if everything is done to mitigate the impact, and if countervailing benefit of the policy can be shown".<sup>132</sup> He recommended the Home Office develop alternatives to detention and give consideration to ways of strengthening the legal safeguards against excessive length of detention.

102. In 2018, Stephen Shaw published a follow-up review assessing the Government's implementation of his recommendations. He found that although the Government had shown a clear commitment to the broad thrust of his previous recommendations, there was a gap between policy and practice. The report

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130 [Review into the Welfare in Detention of Vulnerable Persons](#): A report to the Home Office by Stephen Shaw, January 2016; 11.1, p 91.

131 [Stephen Shaw, Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, 11.4, p191.

132 [Stephen Shaw, Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, 11.4, p191.

noted that over half of detainees are ultimately released into the community, and stated that “ [ ... ] very frequently, detention is not fulfilling its stated aims”.<sup>133</sup> Detention Action noted that this brought into question the purpose of their detention.<sup>134</sup>

### Adults at Risk (AAR) policy

103. In response to the first Shaw review, the Government pledged to introduce a new ‘adult at risk’ concept into decision-making on immigration detention with a clear presumption that people who are at risk should not be detained. The new Adults at Risk (AAR) policy is underpinned by section 59 of the Immigration Act 2016. This required the Home Secretary to issue guidance for assessing whether an individual would be particularly vulnerable if detained and for making decisions to detain in such cases. The Government also stated its expectation that the AAR policy would “lead to a reduction in the number of vulnerable people detained, to a reduction in the length of time for which people are detained generally, to a quicker and more efficient use of the detention estate and, as a result, to an improvement in the welfare of those detained”.<sup>135</sup> In responding to Shaw’s report, the Government also made specific commitments on torture:

We will also strengthen our processes for dealing with those cases of torture, health issues and self-harm threats that are first notified after the point of detention, including bespoke training to GPs on reporting concerns about the welfare of individuals in detention and how to identify potential victims of torture.<sup>136</sup>

104. In oral evidence to the Committee, Stephen Shaw told us that he “did not call for Adults at Risk” and that he had been more conservative in his recommendation which was “about changing the way the then existing framework operated”. Although he believed the policy had “a huge amount of potential”, he found during the course of his second review that despite “significant investment both of time and of money in developing the Adults at Risk policy” it was not delivering what he had assumed the Home Office, or he, had anticipated, which was “a reduction in the number of vulnerable people in detention”.<sup>137</sup>

105. The Home Office statutory guidance, and the AAR caseworker guidance replaced the previous vulnerability policy as laid out in Chapter 55.10 of the Enforcement Instructions and Guidance on Detention and Temporary Release (EIG 55.10).<sup>138</sup> The previous policy listed set categories of people who are “normally considered suitable for detention in only very exceptional circumstances”.<sup>139</sup>

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133 [Stephen Shaw, Assessment of government progress in implementing the report on the welfare of vulnerable persons: a follow up report to the Home Office, July 2018, 2.93.](#)

134 [Detention Action responds to the second Shaw review, 24 July 2018.](#)

135 Home Affairs Committee, First special report 2016–17, [The work of the Immigration Directorates \(Q3 2015\): Government Response to the Committee’s Sixth Report of Session 2015–16, 9 June 2016.](#)

136 [Written statement](#) responding to the Shaw Review, 14 January 2016.

137 [Q487](#)

138 [Home Office, Adults at risk in immigration detention, 2 July 2018](#)

139 Stephen Shaw, Review into the Welfare in Detention of Vulnerable Persons, January 2016, p84, 4.18; Shaw references the previous policy - specifically the categories of people considered to be vulnerable. There is no longer a link on the Home Office website to the previous policy on vulnerability in immigration detention as was laid out in Chapter 55.10 of the UK Visas and Immigration and Immigration Enforcement, Enforcement Instructions and Guidance.

## Criticism of the AAR policy

106. The AAR policy was implemented on 12 September 2016. The policy guidance immediately drew criticism from NGOs working with torture survivors and immigration detainees.<sup>140</sup> They raised concerns that it would lead to a worsening of protection from detention for vulnerable individuals, because of the increased evidential burden it placed on vulnerable people and the wide range of factors that would be weighed against evidence of vulnerability. A summary of the key points in the AAR statutory guidance are outlined in the text box below.

### SUMMARY OF THE ADULTS AT RISK STATUTORY GUIDANCE<sup>141</sup>

#### *Lists indicators of risk:*

1) Suffering a mental health condition or impairment or post-traumatic stress disorder; suffering from serious physical disability, health conditions or illnesses; having been the victim of torture, sexual or gender-based violence, human trafficking or modern slavery; being pregnant, aged over 70 or being a transsexual or intersex person, or “other unforeseen, conditions and experiences”.

#### *Guidance for consideration of other relevant conditions or experience (relating to indicators of risk):*

2) The above list is not intended to be exhaustive. Any other relevant condition or experience that may render an individual particularly vulnerable to harm in immigration detention, and which does not fall within the above list, should be considered in the same way as the indicators in that list. In addition, the nature and severity of a condition, as well as the available evidence of a condition or traumatic event, can change over time.

#### *Sets out levels of evidence of risk to be considered in identifying a person at risk:*

3) **Level 1**, the person’s own testimony [afforded limited weight]; **Level 2**, professional evidence that the person is an adult at risk and how this may be impacted by detention [afforded greater weight]; and **Level 3**, professional evidence that the person is at risk and that a period of detention would be likely to cause harm [afforded significant weight].

#### *Provides guidance for making decisions:*

4) Affirming the presumption that a person should not be detained once they are regarded as being at risk in the terms of the guidance, but that it will still be possible to detain people at risk where ‘immigration control considerations’ outweigh this presumption. The immigration factors to be weighed against risk are: length of time in detention, public protection and ‘compliance issues’.

140 The Guardian, [New immigration detention policy for ‘adults at risk’ policy needs urgent review](#), 11 September 2016.

141 Home Office, [Adults at risk in immigration detention](#), 2 July 2018. (Text box summary inspired by a research report commissioned by the Bar Council, Dr Anna Lindley, SOAS (University of London): [Injustice in Immigration Detention Perspectives from legal professionals](#), November 2017.)

107. Critics of the new policy also raised concerns that it has led to an increase in the number of vulnerable people being detained, the opposite of what Stephen Shaw was calling for in his first report.<sup>142</sup> In his October 2017 report on Harmondsworth IRC, HM Chief Inspector of Prisons raised serious concern about the lengthy detention periods for some of the most vulnerable people in detention:

The Home Office Adults at Risk policy had been operating for more than a year but was not working effectively in the centre. Despite efforts to care for adults at risk, too many were held for long periods. For example, a blind detainee on an ACDT [Assessment care in detention team work] had been detained for over a year, and a wheelchair user who had tried to set himself on fire had been held for 15 months.<sup>143</sup>

108. Pierre Makhlouf, assistant director at Bail for Immigration Detainees (BID) said that the policy “equips the Home Office with more arguments to refuse people release when they are found to be vulnerable”.<sup>144</sup> Unlike the previous policy guidance, Medical Justice argued that the stipulation in the policy that a detainee must produce scientific “Levels of evidence” that they are “likely to suffer harm” is difficult to obtain and encourages a “wait and see” approach where vulnerable detainees are allowed to deteriorate until avoidable harm has occurred and can be documented.<sup>145</sup> Medical Justice also highlighted that:

It is important to bear in mind that these levels are a measure of available evidence and not of vulnerability. Someone assessed as an adult at Risk level 1 is not necessarily less vulnerable than someone assessed as level 2—they simply have less evidence of said vulnerability. So, someone very vulnerable could end up being detained for a long time due to lack of evidence or issues with credibility which may in fact be the result of this very vulnerability.<sup>146</sup>

### **AAR levels of risk**

109. A number of organisations, including Medical Justice and Liberty, told us that they would like the “levels of evidence” in the AAR policy to be abolished. Medical Justice said that the levels of evidence had “led to a lowering of the threshold for maintaining detention of those at risk of harm in detention” and that that vulnerable people should only be detained in “very exceptional circumstances” in line with the previous policy.<sup>147</sup> They added that “the policy should retain the commitment for a self-declaration of vulnerability to trigger a duty of inquiry into the asserted vulnerability”.<sup>148</sup> Liberty told us

142 Scottish Detainee Visitors, [The wait is over, the second Shaw Review is finally published](#), [Adults at Risk policy has failed to prevent the detention of vulnerable people], 27 July 2018.

143 HM Chief Inspector of Prisons, [Report of an unannounced inspection of Harmondsworth IRC](#), 13 March 2017; p25, 1.29. In the case of the blind detainee the report also noted that, despite an assessment care in detention and team work (ACDT) review which stated that the detainee ‘relies on staff and his peers to assist him moving around the centre’, the Home Office detention review stated: ‘he is completely self-caring and able to manage’. [P31; 1.67]; [As explained in Stephen Shaw’s, Assessment of government progress in implementing the report on the welfare of vulnerable persons: a follow up report to the Home Office](#) p92 the ACDT system is: “The formal process in IRCs to assist in the prevention of suicide and self-harm remains the Assessment, Care in Detention and Teamwork (ACDT) system”.

144 Independent, Home Office systematically ignores medical advice to keep mentally ill immigrants in detention, 25 November 2017.

145 Medical Justice ([IDD0020](#))

146 Medical Justice ([IDD0020](#))

147 Medical Justice ([IDD0020](#))

148 Medical Justice ([IDD0020](#))

that the Government “should abandon the counter-productive “evidence level” model”.<sup>149</sup> In its assessment of the AAR risk level system, BID said that “The categorisation of risk in this way inappropriately focuses on the quality of evidence available of risk rather than the actual risk to the person”.<sup>150</sup>

110. A common concern in the evidence we received was about the disproportionate Home Office decisions being made to categorise people within the AAR Levels, particularly Levels 2 and 3. In his follow up review, Shaw quoted the following statistics he received from the Home Office on the number of AAR cases as at 4 February 2018: “some 1,189 Adults at Risk were in detention. Of those identified as AAR cases: 396 were Level 1, 782 were Level 2, 11 were Level 3”.<sup>151</sup> Furthermore, he noted that:

While the figures suggest it is relatively rare for a Level 3 individual to be placed or kept in detention, the numbers of cases at Level 2 are significantly higher than I had expected or believe to be appropriate.<sup>152</sup>

111. Shaw also highlighted the difficulties that clinicians face in assigning an individual to AAR Level 3. He said that AAR Level 3 “is problematic in its current form. Clinicians find it extremely difficult to determine whether detention will cause specific harm in the future, beyond the generalised deterioration that we know is the result of detention (with the degree of deterioration rising the longer the detention period)”.<sup>153</sup> He recommended (if AAR is retained) that “Detention of anyone at AAR Level 3 should be subject to showing ‘exceptional circumstances’”.<sup>154</sup> This is in line with the previous Home Office policy on vulnerability.

112. Liberty also noted that under the previous policy (Chapter 55.10 of the EIG), “Survivors of torture or ill-treatment needed to show independent evidence of their experience, but there was no additional requirement to provide evidence that their continued detention may be injurious to their health”.<sup>155</sup> With regard to AAR Level 2, Stephen Shaw told us that it was “too broad” and “embraces everybody from somebody who has asthma, which can of course be exacerbated in detention because it is stress-related, or can be stress-related, to somebody with florid psychiatric symptoms”.<sup>156</sup> Freedom from Torture explained that “their experience has been that those who would previously have been recognised as being at increased risk of harm—including torture survivors with independent evidence of torture - and only detained in ‘very exceptional circumstances’, are now considered level 2 and therefore afforded less protection”.<sup>157</sup> In his follow up review, Shaw claimed

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149 Liberty ([IDD0015](#))

150 Bail for Immigration Detainees, Claire Sullivan and Rudy Schulkind, [Adults at risk: the ongoing struggle for vulnerable adults in detention](#), July 2018, p11.

151 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office](#), July 2018, p32.

152 Ibid p33.

153 Ibid p33.

154 Ibid p33, recommendation 11.

155 Liberty ([IDD0015](#))

156 [Q491](#)

157 Freedom from Torture ([IDD0011](#))

that “the broad definition of Level 2 is at the heart of why the policy as a whole is not functioning as was envisaged”. He said that it “does not give any indication of the degree of an individual’s vulnerability”.<sup>158</sup>

### *Dynamic nature of vulnerabilities*

113. In his first review Shaw recommended that, in addition to the categories of vulnerability identified in the previous Home Office policy, a catch all provision should be introduced to reflect “the dynamic nature of vulnerability” and encompass “persons otherwise identified as being sufficiently vulnerable that their continued detention would be injurious to their welfare”.<sup>159</sup> In response, the Government accepted Shaw’s recommendation to “recognise the dynamic nature of vulnerabilities”.<sup>160</sup> Detention Action told us that:

While the recognition of the dynamic nature of vulnerability is to be welcomed, the way in which this is put into effect reduces the protection afforded to vulnerable people. Vulnerable people now have to show that they are being harmed by detention, instead of the Home Office taking a preventative approach to ensure that harm is not done. For example, rather than not detaining a torture survivor simply because there is an increased likelihood that they could be vulnerable due to their past experiences, the Home Office now requires evidence that there is a significant risk of harm to that particular individual. In practice, this usually means producing evidence of a deterioration in their mental or physical health, i.e. that harm has already been done.<sup>161</sup>

114. Similarly, Medical Justice told us that “The policy’s interpretation of ‘dynamic assessment of vulnerability’ has led to a weakening of the previous protective categories. A focus on holistic assessments of vulnerability can have obvious benefits. However, the way it is applied in the AAR policy serves to remove the protection of belonging to a category recognised as at increased risk of harm in detention, such as victims of torture”. They called for a reinstatement of “a category-based approach to identifying vulnerability where demonstrating that one belongs to a category at increased risk of harm in detention triggers protection from this risk”.<sup>162</sup> The Immigration Legal Practitioners’ Association (ILPA) argued that anyone in detention could be vulnerable and highlighted the death of a 27-year-old Polish man in Morton Hall IRC on 11 January 2017. He was “found hanging in his cell. His wife had given birth that day. While, unsurprisingly, there are suggestions of mental health problems, reports do not indicate whether there were any such problems prior to detention”.<sup>163</sup> While an individual may not be deemed to be ‘vulnerable’ at the time of detention, unforeseen circumstances or experiences may affect and alter a person’s mental health from one day to the next.

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158 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p33, 2.124.

159 Stephen Shaw, [Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, p92,4.51.

160 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p3, 1.9.

161 Detention Action ([IDD0006](#))

162 Medical Justice ([IDD0020](#))

163 Immigration Law Practitioners’ Association (ILPA), Briefing for Westminster Hall debate on the detention of vulnerable persons, Tuesday 14 March 2017.

### ***Risk of harm balanced against ‘immigration factors’***

115. In the AAR policy, immigration factors are weighed against the risk of vulnerability and harm. The AAR policy guidance allows the Home Office to continue to detain vulnerable people if it considers there to be ‘immigration factors’ to support continued detention, for example, if a caseworker believes there are “negative indicators of non-compliance which suggest that the individual is highly likely not to be removable unless detained”.<sup>164</sup> The AAR casework guidance states that its section on “balancing risk factors against immigration factors” is a “guide rather than a prescriptive template”. There is a danger that the Home Office’s non-prescriptive approach to its consideration of what is or is not considered to be an immigration factor could unduly impact on the decision to detain an individual.<sup>165</sup> Tom Nunn from BID explained to us, “this is a balancing of you missed an appointment two years ago or you are a victim of torture, I think we will just keep you in detention. It is not, in my opinion, an appropriate level of assessment”.<sup>166</sup> Black Women’s Rape Action Project and Women Against Rape reported that implementing the AAR policy, “gave the Home Office the power to prioritise ‘any immigration control factors’ over a person’s vulnerability. We immediately saw a change in that more rape and domestic violence victims were detained or found it harder to get released”.<sup>167</sup>

116. As we shall discuss further in Chapter 5, the Home Office introduced case progression panels to review the suitability of continued detention every three months. However, in its 2017 inspection of Harmondsworth IRC, HMIP found that the recommendations of the Home Office’s own case progression panels were often ignored by senior Home Office officials:

The panel recommended the release of five detainees in the 12 cases we sampled, sometimes more than once, yet detention was maintained every time. In one case, the panel had unsuccessfully recommended the release of a detainee on three separate occasions.<sup>168</sup>

117. On 24 July 2018, in response to Stephen Shaw’s follow up review, the Home Secretary, Rt Hon Sajid Javid MP, made a commitment that “To increase support for vulnerable detainees, the Home Office will amend the Adults at Risk policy so it differentiates more strongly between cases to make sure those with the most complex needs receive the right attention and care”.<sup>169</sup> In supplementary evidence to us on 14 November 2018, the Immigration Minister said that she was not “at this stage, able to provide the Committee with further information” about how the most vulnerable people would be better protected.<sup>170</sup> In his July 2018 response, the Home Secretary also undertook to commission the Independent Chief Inspector of Borders and Immigration (ICIBI) to report annually on the effectiveness of the AAR policy. We asked the Home Office if the ICIBI’s annual reporting would include monitoring of the Home Office’s Rule 35 report decision making process. In supplementary evidence to us [14 November 2018], the Immigration

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164 Home Office, [Adults at risk in immigration detention](#), 2 July 2018, p17.

165 *Ibid*, p17.

166 [Q44](#)

167 Black Women’s Rape Action project and Women Against Rape ([IDD0023](#))

168 HM Chief Inspector of Prisons, [Report of an unannounced inspection of Harmondsworth IRC](#), 13 March 2017, p31, 1.68.

169 [Home Office press statement](#), 24 July 2018.

170 Home Office ([IDD0044](#))

Minister told us that “the Home Office is in discussion with the Chief Inspector about the scope and timing of the annual reviews, so it is not possible to provide more detail at this stage”.<sup>171</sup>

118. The Adults at Risk (AAR) policy is clearly not protecting the vulnerable people that it was introduced to protect. Instead, by introducing three levels of evidence of risk which are then weighed against a broad range of immigration factors, the policy has increased the burden on vulnerable people to evidence the risk of harm that might render them particularly vulnerable if they were placed or remained in detention.

119. The previous policy to protect vulnerable people in immigration detention [Chapter 55.10 of the Enforcement Instructions and Guidance] stipulated a presumption not to detain except in ‘very exceptional circumstances’. We are concerned that the AAR policy is not only failing to protect vulnerable people but, by introducing a requirement for individuals to provide evidence of the level of their vulnerability risk in detention, has significantly lowered the threshold for Home Office caseworkers to maintain detention of those most at risk. The AAR policy was not a concept that Stephen Shaw proposed in his first review: although he believes it has potential, the policy is not working as he had anticipated. The AAR policy has not only failed to mitigate the harmful impact of detention on vulnerable people but has failed to deliver a reduction in the number of vulnerable people in detention. *We urge the Government to abolish the three AAR levels of risk and to revert to its previous policy of a presumption not to detain vulnerable individuals except “in very exceptional circumstances”.*

120. We welcome the Government’s identification of a wider range of vulnerabilities in the AAR policy, and its recognition of the dynamic nature of vulnerabilities. However, it is evident from both the broad range of vulnerabilities being assessed at AAR Level 2 and the disproportionately large numbers of people being categorised at this level, that the Government’s ‘holistic’ interpretation of the fluctuating nature of vulnerabilities is failing to provide adequate mechanisms and safeguards to assess a person’s vulnerability before and during detention. *In line with Medical Justice, we recommend a return to the previous category-based approach rather than “indicators of risk” so that an individual who belongs to a category at increased risk of harm in detention is considered suitable for detention in only very exceptional circumstances. To avoid a check list approach, the Home Office should include a catch-all category which captures those who are particularly vulnerable to detention but who also may not fall within one of the pre-set categories. For example, this might include a detainee who has recently suffered a bereavement. The Home Office should consult with a wide range of stakeholders who are affected by detention, including people with lived experience, to develop an agreed grouping of categories. The policy should also retain the commitment for a self-declaration of vulnerability to trigger a duty of inquiry into the asserted vulnerability.*

121. We welcome the Government’s commitment to commission an ongoing annual report by the Independent Chief Inspector of Borders and Immigration to assess progress on the AAR policy. This reporting should assess the operation of the entire AAR framework, including the Detention Gatekeeper Team and the Rule 35 process to ensure that the Government’s system to protect vulnerable people is effectively and robustly monitored, and so that accurate data can be published.

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171 Ibid

### ***Legal challenge to the Adults at Risk statutory guidance***

122. The Adults at Risk policy was also criticised for adopting a narrower definition of torture than the Home Office had previously used when considering suitability for detention. The new definition was based on the UN Convention Against Torture (UNCAT) and excluded torture committed by ‘non-state’ actors.

123. On 10 October 2017, the Home Office lost a high court challenge on its change to the definition of torture in the Adults at Risk statutory guidance (AARSG)<sup>172</sup> The legal challenge was brought by Medical Justice and seven detainees. Mr Justice Ouseley found that, by using the United Nations Convention Against Torture (UNCAT) definition of torture, the Government had wrongly allowed many who had been tortured overseas to be detained, as the policy had restricted the definition of torture to refer to violence carried out by official state agents only. As a result, those tortured by traffickers, terrorists or other non-government forces could be held in detention even if expert medical evidence found the scars on their bodies to be consistent with their accounts of torture. Those who would be excluded under such a restrictive definition “would include victims of sexual and gender violence and abuse and cult and religious violence who were previously included under the EO definition”.<sup>173</sup> Freedom from Torture told us that “organisations working with vulnerable detainees had raised serious concerns at the time about the AAR guidance” but that the Home Office had chosen to “largely ignore these concerns”.<sup>174</sup>

124. In his judgment, Mr Justice Ouseley stated: “The chief problem with the narrowed definition is that it excludes certain individuals whose experiences of the infliction of severe pain and suffering may indeed make them particularly vulnerable to harm in detention.” He concluded that the “UNCAT definition of “torture” intended for use in the AARSG [Adults at Risk statutory guidance] and R35 [Rule 35] would require medical practitioners to reach conclusions on political issues which they cannot rationally be asked to reach”.<sup>175</sup> The Judge ordered the Home Office to revert to the previous definition while it came up with a revised policy.

### ***Home Office revises AAR policy with a new definition of torture***

125. In March 2018, nine months after the judgement against the Government on the use of the UNCAT’s definition of torture in the AAR statutory guidance, the Home Office amended the Detention Centre Rules 2001 (Rule 35 (6)) to change the definition of torture,

172 Garden Court Chambers, [Statutory guidance on adults at risk under scrutiny](#), 6 November 2017: The Home Office lost the high court challenge on the “lawfulness of the use of a definition of torture under the UNCAT definition introduced in the adults at risk statutory guidance (AARSG) issued under section 59 of the Immigration Act 2016 (IA2016)”.

173 “EO” is the name of the applicant in this judicial review; *Ibid*; “This was not the Home Secretary’s first attempt at trying to introduce the UNCAT definition of torture. It had already previously been rejected in the case of *R (on the application of EO) v Secretary of State for the Home Department* [2013] EWHC 1236 (Admin), [2013] All ER (D) 248 (May). In that case, Burnett J held that torture in the Detention Centre Rules 2001 had a broader meaning than in the UNCAT torture definition, which provided that torture was any act by which severe pain or suffering was intentionally inflicted for the purposes of obtaining information or a confession, punishment, intimidation, coercion or discrimination, when inflicted by a public official. EO adopted the same definition, but without the requirement for infliction by a public official”.

174 Freedom from Torture ([IDD0011](#))

175 [Medical Justice v Secretary of State for the Home Department judgment Mr Justice Ouseley Queen’s Bench Division Administrative Court](#). 10 October 2017. Paragraphs 154 and 192.

and cross referenced the new Rule 35 (6) in an amendment to the AAR statutory guidance.<sup>176</sup> The new definition came into force on 2 July 2018. Medical Justice raised concern that this new definition still excluded some victims of torture and that it was too complex to be effectively applied by case workers and doctors working in immigration detention. They said that they, and other NGOs, had tried to raise these concerns with the Home Office.<sup>177</sup> On 12 September 2018, Medical Justice was “granted leave” for a judicial review against the Home Secretary. The barrister representing Medical Justice “argued that the definition being used at present is also unlawful because it means victims of torture must prove they were under the control of the perpetrator and were “powerless to resist””.<sup>178</sup>

126. A number of NGOs including Medical Justice and Freedom from Torture also recommended that the “torture” and “victims of sexual or gender based violence” indicators of risk in the AAR statutory policy guidance should be replaced with a more inclusive category modelled on the UNHCR detention guidelines (9.1), namely ‘victims of torture or other serious, physical, psychological, sexual or gender based violence or ill-treatment’ and that this change should be reflected in the Rule 35 mechanisms to allow a broader set of indicators of risk to be identified.<sup>179</sup> We asked the Minister for Immigration why she sought to bring in the new torture definition without waiting for Stephen Shaw to complete his follow-up review. She told us:

As I said, it was some months on from the High Court judgment and I was very conscious that that was an outstanding matter that we had to resolve. I laid the SI [statutory instrument] and that comes into force in July [2018], but I am absolutely open to looking at that again.<sup>180</sup>

**127. The fundamental purpose of the Adults at Risk framework is to protect all vulnerable individuals from the harmful effects of detention. It seeks to do this by providing a robust safeguarding process that effectively identifies, and ensures that the right decision is made concerning, an individual’s risk in detention. This principle must not be diluted by the Government’s dominant focus on the definition of torture, which poses a risk that other individuals who are particularly vulnerable to harm in detention could be overlooked.**

**128. *The Government should at the very least review the AAR policy guidance with immediate effect to ensure that it includes clear, inclusive and effective categories of vulnerability, with a presumption not to detain unless there are exceptional***

176 [Home Office, Adults at Risk in Immigration Detention](#), p7 26 February 2019: “The definition of torture for the purposes of the adults at risk in immigration detention policy is set out in rule 35(6) of the Detention Centre Rules 2001 (as inserted by the Detention Centre (Amendment) Rules 2018) and rule 32(6) of the Short-term Holding Facility Rules 2018 and is defined as: “any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which— (a) the perpetrator has control (whether mental or physical) over the victim, and (b) as a result of that control, the victim is powerless to resist”.

177 [Medical Justice \(IDD0020\)](#)

178 [The Times, Judicial review granted over Whitehall definition of torture](#), 13 September 2018; [The Detention Centre \(Amendment\) Rules 2018 \(SI 2018/411\)](#): Amendment to rule 35 of the Detention Centre Rules 2.—(1) Rule 35 of the Detention Centre Rules 2001 (1) is amended as follows.

(2) After paragraph (5), insert—

“(6) For the purposes of paragraph (3), “torture” means any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which—

(a) the perpetrator has control (whether mental or physical) over the victim, and

(b) as a result of that control, the victim is powerless to resist.”

179 [Medical Justice \(IDD0020\)](#), [Freedom from Torture \(IDD0011\)](#)

180 [Q372](#)

*circumstances. This review should be completed by 1 December 2019. Any amendments to the AAR policy guidance should be reflected in Rule 35 of the Detention Centre Rules 2001 [See paragraph 130 on Rule 35], as well as the Home Office operational Enforcement Instructions and Guidance. Such a review should also revisit the definition of torture, in light of the Shaw follow-up review and concerns raised by various organisations in their evidence to us, and in line with the overall purpose of the Adults at Risk policy.*

*129. The Government should also replace the current vulnerability indicators in the AAR statutory guidance of “torture” and “victims of sexual or gender-based violence” with a more inclusive indicator based on the UNHCR detention guidelines, namely “victims of torture or other serious, physical, psychological, sexual or gender-based violence or ill-treatment”. This would enable a broader category of risk to be identified and would be more easily applied by caseworkers and doctors.*

## Rule 35

### *The process*

130. Rule 35 of the Detention Centre Rules 2001 exists as a key safeguard for vulnerable individuals once in detention. The Home Office AAR statutory guidance “is meant to operate in tandem with the Detention Centre Rules 2001, SI 2001/238” to function as the safeguard against the detention of vulnerable people.<sup>181</sup> The process is intended to ensure that “particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention”.<sup>182</sup> Rule 34 stipulates that every detained person must have a mental and physical examination within 24 hours of admission to an immigration detention centre.<sup>183</sup> Rule 35 of the Detention Centre Rules requires the IRC medical practitioner to report:

- on any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention (Rule 35(1)),
- on any detained person suspected of having suicidal intentions (Rule 35(2)), and
- any detained person whom the practitioner is concerned may have been the victim of torture (Rule 35(3)).<sup>184</sup> A Rule 35 report does not result in the automatic release of a detainee.<sup>185</sup>

131. Once a Rule 35 report has been completed by a medical practitioner, the report must be passed via the IRC Home Office contact management team to the Home Office caseworker responsible for managing and/or reviewing the individual’s detention. Upon receipt, the caseworker must review continued detention in light of the information in the Rule 35 report and respond to the IRC, within two working days of receipt.<sup>186</sup>

181 Garden Court Chambers, Shu Shin Luh, [Statutory guidance on adults at risk under scrutiny](#), 6 November 2017.

182 Home Office, [Adults at Risk policy guidance](#), 2 July 2018, p20.

183 [Detention Centre Rules 2001, Rule 34 \(1\)](#)

184 [Detention Centre Rules 2001, Rule 35](#)

185 British Medical Association, [Locked up locked out: health and human rights in immigration detention](#). 2017.

186 Home Office, [Detention services order 09/2016, Detention centre rule 35 and Short-term Holding Facility rule 32](#), 2 July 2018, p16 “ A rule 35 report must be considered and be responded to by the responsible officer in line with the guidance in Chapter 55b - Adults at risk in immigration detention. These actions must be carried out as soon as possible but no later than the end of the second working day after the day of receipt”.

Table 2: Rule 35 reports made and subsequent releases

RULE 35 REPORTS MADE AND SUBSEQUENT RELEASES					
	Number of Rule 35 reports made	Number of detainees Rule 35 reports relate to	Number of Rule 35 releases from detention	Ratio of reports to releases	
2015 Q1	440	422	84	19%	
Q2	420	404	74	18%	
Q3	624	614	121	19%	
Q4	554	540	151	27%	
2016 Q1	647	635	208	32%	
Q2	816	803	318	39%	
Q3	741	724	256	35%	
Q4	481	468	161	33%	
2017 Q1	702	690	172	25%	
Q2	663	653	145	22%	
Q3	706	696	102	14%	
Q4	693	683	107	15%	
2018 Q1	542	533	68	13%	
Q2	630	618	122	19%	
Q3	546	535	147	27%	
Q4	514	508	160	31%	

**Source:** Home Office, *Immigration Statistics quarterly, year ending December 2018: table DT\_03*

Notes: One detainee might have more than one Rule 35 report raised in the quarter. 'Rate' of release should be interpreted as percentage of reports which results in a release.

**DETENTION CENTRE RULE 35<sup>187</sup>***Rule 35 of the Detention Centre Rules 2001 states:*

- 1) ‘The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.
- 2) ‘The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State.
- 3) ‘The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.
- 4) ‘The manager shall send a copy of any report under paragraphs (1), (2) or (3) to the Secretary of State without delay.
- 5) ‘The medical practitioner shall pay special attention to any detained person whose mental condition appears to require it, and make any special arrangements (including counselling arrangements) which appear necessary for his supervision or care.’

*The Detention Centre (Amendment) Rule 2018 introduced a new rule 35 (6) which defines ‘torture’ for the purposes of rule 35 (3) as:*

- 6) any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which:
  - a) the perpetrator has control (whether mental or physical) over the victim, and
  - b) as a result of that control, the victim is powerless to resist.

132. In evidence to us Hugh Ind, the then Director General of the Immigration Directorate, described the purpose of Rule 35 as the provision of “a dispassionate assessment from the medical practitioner of factors that they consider to be relevant to the ongoing detention. [ ... ] There are significant numbers of people who think that this is about reasons to release somebody. It may be, but that is not the primary purpose of the rule.”<sup>188</sup>

*Criticism of the Rule 35 process*

133. In his first review, Stephen Shaw “noted widespread criticism of Rule 35” and recommended that “the Home Office immediately consider an alternative”.<sup>189</sup> In response, the Home Office said that steps had been taken to improve the use of Rule 35 through its implementation of the AAR policy, adding that links had been made between the

187 Home Office, [Detention services order 09/2016, Detention centre rule 35 and Short-term Holding Facility rule 32](#), 2 July 2018.

188 [Q400](#)

189 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p36, 2.138.

process detailed in Detention Centre Rule 35 and the AAR policy.<sup>190</sup> In evidence to the Committee, the Home Office accepted the need to review the effectiveness of the Rule 35 Process. Hugh Ind told us in May 2018 that there were “a number of issues” with the process:

I think the evidence of dissatisfaction from a number of quarters is building and is such as to make us want to review the rule later this year. As to what the solution is, that is a lot harder and we have not reached a view on that.<sup>191</sup>

134. In his follow up review, Shaw reported that the majority of organisations who had submitted evidence to him “felt that Rule 35 was not working and should be replaced”.<sup>192</sup> He summarised the concerns that were raised:

It was said that Rule 35 reports were routinely rejected for minor errors, and that they enjoyed the confidence of neither the doctors who complete them nor the caseworkers who receive them. It was pointed out that, following publication of the AAR policy, the number of Rule 35 reports dropped—probably because of the narrowing of the definition of torture. Since the torture definition reverted to the wider definition, the figures have picked up. But despite this, the release rate has continued to decline. One of the key failings in the Rule 35 process is the lack of training and support for IRC GPs in completing Rule 35 reports—many reports are poor quality—and the interpretation of reports and responses by Home Office caseworkers.<sup>193</sup>

135. Furthermore, Shaw stated that it was “anomalous” that decisions relating to Rule 35 were being made by those responsible for “both progressing the case and for detention”.<sup>194</sup> In his analysis of alternative mechanisms for Rule 35 considerations, he proposed that the system currently used to identify and support potential victims of human trafficking and modern slavery could be used as a “template” for the Rule 35 process.<sup>195</sup> He recommended that consideration of Rule 35 reports should be referred to a “new body—which could be within the Home Office but separate from the caseworker responsible for detention decisions”.<sup>196</sup>

136. We received evidence which corroborated some of Stephen Shaw’s findings about the Rule 35 process. The British Medical Association raised concern over the “lack of training and support for IRC GPs in completing Rule 35 reports”. and a shortage of training for

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190 Home Office, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p10, 2.138.

191 Q403

192 Home Office, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p4. 1.19.

193 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p36.

194 *Ibid*, p40, 2.146.

195 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p40, 2.147; Shaw explained that The National Referral Mechanism was introduced in 2009 to meet the UK’s obligations under the Council of Europe Convention on Action against Trafficking in Human Beings. From 31 July 2015, the NRM was put on a statutory basis following implementation of the Modern Slavery Act 2015. The Competent Authority (trained decision makers) decides whether individuals referred to them should be considered to be victims of trafficking according to the definition in the Convention.

196 *Ibid*, p41.

“Home Office caseworkers about the process”.<sup>197</sup> Freedom from Torture argued that failings under Rule 35 were less down to the policy but more due to its implementation by IRC medical staff and immigration officers.<sup>198</sup>

### *Identification of adults at risk who are not victims of torture*

137. Detention Action argued that the Rule 35 process was not effective in identifying vulnerabilities identified under rule 35 (1) or rule 35 (2). They said that:

Rule 35 reports are rarely completed unless the individual is a victim of torture, although in theory they should be completed when a person’s health is likely to be injuriously affected by continued detention or when there are concerns about suicidal intentions. Since Rule 35 is the main route to being considered an adult at risk, vulnerable people who are not victims of torture are often not considered under the Adults at Risk policy.<sup>199</sup>

138. Similarly, Medical Justice argued that the AAR policy relied “heavily on the Rule 35 process” with “a gap in the reporting mechanism for those who qualify as AAR but are not necessarily victims of torture” i.e. Rule 35 (3). They highlighted that this included “many of the groups that were added following the recommendation of the first Shaw Review—victims of sexual and gender-based violence, transsexual persons, those with PTSD or learning difficulties, victims of trafficking”.<sup>200</sup> In evidence to the Committee, HMIP Inspection Leader, Hindpal Singh Bhui, told us that “Torture is only one reason why a rule 35 could be considered, but almost all the rule 35 reports we see are about torture”.<sup>201</sup> A British Medical Association report noted that “far fewer Rule 35(1) and Rule 35(2) reports are completed compared to Rule 35(3)” and suggested that the reasons for this could be due to a “lack of knowledge about their existence and use (the majority of available guidance focuses on Rule 35 (3))”.<sup>202</sup>

### *Fall in Rule 35 report releases*

139. Liberty highlighted the “steep fall in the number of individuals released after a Rule 35 report is written” following the introduction of the AAR guidance.

Whereas 35% of those in receipt of a Rule 35 report were released in Quarter 3 of 2016, only 15% were released in Quarter 3 of 2017. This suggests that the balancing exercise contained in the new guidance has raised the threshold for the release of vulnerable people.<sup>203</sup>

140. In Figure 4, the chart shows that there had been a clear decline in the success rate of Rule 35 (3) report releases from detention, decreasing from 39% in Q2 2016 to 19% in Q2 2018. However, there was an 8% increase in Q3 2018, to 27% during which period the change in the definition of torture occurred, and the latest data for Q4 2018 shows this

197 British Medical Association (BMA) (IDD0019); British Medical Association, [Locked up locked out: health and human rights in immigration detention](#), 2017, p5.

198 Freedom from Torture (IDD0011)

199 Detention Action (IDD0006)

200 Medical Justice (IDD0020)

201 [Q192](#)

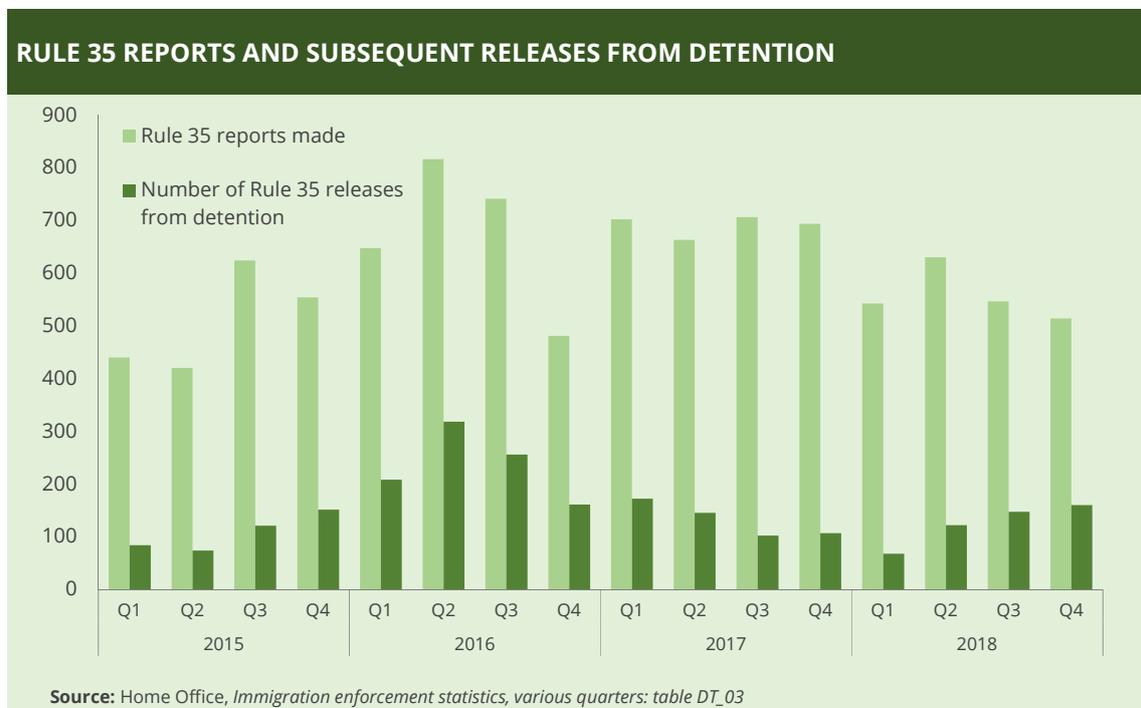
202 British Medical Association, [Locked up locked out: health and human rights in immigration detention](#) 2017, p41.

203 Liberty (IDD0015)

has increased again to 31%. It is important to note that, from September 2018, the Home Office included data for the first time on the breakdown of individual indicators of Rule 35 releases, including torture. This is vitally important data to ensure transparency on the effectiveness of Rule 35 which we strongly welcome. There was no public announcement of this change in the statistics, or any available explanation within the migration transparency data.<sup>204</sup>

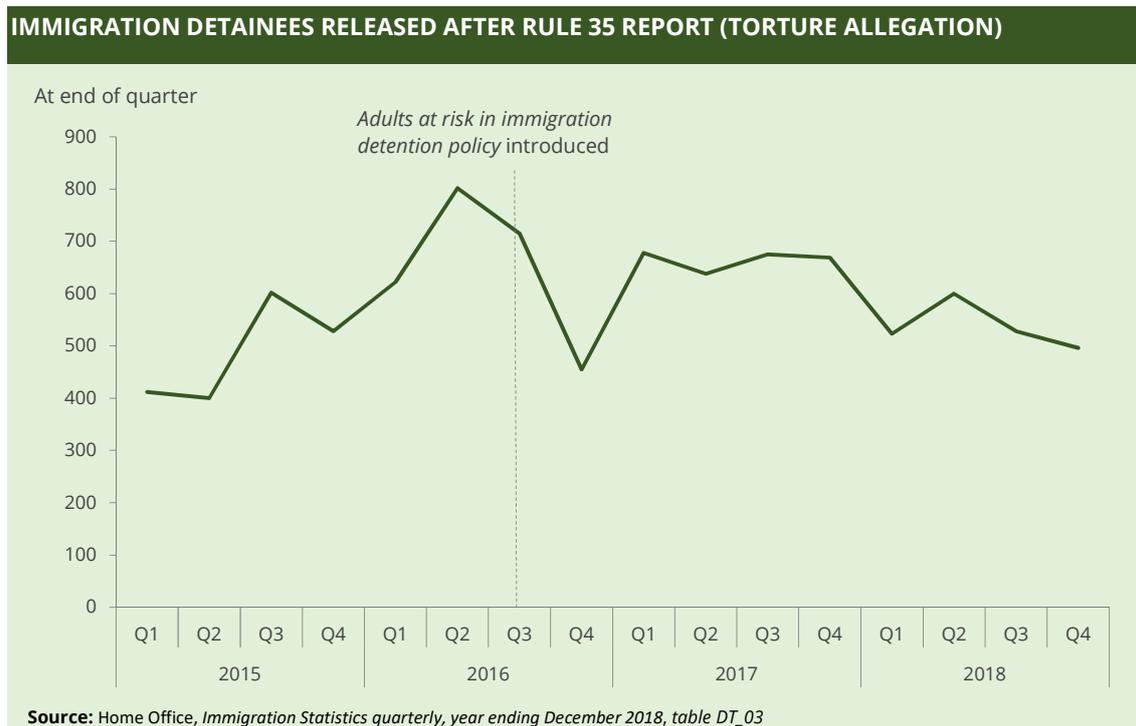
141. Figure 5 below demonstrates that Rule 35 release rates from detention specifically for torture allegations showed a sharp decline following the introduction of the AAR policy in Q3 2016. As noted in paragraph 125, the Home Office amended the Detention Centre Rules to include a new, broader definition of torture, which came into force on 2 July 2018. It is too early to ascertain how this change in the definition will affect the numbers of vulnerable detainees being released under Rule 35 (3).

**Figure 4: Rule 35 reports and subsequent releases from detention**



204 Immigration enforcement statistics (in the [Migration transparency data](#) series), Table DT\_03. There is no user guide for this series.

Figure 5: Rate of Rule 35 reports resulting in release from detention, based on torture allegations



### HMIP reports on Rule 35 effectiveness

142. HMIP also routinely cite a range of inadequacies with the use of Rule 35 in IRCs. These include unexplained Home Office decisions to continue detention, including detainees who had been identified as adults at risk, delays in Home Office responses, and a Home Office propensity to use immigration factors as the overriding balancing factor to maintain detention, irrespective of no imminence of removal. In its 2017 Yarl's Wood report, HMIP outlined the following case studies:

One case that we examined in our casework sample concerned the detainee assessed at level 3 of the Adults at Risk policy because there was professional medical evidence that a period of detention was likely to cause harm. Two recent Rule 35 reports had been submitted for this detainee. In both cases, doctors noted numerous scars consistent with torture and psychological symptoms characteristic of post-traumatic stress disorder (PTSD). The response to the first report took eight weeks to finalise and the second five weeks. Both reports were considered by the internal review panel, independent of the decision-making team. On both occasions the panel recommended release but were overruled by a senior Home Office

official. We were also concerned to find two Rule 35 responses where the Home Office had refused, without explanation, to accept that rape came within the legal definition of torture.<sup>205</sup>

143. In a number of other cases at Yarl’s Wood, HMIP highlighted that:

In eight of the ten cases examined, the Home Office had accepted that the detainee’s treatment came within the definition of torture and assessed the detainee at level 2 of the Adults at Risk policy. One of the eight had been released before the case had been considered and detention was maintained in the other seven cases. In all seven cases it was considered that negative immigration factors outweighed indicators of vulnerability. No responses cited the imminence or otherwise of removal.<sup>206</sup>

144. At its 2017 inspection at Harmondsworth IRC, HMIP revealed that, “In nine of the 10 cases, the decision-maker accepted the reports as evidence of torture. However, only one of these reports led to release”.<sup>207</sup>

145. Voke, a former Yarl’s Wood detainee who gave evidence to the Committee, explained how she had a Rule 35 report carried out which confirmed she had experienced gender-based violence. The Home Office accepted this report but kept her in detention. After she had been in Yarl’s Wood for seven months her mental health deteriorated seriously, and she developed psychotic symptoms. She then tried to kill herself, twice. Women for Refugee Women reported that, following her suicide attempts, Healthcare failed to complete a further Rule 35 report for her as they should have done, despite repeated requests from her solicitor to do this. The Home Office only released her after they were ordered to do so by the courts, after her solicitor brought a judicial review against her detention. She was in Yarl’s Wood for nearly eight months.<sup>208</sup>

146. Another detainee at Yarl’s Wood, Afiya, set out her case to the Committee in March 2018:

When I entered detention, I told them I want to do rule 35 and I told them from the start my application had torture and rape in it. When I did rule 35, the doctor said, “I do not think she is fit to be in detention and I do not know how detention is going to affect her going onwards”. That was the first month when I entered detention. No one reviewed rule 35 within those five months, and at the date for me to be released I met a psychiatrist who said, “Why is she still in detention?” after seeing all my records. “Why is she still in detention?” That is the point he raised.<sup>209</sup>

205 Her Majesty’s Chief Inspector of Prisons, [Report on an unannounced inspection of Yarl’s Wood IRC](#), published 15 November 2017, p31, 1.78; The report explained: “In September 2016, the Home Office changed the definition of torture to be used in Rule 35 considerations. This was challenged in the courts. Pending the outcome of proceedings, the Court has ordered the Home Office to use a broader definition of torture – one including actions of non-state actors, which would include rape regardless of the perpetrator – while the case awaited conclusion. In its ruling in October 2017, the High Court confirmed that the broad definition of torture should be used in Rule 35 considerations”.

206 Her Majesty’s Chief Inspector of Prisons, [Report on an unannounced inspection of Yarl’s Wood IRC](#), published 15 November 2017.

207 Her Majesty’s Chief Inspector of Prisons, [Heathrow Immigration Removal Centre Harmondsworth site](#), 2–20 October 2017, p31, 1.70.

208 [Q23](#); the name “Voke” was a pseudonym to protect the identity of the individual as requested.

209 [Q22](#); the name “Afiya” was a pseudonym to protect the identity of the individual as requested.

147. In a recent High Court case, Free Movement reported that “the Judge was scathing about the approach taken by the Home Office “in deciding to maintain detention of a man suffering from severe mental illness. In his observations, the Judge said that “The failure to assess the Claimant’s case at Level 3 under the AAR policy was, in my judgment, contrary to the evidence”. He stated that there appeared to be “a focus on looking for reasons not to release the Claimant rather than a clear application of the AAR policy in the light of the new evidence”.<sup>210</sup>

**148. We are extremely concerned that the Rule 35 process is plagued with too many long delays, sets too high an evidential burden, and that internal review panel recommendations to release are being overturned by senior Home Office officials.**

**149. The Home Office must ensure that the Rule 35 process is adequately resourced and monitored to enable medical practitioners in IRCs to carry out their functions efficiently and to deliver Rule 35 reports to the evidential threshold required. All IRC medical practitioners should continue to receive training in identifying and documenting concerns as part of the Rule 35 process. Likewise, Home Office case workers should be trained to ensure that there is fairness, accuracy and consistency in their assessments and interpretation of Rule 35 reports.**

**150. As highlighted by Stephen Shaw in his follow-up review, there is a need for an alternative, independent mechanism in the Rule 35 decision making process. Currently, decisions relating to Rule 35 reports are made by the caseworker responsible for progressing an individual’s case, as well as their detention. This is not a fair or robust system. We urge the Government to explore alternatives that would ensure independent oversight as part of the Rule 35 decision making process.**

**151. We welcome the Government’s commitment to review the Rule 35 process. A review of Rule 35 is urgently required to ensure that no further injustices take place on the immigration detention estate. As part of any change to the process, we urge the Government to ensure that Rule 35 effectively identifies all vulnerable groups, as reflected in the wider UNHCR detention guidelines [e.g. “victims of torture or other serious, physical, psychological, sexual or gender-based violence or ill-treatment”] and that these categories are clearly mirrored in the Adults at Risk (AAR) policy guidance. The process used to identify any individual who may be vulnerable to harm in detention must be one that is coherent, fair and easy to apply; the current Rule 35 process, as part of the Adults at Risk framework, clearly fails to achieve this.**

**152. At the time of publication, the government review of Rule 35 had not been done. We recommend that a comprehensive review of Rule 35 is completed by the end of June 2019.**

### **Deaths of immigration detainees**

153. In September 2018 the Home Office included deaths in immigration detention for the first time in its immigration statistics and confirmed that this “data will be reported

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210 Free Movement article, [Home Office “looking for reasons not to release” man suffering from severe mental illness](#), 7 November 2018; R (Bah) v Secretary of State for the Home Department [2018] EWHC 2942 (Admin)

on an annual basis”. The Home Office records deaths in immigration detention under the category of “other”, which does not provide any detail on the type of death e.g. self-inflicted, or by natural causes.<sup>211</sup>

154. Prior to this development, Stephen Shaw told us that it was:

[ ... ] frankly, odd and self-defeating that the Home Office does not follow normal practice in the MOJ of making a statement when there is an apparently self-inflicted death in detention. I think they should do so. I think they should do so routinely.<sup>212</sup>

155. From the evidence we have heard, transparent and accurate data in this area was challenging to obtain. In his follow up review, Shaw requested Home Office management information to establish the number of deaths since the publication of his first report in 2015. According to INQUEST, such public access to data on immigration detainee deaths is rare.<sup>213</sup> Shaw reported that there had been twelve deaths in or shortly after detention, four of which appeared to have been self-inflicted since 2010.<sup>214</sup> In HM Chief Inspector of Prisons’s 2017–18 annual report Peter Clarke noted the rise in self-inflicted deaths in immigration detention with concern:

In last year’s annual report, we noted a rise in deaths in or immediately following detention. That concerning trend has continued. There were five detention related deaths in the reporting year, including three that were self-inflicted. In the previous year there were six deaths, including two self-inflicted deaths and a manslaughter. Before 2016–17, deaths that were not from natural causes were rare. It remains unclear why this change has occurred.<sup>215</sup>

156. In written evidence to the Joint Committee on Human Rights, INQUEST also reported “an unprecedented and dramatic rise” in deaths in 2017; their annual monitoring of deaths in immigration detention data showed a total of 6 deaths, two of which were awaiting classification.<sup>216</sup> In its review of immigration detainee deaths between 1 January 2015 and 30 August 2018, INQUEST reported that it was “aware of seventeen deaths of immigration detainees in Immigration Removal Centres, prison or within five days of being released”, of which “The majority await inquest”.<sup>217</sup> Worryingly, INQUEST told us that they relied on relatives, friends, NGO networks and witnesses to access information about immigration detainee deaths.<sup>218</sup>

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211 Deaths in immigration detention are included in the ‘other’ category in [Immigration statistics detention table dt\\_06](#) and [dt\\_06\\_q](#). The [User guide](#) to these statistics states that: “The ‘other’ category includes people who have returned to criminal detention, those released unconditionally, absconders, those sectioned under the Mental Health Act, and deaths in detention” (p.88).

212 [Q521](#)

213 [Written evidence from INQUEST](#) to the Joint Committee on Human Rights.

214 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons, a follow-up report to the Home Office](#), July 2018, part 5, p 91; Annex 9 of Stephen Shaw’s follow up report details the number and type of deaths in immigration detention since 2010.

215 [HM Chief Inspector of Prisons for England and Wales, Annual Report 2017–18](#), p75.

216 Written evidence from INQUEST ([IMD0028](#)) to the Joint Committee on Human Rights; INQUEST: [Deaths of immigration detainees](#).

217 *Ibid*

218 *Ibid*

157. *We are deeply saddened and concerned by the recent reports of an increase in the number of self-inflicted deaths taking place in or shortly after immigration detention. We welcome the Home Office's inclusion in its statistics of deaths in immigration detention from September 2018. This action was long overdue. However, as outlined in the evidence we received, it remains very difficult to access accurate and detailed data on the causes of deaths in immigration detention. The Home Office data does not state if a death was self-inflicted, natural, or if it occurred in a prison. In line with recommendations by Stephen Shaw, and Ministry of Justice practice, the Home Office should publish a more systematic and transparent record of deaths in immigration detention with immediate effect. This should include whether the cause of death is apparently self-inflicted, from natural causes, or unknown. The data should also record deaths of detainees held under immigration powers in HM prisons.*

## 5 Length of detention

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### Casework delays

158. Her Majesty's Inspectorate of Prisons (HMIP) concludes that inefficiencies in Home Office casework unnecessarily prolong people's detention. In his 2017 report on Morton Hall the Chief Inspector of Prisons, Peter Clarke, highlighted an asylum case which took the Home Office seven months to resolve and another case where a detainee wanted to return voluntarily, and an emergency passport was obtained, yet it took the Home Office another three weeks to effect removal.<sup>219</sup>

159. HMIP Inspection Team Leader, Hindpal Singh Bhui told us that one of the main reasons people were detained for extended periods was unnecessary "issues around travel documentation" and "late appeals" that were made. However, he also said there were "consistent issues around the efficiency of the Home Office case-working that can delay someone's release or someone's removal". He highlighted the Home Office delays in processing foreign national offenders, many of whom are held under immigration powers in HM Prisons.

[ ... ] there are a number of people held in prisons at the moment, about 400 or so, who are detained under immigration powers. They should be case-worked from the 18-month period before the end of sentence, but often they are not, so many of them would end up being detained after sentence.<sup>220</sup>

160. Similarly, a former Duty Director at Brook House IRC, Rev. Nathan Ward highlighted the lengthy casework delays with foreign national offenders and suggested they could be addressed if the Home Office started "proceedings while those people are in prison. Or, at the point of the custodial sentence ending, they should release them like any other person and, if they are going to deport them, follow that system".<sup>221</sup> As outlined in Chapter 2, most recent Home Office statistics showed that foreign national ex-offenders made up 53% of the detained population.<sup>222</sup>

161. Jerry Petherick, Managing Director of G4S Custodial and Detention Services, told us that the most frequent comments received from immigration detainees in the prison estate related "either to access to a caseworker or the very late serving of documentation at the end of their prison sentence". He added that this was a particular frustration that could result in "incidents of self-harm or indiscipline".<sup>223</sup>

162. Bail for Immigration Detainees (BID) regularly highlights problems on its Twitter feed with Home Office casework. Recent examples included:<sup>224</sup>

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219 HM Inspectorate of Prisons, [Morton Hall Immigration Removal Centre 21 – 25 November 2016](#), p27, 1.62.

220 [Q178; Under the UK Borders Act 2007, the automatic deportation section states](#): (1)In this section "foreign criminal" means a person— (a)who is not a British citizen, (b)who is convicted in the United Kingdom of an offence, and (c)to whom Condition 1 or 2 applies. (2)Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months. (3)Condition 2 is that— (a)the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and (b)the person is sentenced to a period of imprisonment.

221 [Q39](#)

222 Home Office [Immigration Enforcement statistics, Q4 2018, table FNO\\_11](#), Time served foreign national offenders, December 2018.

223 G4S Custodial & Detention Services ([IDD0028](#))

224 Bail for Immigration Detainees Twitter feed, [@BIDdetention](#)

- On 6 December 2018, BID reported that it would apply for bail for someone who was sentenced to 9 weeks' imprisonment for shoplifting in August 2017. Following his sentence, he was detained under immigration powers.
- On 28 November 2018, BID reported that their legal adviser met someone at Yarl's Wood IRC who won her asylum appeal a week previously but was still in detention.
- On 22 November 2018, BID reported that bail was granted to a client detained for over a month and separated from their entire family (wife, children and grandchildren) despite over 7 years of reporting without issue.

163. Tom Nunn, Legal Manager at BID, told us that he was concerned about the way the Home Office was dealing with “administrative investment in immigration detention”. He said that it “feels like people are completely forgotten” in detention until something happens, such as an upcoming bail hearing, at which point the Home Office suddenly seems able to make a decision. He added that “places like Morton Hall in particular, people do not seem to be able to get access to the Home Office to talk to an individual who is dealing with their case”.<sup>225</sup>

164. In evidence to the Committee the Immigration Minister, Rt Hon Caroline Nokes MP, told us that she was very conscious that the Home Office was a large department “affecting people’s lives every day” and that it was “crucially important that we work extremely hard to be able to give good decisions in a timely fashion”.<sup>226</sup> The strain on the Home Office’s capacity to process asylum applications was addressed in our predecessor’s 2017 report on asylum accommodation. The Committee recommended that the Government needed to take urgent action to increase its capacity to process applications. It stated that:

There are clear benefits in applications being processed quickly and these far outweigh the cost of increasing capacity in the responsible section of the Home Office, UK Visas and Immigration.<sup>227</sup>

165. In his 2017–18 annual report, the Independent Chief Inspector of Borders and Immigration reported that “the greatest cause for concern was not a particular function or failing but the overall capacity and capabilities of the Home Office’s Borders, Immigration and Citizenship System (BICS)”. He noted that, “the more pressing worries were the staffing gaps, shortages of skills and experience, and the inability to recruit, train and replace staff quickly enough”.<sup>228</sup> In evidence to the Committee, the Immigration Minister acknowledged that the Home Office was “a Department that needs more resources. It needs more people. It needs more experienced caseworkers who are in a position to be able to process claims accurately and effectively”.<sup>229</sup>

**166. Home Office caseworking inefficiencies are unnecessarily prolonging people’s detention, with some being held for more than three years. This is unacceptable and adversely affects the most vulnerable people in detention. We welcome the Immigration**

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225 [Q28](#)

226 [Q354](#)

227 House of Commons Home Affairs Committee, [Asylum accommodation Twelfth Report of Session 2016–17](#), HC637, 31 January 2017 p9.

228 Independent Chief Inspector of Borders and Immigration, [Annual Report for the period 1 April 2017 to 31 March 2018](#), p11–12.

229 [Q355](#)

*Minister's acknowledgement that her Department needs more caseworkers and call on the Government to urgently increase the resources and staffing in the UK Visas and Immigration (UKVI) caseworking team to ensure that people's immigration cases are swiftly resolved.*

167. The number of foreign national offenders who are held in prison under immigration powers despite having served their sentence remains far too high. People should not be held in prison beyond the end of a custodial sentence. The Home Office should ensure that notifications of liability for deportation are sent to foreign national offenders several months before the end of their custodial sentences. This would enable the necessary representations and legal challenges to take place and, where these were unsuccessful, provide for the timely organisation of travel documents. Importantly, this would avoid unacceptable situations of double punishment.

### Home Office decisions to maintain detention

168. In Stephen Shaw's first report on immigration detention, he referred to Medical Justice's evidence that: "numerous court cases have demonstrated that 'monthly reviews' are often cursory and frequently fail to take into consideration emerging issues, such as deteriorating mental health".<sup>230</sup> Stephen Shaw also noted that during his visit to Tinsley House IRC, "the Gatwick Befrienders organisation suggested that caseworkers cut and pasted the information that went into monthly detention reviews". He added that "the whole process led to helplessness and was dehumanising".<sup>231</sup>

169. Much of the evidence we received highlighted concerns with Home Office decisions to maintain detention, despite the existence of the statutory review framework and Home Office independent review panels. Detention Action said that "in many circumstances" immigration factors "will trump risk of harm to the individual". They explained that "Negative indicators of non-compliance, including irregular presence in the UK for some time, failing to comply with voluntary return or making a late asylum claim, and any history of offending are weighed against the risk of harm to the individual". They highlighted that of 48 cases they identified as having triggered the Adults at Risk (AAR) policy between May and August 2017, "detention was maintained in 85% cases (41 of 48 clients)".<sup>232</sup> Similarly, Amnesty International (UK) argued that the Home Office's reasons for maintaining detention were "often based on strained reasoning and unrealistic

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230 Stephen Shaw, [Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, p185, 10.10; [The Detention Centre Rules 2001](#), Rule 9 sets out the statutory requirement for detainees to be provided "with written reasons for detention at the time of initial detention, and thereafter monthly"; [Chapter 55.8 of the Home Office, Enforcement Instructions and Guidance](#) advises Home Office staff on the management of monthly detention reviews. The guidance states that "Detention reviews are necessary in all cases to ensure that detention remains lawful and in line with stated detention policy at all times. Detention reviews must be carried out at prescribed points throughout the period a person remains detained under Immigration Act powers, whether the person is held in the immigration detention estate or elsewhere, for example, secure hospital or prison".

231 *Ibid*, p184, 10.6.

232 Detention Action ([IDD0006](#))

assessments of the prospect of removing someone from the UK”. They said that “Detention is often maintained unless release cannot be avoided—reversing the appropriate position of detention as the last resort”.<sup>233</sup>

170. In its 2017 inspection report of Yarl’s Wood, HMIP stated that the Home Office’s independent review panel had recommended the release of a detainee on two occasions after the consideration of two Rule 35 reports. The detainee was assessed at level 3 of the AAR policy “because there was professional evidence that a period of detention was likely to cause harm”.<sup>234</sup> However, on both occasions the panel “were overruled by a senior Home Office official”.<sup>235</sup> In written evidence to the Committee, the Home Office stated that “Any decision to maintain detention following receipt of a Rule 35 is subject to an additional check by a senior case worker who will critically review the reasoning with the presumption always in favour of release”. However, it confirmed that “Data on the rationale for decisions not to release individuals subject to Rule 35 reports was not centrally recorded and could be obtained only through detailed manual scrutiny of individual casefiles”.<sup>236</sup>

**171. The Detention Centre Rules 2001 clearly stipulate that detainees must be provided with written justification for their detention at the time of their initial detention followed by monthly reviews. From the evidence we have seen, this is clearly not always happening. The outcome of these monthly detention reviews is life changing for the most vulnerable people in detention. *If there is no prospect of imminent removal, then people should not be detained.***

**172. Failure to provide justification for continued detention will only compound detainees’ frustration and may lead to self-harm and violence in immigration removal centres. *Home Office decisions to maintain detention must be clearly justified so that a person knows exactly why they are being detained, and if appropriate can challenge the Home Office decision.***

**173. HMIP has highlighted instances where senior Home Office officials have overridden their own independent review panel’s decisions to release vulnerable detainees, and continued detention, without any justification. This raises serious questions about the purpose of the Home Office’s independent review panel. Ultimately, the Home Office cannot and should not be maintaining detention by default. We are also extremely concerned about the lack of any consistent information on the overturning of review panel decisions which could be used for monitoring senior officials’ decision-making and ensure proper accountability.**

**174. Following the Home Secretary’s commitment, in response to Stephen Shaw’s follow up review, to publish more data on immigration detention, we urge the Home**

233 Amnesty International ([IDD0029](#)); Amnesty International (UK) conducted research during 2017 regarding the Home Office’s use of its immigration detention powers. This research involved an examination of Home Office detention case files and interviews with detainees, their family members and lawyers: [A Matter of Routine: The Use of Immigration Detention in the UK](#), December 2017.

234 HM Chief Inspector of Prisons, [Report on an unannounced inspection of Yarl’s Wood Immigration Removal Centre](#), 5–7, 12–16 June 2017; p31, 1.78.

235 Ibid

236 Home Office ([IDD0044](#))

*Office to begin to publish its data on the rationale for decisions not to release individuals subject to Rule 35 reports by 1 July 2019.<sup>237</sup> This data can be anonymised, and therefore there should be no reason why the Home Office cannot publicly share this information.*

*175. The Home Office should also provide more transparent and detailed reporting about the reasons for continued detention. Data on the barriers to release of individuals detained for more than six months should be published as part of the Home Office's next quarterly immigration statistics. We would also urge the Home Office to improve its learning from cases where people are released from detention on immigration bail to prevent people being inappropriately detained in the future. If this learning is successfully embedded in Home Office operations, we would expect the number of cases where people are held in immigration detention for over six months to decrease.*

## Case progression panels

176. In his first report, Stephen Shaw highlighted the need for greater independence in detention decision making processes and recommended that, “the Home Office consider if and [in] what ways an independent element can be introduced into detention decision making”.<sup>238</sup> In response to Shaw’s recommendation, the Home Office introduced case progression panels in February 2017 to “provide regular additional checks on continuing suitability for detention” and as “an opportunity for identifying action to progress cases more quickly, reducing time spent in detention”.<sup>239</sup> The case progression panels are comprised entirely of Home Office officials. They consider the cases of people held for periods of three, six, nine, and twelve months detention and look at detention decisions independently of the case owner.<sup>240</sup> For any detainees held for more than twelve months, their cases are “reviewed by a panel chaired at a senior level every subsequent three months, complemented by an internal monthly Director-chaired Criminal Casework Internal Review Panel”.<sup>241</sup>

237 [Home Secretary statement on immigration detention and Shaw report](#): on 24 July 2018, in response to Stephen Shaw’s follow up review, the Home Secretary, Rt Hon Sajid Javid MP, made a commitment that “[...] in his report, Stephen Shaw also rightly focuses on the need for greater transparency around immigration detention. I will publish more data on immigration detention”.

238 Stephen Shaw, [Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, p187, Recommendation 61.

239 Home Office ([BRK0011](#))

240 Alongside the Home Office case progression panel reviews, the Home Office has a statutory duty to provide detainees with written reasons for their continued detention at monthly intervals following the initial decision to detain. “Detention reviews must be carried out at prescribed points throughout the period a person remains detained under Immigration Act powers, whether the person is held in the immigration detention estate or elsewhere, for example, secure hospital or prison”. [See Chapter 55.8, [Home Office Enforcement Instructions and Guidance](#)].

241 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p85, 4.73; Shaw noted in his observation of the case progression panels that on one 12-month panel review, all the cases were Foreign National Offenders (FNOs) [p86, 4.74]; Shaw also noted in his follow up review that Foreign National Offenders make up the “vast majority of those held in detention the longest” [Foreword, viii]. In evidence to the Joint Committee on Human Rights on 5 December 2018 [[Q69](#)], Rt Hon Caroline Nokes MP stated that: “I can certainly assert confidently that everybody who has been in detention for over a year is a foreign national offender”.

177. In his follow up review, Shaw criticised the independence of the Home Office casework progression panels stating that they had not been “implemented as I had envisaged”.<sup>242</sup> As part of his research, Shaw observed five of these panel reviews in total, covering all timescales i.e. cases held in detention for 3, 6, 9, and 12-month periods. He found that:

The panels did not always consider AAR factors as part of the decision-making process. Indeed, the paperwork did not reference information about AAR. This is a matter of considerable concern. I found evidence of inconsistent interpretation of AAR levels by caseworkers that then led to inconsistent recommendations at panel level. There was also little consideration of the fact that prolonged detention can lead to increased levels of vulnerability.<sup>243</sup>

178. Shaw also reported that “a theme across all panels was that there had been missed opportunities to progress towards removal earlier in the detention period”. He highlighted that the case progression panels could “only make recommendations” to release or reject “specific casework actions”. In response to how frequently these recommendations were made, Shaw expressed his concern that the Home Office “was unable to provide this information”.<sup>244</sup>

179. In written evidence to Stephen Shaw’s latest report, the Immigration Law Practitioners’ Association (ILPA) also highlighted their concerns about the independence and effectiveness of the panels, stating that “these panels are entirely made up of Home Office officials and there is no opportunity for detainees or their representatives to provide evidence and oral or written representations. It is ILPA members’ experience that like ordinary detention reviews, decisions are often made on an incorrect understanding of the factual situation”.<sup>245</sup>

180. HMIP also noted serious concerns with the case progression panels. In its 2017 report on Harmondsworth, HMIP reported that recommendations of the case progression panel “were often rejected”. In the 12 cases they looked at, the panel “recommended the release of five detainees sometime more than once, yet detention was maintained every time. In one case, the panel had unsuccessfully recommended the release of a detainee on three separate occasions”.<sup>246</sup>

**181. *The Home Office introduced case progression panels to provide internal independence to the detention decision-making process at three-monthly intervals. However, we question whether a process that remains internal can be truly independent. It is clear from the evidence we have received that this review process is not functioning***

242 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p85, 4.73.

243 *Ibid*, p86, 4.73.

244 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p88, 4.86.

245 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p73, 4.8.

246 HM Chief Inspector of Prisons, [Heathrow Immigration Removal Centre Harmondsworth site, 2–20 October 2017](#), p31, 1.68.

*as an effective independent check on decisions to maintain detention. We echo Stephen Shaw's comment in his follow up review, that "there remains a need for robust independent oversight".*<sup>247</sup>

## Barriers to release

### *Home Office assessment of 'absconding' and 'non-compliance'*

182. A detainee who is held under immigration powers by the State has the right to apply to be released on immigration bail to the First-tier Tribunal. However, the opportunity to exercise this right relies heavily on detainees' ability to navigate the immigration bail process. This would be dependent on the detainee's knowledge of and access to legal advice and representation, as well as being able to access a wider support network - including for example personal guarantors.

183. The Home Office assessment of the 'risk of absconding', a key rationale for detention, is also a significant factor in the Home Office's decisions to continue detention. Home Office caseworkers are also required to consider an individual's history of compliance with the immigration authorities.<sup>248</sup> In a report commissioned by the Bar Council, several lawyers were interviewed about their perspectives on Home Office decisions to detain and on its interpretation of the 'risk of absconding' and 'non-compliance'. Some suggested that:

Home Office decisions to detain often give excessive and unjustifiable weight to any history of 'non-compliance' with the immigration authorities. This might for instance include: using a false document when this was the only way available to you to enter the UK to claim asylum; breaching visa conditions while under the control of traffickers; overstaying a visa to remain part of your child's life while trying to regularise your status; missing a reporting appointment because of an emergency. These are understandable outcomes of people trying to navigate a complex and changing immigration system, and do not automatically imply a greater risk of absconding".<sup>249</sup>

184. Similarly, Bail for Immigration Detainees reported that the Home Office has "provided evidence to show that only 5% of people subject to immigration control abscond. The real figure is likely to be even lower as the mere fact of missing a reporting event (perhaps through illness) is categorised as absconding".<sup>250</sup>

185. Bail for Immigration Detainees (BID) regularly tweets about the status of clients' immigration bail cases it supports. On 30 November 2018, it reported that a client was released on immigration bail after one month in detention. This was the third time their client had been detained. The client was separated from two British children with independent expert evidence of the damage this has caused. They stated that the Home Office falsely claimed that their client had missed reporting events and when pressed in court, admitted it had no such evidence.<sup>251</sup>

247 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office](#), July 2018, Executive Summary, xii, paragraph 11.

248 Chapter 55.3.1, [Home Office Enforcement Instructions and Guidance, Factors influencing a decision to detain](#)

249 [Injustice in Immigration Detention](#), commissioned by the Bar Council, Dr Anna Lindley, SOAS, November 2017.

250 [Bail for Immigration Detainees \(IMD0012\)](#)

251 [Tweet from Bail for Immigration Detainees, @BIDdetention](#), 30 November 2018.

186. In 2017, the Independent Chief Inspector of Borders and Immigration (ICIBI), reported that: “In December 2016, there were 6,989 recorded instances of a scheduled reporting event not being completed out of a total of 75,522 reporting events scheduled for that month. This represents a ‘non-compliance’ rate of nine per cent”.<sup>252</sup> The Chief Inspector concluded that “The way non-compliance with reporting restrictions was recorded and treated was inconsistent [...]”.<sup>253</sup> An individual can be re-detained if reporting restrictions are breached.

### **Challenges within the immigration bail system**

187. In written evidence to the Committee, the Law Society of Scotland raised another significant barrier to release from immigration detention, that being the requirement for the Home Office to consent to bail in certain circumstances. This was introduced by the Immigration Act 2014 and means that, as was the case in *Roszkowski v Secretary of State for the Home Department* [2017] EWCA Civ 1893 at [54], the Secretary of State can refuse consent to bail granted by an immigration Judge.<sup>254</sup> Although this requirement applies in very limited circumstances, the fact remains that the Government can overrule a decision of the judiciary and calls into question the Home Office’s claim of guaranteeing independent judicial oversight.<sup>255</sup>

188. Another challenge with the immigration bail process is securing accommodation for individuals on release from detention. On 15 January 2018, new provisions of the 2016 Immigration Act regarding immigration bail came into force.<sup>256</sup> Liberty explained that the Immigration Act 2016 “repealed provisions under which people in detention accessed accommodation in order to be released”. They told us that “The guidance supplied by the Home Office to explain the new bail provisions is opaque and could mean an individual is presented with a choice between homelessness or remaining in detention”.<sup>257</sup>

189. There are specific provisions relating to accommodation for asylum seekers and refused asylum seekers that remain substantively the same following the Immigration Act 2016. However, one of the main mechanisms for those in detention to access accommodation on release has been changed. A briefing by Bail for Immigration Detainees (BID) outlined the complexities and failings of the new immigration bail system. Under the previous policy [Section 4 (1)(c) of the Immigration and Asylum Act 1999], “homeless detainees could apply for accommodation from within detention if they had nowhere to reside when

252 [Independent Chief Inspector of Borders and Immigration 2016–17](#), p22, 8.3; “A grant of TR or bail typically requires that the individual resides at a specific address and reports to the Home Office, or police, at a specific location at set times and dates. These requirements are generally referred to by Home Office staff as ‘reporting restrictions’ or ‘reporting conditions’”. [Independent Chief Inspector of Borders and Immigration 2016–17](#), p4, 5.8.

253 [Independent Chief Inspector of Borders and Immigration 2016–17](#), Foreword.

254 Law Society of Scotland’s Immigration and Asylum Sub-committee (IDD0035)

255 Home Office, [Immigration Act 2016 Factsheet](#) - Immigration Bail: automatic referrals (July 2016); Free Movement blog: Iain Halliday, [The Home Office is entitled to ignore a judge’s decision to grant bail](#), 24 November 2017 - “The requirement for the Home Office to consent to bail was introduced by the Immigration Act 2014 and appears at [paragraph 22\(4\)](#) of Schedule 2 to the Immigration Act 1971. It applies only in very limited circumstances: where removal directions are in force, and removal will take place within 14 days”.

256 Schedule 10 of the Immigration Act 2016 came into force on 15 January 2018. Free Movement blog: Conor James McKinney, [Migrants detained indefinitely or made homeless by new immigration bail system](#), 23 July 2018.

257 Liberty (IDD0015); Liberty’s reference to the “guidance supplied by the Home Office” is: Immigration Bail, Home Office, Published for Home Office staff on 12 January 2018.

released”.<sup>258</sup> Under the new system, there are various routes to securing accommodation depending on the immigration status of the homeless detainee, but as BID’s briefing shows, these routes are flawed:

- Asylum seekers can apply for accommodation under section 95 of the 1999 Act if they are destitute, but the Home Office maintains that if they are still detained, they would fail the destitution test. This means that applicants would only satisfy the Home Office’s destitution test by being forced onto the streets.
- Refused asylum seekers can apply for accommodation under section 4(2) of the Immigration and Asylum Act 1999 if they have proof of a release date within 14 days. However, BID stated that “detainees are never given notice of their release date”.
- Migrants who are not asylum seekers can get accommodation under paragraph 9, schedule 10 of the Immigration Act 2016, but there is no application process for them to apply.<sup>259</sup>

190. The Independent reported the case of a “male asylum seeker who was granted bail in March [2018] after spending 10 months in detention, but his application for asylum accommodation was rejected by the Home Office on the grounds that he was “not destitute by the fact that he is being housed and his dietary needs are catered to”.<sup>260</sup>

191. Speaking about his experience of working at Brook House IRC from 2011 to 2014, former duty manager Rev. Nathan Ward told us that he knew of “two particular cases where they actually refused to leave the centre because they had nowhere to go”.<sup>261</sup> He said that:

Some people are released, and some are actually just left on the street by the side of Gatwick airport to fend for themselves.<sup>262</sup>

**192. There are a multitude of barriers which prevent some of the most vulnerable people in immigration detention from being released. The immigration detention bail process is unnecessarily complex and relies heavily on a detainee’s knowledge of and access to legal advice and representation to secure immigration bail. Furthermore, the Home Office is attributing excessive weight to absconding and non-compliance which, as we have learnt, could simply mean that an individual has missed a reporting appointment because of illness.**

**193. It is unacceptable that some detainees are being forced to languish in immigration detention or in some cases are being thrown onto the streets because the Home Office is not ensuring people can secure accommodation post release. This is unacceptable and a breach of people’s fundamental human rights.**

**194. *The Home Office should urgently review the new immigration bail provisions introduced in January 2018, which, a year on, are clearly not working - in particular***

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258 Bail for Immigration Detainees, [Briefing - Accommodation post detention](#), 13 June 2018.

259 Bail for Immigration Detainees, [Briefing - Accommodation post detention](#), 13 June 2018.

260 The Independent, [Asylum seekers unlawfully held in removal centres for months despite courts ruling they can be released, lawyers warn](#). Sunday 27 May 2018.

261 [Q49](#) Oral evidence: Brook House Immigration Removal Centre, HC 346, 14 September 2017.

262 [Q47](#) Oral evidence: Brook House Immigration Removal Centre, HC 346, 14 September 2017.

*to ensure that a lack of accommodation is not preventing immigration bail. The process should be made much simpler for individuals to navigate, and ultimately detainees should not be faced with a choice of destitution or remaining in immigration detention.*

195. Parliament passed Section 95 of the Immigration and Asylum Act 1999 which ensures that asylum seekers are not made destitute and homeless and lacking any means of remedying their position, given the restrictions on asylum seekers working in the UK. The provision of accommodation to destitute asylum seekers is a minimum requirement in line with the UK's international human rights obligations under the Refugee Convention and the prohibition against inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights. We are extremely concerned by evidence that the way in which the Home Office is applying this provision means that an asylum seeker in detention cannot satisfy the Home Office's destitution test for accommodation at the point of release, even if they would be homeless and destitute immediately upon release. Such an approach is perverse. In practice, this means that the Home Office makes it impossible for an impecunious asylum seeker in detention to access accommodation. It can also mean the poorest asylum seekers are locked up for longer simply for being poor. Such an approach risks breaching an individual's human rights. The Home Office must ensure that destitute asylum seekers in detention are allowed to access accommodation under Section 95 of the 1999 Act and that immigration bail is not refused solely due to a lack of such accommodation.

### *Automatic immigration bail after four months*

196. Following Stephen Shaw's recommendation that "the Home Office give further consideration to ways of strengthening the legal safeguards against excessive length of detention", the Immigration Act 2016 introduced a new duty on the Secretary of State to provide for automatic bail hearings after four months of detention.<sup>263</sup> This provision was implemented on 15 January 2018. However, as highlighted in Shaw's first review, this provision "applies to all detainees other than those detained pending deportation (i.e. FNOs) and persons detained pending removal in the interests of national security".<sup>264</sup>

197. Shaw raised concerns in his first review about the "lack of safeguards for FNOs, the majority of whom are subject to deportation procedures" and "are those who are most likely to have excessive length of detention".<sup>265</sup> He added that "Whatever their past crimes, they surely have an equal right to independent consideration of the detention decision". Shaw called for the automatic bail provisions to "be extended to those in detention awaiting deportation".<sup>266</sup> The excessive length of detention for FNOs was confirmed by the

263 Stephen Shaw, [Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, Recommendation 62, p188.

264 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p89; The UK Borders Act 2007 provided for automatic deportation for any foreign national with a criminal conviction of 12 months or longer. [Under the UK Borders Act 2007, the automatic deportation section states:](#) (1) In this section "foreign criminal" means a person— (a) who is not a British citizen, (b) who is convicted in the United Kingdom of an offence, and (c) to whom Condition 1 or 2 applies. (2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months. (3) Condition 2 is that— (a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and (b) the person is sentenced to a period of imprisonment.

265 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), July 2018, p89.

266 *Ibid*, p89, 4.90.

Immigration Minister, Rt Hon Caroline Nokes MP, in evidence to the Joint Committee on Human Rights: “I can certainly assert confidently that everybody who has been in detention for over a year is a foreign national offender”.<sup>267</sup>

198. As at 10 December 2018, 170 people had submitted applications for automatic bail hearings at the four month point, of whom 17 (10%) were granted bail.<sup>268</sup> NGOs have been critical of the implementation of the policy. BID told us in written evidence that auto-bail “is not working effectively” as “detainees often do not have sufficient advance notice, are not assisted with preparation, nor do they have automatic access to legal assistance”.<sup>269</sup> Liberty described the hearings as “haphazard” and echoed what BID told us, submitting that “those held in detention [are] not given advance notice of bail hearings and [are] forced to appear without legal representation and interpreters”.<sup>270</sup> The Gatwick Detainees Welfare Group submitted written evidence reporting that individuals were being asked to sign a form on arrival in detention waiving their right to an automatic bail hearing.<sup>271</sup>

199. On 24 July 2018, in response to Shaw’s follow-up review the Home Secretary, Rt Hon Sajid Javid MP, said that he wanted to “to pick up the pace of reform” and announced that the Home Office would “pilot an additional bail referral at the 2-month point. Halving the time in detention before a first bail referral”.<sup>272</sup>

**200. Evidence submitted to the Committee makes it clear that the automatic bail hearing process is not functioning as it should. Reports that detainees are being asked to waive their rights in this regard are particularly troubling. Bail hearings should be scheduled to give detainees adequate time to prepare, and applicants should have access to interpretation, should they so need it, and legal representation as a matter of course.**

**201. We support Stephen Shaw’s concerns in his follow-up review about the lack of access to legal safeguards for individuals held under immigration powers in prison. It is neither just nor right to deny people detained in prisons the same access to legal safeguarding that is available to detainees held in Immigration Removal Centres. Foreign National Offenders are subject to deportation procedures and are often held in detention for very long periods of time. We support Shaw’s call for the Home Office to extend the automatic immigration bail provisions. These should be extended to all FNOs, including individuals detained under immigration powers in prison who are pending or awaiting deportation.**

## Time limit

202. The UK is the only country in Europe without a limit on the length of time someone can be held in immigration detention. This contrasts with other EU member states who signed the EU Returns Directive, which sets the upper limit of detention to six months,

267 [Q69](#), Joint Committee on Human Rights, Oral evidence: [Immigration detention](#), HC1484, Wednesday 5 December 2018.

268 [Q74](#), Joint Committee on Human Rights, evidence on [Immigration detention](#) HC1484, 5 December 2018.

269 Bail for Immigration Detainees ([IDD0002](#))

270 Liberty ([IDD0015](#))

271 Gatwick Detainees Welfare Group ([IDD0010](#))

272 Oral statement to Parliament, [Home Secretary Statement on immigration detention and Shaw report](#), 24 July 2018.

extendable to a maximum of 18 months in certain circumstances.<sup>273</sup> Ireland, like the UK, is not a signatory to the EU Returns Directive but it has a detention time limit of 21 days. Other European countries have varying approaches to the time limit, such as France (90 days), Iceland (42 days) and Spain (60 days).

203. Judicial oversight early in the process of detention and deportation would establish whether an individual had been lawfully detained. Research commissioned by the Bar Council argued that a time limit would put “the onus on public authorities to make more careful decisions and act diligently, as seen with historic changes in the UK’s criminal justice and mental health systems”.<sup>274</sup> The unlimited duration of detention in the UK also contrasts with the UK criminal justice system, in which the police can hold individuals suspected of a crime in custody without charge for up to 24 hours. If suspected of a serious crime, individuals can be held in custody for up to 36 or 96 hours, subject to an application for extension by the police.<sup>275</sup> UNHCR told us that they had “repeatedly called” for a time limit on immigration detention. They said that “Indefinite detention damages people, physically and mentally—not only the detainees but their children and other family members”. They also highlighted that “Mental stress is further aggravated by the widespread practice of arbitrary re-detention of released detainees”.<sup>276</sup>

204. Independent inspection bodies have routinely identified the frustration felt by many detainees, at the length of their detention and the uncertainty surrounding their future, as detrimental to the mental health of the individual and a major challenge for staff to manage. In his 2017 report into Yarl’s Wood IRC, the Chief Inspector of Prisons found that “14 people had been held between six months and a year”, and “one detainee had recently been released on bail after three years in detention”.<sup>277</sup> He called for “a strict time limit on the length of detention”.<sup>278</sup> In its 2017 inspection of Morton Hall IRC, HMIP also found “too many detainees were held for prolonged periods; 31 had been held for over a year, including three who had been detained for two years, and an additional two men had been detained on separate occasions totalling more than three years”.<sup>279</sup> On 13 March 2018, HM Chief Inspector of Prisons again called for a strict time limit on the length of detention, this time in his report on Harmondsworth IRC. He noted that some detainees had been held “too long”, with 23 held for more than a year and one man held for more than four and a half years.<sup>280</sup>

205. Table 3 below shows recent figures for the length of detention of immigration detainees. Out of 1,784 people held in immigration detention at the end of December 2018,

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273 The [EU Returns Directive](#) (see Article 15) regulates the key aspects of irregular migration by non-EU citizens. The EU Returns Directive sets a detention limit of six months, extendable to 18 months in certain circumstances. However, the UK has opted out of this Directive and it is therefore not binding.

274 The Bar Council, Dr Anna Lindley, [Injustice in immigration detention](#), November 2017, p56.

275 Gov.uk, [Being arrested: your rights](#); The then Home Secretary Rt Hon Amber Rudd MP said: “Pre-charge bail is a useful and necessary tool but in many cases it is being imposed on people for many months, or even years, without any judicial oversight – and that cannot be right.” [Home Office press release, 28-day pre-charge bail limit comes into force](#), 3 April 2017.

276 UNHCR, The UN Refugee Agency (IDD0018)

277 [HMIP Report, Yarl’s Wood IRC June 2017](#), p30.

278 *Ibid*, p18.

279 [HMIP Report, Morton Hall IRC, published 21 March 2017](#), p15.

280 [Report on an unannounced inspection of Heathrow Immigration Removal Centre Harmondsworth site by HM Chief Inspector of Prisons, 2–20 October 2017](#), p15.

754 had been held for less than 28 days and 208 had been held for more than 6 months.<sup>281</sup> It also shows that the percentage of people that were held in detention for short periods of time - less than 28 days - has increased from 30% in Q4 2017 to 42% in Q4 2018.<sup>282</sup>

**Table 3: People in detention by length of detention**

PEOPLE IN DETENTION BY LENGTH OF DETENTION				
	Q4 2017		Q4 2018	
	Number	%	Number	%
Up to 28 days	753	30%	754	42%
29 days - less than 6 months	1,443	57%	822	46%
6 months - less than 1 year	285	11%	154	9%
1 year - less than 2 years	59	2%	52	3%
2 years - less than 3 years	3	0.1%	2	0.1%
3 years - less than 4 years	1	0.0%	0	0.0%
4 years or more	1	0.0%	0	0.0%
Total	2,545	100%	1,784	100%

**Source:** Home Office, *Immigration Statistics quarterly, year ending December 2018: table dt\_11\_q*  
Notes: Figures show a snapshot on the 30th December. Numbers give the appearance of not adding up to 100% because some have been rounded.

206. In a letter to the Prime Minister in January 2017 the then Home Secretary, Rt Hon Amber Rudd MP, indirectly acknowledged that the Home Office was detaining people unnecessarily. She stated that she had:

[ ... ] instructed IE [Immigration Enforcement] to renew its focus on removability in order that beds are not being blocked by illegal immigrants that we have no realistic hope of removing from the country. This means that those with no near-term prospect of removal would be released into the community on strict reporting restrictions. [ ... ] In that context I have instructed my officials to expedite the work on tagging and other alternatives to detention.<sup>283</sup>

207. Momentum for change within the immigration detention system would seem to be growing. On 24 July 2018, in response to Shaw's follow-up review the Home Secretary, Rt Hon Sajid Javid MP, stated that he had asked his "officials to review how time limits work in other countries". He added that when the review was complete, he would "further consider the issue of time limits on immigration detention".<sup>284</sup> On 5 December 2018, in evidence to the Joint Committee on Human Rights, the Immigration Minister, Rt Hon Caroline Nokes MP, confirmed that she was "looking closely at the issue of time limits

281 [Home Office Immigration statistics](#), December 2018, table dt\_11q

282 Table 3, People in detention by length of detention includes people held in HM Prisons under immigration detention powers.

283 The Guardian, [Amber Rudd letter to PM reveals 'ambitious but deliverable' removals target](#), 29 April 2018

284 Oral statement, [Home Secretary statement on immigration detention and Shaw report](#), 24 July 2018.

to understand how we can best have a detention system that is fair to those who may be detained but also upholds our immigration policies, and can act as a deterrent to those who might seek to frustrate those policies”.<sup>285</sup>

208. Most recently, the Joint Committee on Human Rights published a report on immigration detention in which it recommended a time limit on immigration detention:

[ ... ] where all other alternatives have been explored and considered unsuitable and detention is considered necessary, the maximum cumulative period for detention should be 28 days. The only exception to the 28 day limit should be that in exceptional circumstances—for example, when there are no barriers to removal and the detainee is seeking unreasonably to frustrate the removal process—the period of 28 days could be extended by a further period of up to 28 days on the decision of a judge.<sup>286</sup>

### *Impact of immigration detention on health*

209. Stephen Shaw’s first review on immigration detention found that “immigration detention has a negative impact upon detainees’ mental health” and “the impact on mental health increases the longer detention continues”.<sup>287</sup> Various medical bodies have also articulated the negative impact that indefinite detention has on an individual’s mental health. The British Medical Association has reported on the “significant health effects indeterminate detention can have on individuals” and has called for “a clear limit on the length of time that people can be held in detention, with a presumption that they are held for the shortest possible time”.<sup>288</sup> Similarly, the Centre for Mental Health found that “[t]he longer someone spends in detention, the more negative an impact it has upon their mental health”, with the distress experienced being “disabling, and even life-threatening” even in the cases which do not meet a clinical threshold. The analysis draws attention to the “best available UK evidence” which indicated that “the critical point for a negative impact on mental health was at 30 days”.<sup>289</sup>

210. In 2014, a joint inquiry by the All Party Parliamentary Group (APPG) on Refugees and the APPG on Migration published a series of recommendations for systemic reform of immigration detention in the UK. Following publication of the inquiry’s report, former Chair of the APPG on Migration, Paul Blomfield MP said in a Backbench Business debate that the joint inquiry was repeatedly told that:

[ ... ] detention was worse than prison, because in prison people know when they will get out.<sup>290</sup>

285 [Q69](#) Joint Committee on Human Rights, Oral evidence: Immigration detention HC 1484, Wednesday 5 December 2018.

286 The Joint Committee on Human Rights, [Immigration Detention, Sixteenth Report of Session 2017–19 HC 1484 HL Paper 278](#). Published on 7 February 2019. Paragraph 68, p25.

287 Stephen Shaw, [Review into the welfare in detention of vulnerable persons](#), January 2016, Paragraph 24, p14.

288 British Medical Association, [Locked up, locked out: health and human rights in immigration detention](#), November 2017, p4.

289 [The Centre for Mental Health, Immigration Removal Centres in England A mental health needs analysis](#), January 2017, p36.

290 [House of Commons, Backbench Business debate, Immigration Detention](#), 15 September 2015.

### *A time limit in practice*

211. The lack of a detention time limit was a constant theme in the evidence we received during our inquiry. In its response to the UN’s Universal Periodic Review recommendation, that the UK stop the practice of arresting migrants for unspecified periods, the UK Government said that an individual’s detention remains under regular review by the Government and, secondly, that individuals can apply for release on immigration bail and can challenge the lawfulness of their detention in the courts.<sup>291</sup> However, the system is currently failing to reduce the detention of many individuals.

212. In terms of establishing what a workable statutory time limit length might be, it is important to look at the Home Office’s current capacity to decide whether removal is imminent. In evidence to the Joint Committee on Human Rights, Stephanie Harrison QC, a barrister at Garden Court Chambers, implied that 28 days would be a reasonable time limit to settle on, given that the Home Office’s Enforcement Instructions and Guidance stipulated that detention should only be maintained when removal is imminent (i.e. within 28 days (four weeks)).<sup>292</sup> Both the Detention Forum and Stephanie Harrison noted that that this four-week, defined time period even included more complex cases dealt with by the Criminal Case Directorate, i.e. foreign national ex-offenders.<sup>293</sup> The Home Office Enforcement Instructions and Guidance states:

As a guide, and for these purposes only, removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.<sup>294</sup>

213. The joint inquiry report by the APPG on Refugees and the APPG on Migration recommended a statutory 28-day maximum time limit, “not simply to right the wrong of indefinite definition, but to change the culture endemic in the system”.<sup>295</sup> Paul Blomfield MP added that a 28-day time limit reflected best practice from other countries, and was “workable” for the Home Office, given “only 37% of people were detained for longer in the first three quarters of 2014”.<sup>296</sup> The Detention Forum argued that a 28-day time limit would “drastically reduce the detention both in scale and length. For example, on 30 June 2018, there were a total of 2,226 people detained in IRCs and prison. According to the Detention Forum, if there were a 28-day limit, 59% of those who were in detention on that day (1,316) would not have been there”.<sup>297</sup>

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291 Law Society of Scotland’s Immigration and Asylum Sub-committee ([IDD0035](#))

292 [Q25](#) Joint Committee on Human Rights.

293 [Q25](#) Joint Committee on Human Rights; the Detention Forum, [Why a 28-day time limit on immigration detention? Working paper](#) - 7 September 2018.

294 [Home Office Enforcement Instructions and Guidance](#), Chapter 55.3.2.4, Application of the factors in 55.3.1 to criminal casework cases. Imminence.

295 *Ibid*

296 Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, [The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom \(2015\)](#) p24: “In the first three quarters of 2014, 63 percent of detainees left detention after spending fewer than 28 days being held and 93 percent of detainees spent less than four months in detention”; Table dt\_11\_q, Immigration Statistics – July to September 2014.

297 The Detention Forum, [Why a 28-day time limit on immigration detention? Working paper](#) - 7 September 2018. Using older Home Office immigration statistics, this calculation was derived from the following data included in Detention Forum’s brief: “Distribution of length of time spent in detention among 2,226 individuals detained on 30 June 2018: 1–28 days 41%, 1–3 months 28%, 3–6 months 18%, 6–12 months 10%, 12–24 months 3%”.

214. As proposed by the Bingham Centre for the Rule of Law, “Different time periods may be applied to different types of detention or may depend on the reason for detention”. For example, they suggested that lower time limits might apply for the detention of asylum seekers than for unauthorised non-nationals, or that extensions to detention might vary according to whether the basis for extension is a public order concern or administrative difficulty.<sup>298</sup>

215. To ensure that a 28-day limit did not become the default maximum length of detention, Detention Action highlighted that “[...]a 28-day backstop statutory limit would need to be accompanied by the other safeguards, [ ... including] automatic bail hearings after a matter of hours, accompanied by automatic, legally-aided legal representation for individuals; and a very clear test which the Secretary of State has to satisfy, at that stage and at any other interim stages, to show that removal or deportation is imminent and happening very soon. If he is unable to satisfy that, a release must be ordered earlier. It is not 28 days and that is it. It must be accompanied by a very rigorous set of safeguards”.<sup>299</sup> The Quakers supported a 28-day time limit, with judicial oversight within 72 hours, but stressed that “re-detaining should not be permitted”.<sup>300</sup>

### *Applying the learning from other processes*

216. In light of the detrimental impact of immigration detention on the mental health of vulnerable adults, any consideration of a time limit should consider the success of the Family Returns Process, introduced in 2011, which has drastically reduced the number of children in detention. Women for Refugee Women told us that “under the Family Returns Process, the detention of children in the UK has reduced by 96%”.<sup>301</sup> According to Detention Action, a key feature of its success is “the shift towards engagement with migrants”.<sup>302</sup> The Detention Forum told us that the Family Returns Process was not usually considered as an alternative to detention (ATD) as “it does not follow international best practice in that families are only engaged after a final asylum decision has been made, there is an exclusive focus on return, and there is no structured involvement of NGOs or independent case managers”. Although positive about the impact of the Family Returns Process, the Detention Forum highlighted that “the learning of the Family Returns Process has not been extended to other categories of individuals, such as vulnerable adults”.<sup>303</sup> Women for Refugee Women said that “The success of this process should be the basis for more widespread reform, and should build confidence that it is possible to move away from detention altogether”.<sup>304</sup> Similarly, Amnesty International told us that “The time limit measures already in place provide a model to show that such a system is possible”.<sup>305</sup>

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298 Ibid

299 [Q6 Oral evidence, Joint Committee on Human Rights \*Immigration detention\*, HC 1484](#) Wednesday 31 October 2018.

300 Quakers in Britain and the Quaker Asylum and Refugee Network ([IDD0025](#))

301 Women for Refugee Women ([IDD0001](#))

302 Detention Action ([IDD0006](#)); [As outlined in the Home Office Family Return Process staff guidance, 10 April 2017, the Home Office engages with families in a structured way to support consideration of their options for returning home.](#)

303 Detention Forum ([IDD0033](#))

304 Women for Refugee Women ([IDD0001](#))

305 Amnesty International ([IDD0029](#))

### Alternatives to detention

217. The 2014 joint inquiry by the APPG on Refugees and the APPG on Migration recommended that, in tandem with a 28-day time limit, the Government would need to “introduce a much wider range of alternatives to detention”, adding that alternatives “not only achieve high compliance rates, but they are also considerably cheaper than our current system”.<sup>306</sup> The International Detention Coalition identified over 250 examples of alternatives to detention (ATD) from 60 countries in research they undertook. They found that the most successful ATDs focussed on “engagement rather than enforcement” and could achieve “high compliance rates, achieving up to 95% appearance rates and up to 69% independent departure rates for refused cases”. They noted that alternatives “incorporating case management and legal advice” helped to achieve “efficient and sustainable outcomes by building confidence in the immigration process and reducing unmeritorious appeals”.<sup>307</sup>

218. In Shaw’s follow up review, he recommended the establishment of an alternatives to detention (ATD) project for vulnerable people as well as expanding Detention Action’s Community Support Project with ex-offenders.<sup>308</sup> Detention Action explained that their pilot project had worked with young male ex-offender migrants, with barriers to removal since April 2014. In terms of outcomes, they reported that:

The project has to date worked post-release with 25 participants. There has been [a] rate of compliance with conditions of at least 80%. Two participants have been reconvicted of minor offences. The project is estimated to save between 83% and 95% of the costs of detention, depending on whether participants need housing from the government.<sup>309</sup>

219. Detention Action argued that the UK’s current use of ATDs was not effective in achieving “compliance and return”.<sup>310</sup> Instead, they proposed that a move towards greater engagement with migrants, as seen with the success of the Family Returns Process, could be used as a basis to explore new approaches to alternatives to detention.<sup>311</sup> Similarly, UNHCR advocated for ATDs beyond the Home Office’s current ATD framework. They said that, in their experience, “community-based case management and support is critical to both addressing the needs of what can be a highly vulnerable population and cultivating compliance, including with respect to voluntary return for those individuals found not to be in need of international protection”.<sup>312</sup> However, in research conducted for the Shaw

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306 A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, [The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom](#), p9.

307 International Detention Coalition, [There are alternatives, A handbook for preventing unnecessary immigration detention \(revised edition\)](#), 2015; Executive summary.

308 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), 2018, p122, Recommendation 43.

309 Detention Action ([IDD0006](#))

310 Detention Action ([IDD0006](#)); Detention Action explained that, “Case management is a social work approach which is ‘designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs.’ Case management models involve a case manager, who is not a decision-maker, working with the migrant to provide a link between the individual, the authorities and the community. The case manager ensures that the individual has access to information about the immigration process and can engage fully, and that the government has up-to-date and relevant information about the person”.

311 Detention Action ([IDD0006](#)); in their evidence they cited that as part of the Family Returns Process, “between April 2014 and March 2016, 97% of 1,470 families who left the UK did so without enforcement or detention”.

312 UNHCR, The UN Refugee Agency ([IDD0018](#))

review, Professor Mary Bosworth cautioned against ATDs becoming an expansion of the current UK system. She argued that it was only when ATDs were developed as part of a prohibition on detention (e.g. for children) that they reduced the use of detention.<sup>313</sup>

220. On 3 December 2018, the Home Office announced the launch of a pilot scheme, led by Action Foundation in Newcastle, “to provide alternative arrangements for a number of vulnerable women who are already in detention, or are at risk of being detained, in Yarl’s Wood Immigration Removal Centre”. The Immigration Minister told us that, “A key measure of success will be whether we can achieve the same or better outcomes, in terms of case resolution, than if we had detained them”.<sup>314</sup>

**221. We strongly support the Home Secretary’s commitment that he will consider ending indefinite immigration detention in response to Stephen Shaw’s follow up report. Evidence from a multitude of experts including those affected by detention shows the harm that immigration detention inflicts on detainees’ mental health and well-being. While the indefinite nature of detention traumatises those who are being held, it also means that there is no pressure on the Home Office and immigration system to make swift decisions on individuals’ cases. There is a rapidly growing consensus among medical professionals, independent inspectorate bodies, people with lived experience and other key stakeholders on the urgent need for a maximum time limit.**

**222. From the evidence we have heard throughout our inquiry, a maximum immigration detention time limit is long overdue. It is clear that lengthy immigration detention is unnecessary, inhumane and causes harm.**

**223. Home Office policies which should prevent unlawful detention and harm of vulnerable people are regularly flouted or interpreted and applied in such a way that the most vulnerable detainees, including victims of torture are not being afforded the necessary protection. Detainees can be held despite serious risk to their life. As reported by HM Chief Inspector of Prisons, one detainee who was a wheelchair user was held for 15 months despite an attempt to set himself on fire. There is a systemic failure in the way that the current safeguards are applied by the Home Office. This administrative failure is accompanied by an institutional culture operating within immigration enforcement, and the Home Office more broadly, that clearly prioritises the use of detention as a means to enforce removal, above respect, dignity and the protection of vulnerable individuals.**

**224. *It is time to implement radical change. In line with the Joint Committee on Human Rights, we urge the Government to bring an end to indefinite immigration detention and to implement a maximum 28-day time limit with immediate effect.***<sup>315</sup> We strongly believe that 28 days would be a reasonable statutory immigration detention time limit to enforce, given that the Home Office’s own Enforcement Instructions and Guidance stipulate that detention should only be maintained when removal is imminent (i.e. within 28 days (four weeks)).

313 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#), 2018, 7.17, p119.

314 [Letter to the Chair of the Home Affairs Select Committee from Immigration Minister, Rt Hon Caroline Nokes MP](#), 3 December 2018.

315 In its report on [Immigration Detention](#), the Joint Committee on Human Rights recommended a “maximum cumulative period for detention” of 28 days.

225. *The Immigration and Social Security Co-ordination (EU Withdrawal) Bill may provide a useful opportunity to put this time limit on a statutory footing. However, the Government can change its practice immediately, simply by ceasing to detain people beyond this limit. This 28-day time limit should be cumulative and accompanied by a robust series of regular checks and safeguards.<sup>316</sup> An extension to the 28-day time limit should only be made in very exceptional circumstances and should only be permitted with prior judicial approval.*

226. *With such a maximum time limit, the Government should put safeguards in place to ensure that this maximum does not become a default period of detention that is routinely applied. To mitigate this risk, it is crucial to ensure that a robust and individualised review of detention occurs on a regular basis. The decision to maintain detention must be continually reviewed by the Home Office with appropriate independent oversight.*

227. *We recommend that the Government undertakes a public consultation on how detention time limit maximums could be applied to different types of detainees. For example, a lower time limit might apply to vulnerable individuals. If the Home Office assesses an individual to be an “Adult at Risk” in line with its statutory guidance, we propose that the Home Office adopts a similar policy as currently applies to families with children. That is, having in place a 72-hour detention limit, allowing for a maximum extension of 7 days in certain circumstances.*

228. *We recognise the specific challenges in relation to Foreign National Offenders (FNOs), i.e. that this broad term encompasses those convicted of any offence without British nationality including those who have committed the most serious crimes as well as victims of trafficking and modern slavery who have been coerced into crime. We therefore consider that the Home Secretary should consult on how any public protection issues can best be addressed.*

229. *We welcome the Government’s recent launch of its pilot scheme to provide alternatives to detention (ATD) for vulnerable women detained in Yarl’s Wood IRC. This is a positive first step to end the harmful and unnecessary detention of vulnerable people. We also welcome its research into further ATD pilots and recommend that it expands the use of community based ATDs as recommended by Stephen Shaw. In its response to our report, we ask the Government to include a comprehensive action plan for its work on ATDs. The action plan should include a breakdown of all the ATDs it is currently considering, the key measures of success for each scheme, and an update on progress.*

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316 In this context, ‘cumulative’ means that an individual could be detained for a maximum of 28 days whether all in one period of detention or in different periods of detention providing that the total length of detention does not exceed 28 days. Therefore, the individual could be re-detained depending on their individual immigration case but only up to a limit of 28 days. Each time an individual is detained, this total is taken in to account as part of the 28-day total.

## 6 Immigration removal centres – management and resources

### Introduction

230. Six of the seven Immigration Removal Centres (IRCs) on the immigration detention estate are contracted out to private outsourcing firms, G4S, Mitie, Serco and the GEO Group; one is managed on behalf of the Home Office by HM Prison and Probation Service.<sup>317</sup> As we noted in our introduction, one of the key factors leading to our inquiry was the exposure of abuse of detainees by staff in Brook House Immigration Removal Centre (IRC). This chapter first examines the standards of healthcare provision available to people in immigration detention. We then explore various operational and resource factors that may have contributed to the failings of IRC management and ultimately the Home Office, to provide a “safe and secure environment” for those individuals detained not only in Brook House IRC but in other IRCs across the immigration detention estate.<sup>318</sup>

231. On 4 September 2017, a BBC Panorama undercover documentary revealed scenes of appalling physical and verbal abuse of detainees by some staff at Brook House IRC.<sup>319</sup> Following the Panorama broadcast and our first evidence session on Brook House IRC, a number of staff were dismissed from Brook House IRC, and two independent reviews, by Kate Lampard and Ed Marsden, and Moore Stephens were commissioned by G4S on the causes of abuse that took place, as well as on alleged financial irregularities.<sup>320</sup> Following legal proceedings brought by two detainees who featured in the BBC Panorama programme, the Home Office conceded to the appointment of the Prisons and Probation Ombudsman (PPO) to undertake an investigation into the abuse of detainees at Brook House IRC. Duncan Lewis Solicitors said that this would be “the first investigation of its type into immigration detention for over 13 years”.<sup>321</sup> The independent review of Brook House IRC by Kate Lampard and Ed Marsden was published on 4 December 2018.

317 The Guardian, [Britain’s immigration detention: how many people are locked up?](#) 11 October 2018; Office User Guide to Immigration Statistics, 28 February 2019, p87.

318 [The Detention Centre Rules 2001](#): Rule 3 (1) of the Detention Centre Rules 2001 state that: 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. Rule 39(1) stipulates that: Security shall be maintained, but no more restriction than is required for safe custody and well-ordered community life.

319 Undercover: Britain’s Immigration Secrets, was broadcast on 4 September 2017; Callum Tulley, a former detainee custody officer at Brook House became a whistleblower following violence and abuse he witnessed there. He wore hidden cameras for the BBC Panorama investigation.

320 1) [The Home Affairs Select Committee took evidence on Brook House IRC on 17 September](#). 2) Specialist consultancy Verita was commissioned by G4S to carry out an independent review to understand the extent and root causes of the treatment of detainees at Brook House. The review was led by Kate Lampard CBE and published on 4 December 2018. 3) Moore Stephens was commissioned to conduct an independent audit of billings made by G4S to ensure that these are in accordance with the contract and to review the profit made by G4S over the life of the contract. G4S advised that the findings of this review would be presented directly to the Home Office and the G4S Audit Committee, which is comprised wholly of independent non-executive directors. See written evidence from G4S ([BRK0014](#))

321 Duncan Lewis Solicitors, [Home Office in major U-turn agrees to Article 3-compliant investigation by PPO into abuse at Brook House IRC](#) (11 October 2018): “The detainees’ case was that a review was needed of the systemic and institutional failings of the Home Office and G4S’s running of detention centres as well as the indications of racism, and a cultural indifference to human suffering that allowed such abuse of detainees and their welfare to be placed at such risk”.

### *G4S commissioned review of Brook House IRC*

232. G4S has managed Brook House IRC since 2009 under a contract with the Home Office. The IRC holds up to 508 adult male detainees. The independent report [Lampard and Marsden] commissioned by G4S into behavioural and operational practices at Brook House IRC revealed a series of failings including inadequate facilities for detainees, understaffing, high staff turnover, insufficient activities, and an unacceptable standard of cleanliness.<sup>322</sup> The Home Office was also criticised for focusing its monitoring of the G4S contract on compliance and removals at the expense of “wider concerns of the care and welfare of detainees”.<sup>323</sup> In this Chapter, we first examine the available healthcare provision in immigration detention and then address some of the report’s findings in more detail.

### **Standards of healthcare provision in immigration detention**

233. Detainees are entitled to the same range and quality of services as the general public receives in the community - this is often referred to as equivalence of care. Since 2013, NHS England has been responsible for commissioning healthcare in IRCs in England while healthcare provision for detention facilities in Scotland and Northern Ireland remains the responsibility of service providers.<sup>324</sup> Medical Justice told us that they continued to be “extremely concerned about the quality of healthcare provided in immigration detention centres”, and that “the care provided fails to meet equivalence with that provided in the community [ ... ]”.<sup>325</sup>

234. Stephen Shaw told the Committee that, at the time of his second review, “demand for healthcare remained extremely high”, and that “dissatisfaction with healthcare remained very high. Overall, my view was that there had been improvements”.<sup>326</sup> In its report on Harmondsworth IRC, HMIP reported that there was an “inability of health services to meet the very high level of mental health need”.<sup>327</sup> Despite the high demand for health care in IRCs, we heard that low staffing levels were routinely a source of dissatisfaction and frustration. The British Medical Association said that staffing shortages in healthcare “not only impact on the availability of health services and continuity of care, but also lead to tensions between healthcare staff and security staff if there is no capacity for a staff member to escort an individual to an external hospital appointment, or to monitor or supervise a detainee at risk”.<sup>328</sup>

235. Various studies have identified the negative impact of immigration detention on people’s mental health. Rule 35 of the Detention Centre Rules 2011 is a key mechanism for identifying vulnerable individuals in detention and bringing them to the attention of those responsible for authorising and reviewing detention. However, as outlined in Chapter 4, this mechanism is not working for a variety of reasons including a lack of training for IRC medical practitioners to be able to provide good reports, coupled with

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322 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018. Executive summary and recommendations.

323 *Ibid*, p31.

324 British Medical Association, [Locked up, locked out: health and human rights in immigration detention](#), 2017, p5.

325 Medical Justice ([IDD0020](#))

326 [Q550](#)

327 HM Chief Inspector of Prisons, [Heathrow Immigration Removal Centre Harmondsworth site](#), p6.

328 British Medical Association (BMA) ([IDD0019](#))

poor interpretation of the reports by Home Office caseworkers.<sup>329</sup> The British Medical Association proposed that there should be “a role for clinical leadership and advice within the Home Office”, with “a clinically qualified individual to advise on the development of health policy in relation to IRCs.” They also suggested that there should be “a clinically qualified point of contact within the Home Office for healthcare staff working in IRCs to seek advice from, particularly in relation to concerns they may have over rule 35 reports”.

236. Gemma Lousley, Policy and Research Co-ordinator at Women for Refugee Women, raised concerns with the Committee over the treatment of detainees by healthcare professionals:

[healthcare] is something that has been raised time and time again by the women we have spoken to. There is a culture of disbelief among the healthcare staff there. When women go and talk to mental health and other healthcare staff, it is assumed what they are saying about how they are feeling and what they are experiencing in terms of their health is not true.<sup>330</sup>

237. In a parliamentary debate on immigration detention on 6 March 2018, Gill Furniss MP raised the case of a constituent with a serious eye condition who was detained in Yarl’s Wood IRC. The Independent newspaper reported that:

“She was at risk of losing her eyesight,” she said, adding that it “had already left her blind in one eye, and if left untreated for any short amount of time risked her going blind in the other”. Although Yarl’s Wood IRC had been “made aware of this information she was left for some time before being seen by a nurse”, she said. “In the end my office had to intervene directly in order to ensure urgent medical assistance was provided to my constituent so as to avoid her losing her sight.”<sup>331</sup>

238. Immigration Minister, Rt Hon Caroline Nokes MP replied that individuals were given access to a health professional within two hours of their arrival at the centre and then had the ability to make an appointment with the GP within 24 hours. “It is really important that we provide healthcare to all of those in detention, which is why it’s available 24 hours a day, seven days a week,” she said.<sup>332</sup>

***239. The Home Office must meet its obligations to those individuals it detains in immigration removal centres (IRCs). This means that people should be able to access high quality healthcare, equivalent to that in the community. From the evidence we have heard, this is not always the case.***

***240. We support the British Medical Association’s call for clinical leadership and advice within the Home Office. The Home Office should consider the appointment of a clinically qualified individual to advise on the development of health policy specific to IRCs. In addition to this strategic role, the Home Office should ensure that there is a clinically qualified point of contact within the Home Office for IRC healthcare staff who may require advice relating to Rule 35 reports. Problems with recruitment and***

329 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#) July 2018, p4, 1.19.

330 [Q29](#)

331 The Independent, [Woman detained in Yarl’s Wood after calling police because ex-partner threatened to kill her, reveals MP](#), March 2018.

332 *Ibid*

*staff retention across the whole IRC workforce (including healthcare) must be urgently addressed to prevent staff shortages negatively affecting the health and wellbeing of detained individuals.*

## Understaffing

241. Various reports have been critical of staffing levels in IRCs. This includes shortages in security (e.g. detention custody officers) and healthcare staffing. In his first report, Stephen Shaw highlighted problems in recruiting permanent healthcare staff which he said had led to an overreliance on temporary staff in most IRCs.<sup>333</sup> In his follow-up review, Shaw stressed the “pivotal” role that staff played in the “delivery of a safe and decent regime” but said that research had increasingly found that frontline officers’ capacity to deliver safe and decent regimes was “drawn into question”. He also conducted three visits to Brook House IRC and reported that it had experienced “a haemorrhage of staff”, ranging “between eight and fifteen departures per month”.<sup>334</sup>

242. The G4S commissioned investigation revealed a serious lack of staff at Brook House IRC. It noted that instead of the target of three to four staff to manage one residential wing, there was “on most days” only one detention custody manager managing two wings.<sup>335</sup> The report also highlighted that gaps in staffing at Brook House IRC were “being increasingly filled by Tinsley House staff who did not welcome having to work in the more challenging environment of Brook House”.<sup>336</sup> In evidence to the Joint Committee on Human Rights, Duncan Lewis Solicitors reported that they had seen:

“[ ... ] regular and serious complaints from detained clients about the extended time periods during which they were locked in their cells at Brook House IRC, in overcrowded and insanitary cell conditions including unscreened toilets, with no lid for the toilet-bowl, and a lack of ventilation in the cell”.<sup>337</sup>

243. The immigration independent oversight bodies also identified problems with staffing levels in IRCs. HMIP’s most recent inspection of Harmondsworth IRC run by Mitie, found that, “Staffing levels were low and neither staff nor detainees felt that there were enough officers to effectively support detainees”.<sup>338</sup> Similarly, the Independent Monitoring Board (IMB) for Yarl’s Wood listed in its 2016 annual report a number of instances of staff shortages including:<sup>339</sup>

- several occasions where there was no officer on units when we visited

333 Stephen Shaw, [Review into the Welfare in Detention of Vulnerable Persons](#), January 2016, p172.

334 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office](#), July 2018, Annex 7, p172; Shaw visited Brook House IRC on 26 September 2017, 9 November 2017 and 31 January 2018.

335 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p10, 1.27.

336 *Ibid*, p10, 1.29; Under a separate contract with the Home Office, G4S also manages Tinsley House, another IRC near Gatwick Airport, under the same senior management team as Brook House. Brook House and Tinsley House are known collectively as Gatwick IRCs.

337 Duncan Lewis Solicitors ([IMD0047](#))

338 HM Chief Inspector of Prisons, [Report on an unannounced inspection of Heathrow Immigration Removal Centre Harmondsworth site](#), 2–20 October 2017, p6.

339 [Annual Report of the Independent Monitoring Board at Yarl’s Wood Immigration Removal Centre, Annual Report 2016](#); p16, 5.10.3.

- during night monitoring, we did not see many staff anywhere
- the Café Central closed due to the absence of the member of staff who runs it and there being no other officer available to supervise it
- the library closed due to there being no staff available to supervise it

### *Lack of activity provision at Brook House IRC*

244. Understaffing in IRCs impacts on the effective management of an IRC and detainees' wellbeing. It means that activities including sports and entertainment programmes cannot be run to full capacity or not at all, facilities including libraries and cafes may not be open, and issues of substandard hygiene may be overlooked due to other pressing priorities. A lack of activity provision within an IRC can have a detrimental impact on detainees' mental health, particularly more vulnerable detainees which may lead to an increased demand for and use of drugs. The Detention Centre Rules 2001 stipulate that:

All detained persons shall be provided with an opportunity to participate in activities to meet, as far as possible, their recreational and intellectual needs and the relief of boredom".<sup>340</sup>

245. The BBC Panorama documentary criticised the availability of drugs in Brook House IRC. The G4S commissioned investigation into Brook House IRC found that "there had been a significant increase in drug use and drug finds in the centre, particularly of NPS [New Psychoactive Substances]".<sup>341</sup> When asked about the reasons for detainee drugs misuse, the deputy head of healthcare inspection told the investigation researchers that "People often do it to change how they feel, or to feel something different, or to pass the time". She added that boredom was "often a big trigger".<sup>342</sup>

246. The G4S commissioned investigation into Brook House IRC drew attention to the limited provision of activities and entertainment for detainees at Brook House due to under-resourcing and a lack of space. Detainees told them that for two weeks in March 2018 they "did not even have an unpunctured football to play with".<sup>343</sup> The investigation reported that on an unannounced weekend visit to Brook House they "found no organised activities for the detainees".<sup>344</sup> The report compared provision and resourcing of activities for detainees at Brook House IRC with that at Colnbrook IRC and found that Brook House "compared poorly".<sup>345</sup> Detainees told the investigation researchers that, "Activities are essential to keep the mind active and avoid getting depressed. Inactivity leads to fights and trouble".<sup>346</sup> Due to its size, lay out and limited outdoor space the report concluded that, Brook House IRC was "an unsuitable environment in which to hold detainees for more than a few weeks".<sup>347</sup>

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340 The Detention Centre Rules 2001, [Regime and paid activity, Rule 17 \(1\)](#).

341 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p208, 12.79; New Psychoactive Substances (NPS) are chemically based drugs designed for recreational purposes.

342 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p182, 11.56.

343 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p133, 9.28.

344 *Ibid*, p134, 9.31.

345 *Ibid*, p138, 9.49.

346 *Ibid*, p138, 9.51.

347 *Ibid*, p139, 9.55.

**247. It is evident from the G4S commissioned investigation into Brook House IRC that the activities and facilities available to detainees at Brook House have drastically failed to meet the statutory requirements as outlined in the Detention Centre Rules 2001. The Home Office must take a more robust approach to ensure that Immigration Removal Centre (IRC) providers maintain adequate staffing levels and resources so that sufficient activities are available to detainees. Low staffing levels mean that people are locked up for longer periods of time, face to face communication is limited and IRC facilities are more likely to be closed (e.g. libraries, cafés, IT facilities) all of which compound levels of frustration and mental health issues among detainees and staff. This can lead to increased levels of self-harm as well as violence among detainees and towards IRC staff. In the event of a serious incident, a lack of staff could have detrimental consequences for everyone's safety within an IRC.**

### Culture of abuse

248. Levels of abuse and violent behaviour have been reported across the immigration detention estate. The increase in violence in some IRCs has been variously attributed to frustration at the length of detention and delays in casework progressing, staff shortages and the prison-like atmosphere.<sup>348</sup> Although our inquiry was triggered by undercover reporting of abuse in Brook House IRC, this is sadly not the first time such allegations have been made. As UNHCR highlighted, “[ ... ] in his role as Prisons and Probation Ombudsman, Stephen Shaw investigated concerns similar to those identified in the Panorama documentary, and in 2004 and 2005 he carried out two inquiries into allegations of racist mistreatment within Yarl’s Wood Immigration Removal Centre (IRC) and Oakington IRC”.<sup>349</sup>

249. In March 2015, a Channel 4 undercover documentary on Serco run Yarl’s Wood IRC had made allegations about the way residents were treated by staff.<sup>350</sup> James Wilson, Director, Gatwick Detainees Welfare Group, told us in 2017 that the revelations from Yarl’s Wood in 2015 were about very similar things, “with staff being abusive and disrespectful”. He told us that, “It feels like these things happen, are addressed or not at the time, and then drift off the public radar”.<sup>351</sup> The Committee heard from Serco in 2018 that five employees at Yarl’s Wood had been dismissed in the last five years following allegations of abuse.<sup>352</sup> The most recent HMIP report (2017) found that “there had been significant improvements at the centre” and that “there was little violence”.<sup>353</sup> However, the Committee also heard from a former Yarl’s Wood detainee who described staff openly mocking her, and putting their fingers in her eyes after she collapsed:

What they are doing, they turn off the camera and say they do not do stuff like that. I collapsed coming out from the bathroom. They were poking my eyes, forcing me, telling me, “You need to eat. You want to kill yourself? You are a stupid girl.” They mimic me sometimes when I say something. They

348 HM Inspectorate of Prisons, [Report of an unannounced inspection of Harmondsworth IRC, 2–20 October 2017](#), p23, paragraph 1.16.

349 UNHCR ([BRK0008](#))

350 Channel 4 News, [Yarl’s Wood: undercover in the secretive immigration centre](#), 2 March 2015.

351 [Q21](#)

352 [Q104](#)

353 HM Chief Inspector of Prisons, [Report on an unannounced inspection of Yarl’s Wood Immigration Removal Centre](#), 5–7, 12–16 June 2017, p5.

repeat it in a very funny way and they laugh about it. To me, that is just not right. It is wrong for them to do that. There are good ones but the majority of them, they need monitoring of them.<sup>354</sup>

### *Whistleblowing procedures*

250. In September 2017, we heard evidence from Rev. Nathan Ward, a former duty manager at Brook House IRC who featured in the BBC Panorama programme. He joined G4S in 2001 and had worked as duty director at Brook House for three-and-a-half years before resigning in 2014. He told the Committee that he had systematically raised concerns at the highest levels about “practice within G4S since 2001” and that upon his resignation from Brook House IRC he had also complained directly to Jerry Petherick, the Managing Director Custody and Detention Centres at G4S, about inappropriate staff behaviour towards detainees, and management culture.<sup>355</sup> In response, Jerry Petherick told us that, “There may well have been general conversation about ethos and so forth” but that “he did not raise any specific complaints about individuals”.<sup>356</sup>

251. Following the BBC Panorama programme and ongoing questions around G4S’ whistleblowing procedures, the Home Office asked Stephen Shaw to consider the effectiveness of whistle-blowing procedures as one of the topics to be considered in his follow-up review.<sup>357</sup> As part of his research, Shaw requested copies of whistle-blowing procedures for each of the companies running IRCs and concluded that all of them appeared to meet best practice as outlined in the BIS whistleblowing guidance for employers. However, he added that it was not clear to him “how often the whistle-blowing procedures are actually invoked”.<sup>358</sup> As a way of enforcing whistleblowing arrangements, Stephen Shaw recommended that IRC staff should have “safe spaces in which they can discuss what they have done well (and less well) without fear of disciplinary repercussions”.<sup>359</sup>

252. Following an inspection at Harmondsworth IRC in 2017, HMIP reported that: “Staff knowledge of whistleblowing policies or procedures was weak or non-existent for many”.<sup>360</sup> Similarly, at the most recent inspection of Tinsley House, Her Majesty’s Chief Inspector of Prisons reported that:

Most staff told us they would report safeguarding concerns, although none had made any reports. A minority of staff said they would not report concerns, because they did not trust managers or believe confidentiality would be respected. The whistle-blowing process was convoluted and potentially off-putting.<sup>361</sup>

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354 [Q26](#)

355 [Q2 to Q10](#)

356 [Q99 to Q100](#)

357 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office](#), July 2018; p99.

358 In March 2015, the Department for Business, Innovation and Skills (BIS, now BEIS) published a guide for businesses, [Whistle-blowing: Guidance for Employers and Code of Practice](#). The document outlined the principles of an effective whistleblowing system.

359 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office](#), July 2018, p104, 6.30.

360 HM Chief Inspector of Prisons, [Heathrow Immigration Removal Centre Harmondsworth site](#), p89.

361 [HM Chief Inspector of Prisons, Report on an unannounced inspection of Tinsley House IRC](#), 30 August 2018, p14; Tinsley House is close to Gatwick Airport. It has the capacity to hold 162 men and has a suite to accommodate families denied entry to the UK.

253. We also learnt that a detainee at Brook House IRC had experienced abuse as a consequence of whistleblowing. Gatwick Detainees Welfare Group told us that they had “supported a person detained who sought to ‘whistle blow’ about guards who appeared to be dealing drugs who was subsequently assaulted in Brook House after providing this information”.<sup>362</sup> Rev. Ward highlighted that, from his experience, detainees’ “main concern about making complaints is that it might affect their immigration case, which might cause reluctance. At Tinsley House I was worried when no detainees made any complaints in a three-month period and I actively encouraged them to do so”.<sup>363</sup>

254. The G4S commissioned review of Brook House reported concerns with the G4S whistleblowing procedure that were consistent with the evidence we heard during our inquiry. The report noted that some staff who had “challenged colleagues who they felt had behaved inappropriately” had consequently experienced “bullying and victimisation”.<sup>364</sup> The report also highlighted that, following the BBC Panorama programme, large posters were displayed across Brook House IRC “to draw attention to the G4S whistleblowing policy known as Speak Out”. However, the policy’s emphasis on wrongdoing of a commercial nature or amongst senior staff undermined its relevance to ordinary staff at Brook House who may have wanted to raise concerns about inappropriate behaviour by fellow detention custody officers and frontline managers.<sup>365</sup> Consequently, staff “did not have confidence in the Speak Out arrangements”.<sup>366</sup>

**255. The disgraceful abuse of detainees by staff that was revealed by undercover journalism at Brook House IRC is sadly not the first of its kind. As Stephen Shaw told the Committee, “potential for abusive behaviours is ever-present [ ... ] in closed institutions”.<sup>367</sup> Stephen Shaw’s follow up review reported that whistleblowing procedures met good practice in all of the IRCs he visited. Yet, despite what is written on paper, it is evident from the abhorrent abuse that took place in Brook House IRC that many IRC staff and detainees are not using the whistleblowing channels available to them. IRC staff and detainees simply do not trust the process, and have voiced concerns about confidentiality and potential repercussions to their safety.**

***256. The Home Office must take immediate steps to ensure that all IRCs have robust and effective whistleblowing procedures in place which IRC staff and detainees can use with complete confidence, knowing that they will be fully protected. IRC managers should ensure that both staff and detainees are regularly made aware of the whistleblowing procedures, providing clear written and verbal explanations of what the policy is for, with user friendly whistleblowing toolkits and publicity made available across the IRC. Staff and detainees should also be given explicit reassurance that they would be supported if they raised concerns about any wrongdoing or misconduct they witnessed. Failure to do so may result in further abuses across the immigration detention estate.***

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362 Gatwick Detainees’ Welfare Group ([BRK0006](#))

363 [Q15](#)

364 Kate Lampard Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), A report for the divisional chief executive of G4S Care and Justice and the main board of G4S plc, November 2018, p22, 13.41.

365 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p224–226.

366 *Ibid*, p29, 1.135.

367 [Q529](#)

**257. IRC staff should receive comprehensive training on whistleblowing processes which should be refreshed regularly. In line with Stephen Shaw, we support the provision of a “safe space” for IRC staff to reflect on what they have done well, and less well without fear of discipline or management action. The details of how such a safe space might work should urgently be explored by the Government in consultation with IRC staff and senior managers and reported back to our Committee by 1 December 2019.**

### Staff culture

258. In his follow-up review, Shaw said that “the systems for recruitment, training and whistle-blowing used by the individual contractors, and the processes for handling complaints and ensuring independent monitoring, are all satisfactory so far as they go. But manifestly they have not prevented abuses of the kind revealed by the BBC”.<sup>368</sup> As part of his review, Shaw co-hosted a seminar on staff culture with Professor Mary Bosworth from Oxford University, bringing together academics and others to reflect on culture and best practice across the police, prisons, NHS, and IRCs.<sup>369</sup> One attendee, Dr Paul Quinton from the College of Policing, spoke about police culture and shared a number of strategies for reducing police wrongdoing that could be applied to other institutions. These included, “encouraging whistleblowing”, “Ensuring robust internal supervision and accountability” and “promoting an ethical culture”.<sup>370</sup> Stephen Shaw also commended findings from a College of Policing paper which stressed “the importance of strong and effective leadership—leaders who are open, act as role models, but are also ‘firm’ in terms of setting and enforcing standards and encouraging ethical behaviour”.<sup>371</sup> Shaw recommended “that the Home Office should strengthen its own assurance processes to examine adherence to professional standards and staff culture in IRCs on a regular basis”.<sup>372</sup>

259. The G4S commissioned investigation into Brook House IRC reported that some detainees “found their interaction with staff “dehumanising” and that staff lacked “training and experience”. The report highlighted that “detainees were particularly critical of the attitude of healthcare staff whom they described as “uncaring”, “arrogant” and “unkind””. However, the detainees did not suggest that there were “significant or widespread problems with poor or abusive behaviours by staff”.<sup>373</sup> On staff culture at Brook House, the report concluded that:

We are concerned that the absence of strong and visible management arrangements, ensuring the modelling and reinforcement of the behaviours expect of staff; the lack of staff and the inexperience of many; and the assertive laddish culture among the DCMs [Detention Custody Managers] and DCOs [Detainee Custody Officers] heightens the risk of inappropriate behaviour by staff.<sup>374</sup>

368 Stephen Shaw, [Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office](#), July 2018, Executive summary paragraph 13.

369 *Ibid*, Annex 10, p207.

370 *Ibid*, p110

371 *Ibid*, p110

372 *Ibid*, p114

373 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p27.

374 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p29.

260. During our inquiry, the issue of “culture” was also raised in relation to Home Office staff. Rev. Nathan Ward, a former duty manager at Brook House IRC, told us that “it is a culture set not just by G4S but, far wider, by the Home Office”. He explained that while at Brook House, a member of the Home Office had said to him, “It’s all about who breaks first, whether the detainees or the Home Office, in relation to immigration cases”.<sup>375</sup> Mr Ward argued that the immigration detention system had become very “politicised” and that while working at Brook House, a senior civil servant “was telling us that we were under tremendous pressure to get people through the system and deport them in that year in particular, because it was that year’s statistics that would be reported just before the general election”.<sup>376</sup>

**261. A healthy staff culture requires strong and effective leadership with managers who are open, supportive, act as role models, but are also firm with regard to setting and enforcing standards and encouraging ethical behaviour. Preventative steps should be taken by managers to mitigate any unethical conduct by taking remedial action where appropriate and avoiding a blame culture which discourages transparency and honesty. We support Stephen Shaw’s recommendation and call on the Home Office to urgently monitor more closely the policies, procedures and practices of its immigration detention contractors in order to more effectively expose inappropriate behaviour. Equally, the Home Office should review its equivalent professional standards policies and procedures with immediate effect and ensure that Home Office staff receive comprehensive training on upholding professional standards and promoting a healthy staff culture.**

## Formal oversight mechanisms of IRCs

262. The BBC Panorama revelations of deplorable abuse and assault of detainees at Brook House IRC called in to question the effectiveness of the formal independent oversight mechanisms currently in place. Independent oversight of IRCs is provided by HM Inspectorate of Prisons, Independent Monitoring Boards, the Prisons and Probation Ombudsman and the Independent Chief Inspector of Borders and Immigration.<sup>377</sup>

263. When we asked Rev. Nathan Ward about the current effectiveness of oversight mechanisms for immigration detention, he told us that he thought HMIP was “a very good and robust inspectorate, but it can only inspect what it sees on the day it turns up”. He highlighted that Home Office staff were on site and “should be looking on a day-by-day basis at what is going on, and raising pertinent questions”. However, he argued that “the culture within that group itself most probably isn’t one that has sufficient curiosity”.<sup>378</sup> When asked if G4S placed sufficient emphasis on detainee welfare, he told us that the relationship between G4S and the Home Office had “become too close” and that part of the problem was that the Home Office was “reliant on G4S as an operator to actually

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375 [Q18](#)

376 [Q22](#)

377 [HM Inspectorate of Prisons’s](#) remit includes reporting on the treatment of and conditions for people held in IRCs. [Independent Monitoring Boards](#) have a statutory duty to monitor the conditions and operation of IRCs. They have a right to monitor the way that complaints are managed, and a statutory obligation to hear complaints sent to them from detainees; they also publish reports. [The Prisons and Probation Ombudsman’s](#) remit includes hearing complaints from detainees who have already exhausted the Home Office’s internal complaints procedures; and conducting investigations into deaths occurring in the estate. The remit of the [Independent Chief Inspector of Borders and Immigration](#) also extends to immigration detention cases.

378 [Q22](#)

undertake what it needs to do”.<sup>379</sup> Similarly, the G4S commissioned investigation into Brook House IRC noted that it was struck during a meeting with the IMB “by a sense of collegiality between the IMB and G4S and a tendency on the part of IMB members to over-empathise with the G4S management team and the Home Office, rather than to hold them vigorously to account and press them on their plans for action to address concerns and make improvements at Brook House”.<sup>380</sup>

264. Freed Voices, a group of people with lived experience whose members have been held in immigration detention, argued that immigration detention was severely lacking in transparency and scrutiny. They said:

It is of note that this inquiry has only come about following the release of undercover footage from a whistleblower. The lack of transparency around detention - restricted access of independent monitors, public taxpayers or journalists, the forbidden use of cameras, limited access to external communications platforms - should all be strong indicators that the Home Office would prefer to keep detention centres ‘out of sight, out of mind’ for a reason.<sup>381</sup>

265. Medical Justice told us that, “The scale of the detention estate, its routine nature and the culture that this has encouraged have arguably taken it beyond the capacity for effective oversight. The repeated accusations and documentation of abusive behaviour indicates a deeper issue with staff culture across the agencies in the detention system”.<sup>382</sup>

266. HMIP had inspected Brook House in 2016 and assessed it as “reasonably good” in all four of its healthy establishment tests”.<sup>383</sup> Similarly, in their 2016 annual report, the Brook House Independent Monitoring Board (IMB) judged Brook House IRC to be “a well-run establishment, providing a decent environment where detainees awaiting removal are treated humanely and fairly”.<sup>384</sup> The abuse at Brook House took place some time after HMIP’s inspection and in evidence to the Committee, the Chief Inspector of Prisons, Peter Clarke told us that:

[ ... ] it was of great concern to us to understand whether or not our inspection, which is inevitably a snapshot, had missed something wrong in terms of culture or ill-treatment.<sup>385</sup>

267. Peter Clarke added that, “neither the senior management of the centre nor the independent monitoring board, who are there all the time, nor the Home Office monitors, nor the many NGOs who work in the centre, they did not appear to be aware of what was going on either”. Following the events at Brook House IRC, HMIP introduced an “enhanced methodology at subsequent inspections”. This involved offering every detainee a confidential interview with the inspectors. Hindpal Singh Bhui, HMIP inspection team leader added that the inspectorate also now conducted a full staff survey and interviewed

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379 [Q25](#)

380 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p235, 14.18.

381 Freed Voices ([BRK0010](#))

382 Medical Justice ([IDD0020](#))

383 HM Chief Inspector of Prisons, [Brook House Immigration Removal Centre, 31 October–11 November 2016](#), p5.

384 Independent Monitoring Boards, [Annual Report of the Independent Monitoring Board for Brook House Immigration Removal Centre](#), 1 January 2016 to 31 December 2016, p7.

385 [Q206](#)

a number of staff from all agencies working in the centre. In addition, HMIP wrote to the NGOs involved in the centre in advance of an inspection and also invited ex-detainees to speak to them.<sup>386</sup>

268. The G4S independent review into Brook House IRC looked at the formal oversight mechanisms of Brook House and suggested that “more focused questioning of staff and frontline managers might have more clearly identified some of these issues”. However, the report did not state that IMB or HMIP should have “uncovered or predicted behaviours of the type shown in the Panorama film”. They welcomed HMIP’s enhanced methodology that it had started to incorporate as part of its inspection process.<sup>387</sup>

*269. The formal oversight mechanisms currently in place to ensure effective, safe and humane management of IRCs are clearly not working; this is evident from the disgusting abuse of detainees by some staff revealed by an undercover journalist at Brook House IRC in 2017. Six of the seven IRCs across the UK are contracted out to a handful of outsourcing firms including G4S, Serco, Mitie and the GEO group. Accountability for any serious misconduct rests with the Home Office, which is ultimately responsible for the effective operation of our immigration detention estate. We must not forget too that the Home Office monitoring staff were on site and did not raise any concerns about wrongdoing at Brook House IRC.*

270. It is clear from the evidence we heard that the Home Office has utterly failed in its responsibilities to oversee and monitor the safe and humane detention of individuals in the UK. Consequently, we strongly welcome the Home Office’s agreement on 11 October 2018 to conduct an independent inquiry into the maltreatment of detainees by some staff at Brook House. Over four months later, on 5 March 2019, we were advised by the Home Office that the terms of reference had been agreed. We are deeply concerned about the length of time it has taken for the Home Office to agree the terms of reference for such a crucial inquiry. We look forward to seeing the published terms of reference at the first opportunity.

### *Financial irregularities at Brook House IRC*

271. As well as questioning witnesses about the abuse of detainees at Brook House IRC, the Committee heard allegations of financial mismanagement at Brook House IRC from Rev. Nathan Ward, who had worked there as a duty manager for a number of years. He told the Committee that it was plausible that people working for G4S [at Brook House IRC] had deliberately been giving false information to the Home Office about staffing costs and claiming for things that were not provided.<sup>388</sup> The Guardian reported G4S making profits of 20%, more than its contract allowed. In an interview with the Guardian, Rev. Nathan Ward said that, “when he worked at G4S, profit margins above the agreed Home Office limit were discussed”. He told the Guardian that “he sat in trading reviews where profits of around 20% were declared, which were far in excess of what was envisaged in

386 [Q207](#)

387 Kate Lampard, Ed Marsden, [Independent investigation into concerns about Brook House immigration removal centre](#), November 2018, p30.

388 [Qq72-77](#)

the original contract”.<sup>389</sup> The Home Office told us that they “had no grounds to believe or suspect that there may have been inappropriate practices in the financial management of Brook House IRC”.<sup>390</sup>

272. On 16 November 2017, Moore Stephens were commissioned to conduct an independent audit of billings for Brook House IRC made by G4S to ensure that these were in accordance with the contract and to review the profit made by G4S over the life of the contract. It was not until 5 March 2019 that we were advised by the Home Office, despite repeated requests from our Committee secretariat for information pertaining to the review, that the Government had received the audit in May 2018. We were then advised that G4S had provided the Home Office with its report marked as Commercial in confidence. The Home Office confirmed to us that the report advised information provided to the Home Office was accurate with regard to reporting of profits and that billing was in accordance with the contract. However, no public assurance has been given either by the Home Office, or G4S, although the contract is funded by the tax payer.

**273. During our inquiry we were extremely concerned to hear evidence of alleged financial misconduct at Brook House IRC, with reports that profits reached above what was agreed in G4S’s contract with the Home Office. The Home Office has ultimate oversight of G4S’s publicly-funded contract with Brook House IRC. Given the widespread public concerns voiced over G4S’s management of Brook House in 2017 we are astonished that, for ten months, the Government has ducked the question and missed the opportunity to assuage such concerns by reporting the outcomes of the Moore Stephens review. Such behaviour does not help to instil confidence in the Government’s management of publicly-funded contracts.**

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389 The Guardian, [G4S may make more profit than allowed from removal centres, figures suggest](#), 13 September 2017.

390 Home Office ([BRK0013](#))

## Conclusions and recommendations

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### Operation of the detention estate

1. The application of immigration detention as set out in policy and guidance is meant to be carried out in line with the process described in this section. However, the evidence taken by the Committee shows that there are serious problems with almost every element of the process, which lead to people being wrongfully detained, held in detention when they are vulnerable and detained for too long. Substantial reforms are needed. (Paragraph 20)
2. The latest Home Office immigration statistics show a decrease in the number of people being detained. We welcome this recent reduction. However, we are deeply troubled that, beneath this headline figure, there is an increase in people being held in immigration detention for over six months, many of whom are foreign national offenders. (Paragraph 28)
3. We are also concerned about the fact that more than half of the people being detained in the year to December 2018 were simply released again, raising important questions over whether the power to detain is being used appropriately. The power to detain is a necessary one, but should be used only if there are no other options, as a last resort prior to removal. The power should be exercised for the shortest possible time and only when there is a realistic prospect of removal within a reasonable period. (Paragraph 29)

### Decision to detain

4. *The initial detention decision should be made by the Home Office but reviewed within 72 hours by a judge. This would be in line with other areas of UK law, for example in the UK criminal justice system, where an upper limit for detention without charge exists.* (Paragraph 38)
5. *The Borders, Citizenship and Immigration Act 2009 places a statutory duty upon the Secretary of State to ensure that immigration, asylum and nationality functions “are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom”. The Home Office’s guidance for caseworkers and Immigration Compliance and Enforcement (ICE) officers on family separations is founded upon this statutory duty and clearly states that the best interests of any child must be the “primary consideration” for officials in each case. Yet it is clear that this guidance is not always being followed. The Government should bring forward legislation specifically to prevent the separation of a nursing mother from the child they are nursing, and the separation of a child from one or both parents where the result would be that the child is taken into care.* (Paragraph 41)
6. *We recognise that age-related vulnerability is complex and that perspectives on and definitions of ‘older people’ can differ widely. However, the Home Office does not define ‘older people’ in either the Adults at Risk statutory guidance or the Adults at Risk policy guidance; also it does not explain why an individual specifically aged 70 or*

*over should be regarded as vulnerable. We recommend that the Government should have a clear policy which avoids detaining people over the age of 60 unless there are exceptional reasons to do so. (Paragraph 45)*

7. *We recommend that the Government should recognise that LGBTQI+ people are vulnerable in immigration detention, thereby extending the recognition that it already affords to trans and intersex people to all LGBTQI+ individuals. Secondly, the Home Office should monitor and publish statistics on the number of LGBTQI+ people it detains. (Paragraph 54)*
8. We are very concerned about the discrepancy in the evidence we have been given and we are not confident in the accuracy of the Home Office information. While we accept it is the intention only to detain people where there are public protection reasons to do so, in practice we are concerned that too many asylum seekers are being detained who may not need to be, and that inappropriate decisions are being taken to lock people up. (Paragraph 59)
9. Immigration officials tasked with detaining and removing people from the UK face making difficult decisions on a daily basis. However, cases drawn to our attention show that the Home Office is ignoring and breaching its own policy guidance. While the Government's data can only provide an inexact picture of mistaken decisions, it is clear that people are being wrongly detained. We are appalled that the Home Office does not collate basic, transparent information about the number of people who are wrongfully detained. These are cases in which people have been wrongly deprived by the state of one of their most basic rights, potentially causing them great harm and distress. For the Home Office not even to collate this information so that ministers and senior officials can monitor or review the problem shows a shockingly cavalier attitude to the deprivation of liberty and the protection of people's basic rights. The Home Office needs to urgently change its recording systems and ensure there is a proper process to record and publish quarterly the number of people wrongfully detained and to publish annually the level of compensation paid out. (Paragraph 65)
10. *Detaining an individual for reasons of immigration control is a deprivation of that person's liberty. Decisions to detain an individual are taken by Home Office officials and not by a judge or court. The Home Office must do much more to ensure that all reasonable alternatives to detention have been considered before detention is authorised. As we have seen from the Windrush scandal, wrongful Home Office decisions to detain have wrecked people's lives. The Home Office needs to be more transparent in its explanation to detainees and legal representatives of why a decision to detain has been made, and to support that decision with detailed evidence. Similarly, with regard to cases of wrongful detention and removal, the Home Office needs to change its approach to litigation, by admitting where things have gone wrong, apologising, and seeking to learn lessons. Furthermore, the Home Office must take remedial action in respect of officials responsible for cases of wrongful detention and removal, so that the same mistakes are not repeated and decision-makers understand the seriousness of getting cases wrong. (Paragraph 66)*
11. It is shocking that, other than asylum interviews, there is no face to face contact between immigration decision makers and the detainee during the initial decision

to detain. We believe this contributes to the cavalier attitude towards detention decisions. Had decision-makers ever met Paulette Wilson before deciding that she should be detained, it might have made them more likely to spot the injustice in her case or realise that there was a problem. It is a basic tenet of our legal system that when judges take the decision to detain, that person is brought before the court. Therefore it is extremely troubling that in the immigration and asylum system people can be deprived of their liberty through an entirely paper-based exercise by officials where no one involved in the decision ever interviews the potential detainee. We welcome the Government's recent introduction of pre-departure teams [PDTs] within a number of IRCs, but their coverage is currently very patchy and such teams are only relevant to those individuals already in detention. Further, their staff are not caseworkers and cannot make decisions on cases. (Paragraph 77)

12. We strongly support Mr Shaw's recommendation that all "caseworkers involved in detention decisions should visit an IRC either on secondment or as part of their mandatory training" but we believe that is not the same as meeting someone as part of the decision-making process. We recommend that immigration caseworkers *involved in the decision-making process to detain an individual should meet that individual at least once, in person, prior to finalising the detention decision or/and within one week of their detention.* (Paragraph 78)
13. The introduction of the Detention Gatekeeper function is a welcome step forward, but the current approach still fails to provide sufficient safeguards to prevent inappropriate detention or the detention of vulnerable adults. As the latest Shaw report noted, large numbers of vulnerable people are still being detained. This indicates that vulnerable people are being wrongly routed into detention due to the Gatekeepers' incorrect validations or misplaced challenges of Home Office caseworkers' decisions. *There needs to be a thorough, face-to-face pre-detention screening process to facilitate the disclosure of vulnerability. Where there is no deemed risk of absconding, this screening should be undertaken at the point of enforcement activity, for example, as part of the reporting process where UK Visas and Immigration officials or Enforcement officers should feedback any concerns they have about a person's suitability for detention. Even a short period of detention for someone who, for example, has been a victim of torture could be extremely traumatic. Therefore it is essential that a proper pre-screening assessment is done.* (Paragraph 79)
14. *The Home Office needs to improve its performance in capturing detainee vulnerability in the early days of an individual's detention. We are concerned by reports that initial screening processes are rushed and that detainees are made insufficiently aware of their importance. Detainees arriving in detention for the first time are understandably reluctant to talk openly about traumatic past experiences but the crucial importance of reporting vulnerability to enable potential release should be made explicit. Similarly, immigration detention centre staff should explain to a newly arrived detainee that they may be automatically referred for a bail hearing after four months of detention, and at what other stages of their detention they can apply for immigration bail.* (Paragraph 85)
15. *The Government should stop night moves unless exceptional criteria are met, and the length of time detainees spend in transfer should be kept to a minimum. We recommend that future contracts concerning detainee transfers should stipulate a*

*7pm cut-off for arrival and should require that prior approval must be sought from the Home Office for exceptional circumstances where that deadline will not be met. Requests for such approval should also be reported to the Independent Monitoring Board so that there is oversight of its use. (Paragraph 86)*

16. It is evident from what we have heard that the Government's Detention Duty Advice scheme is flawed and is failing to provide adequate legal safeguarding to those who need it most. Under the DDA scheme, people who are detained in IRCs are eligible for 30 minutes' free legal advice. However due to severe cuts in legal aid following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), many detainees are not able to access legal advice. Rigorous means and merits tests, as well as a requirement for detainees to demonstrate a strong human rights case means that the harsh reality is, that legal aid funding is extremely difficult to obtain. (Paragraph 95)
17. *We deeply regret that the Government has failed to listen to the legal bodies that have submitted their views to the post implementation review of LASPO and to address radically the current failings in the system and provision of legal advice to some of the most vulnerable individuals who are held in immigration detention. We repeat the recommendation made in the Committee's report on the Windrush generation that legal aid arrangements should be restored for immigration matters in order to allow those with complex cases the access to legal advice they need. (Paragraph 96)*
18. People held under immigration powers in prisons subject to deportation procedures, i.e. foreign national offenders who are serving custodial sentences in prisons and who are liable to deportation at the end of their sentences, do not have access to the DDA scheme in prison. This means that they have no guaranteed access to a legal adviser and have to find and contact a lawyer themselves. *Foreign national offenders should be afforded the same legal safeguarding provisions as immigration detainees held in IRCs so that, on completion of their custodial sentence, they can be deported or have their immigration status resolved rather than entering immigration detention. This should include access in prison to the DDA scheme. (Paragraph 97)*

### Treatment of vulnerable adults in detention

19. The Adults at Risk (AAR) policy is clearly not protecting the vulnerable people that it was introduced to protect. Instead, by introducing three levels of evidence of risk which are then weighed against a broad range of immigration factors, the policy has increased the burden on vulnerable people to evidence the risk of harm that might render them particularly vulnerable if they were placed or remained in detention. (Paragraph 118)
20. The previous policy to protect vulnerable people in immigration detention [Chapter 55.10 of the Enforcement Instructions and Guidance] stipulated a presumption not to detain except in 'very exceptional circumstances'. We are concerned that the AAR policy is not only failing to protect vulnerable people but, by introducing a requirement for individuals to provide evidence of the level of their vulnerability risk in detention, has significantly lowered the threshold for Home Office caseworkers to maintain detention of those most at risk. The AAR policy was not a concept that Stephen Shaw proposed in his first review: although he believes it has potential, the

policy is not working as he had anticipated. The AAR policy has not only failed to mitigate the harmful impact of detention on vulnerable people but has failed to deliver a reduction in the number of vulnerable people in detention. *We urge the Government to abolish the three AAR levels of risk and to revert to its previous policy of a presumption not to detain vulnerable individuals except “in very exceptional circumstances”.* (Paragraph 119)

21. We welcome the Government’s identification of a wider range of vulnerabilities in the AAR policy, and its recognition of the dynamic nature of vulnerabilities. However, it is evident from both the broad range of vulnerabilities being assessed at AAR Level 2 and the disproportionately large numbers of people being categorised at this level, that the Government’s ‘holistic’ interpretation of the fluctuating nature of vulnerabilities is failing to provide adequate mechanisms and safeguards to assess a person’s vulnerability before and during detention. *In line with Medical Justice, we recommend a return to the previous category-based approach rather than “indicators of risk” so that an individual who belongs to a category at increased risk of harm in detention is considered suitable for detention in only very exceptional circumstances. To avoid a check list approach, the Home Office should include a catch-all category which captures those who are particularly vulnerable to detention but who also may not fall within one of the pre-set categories. For example, this might include a detainee who has recently suffered a bereavement. The Home Office should consult with a wide range of stakeholders who are affected by detention, including people with lived experience, to develop an agreed grouping of categories. The policy should also retain the commitment for a self-declaration of vulnerability to trigger a duty of inquiry into the asserted vulnerability.* (Paragraph 120)
22. We welcome the Government’s commitment to commission an ongoing annual report by the Independent Chief Inspector of Borders and Immigration to assess progress on the AAR policy. This reporting should assess the operation of the entire AAR framework, including the Detention Gatekeeper Team and the Rule 35 process to ensure that the Government’s system to protect vulnerable people is effectively and robustly monitored, and so that accurate data can be published. (Paragraph 121)
23. The fundamental purpose of the Adults at Risk framework is to protect all vulnerable individuals from the harmful effects of detention. It seeks to do this by providing a robust safeguarding process that effectively identifies, and ensures that the right decision is made concerning, an individual’s risk in detention. This principle must not be diluted by the Government’s dominant focus on the definition of torture, which poses a risk that other individuals who are particularly vulnerable to harm in detention could be overlooked. (Paragraph 127)
24. *The Government should at the very least review the AAR policy guidance with immediate effect to ensure that it includes clear, inclusive and effective categories of vulnerability, with a presumption not to detain unless there are exceptional circumstances. This review should be completed by 1 December 2019. Any amendments to the AAR policy guidance should be reflected in Rule 35 of the Detention Centre Rules 2001 [See paragraph 130 on Rule 35], as well as the Home Office operational Enforcement Instructions and Guidance. Such a review should also revisit the definition of torture,*

*in light of the Shaw follow-up review and concerns raised by various organisations in their evidence to us, and in line with the overall purpose of the Adults at Risk policy. (Paragraph 128)*

25. *The Government should also replace the current vulnerability indicators in the AAR statutory guidance of “torture” and “victims of sexual or gender-based violence” with a more inclusive indicator based on the UNHCR detention guidelines, namely “victims of torture or other serious, physical, psychological, sexual or gender-based violence or ill-treatment”. This would enable a broader category of risk to be identified and would be more easily applied by caseworkers and doctors. (Paragraph 129)*
26. *We are extremely concerned that the Rule 35 process is plagued with too many long delays, sets too high an evidential burden, and that internal review panel recommendations to release are being overturned by senior Home Office officials. (Paragraph 149)*
27. *The Home Office must ensure that the Rule 35 process is adequately resourced and monitored to enable medical practitioners in IRCs to carry out their functions efficiently and to deliver Rule 35 reports to the evidential threshold required. All IRC medical practitioners should continue to receive training in identifying and documenting concerns as part of the Rule 35 process. Likewise, Home Office case workers should be trained to ensure that there is fairness, accuracy and consistency in their assessments and interpretation of Rule 35 reports. (Paragraph 150)*
28. *As highlighted by Stephen Shaw in his follow-up review, there is a need for an alternative, independent mechanism in the Rule 35 decision making process. Currently, decisions relating to Rule 35 reports are made by the caseworker responsible for progressing an individual’s case, as well as their detention. This is not a fair or robust system. We urge the Government to explore alternatives that would ensure independent oversight as part of the Rule 35 decision making process. (Paragraph 151)*
29. *We welcome the Government’s commitment to review the Rule 35 process. A review of Rule 35 is urgently required to ensure that no further injustices take place on the immigration detention estate. As part of any change to the process, we urge the Government to ensure that Rule 35 effectively identifies all vulnerable groups, as reflected in the wider UNHCR detention guidelines [e.g. “victims of torture or other serious, physical, psychological, sexual or gender-based violence or ill-treatment”] and that these categories are clearly mirrored in the Adults at Risk (AAR) policy guidance. The process used to identify any individual who may be vulnerable to harm in detention must be one that is coherent, fair and easy to apply; the current Rule 35 process, as part of the Adults at Risk framework, clearly fails to achieve this. (Paragraph 152)*
30. *At the time of publication, the government review of Rule 35 had not been done. We recommend that a comprehensive review of Rule 35 is completed by the end of June 2019. (Paragraph 153)*
31. *We are deeply saddened and concerned by the recent reports of an increase in the number of self-inflicted deaths taking place in or shortly after immigration detention. We welcome the Home Office’s inclusion in its statistics of deaths in immigration detention from September 2018. This action was long overdue. However, as outlined*

*in the evidence we received, it remains very difficult to access accurate and detailed data on the causes of deaths in immigration detention. The Home Office data does not state if a death was self-inflicted, natural, or if it occurred in a prison. In line with recommendations by Stephen Shaw, and Ministry of Justice practice, the Home Office should publish a more systematic and transparent record of deaths in immigration detention with immediate effect. This should include whether the cause of death is apparently self-inflicted, from natural causes, or unknown. The data should also record deaths of detainees held under immigration powers in HM prisons.* (Paragraph 158)

### Length of detention

32. Home Office caseworking inefficiencies are unnecessarily prolonging people's detention, with some being held for more than three years. This is unacceptable and adversely affects the most vulnerable people in detention. *We welcome the Immigration Minister's acknowledgement that her Department needs more caseworkers and call on the Government to urgently increase the resources and staffing in the UK Visas and Immigration (UKVI) caseworking team to ensure that people's immigration cases are swiftly resolved.* (Paragraph 167)
33. The number of foreign national offenders who are held in prison under immigration powers despite having served their sentence remains far too high. People should not be held in prison beyond the end of a custodial sentence. The Home Office should ensure that notifications of liability for deportation are sent to foreign national offenders several months before the end of their custodial sentences. This would enable the necessary representations and legal challenges to take place and, where these were unsuccessful, provide for the timely organisation of travel documents. Importantly, this would avoid unacceptable situations of double punishment. (Paragraph 168)
34. The Detention Centre Rules 2001 clearly stipulate that detainees must be provided with written justification for their detention at the time of their initial detention followed by monthly reviews. From the evidence we have seen, this is clearly not always happening. The outcome of these monthly detention reviews is life changing for the most vulnerable people in detention. If there is no prospect of imminent removal, then people should not be detained. *If there is no prospect of imminent removal, then people should not be detained.* (Paragraph 172)
35. Failure to provide justification for continued detention will only compound detainees' frustration and may lead to self-harm and violence in immigration removal centres. Home Office decisions to maintain detention must be clearly justified so that a person knows exactly why they are being detained, and if appropriate can challenge the Home Office decision. *Home Office decisions to maintain detention must be clearly justified so that a person knows exactly why they are being detained, and if appropriate can challenge the Home Office decision.* (Paragraph 173)
36. HMIP has highlighted instances where senior Home Office officials have overridden their own independent review panel's decisions to release vulnerable detainees, and continued detention, without any justification. This raises serious questions about the purpose of the Home Office's independent review panel. Ultimately, the Home Office cannot and should not be maintaining detention by default. We

are also extremely concerned about the lack of any consistent information on the overturning of review panel decisions which could be used for monitoring senior officials' decision-making and ensure proper accountability. (Paragraph 174)

37. Following the Home Secretary's commitment, in response to Stephen Shaw's follow up review, to publish more data on immigration detention, *we urge the Home Office to begin to publish its data on the rationale for decisions not to release individuals subject to Rule 35 reports by 1 July 2019. This data can be anonymised, and therefore there should be no reason why the Home Office cannot publicly share this information.* (Paragraph 175)
38. *The Home Office should also provide more transparent and detailed reporting about the reasons for continued detention. Data on the barriers to release of individuals detained for more than six months should be published as part of the Home Office's next quarterly immigration statistics. We would also urge the Home Office to improve its learning from cases where people are released from detention on immigration bail to prevent people being inappropriately detained in the future. If this learning is successfully embedded in Home Office operations, we would expect the number of cases where people are held in immigration detention for over six months to decrease.* (Paragraph 176)
39. *The Home Office introduced case progression panels to provide internal independence to the detention decision-making process at three-monthly intervals. However, we question whether a process that remains internal can be truly independent. It is clear from the evidence we have received that this review process is not functioning as an effective independent check on decisions to maintain detention. We echo Stephen Shaw's comment in his follow up review, that "there remains a need for robust independent oversight".* (Paragraph 182)
40. There are a multitude of barriers which prevent some of the most vulnerable people in immigration detention from being released. The immigration detention bail process is unnecessarily complex and relies heavily on a detainee's knowledge of and access to legal advice and representation to secure immigration bail. Furthermore, the Home Office is attributing excessive weight to absconding and non-compliance which, as we have learnt, could simply mean that an individual has missed a reporting appointment because of illness. (Paragraph 193)
41. It is unacceptable that some detainees are being forced to languish in immigration detention or in some cases are being thrown onto the streets because the Home Office is not ensuring people can secure accommodation post release. This is unacceptable and a breach of people's fundamental human rights. (Paragraph 194)
42. *The Home Office should urgently review the new immigration bail provisions introduced in January 2018, which, a year on, are clearly not working - in particular to ensure that a lack of accommodation is not preventing immigration bail. The process should be made much simpler for individuals to navigate, and ultimately detainees should not be faced with a choice of destitution or remaining in immigration detention.* (Paragraph 195)
43. Parliament passed Section 95 of the Immigration and Asylum Act 1999 which ensures that asylum seekers are not made destitute and homeless and lacking

any means of remedying their position, given the restrictions on asylum seekers working in the UK. The provision of accommodation to destitute asylum seekers is a minimum requirement in line with the UK's international human rights obligations under the Refugee Convention and the prohibition against inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights. We are extremely concerned by evidence that the way in which the Home Office is applying this provision means that an asylum seeker in detention cannot satisfy the Home Office's destitution test for accommodation at the point of release, even if they would be homeless and destitute immediately upon release. Such an approach is perverse. In practice, this means that the Home Office makes it impossible for an impecunious asylum seeker in detention to access accommodation. It can also mean the poorest asylum seekers are locked up for longer simply for being poor. Such an approach risks breaching an individual's human rights. The Home Office must ensure that destitute asylum seekers in detention are allowed to access accommodation under Section 95 of the 1999 Act and that immigration bail is not refused solely due to a lack of such accommodation. (Paragraph 196)

44. *Evidence submitted to the Committee makes it clear that the automatic bail hearing process is not functioning as it should. Reports that detainees are being asked to waive their rights in this regard are particularly troubling. Bail hearings should be scheduled to give detainees adequate time to prepare, and applicants should have access to interpretation, should they so need it, and legal representation as a matter of course. (Paragraph 201)*
45. *We support Stephen Shaw's concerns in his follow-up review about the lack of access to legal safeguards for individuals held under immigration powers in prison. It is neither just nor right to deny people detained in prisons the same access to legal safeguarding that is available to detainees held in Immigration Removal Centres. Foreign National Offenders are subject to deportation procedures and are often held in detention for very long periods of time. We support Shaw's call for the Home Office to extend the automatic immigration bail provisions. These should be extended to all FNOs, including individuals detained under immigration powers in prison who are pending or awaiting deportation. (Paragraph 202)*
46. We strongly support the Home Secretary's commitment that he will consider ending indefinite immigration detention in response to Stephen Shaw's follow up report. Evidence from a multitude of experts including those affected by detention shows the harm that immigration detention inflicts on detainees' mental health and well-being. While the indefinite nature of detention traumatises those who are being held, it also means that there is no pressure on the Home Office and immigration system to make swift decisions on individuals' cases. There is a rapidly growing consensus among medical professionals, independent inspectorate bodies, people with lived experience and other key stakeholders on the urgent need for a maximum time limit. (Paragraph 222)
47. From the evidence we have heard throughout our inquiry, a maximum immigration detention time limit is long overdue. It is clear that lengthy immigration detention is unnecessary, inhumane and causes harm. (Paragraph 223)

48. Home Office policies which should prevent unlawful detention and harm of vulnerable people are regularly flouted or interpreted and applied in such a way that the most vulnerable detainees, including victims of torture are not being afforded the necessary protection. Detainees can be held despite serious risk to their life. As reported by HM Chief Inspector of Prisons, one detainee who was a wheelchair user was held for 15 months despite an attempt to set himself on fire. There is a systemic failure in the way that the current safeguards are applied by the Home Office. This administrative failure is accompanied by an institutional culture operating within immigration enforcement, and the Home Office more broadly, that clearly prioritises the use of detention as a means to enforce removal, above respect, dignity and the protection of vulnerable individuals. (Paragraph 224)
49. *It is time to implement radical change. In line with the Joint Committee on Human Rights, we urge the Government to bring an end to indefinite immigration detention and to implement a maximum 28-day time limit with immediate effect.* We strongly believe that 28 days would be a reasonable statutory immigration detention time limit to enforce, given that the Home Office's own Enforcement Instructions and Guidance stipulate that detention should only be maintained when removal is imminent (i.e. within 28 days (four weeks)). (Paragraph 225)
50. *The Immigration and Social Security Co-ordination (EU Withdrawal) Bill may provide a useful opportunity to put this time limit on a statutory footing. However, the Government can change its practice immediately, simply by ceasing to detain people beyond this limit. This 28-day time limit should be cumulative and accompanied by a robust series of regular checks and safeguards. An extension to the 28-day time limit should only be made in very exceptional circumstances and should only be permitted with prior judicial approval.* (Paragraph 226)
51. *With such a maximum time limit, the Government should put safeguards in place to ensure that this maximum does not become a default period of detention that is routinely applied. To mitigate this risk, it is crucial to ensure that a robust and individualised review of detention occurs on a regular basis. The decision to maintain detention must be continually reviewed by the Home Office with appropriate independent oversight.* (Paragraph 227)
52. *We recommend that the Government undertakes a public consultation on how detention time limit maximums could be applied to different types of detainees. For example, a lower time limit might apply to vulnerable individuals. If the Home Office assesses an individual to be an "Adult at Risk" in line with its statutory guidance, we propose that the Home Office adopts a similar policy as currently applies to families with children. That is, having in place a 72-hour detention limit, allowing for a maximum extension of 7 days in certain circumstances.* (Paragraph 228)
53. *We recognise the specific challenges in relation to Foreign National Offenders (FNOs), i.e. that this broad term encompasses those convicted of any offence without British nationality including those who have committed the most serious crimes as well as victims of trafficking and modern slavery who have been coerced into crime. We therefore consider that the Home Secretary should consult on how any public protection issues can best be addressed.* (Paragraph 229)

54. *We welcome the Government's recent launch of its pilot scheme to provide alternatives to detention (ATD) for vulnerable women detained in Yarl's Wood IRC. This is a positive first step to end the harmful and unnecessary detention of vulnerable people. We also welcome its research into further ATD pilots and recommend that it expands the use of community based ATDs as recommended by Stephen Shaw. In its response to our report, we ask the Government to include a comprehensive action plan for its work on ATDs. The action plan should include a breakdown of all the ATDs it is currently considering, the key measures of success for each scheme, and an update on progress. (Paragraph 230)*

### Immigration removal centres – management and resources

55. *The Home Office must meet its obligations to those individuals it detains in immigration removal centres (IRCs). This means that people should be able to access high quality healthcare, equivalent to that in the community. From the evidence we have heard, this is not always the case. (Paragraph 240)*
56. *We support the British Medical Association's call for clinical leadership and advice within the Home Office. The Home Office should consider the appointment of a clinically qualified individual to advise on the development of health policy specific to IRCs. In addition to this strategic role, the Home Office should ensure that there is a clinically qualified point of contact within the Home Office for IRC healthcare staff who may require advice relating to Rule 35 reports. Problems with recruitment and staff retention across the whole IRC workforce (including healthcare) must be urgently addressed to prevent staff shortages negatively affecting the health and wellbeing of detained individuals. (Paragraph 241)*
57. *It is evident from the G4S commissioned investigation into Brook House IRC that the activities and facilities available to detainees at Brook House have drastically failed to meet the statutory requirements as outlined in the Detention Centre Rules 2001. The Home Office must take a more robust approach to ensure that Immigration Removal Centre (IRC) providers maintain adequate staffing levels and resources so that sufficient activities are available to detainees. Low staffing levels mean that people are locked up for longer periods of time, face to face communication is limited and IRC facilities are more likely to be closed (e.g. libraries, cafés, IT facilities) all of which compound levels of frustration and mental health issues among detainees and staff. This can lead to increased levels of self-harm as well as violence among detainees and towards IRC staff. In the event of a serious incident, a lack of staff could have detrimental consequences for everyone's safety within an IRC. (Paragraph 248)*
58. *The disgraceful abuse of detainees by staff that was revealed by undercover journalism at Brook House IRC is sadly not the first of its kind. As Stephen Shaw told the Committee, "potential for abusive behaviours is ever-present [ ... ] in closed institutions". Stephen Shaw's follow up review reported that whistleblowing procedures met good practice in all of the IRCs he visited. Yet, despite what is written on paper, it is evident from the abhorrent abuse that took place in Brook House IRC that many IRC staff and detainees are not using the whistleblowing channels*

available to them. IRC staff and detainees simply do not trust the process, and have voiced concerns about confidentiality and potential repercussions to their safety. (Paragraph 256)

59. *The Home Office must take immediate steps to ensure that all IRCs have robust and effective whistleblowing procedures in place which IRC staff and detainees can use with complete confidence, knowing that they will be fully protected. IRC managers should ensure that both staff and detainees are regularly made aware of the whistleblowing procedures, providing clear written and verbal explanations of what the policy is for, with user friendly whistleblowing toolkits and publicity made available across the IRC. Staff and detainees should also be given explicit reassurance that they would be supported if they raised concerns about any wrongdoing or misconduct they witnessed. Failure to do so may result in further abuses across the immigration detention estate. (Paragraph 257)*
60. *IRC staff should receive comprehensive training on whistleblowing processes which should be refreshed regularly. In line with Stephen Shaw, we support the provision of a “safe space” for IRC staff to reflect on what they have done well, and less well without fear of discipline or management action. The details of how such a safe space might work should urgently be explored by the Government in consultation with IRC staff and senior managers and reported back to our Committee by 1 December 2019. (Paragraph 258)*
61. A healthy staff culture requires strong and effective leadership with managers who are open, supportive, act as role models, but are also firm with regard to setting and enforcing standards and encouraging ethical behaviour. Preventative steps should be taken by managers to mitigate any unethical conduct by taking remedial action where appropriate and avoiding a blame culture which discourages transparency and honesty. We support Stephen Shaw’s recommendation and call on the Home Office to urgently monitor more closely the policies, procedures and practices of its immigration detention contractors in order to more effectively expose inappropriate behaviour. Equally, the Home Office should review its equivalent professional standards policies and procedures with immediate effect and ensure that Home Office staff receive comprehensive training on upholding professional standards and promoting a healthy staff culture. (Paragraph 262)
62. *The formal oversight mechanisms currently in place to ensure effective, safe and humane management of IRCs are clearly not working; this is evident from the disgusting abuse of detainees by some staff revealed by an undercover journalist at Brook House IRC in 2017. Six of the seven IRCs across the UK are contracted out to a handful of outsourcing firms including G4S, Serco, Mitie and the GEO group. Accountability for any serious misconduct rests with the Home Office, which is ultimately responsible for the effective operation of our immigration detention estate. We must not forget too that the Home Office monitoring staff were on site and did not raise any concerns about wrongdoing at Brook House IRC. (Paragraph 270)*
63. It is clear from the evidence we heard that the Home Office has utterly failed in its responsibilities to oversee and monitor the safe and humane detention of individuals in the UK. Consequently, we strongly welcome the Home Office’s agreement on 11 October 2018 to conduct an independent inquiry into the maltreatment of detainees

by some staff at Brook House. Over four months later, on 5 March 2019, we were advised by the Home Office that the terms of reference had been agreed. We are deeply concerned about the length of time it has taken for the Home Office to agree the terms of reference for such a crucial inquiry. We look forward to seeing the published terms of reference at the first opportunity. (Paragraph 271)

64. During our inquiry we were extremely concerned to hear evidence of alleged financial misconduct at Brook House IRC, with reports that profits reached above what was agreed in G4S's contract with the Home Office. The Home Office has ultimate oversight of G4S's publicly-funded contract with Brook House IRC. Given the widespread public concerns voiced over G4S's management of Brook House in 2017 we are astonished that, for ten months, the Government has ducked the question and missed the opportunity to assuage such concerns by reporting the outcomes of the Moore Stephens review. Such behaviour does not help to instil confidence in the Government's management of publicly-funded contracts. (Paragraph 274)

# Formal minutes

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**Tuesday 12 March 2019**

Members present:

Yvette Cooper, in the Chair

Kate Green

Stuart C McDonald

Tim Loughton

John Woodcock

Draft Report (*Immigration detention*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 273 read and agreed to.

*Resolved*, That the Report be the Fourteenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 19 March at 9.45 am.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Tuesday 20 March 2018

**Janahan**, a former detainee in Harmondsworth and Morton Hall who now has refugee status, **Voke**, a former Yarl's Wood detainee who is currently seeking asylum, and **Afiya**, a former Yarl's Wood detainee who is currently seeking asylum [Q1–26](#)

**Kris Harris**, Policy & Research Worker, Medical Justice, **Gemma Lousley**, Policy and Research Coordinator, Women for Refugee Women, **Tom Nunn**, Legal Manager, Bail for Immigration Detainees (BID) [Q27–50](#)

**Rupert Soames**, CEO, Serco Group plc, **Julia Rogers**, MD Justice and Immigration, Serco Group plc, **Phil Wragg**, Group Director for Kent, Essex, IRCs and FNPs, HMPPS, and **Karen Head**, Morton Hall Centre Manager, HMPPS [Q51–174](#)

### Tuesday 8 May 2018

**Peter Clarke CVO OBE QPM**, HM Chief Inspector of Prisons, **Hindpal Singh Bhui**, Inspection Team Leader (Immigration), HMI Prisons [Q175–253](#)

**Rt Hon Caroline Nokes MP**, Minister for Immigration, Home Office, **Hugh Ind**, Director General of Immigration Enforcement, Home Office, **Sir Philip Rutnam**, Permanent Secretary, Home Office [Q254–485](#)

### Tuesday 11 September 2018

**Stephen Shaw CBE**, author of the follow-up report to the Home Office on the assessment of government progress on the welfare in detention of vulnerable persons [Q486–560](#)

The following witnesses gave evidence to the Committee's inquiry into [Brook House Immigration Removal Centre](#). The Transcript can be viewed on the [inquiry publications page](#) of the Committee's website.

### Thursday 14 September 2017

**Rev. Nathan Ward**, former Duty Director at Brook House, and **James Wilson**, Director, Gatwick Detainees Welfare Group [Q1–85](#)

**Peter Neden**, Regional President, UK and Ireland, G4S, and **Jerry Petherick**, Managing Director, Custody and Detention Centres, G4S [Q86–208](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

IDD numbers are generated by the evidence processing system and so may not be complete.

- 1 Amnesty International ([IDD0029](#))
- 2 Carolyn Burch and Richard Raggett ([IDD0003](#))
- 3 Association of Visitors to Immigration Detainees ([IDD0017](#))
- 4 Bail for Immigration Detainees ([IDD0002](#))
- 5 Bar Council ([IDD0022](#))
- 6 Bingham Centre for the Rule of Law ([IDD0014](#))
- 7 Black Women's Rape Action project and Women Against Rape ([IDD0023](#))
- 8 British Medical Association (BMA) ([IDD0019](#))
- 9 Campaign to Close Campsfield and End All Immigration Detention ([IDD0007](#))
- 10 Catholic Bishops' Conference of England and Wales ([IDD0038](#))
- 11 Detention Action ([IDD0006](#))
- 12 Detention Forum ([IDD0033](#))
- 13 Equality and Human Rights Commission ([IDD0030](#))
- 14 Freed Voices ([IDD0032](#))
- 15 Freedom from Torture ([IDD0011](#))
- 16 G4S Custodial & Detention Services ([IDD0028](#))
- 17 G4S Health Services ([IDD0027](#))
- 18 Gatwick Detainees Welfare Group ([IDD0010](#))
- 19 Home Office ([IDD0037](#))
- 20 Home Office ([IDD0043](#))
- 21 Home Office ([IDD0044](#))
- 22 Immigration Law Practitioners' Association ([IDD0042](#))
- 23 Independent Monitoring Boards ([IDD0040](#))
- 24 Jennifer Smith and Andrew Burridge, Professor Nick Gill, Dr Daniel Fisher, ([IDD0008](#))
- 25 Jesuit Refugee Service UK ([IDD0041](#))
- 26 Law Society of Scotland's Immigration and Asylum Sub-committee ([IDD0035](#))
- 27 Liberty ([IDD0015](#))
- 28 Lifeline Options CIC ([IDD0005](#))
- 29 Manchester community submission ([IDD0021](#))
- 30 Medact ([IDD0013](#))
- 31 Medical Justice ([IDD0020](#))
- 32 Molloy, Ms Colleen ([IDD0034](#))
- 33 Movement for Justice By Any Means Necessary ([IDD0024](#))

- 34 NAT (National AIDS Trust) ([IDD0016](#))
- 35 NUJ ([IDD0031](#))
- 36 Prisons and Probation Ombudsman ([IDD0036](#))
- 37 Quakers in Britain and the Quaker Asylum and Refugee Network ([IDD0025](#))
- 38 Scottish Detainee Visitors ([IDD0009](#))
- 39 SYMAAG ([IDD0004](#))
- 40 UK Lesbian and Gay Immigration Group ([IDD0026](#))
- 41 UNHCR, The UN Refugee Agency ([IDD0018](#))
- 42 Women for Refugee Women ([IDD0001](#))
- 43 Women for Refugee Women and Detention Action ([IDD0039](#))

The following evidence was received by the Home Affairs Committee in their inquiry into [Brook House Immigration Removal Centre](#). It can be viewed on the [inquiry publications page](#) of the Committee's website

- 1 Bail for Immigration Detainees ([BRK0007](#))
- 2 BBC ([BRK0012](#))
- 3 Campaign to Close Campsfield and End All Immigration Detention ([BRK0005](#))
- 4 Detention Action ([BRK0004](#))
- 5 Detention Forum ([BRK0002](#))
- 6 Freed Voices ([BRK0010](#))
- 7 G4S ([BRK0001](#))
- 8 G4S ([BRK0003](#))
- 9 G4S ([BRK0014](#))
- 10 G4S ([BRK0015](#))
- 11 Gatwick Detainees Welfare Group ([BRK0006](#))
- 12 Home Office ([BRK0011](#))
- 13 Home Office ([BRK0013](#))
- 14 Medical Justice ([BRK0009](#))
- 15 UNHCR ([BRK0008](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Home Office delivery of Brexit: customs operations	HC 540 (HC 754)
Second Report	Immigration policy: basis for building consensus	HC 500 (HC 961)
Third Report	Home Office delivery of Brexit: immigration	HC 421 (HC 1075)
Fourth Report	UK-EU security cooperation after Brexit	HC 635 (HC 1566)
Fifth Report	Windrush: the need for a hardship fund	HC 1200 (HC 1558)
Sixth Report	The Windrush generation	HC 990 (HC 1545)
Seventh Report	UK-EU security cooperation after Brexit: Follow-up report	HC 1356 (HC 1632)
Eighth Report	Policy options for future migration from the European Economic Area: Interim report	HC 857
Ninth Report	Domestic Abuse	HC 1015
Tenth Report	Policing for the future	HC 515
Eleventh Report	Policy options for future migration from the European Economic Area: Interim report: Government Response to the Committee's Eighth Report	HC 1663
Twelfth Report	Home Office preparations for the UK exiting the EU	HC 1674 (HC 1985)
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