# Submission to the Parliamentary inquiry into the use of immigration detention in the UK, hosted by the APPG on Refugees and the APPG on Migration

by Her Majesty's Chief Inspector of Prisons

## Introduction

1. We welcome the opportunity to submit evidence to the parliamentary inquiry into the use of immigration detention in the UK.

2. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (with Ofsted).

3. HMI Prisons coordinates, and is a member of, the UK's National Preventive Mechanism (NPM) the body established in compliance with the UK government's obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture (OPCAT). The NPM's primary focus is the prevention of torture and ill treatment in all places of detention. Article 19 (c) of the Protocol sets out the NPM's powers to submit proposals concerning existing or draft legislation.

4. In 2013–14 we inspected five Immigration Removal Centres (IRCs). To date in 2014, three inspection reports have been published.[1] The following evidence is based on evidence from our inspections, drawing particularly on evidence of outcomes for immigration detainees from inspections over the past 18 months and a joint thematic review of the impact and effectiveness of detention casework published in 2012.[2] All inspections are carried out against our *Expectations* - independent criteria based on relevant international human rights standards and norms – and we examine outcomes for immigration detainees under four areas: safety, respect, purposeful activity and preparation for removal and release.[3]

5. Five key sources of evidence are used by inspectors: observation; detainee surveys; discussions with detainees; discussions with staff and relevant third parties; and documentation. During inspections we use a mixed-method approach to data gathering and

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[1] See all full reports at : http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/?post_type=inspection&s&prison-inspection-type=immigration-removal-centre-inspections

[2] HMIP & ICIBI, *The effectiveness and impact of immigration detention casework,* December 2012

[3] HMIP Expectations, Criteria for assessing the conditions for and treatment of immigration detainees, v 3, 2012 at: http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/immigration-expectations.pdf

analysis, applying both qualitative and quantitative methodologies. Evidence from different sources is triangulated to strengthen the validity of our assessments.

6. In inspecting immigration detention, we are mindful that although IRCs are custodial establishments, detainees are not held because they have been charged with a criminal offence and have not been detained through normal judicial processes. This is consistent with Rule 3 of the Detention Centre Rules 2001 which sets out the purpose of centres as being to provide for the secure but humane accommodation of detainees in a relaxed regime, with as much freedom of movement and association as possible consistent with maintaining a safe and secure environment"

7. HMIP's recommendations for individual establishments are set out in each individual inspection report. These reports highlight areas where we consider centres are ensuring good or reasonably good outcomes for detainees, and the summarised outcome table at annex 1 shows that most centres are achieving some positive outcomes for detainees. However, as this submission demonstrates, these inspections highlight a number of important areas where we have found outcomes for detainees in line with our Expectations to be inadequate and have repeatedly made recommendations for IRCs to address.

**Summary of key points**

- Detainees feel anxious because they are uncertain as to how long they will be detained and whether they will be released or removed from the UK, and in some cases do not understand the reasons for their detention.
- Conditions in IRCs are variable; some IRCs treat detainees with respect and those detained experience minimal physical restrictions, others are too prison-like, which impacts negatively on detainees.
- Too many detainees are held in prisons, including those who on risk assessment would be suitable to transfer to an IRC, which is not appropriate.
- Provision of immigration and asylum advice and representation to detainees is inadequate and deteriorating in IRCs and extremely poor in prisons.
- Detention causes and exacerbates mental health problems and in some cases detainees with mental health problems are being detained unlawfully.
- Despite an improvement in mental health services within immigration detention, some provision remains insufficient.
- There have been some recent improvements to Rule 35 procedures, which have resulted in release in a small number of cases. However, too often Rule 35 is not an adequate safeguard.
- Some detainees with indicators of having been trafficked are not referred to the National Referral Mechanism.
- Not all children whose age is disputed are referred to social services for an independent age assessment.
- Treatment of families who are detained has improved and Cedars pre departure accommodation offers good practice that could be replicated elsewhere in the adult detention estate.
- Too many vulnerable women are detained without sufficient justification, including pregnant women. Not enough consideration is given to the specific needs of a female detainee population, though most told us they felt safe.
- Detention impacts on people's ability to prepare for departure from the UK, provision of welfare support is not systematic, and there is little communication with destination countries to establish sources of support.
- Too many detainees are held for unacceptably long periods, in some cases up to several years. In some cases, detention is unlawful because it is not for the minimum possible period, or because removal is not possible in a reasonable period.

- The lack of access to advice and information on release and bail reduces detainees' ability to access existing alternatives to detention.

## HMI Prisons evidence

### Conditions of detention, including access to advice and services

8. In most of the centres we reported on, detainees were held reasonably safely, except for Harmondsworth IRC. During our August 2013 inspection of Harmondsworth we noted the case of an 84 year-old man who had been declared unfit for detention by a doctor yet was still in handcuffs at the point that he died. He had neither been resistant or posed any current specific individual risk.[4] Activities were at least reasonably good across the centres inspected, and outcomes for respect and preparation for removal and release varied.[5]

9. Conditions in centres were variable, with some centres providing overall generally good conditions, but others characterised by prison-like conditions and inappropriate restrictions. For example, during our 2014 inspection of Dover, we noted a clear need for the institution to distinguish and assert its function and character as an IRC, and not the prison it once was.[6] We consider that the use of buildings akin to category B prisons at Brook House, Colnbrook, Harmondsworth and planned at Campsfield House is inappropriate for immigration detainees and contribute to worse outcomes for those held there.

10. Detainees often tell us that they feel anxious and frustrated because of their uncertainty about how long they are to be held. For example, our report of our most recent inspection of Brook House found too many detainees who were not sufficiently well informed by the Home Office, and who were experiencing considerable frustration and confusion as a result.[7]

11. A safe centre with good physical conditions and ease of communication with the outside world helps to ensure that detainees are respectfully treated, experience minimal restrictions on their daily lives, and are prepared for release or removal from the UK. For example, at Haslar facilities were adequate and the centre was reasonably clean and good relationships between staff and detainees underpinned many of the centre's strengths. In our survey, 95% of detainees thought that staff treated them with respect.[8]

12. We have repeatedly recommended that immigration detainees should not be held in prisons unless there are exceptional individual risks to justify this, and are concerned that the practice continues. Detainees in prisons always experience a more restrictive and impoverished regime than they would in an IRC, and many are further isolated from support

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[4] Unannounced inspection of Harmondsworth IRC (5-16 August 2013) at: http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf

[5] See Annex 1, figure 1, summary of outcomes from previous inspections of IRCs.

[6] Unannounced inspection of Dover Immigration Removal Centre (3 –14 March 2014) at: http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/dover-immigration-removal-centre/

[7] Unannounced inspection of Brook House Immigration Removal Centre (28 May – 7 June 2013) http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/brook-house/brook-house-2013.pdf

[8] Unannounced inspection of Haslar Immigration Removal Centre (10-11 and 17-21 February 2014) at: http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/haslar-immigration-removal-centre/

by the lack of professional interpreters and immigration advice, and the ability to use mobile phones and email.[9]

13. Findings from recent inspections identify limited access to advice and representation for immigration detainees in IRCs. The provision of legal surgeries funded by the Legal Aid Agency is not adequate as detainees often have to wait too long to see an adviser, and the advice given often does not lead to representation. For example, at Haslar we found too many detainees did not have an immigration lawyer and legal surgery arrangements were not clearly understood.[10]

14. Furthermore, we have often found that immigration detainees in prisons do not have access to independent advice as this is not provided in the establishments in which they are found.

**Meeting the needs of vulnerable detainees**

15. *Mentally ill detainees:* In some cases detainees with enduring mental health problems are potentially being detained unlawfully; at Tinsley House[11] we found one detainee who had been examined by an independent doctor and a psychiatrist as requiring urgent psychiatric input. Both recommended immediate release, and the psychiatrist also reported that the detainee's symptoms were being made worse by detention.

16. *Mental health provision:* We also have concerns that health provision offered to some detainees with mental health problems is insufficient. In our 2012-13 annual report[12] we found that although there had been an improvement in mental health services within immigration detention they were still insufficient and in some cases the treatment of detainees suffering from poor mental health could be described as degrading.

17. *Rule 35 [13]reports and the detention of torture survivors:* We have noted some improvements in the quality of some doctor's Rule 35 reports concerning torture[14], and caseworkers' consideration of them and in some inspections we have found evidence that they are leading to release. For example two detainees at Yarl's Wood and two out of 10 cases we examined at Brook House were released. However, this is not the case in all recent inspections and we remain concerned that routinely the reports fail to make diagnostic findings or lead to release. This means that Rule 35 is an inadequate safeguard for vulnerable detainees. For example, a caseworker accepted that a detainee at Yarl's Wood had been tortured in her county of origin, but maintained detention on the grounds that her condition could be satisfactorily managed in the centre, which was not in accordance with Home Office policy.

18. *Victims of trafficking:* During our last inspection of Yarl's Wood we found that detainees displaying clear trafficking indicators were not always referred to the National Referral Mechanism (NRM). In one case, a detainee without leave to remain had been picked up

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[9] See for example a report of an inspection of HMP Pentonville published on 18 February 2014, which found that "the Home Office's input on immigration matters was inadequate, as was the use of translation services and access to independent legal advice." p 6

[10] Haslar inspection report, Ibid.

[11] Unannounced inspection of Tinsley House IRC , 2012 at: http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/tinsley-house/tinsley-house-2012.pdf

[12] HMIP Annual Report 2012/13: http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf

[13] The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case.

[14] Rule 35 reports written by doctors at Brook House had improved and those at Morton Hall were good.

working in a brothel but no referral had been made.[15] Our experience is that there is little awareness of the NRM among staff in most custodial settings, including immigration detention, and that few staff receive specific training in identification of trafficking indicators.

19. *Detention of separated children whose age is disputed:* our recent inspection evidence shows that not all those claiming to be children in the immigration detention estate are properly referred for age assessment by social services. For example, at Dover we found that

    *"Over the previous year, seven detainees had claimed to be children while at the centre. Not all had been referred to social services for a Merton-compliant age assessment. Location at the centre and access to the regime for age-dispute detainees was appropriately based on individual risk assessment. No staff, other than those in the security department, had undertaken child protection training."* [16]

    At Yarl's Wood, detainees whose ages were disputed were appropriately cared for while awaiting social services assessments. However, some detainees stating that they were children had been inappropriately assessed by a chief immigration officer alone, without referral to social services.[17]

20. *Detention of women*: The specific needs of female detainees were highlighted during our inspection of Yarl's Wood. Many of the women we spoke to – including some very vulnerable women - were distressed and anxious about the immigration process and what was going to happen to them. At the same time, most women told inspectors that Yarl's Wood itself was a generally decent and safe place, which was also reflected in our survey findings. However, we were concerned to learn that two staff had engaged in sexual activity with a female detainee, something that could never be less than abusive in view of the vulnerability of the women held, and these staff had rightly been dismissed. We shared concern that this conduct might be more widespread and following the emergence of new allegations of abuse we returned to Yarls Wood and conducted more than 50 confidential interviews, using interpreters where necessary. In these interviews women did not make allegations of a culture of victimisation or systematic abuse. However, there were widely shared complaints about staff going into women's rooms after knocking, without waiting for a response from detainees. The one to one interviews conducted reinforced our view that women's histories of victimisation were not sufficiently acknowledged by the authorities.

21. We were also concerned that, for the most vulnerable of the women held, the decision to detain itself appeared much too casual. Our inspection identified cases where women with severe mental health problems had been detained straight from the airport upon arrival, without clear justification of detention. Our findings were that a lack of progress on immigration cases caused women most distress. We were also concerned to find some cases where pregnant women had been detained without evidence of the exceptional circumstances required to justify this. A number of women who had been detained for long periods of time, with one woman in particular being detained for nearly four years; and several obviously mentally ill women had been detained before being sectioned and released to a more appropriate medical facility, however, it was difficult to understand why the mentally ill women had been detained in the first place. Given the heightened vulnerability of female detainees we recommend that in any detention setting where the population is

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[15] Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre, 29 October 2013, p 31, para 1.100

[16] Para. S2, Dover inspection report, Ibid.

[17] Para. S9, Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre (17 - 28 June, 30 Sept - 1 Oct 2013) by HM Chief Inspector of Prisons, at: http://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centres/yarls-wood

predominantly female, there should be appropriate levels of female staff who are trained to deal with the specific needs, vulnerabilities and previous experiences of such a population.

22. *Detention of families with children under 18:* We are pleased that there has been an improvement in the treatment of families with children in detention. In May 2014, we published our second inspection report on Cedars pre-departure accommodation, which we found to be a high quality, well-managed institution, both of which qualities are vital given the level of distress experienced by families passing through the centre and its potential impact on the children involved. The important role that Barnardo's staff played in the centre had been maintained and helped to ensure that the needs of children were uppermost in the minds of all staff. Despite undergoing an extremely stressful experience, the families detained at Cedars spoke highly of the care given to them by all staff. Our previous serious concerns[18] about the initiation of force against pregnant women and children had been allayed as staff had been instructed not to use force against them unless it was to prevent harm. However, we were concerned that although good efforts were made by the Home Office to avoid detention, but too many families were still detained more than once. We were critical of the approach we observed by arrest teams wearing stab vests and body armour, although there had been no risk assessment to justify this.[19] The small size of the facility and the limited periods of detention are good practice within the detention estate and in our view should be explored for application to adult detainees.

**The impacts of immigration detention**

*23.* In addition to the impacts raised above, detention can also act as a barrier to detainees preparing for their release or removal. We frequently find that detainees have been unable to get their property or deal with their affairs before being detained. There is no systematic provision for detainees without funds to get their property back prior to removal. We are also concerned that not all detainees are provided with the means to reach their final destination safely and have recommended that this be addressed (see for example Campsfield House inspection report forthcoming).

**Safeguards against prolonged and unnecessary detention, the absence of a time limit and appropriateness of the current arrangements for authorising detention**

24. We are concerned that there is insufficient focus on ensuring that all cases are progressed effectively to ensure that detention is for the minimum possible time and remains lawful. In our 2012 joint thematic report on casework[20], inspectors found that in most cases, the decision to detain was defensible and properly evidenced and most were progressed diligently and in line with legal and policy guidelines. However, we were concerned to find insufficient progress as a result of inefficient work by immigration staff in a quarter of cases we examined. Not enough was done to resolve ex-prisoners' cases before the end of their custodial sentences, and not all relevant facts were considered when detention was reviewed – this meant that people experienced the severe and expensive measure of detention unnecessarily. Decisions to detain were made by relatively junior Home Office staff, while

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[18] Announced inspection of Cedars Pre-Departure Accommodation (30 April – 25 May 2012) at: http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/report-on-an-announced-inspection-of-cedars-pre-departure-accommodation-30-april-25-may-2012-by-hm-chief-inspector-of-prisons/

[19] Para. S40, Unannounced inspection of Cedars pre-departure accomodation and overseas family escort (6 – 27 January 2014) at: http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/cedars-pre-departure-accomodation-and-overseas-family-escort/

[20] Report on the effectiveness and impact of immigration detention casework, by HMI Prisons with the Independent Chief Inspector of Borders and Immigration (12 December 2012) at: http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/the-effectiveness-and-impact-of-immigration-detention-casework/

the decision to release ex-prisoners could only be made by very senior staff. This sat uneasily with the presumption in favour of release. Difficulties in obtaining travel documents and deciding asylum claims caused lengthy detention. The former were sometimes outside the control of the Home Office, but the latter were not. As our report showed, in many cases, caseworkers accused detainees of not cooperating with the re-documentation process. If detainees are non-compliant, the Home Office has the power to prosecute and put them before a court – however, this power was very rarely used; instead, caseworkers relied on open-ended and costly detention, effectively waiting for detainees to 'give in'. There was little evidence of a strategic approach to managing the most complex cases beyond use of extended detention.

25. Our recent inspection of Brook House found that while the average length of stay at the centre had reduced, there were a number of detainees who were held for unreasonably long periods including: twenty detainees held between one and two years; two detainees held between two and three years; and one detainee held for three years and two months. During our recent inspection of Dover, four detainees had been held under immigration powers for over two years, the longest period being two years and nine months. Some cases had not been progressed promptly and, when removal had not been possible within a reasonable period, had resulted in prolonged and possibly unlawful detention. [21]

26. At our inspection of Harmondsworth we found that:

*"Some detainees had been detained for unreasonable periods of time and there was evidence that some cases were not progressed with due diligence. The local contact team management team did not monitor monthly progress reports and some were late or missing. Some reports merely repeated the contents of previous reviews. The on-site Home Office team was overstretched and detainees reported negatively on contact with them."*[22]

**The effectiveness of current UK alternatives to detention**

27. We see little evidence during inspection of casework files that existing alternatives to detention have been considered and assessed prior to a decision to detain and on an ongoing basis when it is reviewed periodically. Once detention is authorised, detainees often struggle to access bail or temporary admission due to a lack of information about these and the lack of advice. For example, at Morton Hall, bail rights were not explained.[23]

**Areas where improvements could be made**

28. The following points are synthesised from inspection findings and recommendations to the Home Office and IRC managers, and we hope provide a useful focus for the detention inquiry:

a) Access to independent immigration advice and representation should be prioritised. Detainees, IRC staff and legal representatives should clearly understand the Legal Aid Agency's legal surgery arrangements and detainees' entitlement to free representation.

b) There should be improvements to casework processes so that detention is for the minimum period necessary for the stated purpose. Decisions to maintain detention should be based on a realistic appraisal of the prospects of removal and made in accordance with the law. There

[21] Para 1.91, Dover inspection report, Ibid.

[22] P14, Harmondsworth inspection report, Ibid.

[23] Announced inspection of Morton Hall Immigration Removal Centre (4–8 March 2013) at: http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/morton-hall-2013.pdf

should be independent reviews of all cases where detainees have been held for lengthy periods to establish whether prolonged detention is justified.

c) No person alleging torture should be detained, unless the allegation has been fully investigated and rejected, and detainees should be released immediately on the receipt of independent medical evidence of torture. Urgent attention is needed to the Rule 35 process to ensure it acts as an effective safeguard.

d) Detainees with enduring mental health illnesses should not be detained, and pregnant detainees should only be detained in the most exceptional circumstances. The continued detention of pregnant women should be considered in line with the Home Office's published policy on the detention of pregnant women.

e) The living environment in all IRCs should be more open and less prisonlike, and security measures should reflect the generally low-risk immigration detainee population.

f) Immigration detainees should not be held in prisons, other than in exceptional circumstances following risk assessment.

g) Access to internet, social media and skype should be facilitated so that detainees can easily and cheaply communicate with friends, supporters and family in the UK and overseas and access support organisations and lawyers freely.

h) Detainees' welfare needs should be systematically assessed early in their detention. Welfare assistance should be embedded and support offered throughout the detention period, especially in preparation for release or removal.

[redacted] 1 October 2014

HM Chief Inspector of Prisons

**Annex 1**

All Inspectorate of Prisons reports include a summary of an establishment's performance against the model of a healthy establishment. The four tests of a healthy establishment are:

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|---|---|
| **Safety** | that detainees are held in safety and with due regard to the insecurity of their position |
| **Respect** | that detainees are treated with respect for their human dignity and the circumstances of their detention |
| **Activities** | that the centre encourages activities and provides facilities to preserve and promote the mental and physical well-being of detainees |
| **Preparation for removal and release** | that detainees are able to maintain contact with family, friends, support groups, legal representatives and advisers, access information about their country of origin and be prepared for their release, transfer or removal. Detainees are able to retain or recover their property. |

Under each test, we make an assessment of outcomes for detainees and therefore of the establishment's overall performance against the test. In some cases, this performance will be affected by matters outside the establishment's direct control, which need to be addressed by the Home Office.

- **outcomes for detainees are good against this healthy establishment test.**
  There is no evidence that outcomes for detainees are being adversely affected in any significant areas.

- **outcomes for detainees are reasonably good against this healthy establishment test.**
  There is evidence of adverse outcomes for detainees in only a small number of areas. For the majority, there are no significant concerns. Procedures to safeguard outcomes are in place.

- **outcomes for detainees are not sufficiently good against this healthy establishment test.**
  There is evidence that outcomes for detainees are being adversely affected in many areas or particularly in those areas of greatest importance to the well-being of detainees. Problems/concerns, if left unattended, are likely to become areas of serious concern.

- **outcomes for detainees are poor against this healthy establishment test.**
  There is evidence that the outcomes for detainees are seriously affected by current practice. There is a failure to ensure even adequate treatment of and/or conditions for detainees. Immediate remedial action is required.

**Figure 1: Outcomes in full inspections of IRCs, April 2013– July 2014**

| | Safety | Respect | Purposeful activity | Preparation for release |
|---|---|---|---|---|
| **Colnbrook** | Reasonably good | Not sufficiently good | Reasonably good | Reasonably good |
| **Morton Hall** | Reasonably good | Good | Good | Good |
| **Brook House** | Reasonably good | Reasonably good | Reasonably good | Not sufficiently good |
| **Yarl's Wood** | Reasonably good | Good | Reasonably good | Good |
| **Harmondsworth** | Not sufficiently good | Not sufficiently good | Reasonably good | Reasonably good |
| **Haslar** | Reasonably good | Good | Good | Reasonably good |
| **Dover** | Reasonably good | Not sufficiently good | Reasonably good | Not sufficiently good |
| **Cedars** | Reasonably good | Good | Good | Good |