

Submission from Bail for Immigration Detainees (BiD) and Medical Justice to the International Covenant on Civil and Political Rights periodic review of the UK: January 2024

About BiD

BiD is an independent national charity established in 1999 to challenge immigration detention. We assist those held under immigration powers in removal centres and prisons to secure their release from detention through the provision of free legal advice, information and representation. We are accredited by the Office of the Immigration Services Commissioner (OISC). In 2014 BiD set up a project dedicated to providing assistance for people detained in prisons for immigration reasons. We also provide legal advice and representation to people for their deportation appeals. We are entirely reliant on charitable donations, and we are not in receipt of legal aid funding. We do, however, call for the provision of legal aid funding to everyone held in detention or facing deportation. Between 1 August 2022 and 31 July 2023, BiD provided advice to 1960 people. Alongside our legal casework, we engage in research, policy advocacy and strategic litigation to secure change in detention policy and practice. BiD campaigns for an end to immigration detention. Find out more about BiD's work on our website: www.biduk.org

About Medical Justice

Medical Justice is the only charity in the UK that sends independent volunteer clinicians into all the Immigration Removal Centres (IRCs) across the UK to medically assess people held in detention. Our clinicians assess the physical and mental health of clients in detention and write medico-legal reports documenting physical injuries and scarring attributed to torture or other ill-treatment, mental health conditions, the deterioration and lack of appropriate healthcare in detention. We assess the impact of detention, continued detention and the conditions of detention on any identified physical or mental disorder as well as identify and assess injuries and mistreatment sustained during attempted removal.

We assist our clients to access competent legal advice and representation to ensure that the strength of the expert medical evidence and its implication for the legality of detention and treatment in detention is properly deployed. In legal challenges, lawyers utilise evidence from our casework and our research into systemic failures in healthcare provision, the harm caused by the absence of effective safeguards, and the adverse effect of immigration detention itself, in terms of its indefinite nature and constant threat of removal, on the health of people in detention.

We receive over 500 referrals from people held in detention each year and have gathered a sizeable, unique and growing medical evidence base. Evidence from our casework informs our research, policy work, parliamentary advocacy and strategic litigation, with the aim of securing lasting change in reducing, if not ending administrative detention for immigration purposes. Medical Justice believes the only way to ultimately eradicate endemic healthcare failures in immigration detention is to end the use of immigration detention, a position supported by the British Medical Association (BMA), amongst others.

Introduction

This is a joint submission from Medical Justice and Bail for Immigration Detainees (BiD) to the ICCPR's upcoming periodic review of the United Kingdom. It focuses on our concerns about the current situation in immigration detention. Our comments draw on both organisation's casework experience, as well as recent judgments, research, monitoring bodies' reports and the Brook House Inquiry's findings.

People seeking asylum and migrating to the UK can be detained by immigration officers exercising powers conferred on the Secretary of State under a number of different Immigration Legislations.¹ These powers have been enshrined in policy and practice via non-statutory documents such as the Home Office's Detention: General Instructions.²

Since the last periodic review, there have been a number of harmful legislative and policy changes to detention and removal. The Nationality & Borders Act 2022 (NABA) criminalised entry to the UK via irregular routes and in 2023, the UK government passed the Illegal Migration Act (IMA) which significantly expanded detention powers. The Act limits judicial oversight as the decision on what is a reasonable period of detention now sits with the Secretary of State for the Home Department (SSHD) rather than the courts.³ This allows the SSHD to detain people even when removal from the UK is not imminent. In order to be workable, the government plans to massively expand the detention estate⁴.

In June 2022, the European Court of Human Rights (ECHR) issued a series of last-minute injunctions which stopped the removal of people seeking asylum and cancelled the flight.⁵ The Supreme Court has since unanimously held that Rwanda is not a safe country and that it would be unlawful for refugees to be removed there. It held that there are substantial grounds to believe that asylum seekers would face a real risk of refoulement. The Safety of Rwanda Bill seeks to overturn the Supreme Court judgement and the Bill puts the UK on a direct collision course with the European Court of Human Rights.⁶

This submission is divided into six sections. The first five sections were written by BiD and are as follows: legal and policy framework, access to justice, family separation, deportation and the use of prisons for immigration detention. The sixth section, written by Medical Justice, concerns the failure to protect vulnerable adults in immigration detention.

¹ The Immigration Act 1971; the Immigration and Asylum Act 1999; Nationality, Immigration and Asylum Act 2002; UK Borders Act 2007; Citizenship Immigration and Borders Act 2009.

² Available at

<https://assets.publishing.service.gov.uk/media/6509c3af22a783000d43e8cf/Detention+General+instructions.pdf>

³ Illegal Migration Act – Section 12 - Period for which persons may be detained

⁴ https://hubble-live-assets.s3.eu-west-1.amazonaws.com/biduk/file_asset/file/675/220828_joint_Campsfield_House_and_Haslar_briefing.pdf

⁵ [First UK deportation flight to Rwanda cancelled after European court intervention – as it happened | Politics | The Guardian](https://www.theguardian.com/politics/2022/jun/23/first-uk-deportation-flight-to-rwanda-cancelled-after-european-court-intervention)

⁶ See for more information: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2024/01/Libertys-briefing-on-the-Safety-of-Rwanda-Bill-for-Second-Reading-HoL-January-2024.pdf>

Section 1: *Legal and policy framework*: Lack of judicial oversight, safeguards and the insufficiently robust legal and policy framework governing immigration detention means that people are frequently unlawfully detained, or held for excessive periods.

Prior to the Illegal Migration Act, immigration detention was permitted for identification purposes, or to affect an imminent removal. Case law, including the “Hardial Singh” principles⁷ makes this clear. However, the few safeguards against unjust or arbitrary deprivation of liberty have been eroded under the Act.

Section 12 of the Illegal Migration Act 2023 seeks to ‘codify’ the Hardial Singh principles (see below) by passing responsibility for assessing the Hardial Singh principles into the hands of the Home Office, while also amending the second and third Haridal Singh principles. The second Hardial Singh principle states that detention may only be used for a period that is reasonable in all circumstances. The third Hardial Singh principle states that if, before the expiry of a reasonable period, it becomes apparent that removal will not be able to take effect within a reasonable period, the SSHD should not exercise the power of detention. However, from the 28th of September 2023, the decision on what is a reasonable period of detention will now sit with the SSHD. The Act also expands powers whereby detention may also be enforced for the purposes of examination, for removal to be carried out, the decision to be made or for removal directions to be given. A person may also be detained for a further period as, in the opinion of the SSHD, is considered to be reasonably necessary for arrangements on release to be made.

When the Home Office detains someone, it must provide them with an ‘IS.91’ form. In practice, the ‘IS.91’ form is a box-ticking exercise as individuals are not given sufficient or personalised reasons in writing as to why they are being detained and there is no requirement for the Home Office to provide evidence for the assertions. Certainly, detention is not demonstrated to be used sparingly and for the shortest period necessary, as set out in the Home Office’s ‘Detention: General Instructions’. Home Office statistics from September 2022 reveal that 1,122 out of 2,077 people (54%) were in detention for a period in between 28 days to 48 months or more.⁸

There is no maximum period of detention. The IMA includes the power to prevent a person from applying for immigration bail within the first 28 days of detention under Section 13⁹ however this is not yet in force. However, the Brook House Inquiry Report, a statutory inquiry into abuse & mistreatment of people detained in Brook House IRC, has since recommended a 28-day time limit. Whilst the government’s response to the Inquiry’s recommendations is due in March 2024, we are

⁷ See *R v. Governor of Durham Prison, Ex parte Singh*, [1984] 1 All ER 983, [1984] 1 WLR 704, [1983] Imm AR 198, United Kingdom: High Court (England and Wales), 13 December 1983. Available at <http://www.bailii.org/ew/cases/EWHC/QB/1983/1.html/>. The Hardial Singh Principles were restated by the Court of Appeal in two important cases: *R (I) v SSHD* [2003] INLR 196 and adopted by the Supreme Court in *Lumba v SSHD* [2011] UKSC 12. In *I Dyson LJ* stated that there were four such principles:

- (i) The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
- (ii) The deportee may only be detained for a period that is reasonable in all the circumstances;
- (iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;
- (iv) The Secretary of State should act with the reasonable diligence and expedition to effect removal.

⁸ Home Office Summary Table - Published September 2023 - Det_03c

⁹ Illegal Migration Act – Section 13 - Powers to grant immigration bail

concerned that the government has implied that they will not be adopting a time limit in a debate in the House of Lords in January 2024.¹⁰ BID recommends the end of immigration detention, however whilst detention remains, BID would welcome a time-limit.

Moreover, in the absence of automatic judicial oversight, a challenge to an unlawful Home Office decision to detain must be initiated by the person held in immigration detention, often after an unlawful decision and after harm has already occurred. People detained are therefore required to understand complex immigration and public law principles and common law sufficiently to apply for permission to judicially review the decision to detain them, or they must find a lawyer willing and sufficiently competent to represent them in a judicial review (or more rarely, habeas corpus) challenge before the courts. Access to quality immigration advice within detention is very limited.¹¹

Despite these limitations, the Home Office is frequently found to have acted unlawfully in its use of immigration detention. Compensation pay-outs for wrongful detention is increasing. In 2022-23, the Home Office paid out £16.1 million in 736 cases of wrongful detention.¹² This compares to £12.7 million in 572 cases the previous year.¹³ Furthermore, these cases may be the tip of the iceberg because there will be many individuals who are not able to access the high-quality legal advice required to bring an unlawful detention case. As the decision on whether the length of a person's detention is reasonable now sits with the SSHD, rather than the courts, it will be harder to challenge on public law grounds.

Indeed, detention is frequently used in a way that is inconsistent with its statutory purpose or the limitations set out in common law. In the majority of instances detention is not used to effect removal. In the year ending September 2023, 16,363 entered the detention and 16,674 people left the detention estate, of whom only 27% were removed at the end of their period of detention. 68% of people leaving detention were bailed, and most were bailed due to an asylum application.¹⁴

HM Chief Inspector 2022/23 Annual Report found many people are still being held in IRCs for a long period of time, including people who have been identified as vulnerable by the Home Office.¹⁵

We submit that the UK's immigration detention system does not have a sufficiently robust legal and policy framework to prevent wrongful detention. There are none of the safeguards that there should be to prevent wrongful deprivation of liberty such as those which exist in the criminal justice system, including strict custody time limits, independent judicial oversight and automatic legal advice and representation.

¹⁰ <https://hansard.parliament.uk/lords/2024-01-11/debates/126E6881-203B-4CF2-9F31-1A05C786106D/ImmigrationDetentionBrookHouseInquiry>

¹¹ For more information see BID's Legal Advice Surveys <https://www.biduk.org/pages/106-bid-legal-advice-surveys>

¹² Home Office Annual Reports & Accounts 2022-23 page 195

¹³ The Migration Observatory - Immigration Detention in the UK - Nov 2022

¹⁴ Home Office data - September 2023 - <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2023/how-many-people-are-detained-or-returned>

¹⁵ HM Chief Inspector of Prisons for England & Wales Annual Report 2022-23

Section 2: *Access to Justice*: Deficiencies in access to quality legal advice and representation mean that people in detention have difficulty accessing their legal rights including the right to challenge their detention or removal from the UK.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) removed non-asylum immigration cases from within the scope of legal aid funding. The LASPO cuts have had a direct impact on people detained under immigration powers and the consequences of these cuts, alongside the implementation of the government’s hostile environment policy, have been devastating. The government’s own review of LASPO showed an 85% reduction in legal help for non-asylum immigration matters, and a 62% reduction in full representation.¹⁶ LASPO reduced the rates paid for legal work and led to a reduction in the number of legal aid providers.

Consequently, many people detained do not have legal representatives. Prior to the LASPO, BID found 79% of surveyed detainees reported that they had a legal representative, 75% of which were funded by legal aid. However, since the cuts were implemented BID has found that there has only been one year where the number of people with a legal representative was above 60% and in a number of years this figure has been below 50%. BID’s most recent legal advice surveys reveal 43% of respondents in IRCs do not have legal representation¹⁷ and 75% of respondents detained in prisons do not have legal representation.¹⁸

It is almost impossible to succeed in a deportation appeal without legal aid representation. Those paying privately are forced to scrape together funds from friends and family to pay for private legal representation. These fee-paying clients often have insufficient means to pay for enough immigration advice to progress or conclude their case, especially if the case progresses through the higher courts. It is well documented that the Home Office places a high evidentiary burden upon those subject to the Immigration Rules, and in order to succeed in a deportation appeal, applicants will need to prove the strength of their family life in the UK through expert reports, from an independent social worker or a psychiatrist. Such reports are essential to success in deportation cases but often cost over £1,500 and would thus usually be unaffordable to those paying privately.

It is also unreasonable to expect that individuals could bring a judicial review to challenge the lawfulness of their detention without access to legal representation. This would require an understanding of primary and secondary legislation, as well as rafts of Home Office policies and guidance. The legislative provisions have been repeatedly amended and expanded¹⁹ and the

¹⁶ LASPO Post-Implementation Review 2019

¹⁷ BID Legal Advice Survey - August 2023

¹⁸ BID Prison Legal Advice Survey 2023

¹⁹ Immigration legal provisions and can be found in statutes from 1971, 1988, 1999, 2002, 2004, 2006, 2007, 2008, 2009, 2014 and 2016. Refer to Colin Yeo, “How complex is UK immigration law and is this a problem?”, *Free Movement*, 24 January 2018, retrieved from <https://www.freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/>

Immigration Rules have more than doubled in length since they were drafted in 2010 to 2018.²⁰ Claimants would also need an understanding of relevant case law which has proliferated considerably in recent years.

Legal advice in immigration detention is provided under the Detention Duty Advice Scheme (DDAS). Under the DDAS, detainees can book a half-hour appointment with a legal aid immigration lawyer, and each firm that is contracted to give advice in that detention centre is responsible for the provision of advice for a week at a time. In September 2018 the Legal Aid Agency made changes to the DDAS contract and dramatically increased the number of providers. However, such contracts have proven to be short-lived, with providers relinquishing their legal aid contracts. Indeed, more than 30% of immigration and asylum legal aid providers who were given contracts in September 2019 had stopped delivering legal aid work by March 2023.²¹

In the 13 years that we have been carrying out the legal advice survey we have consistently found:

- Many detained people are unrepresented
- People detained frequently have to wait over a week for their appointment with the solicitor
- The quality of advice given at DDAS appointments is highly variable
- The cases of people detained are often not taken on for representation after an appointment with the solicitor

It is BID's view that changes to the DDAS have led to a significant reduction in the quality of legal advice in immigration detention, which in turn has affected our clients' ability to access their right to liberty and to challenge immigration decisions. Concerns about the DDAS have been expressed by key stakeholders including the Chair of the Independent Monitoring Board²², the Parliamentary Joint Committee on Human Rights²³, Her Majesty's Inspector of Prisons²⁴, and Dr Jo Wilding²⁵.

²⁰ Martha Bozic, Caelainn Barrm, Niamh McIntyre and Poppy Noor, "Revealed: immigration rules in UK more than double in length", *The Guardian*, 27 August 2018, retrieved from <https://www.theguardian.com/uk-news/2018/aug/27/revealed-immigration-rules-have-more-than-doubled-in-length-since-2010>

²¹ The Conversation: The legal aid sector is collapsing and millions more may soon be without access to justice – new data. June 2023

²² Joint Committee on Human Rights, Examination of Witnesses: Dame Anne Owers, Jane Leech and Hindpal Singh Bhui <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/immigration-detention/oral/92251.html>

²³ Joint Committee on Human Rights *Immigration Detention* Sixteenth Report of Session 2017-19 pg 20 <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf>

²⁴ Report on an unannounced inspection of Colnbrook Immigration Removal Centre by HM Chief Inspector of Prisons <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/04/Colnbrook-web-2018.pdf>

²⁵ *Droughts and Deserts: A report on the immigration legal aid market*, Dr Jo Wilding. <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>

Section 3: *Family Separation*. Families are routinely separated by reason of detention and deportation with little attention paid to the best interests of the children involved.

The Home Office has a statutory duty to safeguard and promote the welfare of children in the UK under section 55 of the Borders, Citizenship and Immigration Act 2009 (BCIA 2009), Article 24 of the Charter of Fundamental Rights (CFR) and the UN Convention on the Rights of the Child (UNCRC), Articles 3, 9 and 12. To ensure that the Home Office complies with this duty, its own policies set out very clear guidance with regard to safeguarding and promoting the best interests of children, and the process that must be followed to comprehensively assess these best interests. Where a Home Office decision will have an impact on a child – for instance, the decision to separate a family for the purpose of detention or deportation – they must treat the best interests of any child(ren) affected by that decision as a *primary consideration*.

Advice must be sought from the ‘Office of the Children’s Champion’ (OCC), an internal Home Office body that offers advice to decision-makers on the implications of decisions on the welfare of children. Home Office policies acknowledge that the separation of a parent from their child has an impact on the ‘emotional development’ and ‘identity development’ of the child²⁶ and that “*If there is a subsisting relationship between the parent and the child, the best interests of the child will almost always be in the liberty of the parent*”.²⁷ The section 55 policies clearly place the burden of enquiry on the Home Office, but in BID’s experience they are rarely complied with. Time and again we see parents with caring responsibilities being detained, the Home Office having made no enquiries as to the children’s welfare.

There is a wealth of evidence in the public domain that illustrates the fact that children can be harmed by separation from their parents.²⁸ In 2021, BID’s “*Excessively Cruel*” study highlighted families placed in extreme practical, financial and emotional hardship by extended periods of uncertainty under the constant threat that family life will be brought to a permanent end. The mental health consequences of the ordeal were severe, particularly for children. In the interviews we carried out, fathers facing deportation reported their children developing anxiety; crying constantly; unable to let their dad out of their sight; withdrawing from everything; loss of appetite; difficulty sleeping; having nightmares; and in one particularly serious case self-harm and attempted suicide.²⁹

²⁶ Family separations Version 4.0 Published for Home Office staff on 11 December 2017
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666491/family_separations.pdf

²⁷ Detention of families, v7.0, p.12 “Detaining foreign national offenders (FNOs) with parental responsibility”
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488916/Detention_of_families_v7.0.pdf

²⁸ See for example Bowlby, J. 1973 *Attachment and Loss: Vol. 2, Separation: Anxiety and Anger*; Bartholomew, K. & Horowitz, L.M 1991 ‘Attachment styles among young adults: a test of a four-category model’ *Journal of Personality and Social Psychology* 61(2) pp226-44; Dallos, R. & Shaw, S. 2006 ‘Attachment and adolescent depression: impacts of early attachment experiences’ *Attachment & Human Development* 7:4 pp409-424, Beresford S, “‘What about me?’ The impact on children when mothers are involved in the criminal justice system’, *Prison Reform Trust*.

²⁹ BID “Excessively Cruel”: Detention, Deportation and Separated Families - 2021

In 2019, BiD conducted an analysis of 28 cases where we made an application to the Home Office for our client to be released on bail. In each of these applications we requested full disclosure of any correspondence with the OCC or LACS, citing evidence of the Home Office's failure to show that it had complied with its section 55 duty or its own policies by considering the best interests of the child in any decision to detain or maintain detention up to that point. In 12 of these cases the Home Office had already accepted that the client had a genuine and subsisting relationship with a child in the UK; in the remaining cases we made arguments to this effect in the application. In both situations, the Home Office's Section 55 duty would require a reference to be made to the OCC, and a reference to LACS in those cases where the local authority had been involved with the family in some way. Just 3 of these applications led to release. Of even greater concern was the fact that despite explicitly asking for disclosure of any correspondence, not a single response to these bail applications contained evidence that the OCC had been contacted and in only one case was there evidence that a local authority had been contacted. The responses simply failed to mention the best interests of the children.

The ICCPR Committee has previously raised concerns on the practice of detaining parents of young children without making suitable arrangements for the child in [list of issues](#) in the eight periodic report.

Since the Illegal Migration Act 2023 passed, children may also be removed for the purposes of reunion with a parent and unaccompanied children may be removed from the UK as soon as they turn 18. This is not yet enforced. The Act has also disapplied the duty to consult the Independent Family Returns Panel on best safeguarding practices and the welfare of children and families in relation to removal and detention.

Section 4: *Deportations: Article 8 right to family and private life and Exceptional Case Funding*

Under the UK Borders Act 2007, those sentenced to 12 months or more in prison are liable for 'automatic deportation' unless they can show that deportation would breach their human rights. The Act enshrined in law that it was in the public interest to deport 'foreign criminals.' Under the Immigration Act 1971, deportation can also be carried out even if the sentence is less than 12 months or there is no sentence at all on the basis that the SSHD considers it 'conducive to the public good.' As LASPO 2012 removed all non-asylum immigration matters from the scope of legal aid, people challenging their deportation on the basis of their Article 8 right to family and private life no longer have access to legal aid.

Additionally, Section 117C of the 2014 Immigration Act makes it extremely difficult to challenge deportation on the basis of Article 8. 117C (1) of the act states that "the deportation of foreign criminals is in the *public interest*", unless one of two exceptions apply:

- The individual has been lawfully resident in the UK for most of their life, is socially and culturally integrated in the UK, and would face *very significant obstacles* to integration into the country to which they face deportation

- The individual has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting relationship with a qualifying child, and the effect of their deportation would be *unduly harsh*³⁰

The high evidentiary threshold means that many will require expert reports. However, few can afford to pay for the expert reports needed to evidence an Article 8 case to the satisfaction of the courts without legal aid.

LASPO introduced Exceptional Case Funding (ECF), an application whereby people may apply for legal aid on specific and limited grounds - where the absence of legal aid would result in serious unfairness, a breach of human and/or denial of effective access to justice. However, BID's casework has found that many people facing deportation require legal assistance in order to have a fair opportunity to make out their ECF and case. In 2019, BID set up a project to work with pro-bono lawyers from 4 commercial firms to prepare ECF applications for individuals. The ECF application process is complex and BID's research has found that paradoxically, many people struggle to apply for legal aid without legal assistance.³¹ BID received 28 survey responses from pro-bono lawyers assisting people with ECF applications and found 100% of respondents doubted whether their applicant could complete an ECF application without legal help, speaking to the complexity of the process. BID also found that it was more difficult for lawyers assisting them to communicate and take instructions if applicants were held in a detention centre or prison, hindering their ability to access justice.

Furthermore, once ECF is granted, BID also found that people facing deportation are represented with the additional hurdle of finding a legal aid lawyer to take on their case.³² Pro-bono lawyers made numerous referrals and found many legal aid lawyers lack the capacity to take on cases and they would then be required to apply for adjournments of the applicant's deportation appeal until a lawyer can be sourced.

More British than foreign

A cohort of people facing automatic deportation despite having strong Article 8 claims actually came to the UK as a child or perhaps were born here, were educated in British schools, are a part of British communities, and have no connection to the place the Home Office proposes to deport them to. Many would have been eligible for British citizenship but never knew they had to apply or lacked the resources to do so. Others grew up under the care of the Local Authority, who failed to register them as British citizens.

For example, BID worked on the case of Mr C. Mr C arrived in the UK as a minor and was a 'Looked After Child', meaning he had been in the care of the local authority. His immediate family were in the UK and he has a British partner. After being sentenced to over four years, he faced removal from the UK. He was granted ECF in November 2022 however he was not able to be referred out until March 2022. In total 59 firms were contacted and two online postings. More cases like Mr C's can be found

³⁰ 2014 Immigration act Section 117C <http://www.legislation.gov.uk/ukpga/2014/22/section/19/enacted>

³¹ BID Research Report - Hurdle after Hurdle: The Struggle for Advice & Representation through ECF - Part One

³² BID Research Report - Hurdle after Hurdle: The Struggle for Advice & Representation through ECF - Part Two

in BID's "Hurdle after Hurdle" report³³ and in BID's opinion, cases such as this represent a trend on the systematic issues hindering access to justice for people's Article 8 right.

We ask whether it is truly in the public interest for people born and raised in the UK, with family and communities here, to be deported. The hysteria around the concept of 'foreign criminals', and the ruthless deportation policies that have followed, obscures the fact that these individuals are in fact members of British society and British themselves in everything but immigration status.

Section 5: *Use of Prisons: People who are held in prisons under immigration powers face additional disadvantages which infringe on the right to liberty and access to justice*

At the end of June 2023, there were 254 people detained in UK prisons under immigration powers.³⁴ People detained in prisons have no internet access and only limited access to the telephone. They rely on the prison postal system which can cause delays and documents are lost in the post. In order to make calls, people are given a Personal Identification Number (PIN) that they enter before dialling the number they want to call. However, before making a call, individuals must make an application to have a number added to their PIN. They cannot make a call until this application has been approved. There are also different limits set by the prisons to how many numbers can be added to a PIN, the length of a phone call and the charges applied to calls.

Prior to 2021, there was no equivalent to the DDA service in prisons. During this time, there was an onus on the person detained in prison, with limited ability to communicate, to contact a legal aid solicitor and persuade them to visit the prison in order to take instructions and open a file to represent them. However, in February 2021, BID intervened in the High Court case of *SM v Lord Chancellor* whereby the courts found that the lack of free legal advice for people held under immigration powers in prisons was discriminatory and unlawful. As a result of *SM v Lord Chancellor*, the Ministry of Justice introduced the telephone legal advice scheme (TLAS) so that individuals detained under immigration powers in prisons would have equivalent access to legal representation.

BID has conducted research in order to establish whether the TLAS has resulted in improvements in accessing immigration legal advice; however, lack of representation continues to be high. BID's most recent prison advice survey found that 75% of respondents do not have legal representation for their case. 75% of respondents also said they had not received 30 minutes free legal advice under the TLAS.³⁵

People also continue to face practical problems in utilising the scheme with 50% of respondents saying that they did not have numbers automatically added to their PIN.

³³ BID Research Report - Hurdle after Hurdle: The Struggle for Advice & Representation through ECF - Annex A

³⁴ Home Office Statistics 2023

³⁵ BID Prison Legal Advice Survey Report 2023

Additionally, another key reason why people being held under immigration powers should not be held in prisons is that there is no equivalent mechanism to Rule 35 of the Detention Centre Rules 2001. Rule 35, as explained below, is central to alerting the Home Office to detained people's vulnerabilities and triggering a review of the suitability of the continued use of detention. A Rule 35 report can therefore have a significant role in securing release for individuals on bail on the basis of vulnerability. However, this mechanism is absent in prisons for people detained under immigration powers.

Section 6: *Vulnerable Adults in Immigration Detention*. The UK government continues to detain individuals for prolonged periods and fails to implement effective safeguards and policies to protect vulnerable persons (section written by Medical Justice)

The Committee have previously raised concerns about the UK government's failure to protect vulnerable people from the harm of immigration detention. It notes in its [list of issues](#) a request for comment on the implementation of the Adults at Risk in Immigration Detention Policy and the impact of such policy. This section covers the alarming situation in detention for vulnerable people, the precise cohort that this policy should be protecting. It highlights the failures in safeguards, healthcare, harm of detention, as well as the impact of the use of force and segregation.

Statutory Inquiry into abuse at Brook House Immigration Removal Centre (IRC)

Since its last review of the UK, immigration detention has been under considerable scrutiny with the Brook House Inquiry.

The Brook House Inquiry was set up by the Home Secretary in November 2019 to investigate the shocking mistreatment of detained individuals at Brook House IRC, shown in the BBC Panorama programme 'Undercover: Britain's Immigration Secrets'³⁶ in September 2017. The Home Secretary was compelled to set up the Inquiry due to legal proceedings brought by former detained persons subject to mistreatment broadcast in the programme. Panorama revealed widespread abuse, both verbal and physical, of detained persons including undercover footage of a vulnerable detained person being choked, with a threat to kill him, demeaned and threatened by other officers with further violence after attempting suicide.

The Inquiry published its report in September 2023. It provided a forensic analysis of how the abuse uncovered by Panorama in 2017 occurred, and why. It found how the dangerous use of force, a wholesale failure of safeguards and a culture of dehumanisation led to 19 instances of inhuman or degrading treatment, breaching Article 3 of the European Convention on Human Rights (ECHR), within a 5-month period at Brook House IRC. It exposed failures, mistreatment and indifference at every level; from nurses and doctors, IRC staff, to Home Office civil servants. Light was shone on the

³⁶ Undercover: Britain's Immigration Secrets", BBC, 17 March 2020

structural deficiencies in detention safeguards and processes around use of force, segregation and responses to self-harm and suicidal thoughts.

The Inquiry found a “toxic culture” at Brook House, a “culture of dehumanisation of detained people”, and a “breeding ground for racist views”. Evidence of pervasive derogatory and violent verbal abuse and racism revealed an underlying lack of any empathy even when people were at their most distressed and vulnerable - even in life-threatening situations.

Home Office and IRC staff, including some who are still in post, were described by the Inquiry as ‘unapologetic’ and ‘intransigent’.

It exposed inexcusable and unconscionable dehumanising abuse of vulnerable people. It showed how the infliction of pain, suffering and humiliation became normalised, even whilst detained people were naked, and in one case where a man was emaciated and could barely hold his own body weight.

Medical Justice has consistently evidenced the continuing harm and dysfunctional safeguards to the Home Office. Our “[If he dies, he dies](#)” report published in December 2023 is the latest iteration of this work, which has stretched back over the past 18 years. All the failings documented in this report have taken place after the Inquiry’s public hearings, across all the UK’s IRCs.

Vulnerabilities in immigration detention

The high rates of mental illness within immigration detention and the harmful impact that being in detention has on people’s mental health, are widely evidenced.³⁷

People in detention have described a range of factors contributing to this including fear for their safety, criminalisation, experiences of physical and verbal abuse and in particular its indeterminate nature. All of these contribute to experiences of loss of agency, entrapment, and feelings of hopelessness.³⁸

The Royal College of Psychiatrists published a detailed position statement in 2021 summarising the current research concerning the adverse impact of immigration detention.³⁹ The statement states that detained people with pre-existing vulnerabilities such as mental health issues or survivors of torture and other forms of cruel or inhumane treatment, including sexual violence and gender-based violence, were at particular risk of harm as a result of detention. The position statement concludes that IRCs were likely to precipitate a significant deterioration of mental health in most cases.

³⁷ See Verhulsdonk, I., Shahab, M., & Molendijk, M. (2021) Prevalence of Psychiatric Disorders Among Refugees and Migrants in Immigration Detention: Systematic Review with Meta-analysis. *BJPsych Open* 7(6); Bosworth M. (2016) Appendix 5: The Mental Health Literature Survey Sub-Review. Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office; M von Werthern, K Robjant, Z Chui et al. (2018) The Impact of Immigration Detention on Mental Health: A Systematic Review, *BMC Psychiatry* 18: 382; and Royal College Psychiatrists [Position statement: The Detention of people with Mental Disorders in Immigration Detention](#) PS02/21, (April 2021).

³⁸ See Annex I to Duncan Lewis Closing Submissions - Witness comments on indefinite detention, [DL0000260](#); and Annex 5 to Duncan Lewis Closing Submissions - Instances of racist language in disclosure, [DL0000264](#).

³⁹ Royal College Psychiatrists [Position statement: The Detention of people with Mental Disorders in Immigration Detention](#) PS02/21, (April 2021) 18.

There is a particular focus in the position statement on survivors of torture, highlighting the research evidence of how “a history of torture alone predisposes an individual to a greater risk of harm, including deterioration in mental health and increased risk of anxiety, depression and PTSD, than would be experienced in the general detained population”.⁴⁰

Medical Justice’s casework and clinical evidence reflects this. Our “[If he dies, he dies](#)” report is an analysis of 66 clients who had a medico-legal assessment by a Medical Justice clinician between 1 June 2022 and 27 March 2023 in an IRC. Of those 66 clients:

- 52 had evidence of a history of torture;
- 29 had evidence of a history of trafficking;
- 25 had evidence of a history of both torture and trafficking;
- 63 had a diagnosis of at least one mental health condition and 38 were diagnosed with two or more mental health conditions, including but not limited to PTSD, depression, anxiety and psychotic symptoms.
- 55 clients either had a diagnosis of PTSD or had some trauma-related symptoms while in detention, such as flashbacks and nightmares.
- Four clients in the case set were determined by a Medical Justice clinician to lack mental capacity to make a particular decision.

Harm caused by immigration detention

Medical Justice clinicians found extremely high levels of harm and deterioration caused by detention. Of the 66 cases analysed in our recent report⁴¹:

- Clinicians found that 64 of the clients they assessed had deteriorated in their mental state because of detention or features associated with detention.
- All 66 clients were assessed as likely to deteriorate or deteriorate further if they remained in detention.
- Detention or features associated with detention caused harm to all 66 clients. Detention was also found to be likely to cause further harm to all 66 if they remained in detention.

Our evidence shows both how people with pre-existing mental health conditions deteriorated in detention, how people developed new symptoms of mental health conditions that were caused by the detention setting, and how people developed suicidal thoughts.

Self-harm and suicide

⁴⁰ Royal College Psychiatrists [Position statement: The Detention of people with Mental Disorders in Immigration Detention](#) PS02/21, (April 2021) 13.

⁴¹ Medical Justice “[If he dies, he dies](#)” [What has changed since the Brook House Inquiry?](#) (December 2023).

Research has shown how immigration detention can increase the risk of suicide and self-harm.⁴² Medical Justice clinicians also find an alarmingly high suicide risk level. In our analysis of the 66 clients⁴³, Medical Justice clinicians assessed that:

- 43 clients' risk of suicide had increased since they had been detained.
- Clinicians expressed concern for a further 14 clients, assessing them as likely to have an increased risk of suicide if they remained in detention, even though the risk had not yet increased at the point of the assessment; this occurs because the risk of destabilisation does not reduce, but can increase, when people in this situation remain in detention.
- 49 of the 66 people in the study were recorded as having self-harmed, suicidal thoughts and/or attempted suicide in detention.
- 10 people both self-harmed and attempted suicide in detention.

More broadly, in 2023, there were a number of incidents that further demonstrate the high levels of suicidality:

- The [death of Alfred Dosku in Nov 2023 at Brook House IRC](#), following his attempted suicide;
- The [removal and subsequent return to UK detention in Nov 2023 of a man also detained at Brook House IRC who had attempted suicide](#)
- The [death of Frank Ospina in March 2023 at Colnbrook IRC](#), reportedly by suicide and following a previous suicide attempt. During this month, there were also no Rule 35(2) reports completed for suspected suicide risk at all⁴⁴;
- What IRC staff described as [an "attempted mass suicide" in March 2023 at Harmondsworth IRC](#).

The role of healthcare

It is particularly important to have good healthcare in circumstances where the state has removed a person's liberty and is placed in an environment which is known to be harmful. However, this is often not the case in detention. Health issues are not always identified, preventing the necessary treatment, and where health conditions are identified, the appropriate treatment is not always available.

The Brook House Inquiry found that healthcare staff were found not to understand their safeguarding obligations. There was a tendency to view detained persons as "wilfully disobedient and obstructive instead of countenancing the idea that behaviour may be manifestation of mental anguish or ill health".

The Inquiry noted evidence regarding an inability to identify PTSD symptoms citing the Clinical Lead at Brook House who said that "she was not confident her staff could identify symptoms of trauma and

⁴² Royal College of Psychiatrists (April 2021) Position Statement: The Detention of people with Mental Disorders in Immigration Detention PS02/21, 18.

⁴³ Medical Justice "[If he dies, he dies](#)" [What has changed since the Brook House Inquiry?](#) (December 2023).

⁴⁴ Home Office and Immigration Enforcement (published 24 August 2023) [Transparency data: Immigration Enforcement data: Q2 2023](#) table DT_04.

PTSD, and that neither she nor her staff had received any training on PTSD or torture awareness”.⁴⁵ We continue to see this in our casework.

Medical Justice continues to find that healthcare professionals working within IRCs, including GPs, often do not identify and diagnose a range of our clients’ mental health conditions. This is important as an individual with an unidentified or undiagnosed mental health condition would not be identified and provided with the appropriate treatment, even if available in detention. This is particularly problematic given the high prevalence of mental health conditions in detained populations and given the harm that detention can cause, including as a causal factor in new mental health problems in people who were previously well. It is also concerning as the appropriate safeguards for those people would not be triggered.

Our recent analysis of 66 clients, as documented in our report, shows that healthcare continues to fail to identify particular mental health conditions and to consistently provide adequate treatment.⁴⁶ We found instances where:

- The IRC healthcare failed to identify or explore particular mental health conditions such as PTSD, and failed to assess or explore suspected lack of mental capacity.
- Healthcare was unable to or failed to provide adequate treatment in detention for mental health conditions such as PTSD and schizophrenia and for some physical health conditions.
- Those who lacked mental capacity to make decisions relating to their detention or immigration case were not identified in detention and there is still no process in place to enable them to access independent advocacy to advance their interests.
- There were examples indicative of a worrying culture of IRC healthcare including dehumanising language and behaviour, disbelief of clients’ mental ill-health or around self-harm.

Limitations on effective treatment that can be provided in immigration detention settings

Immigration detention is not an appropriate setting for effective mental health treatment. Our clinicians repeatedly observe clients whose mental health deteriorates in immigration detention, even when provided with some treatment. The barriers to successfully treating mental illness are outlined in the above-mentioned position statement by the Royal College of Psychiatrists, which addressed the impact of detention on specific conditions. Factors intrinsic to detention include the subjective lack of safety experienced by many detained people, the inability to make plans due to the uncertainty of release or removal, fear of removal and the highly emotionally charged environment.

Management of complex mental health conditions may require specialist therapies. Whilst IRCs have primary care, a mental health team and the ability to make psychiatric referrals, they do not have access to specialist services. For example, in the community, there are separate, specialist teams for people in mental health crisis, people with psychosis, and people with PTSD. Many specialist psychological therapies are also not available in detention.

⁴⁵ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), Chapter D.8 page 179 paragraph 17.

⁴⁶ Medical Justice [“If he dies, he dies” What has changed since the Brook House Inquiry?](#) (December 2023).

The unknown length of detention also limits the effectiveness of treatment and the psychological interventions that might be possible, whilst someone is held in an IRC. Evidence-based psychological therapies have a recommended duration, which is usually planned in advance with the therapist alongside planned review points at which the duration might be changed. In the IRC setting, the duration of treatment is likely to be determined by the person's legal situation, and planning for longer-term treatments is likely to be difficult or impossible.

The Royal College of Psychiatrists position statement also clearly indicates the significant limitations to successful treatment in immigration detention for people with a mental disorder. Psychotropic medication alone is unlikely to achieve good outcomes without a broader multi-model therapeutic approach. As detention prevents community rehabilitation, it is a barrier to achieving recovery and impedes rehabilitation in functional and social aspects of mental health.⁴⁷

The detention setting is not conducive to encourage the disclosure of symptoms. People in immigration detention often do not trust healthcare staff as they are perceived to be part of the Home Office, the body holding them in detention. People in detention may also worry about confidentiality between healthcare staff and the Home Office. The culture of disbelief that exists within detention settings further deters people from disclosing symptoms, as they feel disbelieved, experience disinterest and lack of empathy.⁴⁸ People who have survived torture in their home country face additional barriers and often require additional assurances of their safety with authority figures in the UK.

The persistent mischaracterisation by healthcare staff of symptoms of serious mental illness as merely behavioural was illustrated by evidence to the Inquiry of one nurse referring to a detained person in the midst of suicidal crisis as "(having) a massive hissy fit on the floor".⁴⁹ Another attributed the distress of a detained person, who had jumped onto the suicide netting with a plate shard, to him having to do the washing-up.⁵⁰

The Brook House Inquiry, as further detailed below, found that there was a "toxic culture" amongst staff, with racism, bullying and abusive language.⁵¹

The clinical impact of a culture of disbelief has been summarised by the British Medical Association: *"Most concerning for doctors working in IRCs is the risk that they become cynical and absorb the 'culture of disbelief' - the assumption that individuals are lying or exaggerating for attention or to further their own aims - which pervades the immigration system. A frequent concern of the way that healthcare is provided in IRCs is that individuals complaining of physical or mental health problems are assumed to be lying about or exaggerating them in an attempt to manipulate or disrupt the system."*⁵²

⁴⁷ Royal College Psychiatrists [Position statement: The Detention of people with Mental Disorders in Immigration Detention](#) PS02/21, (April 2021) 10.

⁴⁸ Day 11 transcript at time-marker 46:6-11. See also [Dr Husein Oozeerally, 11 March 2022, 102-109](#)

⁴⁹ [TRN0000100_0008 \[226-229\]](#)

⁵⁰ [TRN0000005_007 \[27-35\]](#)

⁵¹ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), page 3 paragraph 1.8.

⁵² BMA (2017) 'Locked up, locked out: health and human rights in immigration detention' 56.

Systemic defects in detention and clinical safeguards for vulnerable people

The Brook House Inquiry found that a “wholesale failure” of the detention safeguards was likely to have caused actual harm to detained people. As a result, people were found to have been “allowed to deteriorate” in their mental and physical health. Such failures were found to be interlinked with the inappropriate use of segregation and a quick resort to the use of force to manage incidents of self-harm and mental health crises. Healthcare failures put vulnerable people at risk of deteriorating in their health, and of instances of mistreatment. These systemic problems in the adequacy of safeguards have not evolved and remain in place today.

Given the known adverse impact of immigration detention on health and the limitations of successfully treating mental illness in detention as outlined above, it has long been stated Home Office policy not to normally detain particularly vulnerable people, including those with pre-existing mental illnesses and survivors of torture.

This was previously set out in the Enforcement Instruction and Guidance (EIG) chapter 55.10, which listed several categories of people presumed to be unsuitable for immigration detention because of their vulnerability to its adverse effects (including survivors of torture and ‘the mentally ill’) and stated that they could only be detained “in very exceptional circumstances.”

Following the highly critical review by Steven Shaw in 2016, the policy was reformulated as the current ‘Adults At Risk (AAR) Policy’. The stated intention of the reform was to build on the previous protections, to improve safeguards for vulnerable people and to ensure fewer would be detained and for shorter periods. The AAR policy is that vulnerable individuals or adults at particular risk of harm in detention should not normally be detained and can only be detained when ‘immigration factors’ outweigh their indicators of risk.

People in detention are required to provide evidence of their vulnerability in detention. There are three levels of evidence of risk. The first evidence level (Level 1) is a declaration by the detained person about their medical or other aspects of their history that would indicate they had an indicator of risk. The second evidence level (Level 2) is where a professional person provided information that the detained person had indicators of risk. The third evidence level (Level 3) is evidence from a professional that the person fell within the categories of risk and detention would be likely to cause them harm. The policy requires ‘immigration control factors’⁵³ to be considered when taking a decision about whether the vulnerable person would be released. Only persons with Level 3 evidence of risk would have the greatest protection against continued detention.

Since vulnerable people do not necessarily have the means to produce evidence of their own vulnerability, the DCR 2001 provide for a mechanism of assessing any person entering detention and generating the evidence required to allow for those who are vulnerable due to a history of torture, trafficking, sexual violence, mental illness, disability or any other factor to be identified and promptly

⁵³ ‘Immigration control factors’ is defined widely and can include compliance issues such as having failed to agree to voluntary return, previous failure to comply with immigration bail conditions, restrictions on release from detention and conditions of temporary admission.

routed out of detention. From its inception there has been widespread criticisms of the AAR policy and extensive evidence of its ineffectiveness in facilitating identification and prompt release of vulnerable people in detention.

This mechanism is provided by Rule 34 and Rule 35 DCR 2001 and place a statutory obligation on IRC healthcare departments to identify vulnerability and communicate it to the Home Office. These are meant to work in tandem to identify vulnerable detained individuals promptly and trigger a review of their continued detention with a view to release.

Under Rule 34 DCR 2001, all people arriving at an IRC must be offered an appointment with a GP within 24 hours. At the appointment the doctor is required to undertake a mental state and physical examination of their patient.

At this consultation, or at any subsequent meeting, the GP has specific reporting obligations to the Home Office under Rule 35 DCR 2001 if the detained patient is identified as at risk in detention.

Rule 35 DCR 2001 requires GPs to formally report safeguarding concerns where they (1) consider someone's health is likely to be "injuriously affected" by detention; (2) suspect someone "may have suicidal intentions"; or (3) have concerns that someone "may have been a victim of torture".

The Rule 34 and 35 safeguards should, when operating together effectively, pre-empt and prevent a vulnerable person from being exposed to further risks of harm and deterioration in their health. This system is designed to bring such individuals promptly to the attention of the Home Office to review their suitability for continued detention.

However, in practice, the policy framework intended to protect those who are particularly vulnerable to harm in detention, has never worked effectively and continues to systemically fail to date.

Rule 34

The Brook House Inquiry found "significant deficiencies in the operation of Rule 34" which were "likely to have caused detained people to suffer actual harm".⁵⁴ These deficiencies included Rule 34 appointments not taking place, Rule 34 appointments so short that they were rendered inadequate, and mental health not being properly assessed at Rule 34 appointments.⁵⁵

It found that this "left vulnerable detained people in particular at risk of mistreatment, such as the inappropriate use of segregation and the rapid resort to use of force to manage incidents of self-harm and mental health crisis. It also meant that vulnerable people were detained when detention was not appropriate for them".⁵⁶

⁵⁴ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), Chapter D.5 page 77 paragraph 21.

⁵⁵ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), Chapter D.5 pages 74-77 paragraphs 13-20.

⁵⁶ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), Chapter D.5 page 77 paragraph 21.

The Inquiry found “the problems [with Rule 34] persist”⁵⁷ and Medical Justice’s clinical evidence further demonstrates this to be the case to date.⁵⁸

Rule 35

The Brook House Inquiry found “serious systemic failures [within the Rule 35 process], indicating a wholesale breakdown in the system of safeguards designed to protect vulnerable detained people”.⁵⁹

The Inquiry’s concerns included that there was no system in place to automatically review a detained person’s health and welfare when they had self-harmed, made a suicide attempt or there was apparent deterioration in their mental health and no mechanism for GPs to systematically review the person’s condition.

The Inquiry also found that there was no systematic approach to using Rule 35(1) and Rule 35(2) and that such failure to complete Rule 35 reports resulted in detained people’s mental health deteriorating and risk of self-harm and suicide increasing, leaving them more vulnerable to harm.⁶⁰ Medical Justice’s latest analysis and the Home Office’s own data, detailed below, shows that this issue continues to persist.

Our casework experience, as evidenced in our recent report, show that the first two limbs of Rule 35 DCR 2001 are seldom used, not because detention was not injurious to health in most cases or there were not many suicide risk cases, but because those safeguards were simply not being utilised in practice.⁶¹

This is in line with the Home Office’s own statistics. In the year ending September 2023, of the 2,147 Rule 35 reports completed across all the IRCs,⁶² only 49 were Rule 35(1) reports and only 15 were Rule 35(2) reports.⁶³ Therefore, of the total number of Rule 35 reports, only 2.28% were Rule 35(1) reports and 0.69% were Rule 35(2) reports. This is concerning given the evidence of high rates of vulnerability, harm, deterioration, and suicidality in detention. This small proportion is not unusual; since 2015, the proportion of Rule 35 reports that are Rule 35(1) reports has fluctuated between 1.17% at its lowest point in 2020, and 4.11% at its highest in 2015. Between 2015 and 2022, the proportion of Rule 35(2) reports has fluctuated between 0.22% in 2019 and 1.49% in 2022. Although the proportion of Rule

⁵⁷ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.5 page 78 paragraph 24. Also see Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.5 page 73 paragraph 10 and page 77 paragraph 22.

⁵⁸ Medical Justice [“If he dies, he dies” What has changed since the Brook House Inquiry?](#) (December 2023).

⁵⁹ 3 Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.5 page 86 paragraph 41.3 Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.5 page 86 paragraph 41.

⁶⁰ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.5 page 86 paragraphs 39.2 and 41.

⁶¹ Medical Justice [“If he dies, he dies” What has changed since the Brook House Inquiry?](#) (December 2023).

⁶² Out of 16,363 people detained in the year ending September 2023. Home Office national statistics: How many people are detained or returned? 23 November 2023.

⁶³ Home Office and Immigration Enforcement (published 23 November 2023) Transparency data: Immigration Enforcement data: Q3 2023 table DT_03.

35(2) reports has increased over 1% of all Rule 35 reports completed for the first time in 2022, the proportion is still negligible.

Given that Rule 35(1) and Rule 35(2) reports are not routinely completed, Rule 35(3) reports have inappropriately become the primary mechanism to identify those at risk of harm in detention. As the Home Office's own statistics indicate, in the year ending September 2023, of the 2,147 Rule 35 reports completed, 2,083 reports were Rule 35(3) reports.⁶⁴ This is concerning as it only applies to those with a history of torture. Individuals without a history of torture will therefore not be identified; risk of harm cannot be considered by the Home Office caseworkers responsible for reviewing their detention.

ACDT and constant watch: Disconnected and non-therapeutic processes

Assessment Care in Detention and Teamwork (ACDT) is the custodial process to identify and manage detained people at risk of self-harm and/or suicide. It is concerningly run by custodial staff, not healthcare. The Home Office stipulates that the ACDT process should be used to "manage detained individuals who are identified to be at risk of suicide or self-harm".⁶⁵ The ACDT process consists of observations (the most frequent level being constant supervision) and regular reviews led by custodial staff. A detained person can be put on constant supervision "to reduce a serious risk of them carrying out acts of self-harm or other behaviours which could lead to them accidentally or intentionally killing themselves".⁶⁶ Constant watch is an extreme measure for those in immediate and acute risk of suicide. Crucially it is a member of custodial staff, not healthcare, who remains with the detained person. The safeguarding policy of Mitie, who are contracted by the Home Office to run Heathrow and Dungavel IRCs, acknowledges that "Constant supervision must only be used at times of acute crisis and for the shortest time possible. The process of being constantly supervised by a member of staff can be de-humanising which may increase risk".⁶⁷

The Inquiry found that there was not a holistic view which is needed in relation to self-harm and suicide risk and identified a disconnect between ACDT and the other safeguarding processes, which should work together to protect vulnerable people. As a result, these issues were found to have "undoubtedly exposed vulnerable people to a risk of harm and caused actual harm to be suffered in some cases, as well as leaving certain individuals susceptible to mistreatment".⁶⁸ The Chair's view is that such disconnect is "indicative of a system not fit for purpose"⁶⁹ and that the resulting risk of harm remains today.

⁶⁴ Home Office and Immigration Enforcement (published 23 November 2023) Transparency data: Immigration Enforcement data: Q3 2023 table DT_03.

⁶⁵ Home Office (October 2022) Detention Services Order 01/2022 Assessment Care in Detention and Teamwork (ACDT) paragraph 9.

⁶⁶ Home Office (October 2022) Detention Services Order 01/2022 Assessment Care in Detention and Teamwork (ACDT) paragraph 89

⁶⁷ Mitie Care & Custody (4 December 2022) Safer Detention Operational Instruction for Heathrow IRC and Mitie Care & Custody (July 2021) Safer Detention Policy for Dungavel IRC. These policies were obtained by Medical Justice through a Freedom of Information Request, with reference number 76852.

⁶⁸ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.5 pages 96-97 paragraph 63.

⁶⁹ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.5 page 97 paragraph 64.

One clear disconnect is between ACDT and the Rule 35(1) and Rule 35(2) processes. In the period of June 2022 to March 2023, 773 ACDTs were opened across the IRCs⁷⁰ and constant supervision was opened 240 times for individuals being managed under ACDT.⁷¹ However, only 37 Rule 35(1) forms and only 26 Rule 35(2) reports were completed⁷² during that period.

Use of force

Force can be used on people detained under immigration powers, both by Detention Custody Officer in IRCs and by escort staff during removals. Rule 41 of the DCR 2001 provides that force shall not be used “unnecessarily”, and that “no more force than is necessary shall be used”.⁷³ Home Office policy permits force if it is “necessary”, “reasonable” and “proportionate to the threat being faced or the intended aim”.⁷⁴ The excessive use of force is unlawful.⁷⁵ Where force is used, the detail of the use of force must be recorded and reported to the Secretary of State.⁷⁶ There is a perfect storm of conditions in immigration detention to give rise to abuse and mistreatment of vulnerable people, as shown by the Inquiry. Such conditions continue to exist within detention, including the lack of therapeutic tools or resources to care for vulnerable detained persons, treating distressed behaviour as refractory, resulting in an inevitable recourse to coercive measures to manage mentally unwell detained people.

The Brook House Inquiry raised a number of concerns regarding the nature of the use of force, the purpose of such force, whom force was used against, and the monitoring, oversight and rules governing the use of force in IRCs. The report recognises that force is “a coercive tool which, even if used correctly, carries a risk of injury”.⁷⁷ The Inquiry found instances where force had been used to provoke and punish detained people.⁷⁸ De-escalation techniques were not always employed at all, or for long enough, and there were many incidents where force was used as a first, rather than a last, resort.⁷⁹

⁷⁰ This data is from Freedom of Information requests, obtained by Medical Justice, with reference numbers 76568, 72966, 75319, 76239.

⁷¹ This data is from Freedom of Information requests, obtained by Medical Justice, with reference numbers 76568, 72966, 75319, 76239. Note that this number does not necessarily equate to the number of individuals who have had a constant supervision opened against them whilst being managed under ACDT, as a constant supervision may have been opened for one individual on more than one occasion whilst being managed under ACDT.

⁷² The data for June 2022 is from a Freedom of Information request, obtained by Medical Justice, with reference number 71801. The data for 2022 Q3, 2022 Q4 and 2023 is from Home Office and Immigration Enforcement (published 24 August 2023) Transparency data: Immigration Enforcement data: Q2 2023 table DT_03.

⁷³ Rule 41 Detention Centre Rules 2001 (SI 2001/238).

⁷⁴ Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 6.

⁷⁵ Home Office (2022) [Use of force: Guidance for Immigration Enforcement Officers Version 3.0](#) 6.

⁷⁶ Rule 41 Detention Centre Rules 2001 (SI 2001/238).

⁷⁷ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), Chapter D.7 page 146 paragraph 33.

⁷⁸ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), Chapter D.7 page 138 paragraph 18.

⁷⁹ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) [The Brook House Inquiry Report Volume II, HC 1789-II](#), Chapter D.7 page 142 paragraphs 26-33.

Unauthorised use of force techniques were found to be employed, including the practice of handcuffing detained people with their hands secured behind their back when seated, which creates a risk of restricting oxygen to the person and thereby causing serious injury or death (referred to as ‘position asphyxia’). This practice had been removed from the Use of Force Training Manual in 2015 after the unlawful killing by guards of Mr Jimmy Mubenga in 2010.⁸⁰ Control and restraint techniques were also carried out incompetently and wrongly, risking injury.

Force was found to have been inappropriately used against naked or near-naked detained people⁸¹ and against people who were mentally and/or physically unwell⁸².

The monitoring and oversight of the use of force in the relevant period was found to be “inadequate” and as a result, to have “led to dangerous situations for detained people and staff”.⁸³ The serious failings included the absence of senior management⁸⁴, the failure to activate body worn cameras or a failure to film⁸⁵, inaccurate, undetailed or missing use of force reports⁸⁶, debriefs that were “cursory and demonstrated a complete lack of reflection”⁸⁷, and a lack of a proper review process or overall governance system.⁸⁸

The Inquiry raised concerns about healthcare staff not understanding their safeguarding role in the context of use of force on a detained person, emphasising that healthcare staff have a duty to intervene or declare a medical emergency, and to instruct restraints or force to be immediately stopped, in certain circumstances.⁸⁹ The Inquiry Chair states that she remains concerned as to whether the deficiencies relating to the role of the healthcare staff in use of force incidents have been addressed. The Inquiry found it to be common that force was used as a response to, and a way to manage, symptoms of mental-ill health. For example, there was a “routine and quick resort to force in response to incidents of self-harm”.⁹⁰

⁸⁰ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 page 139 paragraphs 20-21 and page 141 paragraph 25.

⁸¹ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 pages 149-151 paragraphs 43-46.

⁸² Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 page 154 paragraph 55.

⁸³ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 page 158 paragraph 65.

⁸⁴ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 page 158 paragraph 66.

⁸⁵ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 page 164 paragraph 78.

⁸⁶ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 pages 164-5 paragraphs 79-83.

⁸⁷ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 pages 165 paragraphs 84.

⁸⁸ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 pages 166-173 paragraphs 87-104.

⁸⁹ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.8 pages 190-201 paragraphs 43-61.

⁹⁰ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 page 155 paragraph 58.

The Inquiry found that governing the use of force in immigration detention by a prison service order (a policy for prison and probation professionals) is inappropriate as IRCs have a different purpose and type of population; it therefore does not take the detained population's needs, circumstances or vulnerabilities into account.⁹¹

Inappropriate use of force continues today, as most recently documented by the Independent Monitoring Board⁹², HMIP⁹³ and in Home Office responses to Freedom of Information Requests⁹⁴.

Segregation

Home Office policy stipulates that segregation may be used in the interest of safety or security under Rule 40 of the DCR 2001, or to manage actively violent detainees under Rule 42 of the Detention Centre Rules 2001.

Those at risk of suicide or self-harm must only be put in segregation in "exceptional circumstances", "for the shortest time possible" and as a "last resort".⁹⁵ Additionally, Rule 40 and 42 should not be used "to manage detained individuals with serious psychiatric illness or presenting with mental health problems".⁹⁶ Once the decision has been taken to put someone in segregation, a Medical Practitioner must be notified "without delay".⁹⁷

Medical Justice has long documented the devastating impact of segregation on our clients and the misuse and over-reliance of segregation in detention. Our 2015 report *A Secret Punishment* highlighted how segregation is one of the most severe and dangerous sanctions that can be imposed on detained people - it's devastating impact on mental and physical health is widely recognised.⁹⁸

The Inquiry found that restrictions under Rule 40 and Rule 42 were found to be inappropriately used, including as a punishment (which is not a permissible use), for pure administrative convenience, and to manage people with mental ill health (contrary to clear mandatory guidance). The Inquiry found evidence of Rule 40 and Rule 42 still being used for administrative convenience under Serco, the contractor running Brook House IRC. Our evidence shows that many of these issues are still ongoing.

⁹¹ Kate Eves, Chair of the Brook House Inquiry (19 September 2023) The Brook House Inquiry Report Volume II, HC 1789-II, Chapter D.7 pages 151-152 paragraphs 47-53.

⁹² IMB (2021) Annual Report of the Independent Monitoring Board at Brook House IRC for reporting year 1 January 2020 – 31 December 2020.

⁹³ HMIP (23 September 2022) [Report on an unannounced inspection of Brook House Immigration Removal Centre by HM Chief Inspector of Prisons \(30 May – 16 June 2022\)](#).

⁹⁴ <https://libertyinvestigates.org.uk/articles/revealed-guards-used-force-on-suicidal-asylum-seekers-after-training-had-expired/>

⁹⁵ Home Office (September 2020) Detention Services Order 02/2017 Removal from Association (Detention Centre Rule 40) and Temporary Confinement (Detention Centre Rule 42) paragraph 34.

⁹⁶ Home Office (September 2020) Detention Services Order 02/2017 Removal from Association (Detention Centre Rule 40) and Temporary Confinement (Detention Centre Rule 42) paragraph 31.

⁹⁷ Rule 40(5) and Rule 42(6) Detention Centre Rules 2001 (SI 2001/238).

⁹⁸ Medical Justice (2015) [A Secret Punishment](#).

Conclusion

This submission shows how harmful the UK's immigration detention system is. The failings of immigration detention, from insufficient access to justice to the ineffective safeguarding system has long been documented, by parliamentary committees, independent monitoring bodies, independent reviews and NGOs. The Brook House Inquiry is the latest iteration of this. The UK government must urgently consider the Inquiry's findings and implement its recommendations.

This is particularly important given the current government's plans for detention, including the expansion of the estate with re-opening Haslar and Campsfield IRCs, as well as quasi-detention sites at Wethersfield and the Bibby Stockholm Barge. Accommodation in isolated areas, with detention-like conditions, is preventing people from accessing legal advice and setting them up for refusal of their claims. On the 31st of January, the Home Affairs Committee questioned the Home Secretary on the use of the Bibby Stockholm for accommodation. The Committee highlighted that despite people having the right to legal advice, it is difficult to exercise that right.

The Illegal Migration Act (IMA) is set to massively ramp up detention. The Refugee Council estimates that 190,000 people, including 45,000 children could be detained in the first 3 years. The IMA has drastically reduced judicial oversight and has given power to the Home Secretary, rather than the courts, to determine reasonable lengths of detention. The IMA disallows most asylum seekers from having their cases considered, and with nowhere to remove most of them, many more vulnerable people are set to languish in detention, deteriorating.

The Home Office has plans to hold 25,000 asylum seekers in quasi-detention sites as disused military bases and barges. As these sites have emerged, there have been outbreaks of infectious diseases and people held there becoming suicidal – the harmful conditions and inadequate healthcare provision has become evident.

If passed, the Rwanda Bill, currently going through parliament, may also result in mass detention for the purposes of removal. As we saw in June 2022, this will cause extreme suffering to people whilst in detention, even before any flight has taken off, as evidenced by Medical Justice in 2022.⁹⁹

We fear that this will result in more people being exposed to the harmful environment in immigration detention.

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⁹⁹ Medical Justice (September 2022) [“Who’s paying the price”](#).