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Joint Committee on Human
Rights

Immigration detention

Sixteenth Report of Session 2017–19

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relating to the report*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

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Summary

Deprivation of liberty is a serious interference with an individual's human rights. While there are strict safeguards to ensure independent decision making and fair processes for detention in the criminal justice system, there are far fewer protections for people caught up in the immigration system. The current immigration detention system is slow, unfair and expensive to run—last year it cost £108m. As our inquiry into Windrush detainees shows, some of those detained have a right to be in the country. Millions of pounds in compensation is paid to those who have been wrongly detained. Conditions in some detention centres are below acceptable standards. The UK needs an immigration detention system which is fair, humane, decent and quick.

In this report we make five key proposals:

Independent decision making

The key element of our proposals is that, as far as possible, decision making on detention matters should be independent. We acknowledge the Home Office has introduced a “gatekeeper” function and case progression panels to review initial detention decisions and review progress of cases where detention has lasted for three months. But both these functions are within the Home Office itself, the Department which progresses removals and deportation. We recommend that the Home Office should conduct a pilot of independent prior authorisation for detention in cases where detentions are planned. (In some cases, it will not be possible to predict whether detention will be needed—for example, immigration status issues may arise at borders.) Not only is there a principled case for independent authorisation to detain in cases of planned detentions; such independent decisions may well be more robust than those taken entirely within the Department. The current lack of rigour in detention decisions is evidenced by the amounts spent on compensation for wrongful detentions and the series of mistakes accepted by the Home Office in detention cases.

Whether detentions are planned or unplanned, immigration detainees should not have fewer safeguards than those applicable in the criminal justice system. The decision on whether to continue detention should be made by a judge and should be made promptly. However, immigration detainees need sufficient time to get advice and gather evidence before such a hearing. A period of 36 hours may be too short for this. We recommend that a judicial decision should be required for any detention beyond 72 hours.

A time limit on detention

The UK is the only country in Europe that does not impose time limits on immigration detention. Without such a time limit, there is a reduced incentive for officials to progress cases as quickly as possible, so that individuals can have their status resolved swiftly, for example by being removed or having their status regularised.

We recommend that detainees should not spend more than 28 days in detention. This will end the trauma of indefinite detention. In exceptional circumstances, for example when the detainee seeks unreasonably to frustrate the removal process and has caused the delay, the Home Office would be able to apply to a judge who could decide whether to extend the detention for up to a further 28 days.

Access to Legal advice

Under the ECHR anyone detained has a right to “to take proceedings by which the lawfulness of his detention shall be decided speedily by a court”. There is legal aid for immigration detainees to challenge detention, but we found that there are problems with the availability and timeliness of legal advice in detention. Immigration detainees should have better and more consistent access to legal advice to challenge their detention.

Moreover, the substantive immigration cases themselves are often not within scope of legal aid. This may cause problems because an individual’s detention is inherently linked to their underlying immigration issue. It is also inefficient and may well be costly, as matters repeatedly return to court (creating unnecessary costs for the taxpayer), and decisions about an individual’s immigration status are delayed.

There also needs—during the period of their custodial sentence—to be better management and consideration by the Home Office of the immigration status of individuals who are subject to deportation or are being considered for deportation to reduce the need for lengthy, costly and harmful additional immigration detention after the sentence has been served. Legal advice should be available to deal with immigration issues while foreign national offenders are in prison so that at the end of their sentence they can be deported or have their immigration status regularised or resolved rather entering immigration detention.

There is an urgent need for immigration legislation to be reviewed. There is now such a complex web of law and regulation that it is impossible for all except the most expert people to understand. The Committee recommend that the Law Commission should be tasked with simplifying and codifying the law on immigration.

Vulnerable individuals

The Adults at Risk policy does not give adequate protection to individuals at risk of harm in detention either by way of policy or of practice. Both the AAR policy and other Home Office policies are silent on how to respond to the needs of those that lack mental capacity, which puts them at a clear disadvantage. More needs to be done to identify vulnerable detainees and treat them appropriately.

Detention conditions

The Home Office should give serious consideration to improving the oversight and assurance mechanisms in Immigration Removal Centres and the wider immigration detention estate to ensure that any ill-treatment or abuse is found out immediately; action is taken to correct it; and steps taken against those responsible to ensure lessons are learned and effective prevention mechanisms are put in place.

More needs to be done to make the detention estate less prison-like and to create as open a regime as feasible. Detainees should not be routinely handcuffed. Under the criminal justice system, there are different prison regimes ranging from category A to D. Consideration should be given to separating individuals who pose a risk of violence, such as those who have been convicted of serious offences from other detainees.

1 Introduction

Immigration detention in the UK

1. On average 27,000 people enter the immigration detention estate each year. These individuals spend widely varying lengths of time in immigration detention: while the great majority of individuals are held for less than 28 days, some individuals spend months and even years in detention. 5,949 individuals left detention in Quarter 3 of 2018. Of these, 4,212 spent less than 28 days in detention, 771 individuals were detained for between one to two months, 511 between two to four months, 226 between four to six months, 179 between six to twelve months and 50 individuals spent over a year in immigration detention.¹

Table 1: People leaving detention in Q3 2018 by length of detention

Number of days	Number of people	%
7 days or less	2,346	39%
8 to 14 days	895	15%
15 to 28 days	971	16%
29 days to less than 2 months	771	13%
2 months to less than 4 months	511	9%
4 months to less than 6 months	226	4%
6 months to less than 12 months	179	3%
12 months or more	50	1%
Total leaving detention	5,949	100%

Source: [Home Office Immigration Statistics, Detention tables, dt_06_q](#)

2. People entering detention have no idea how long that detention will last. This lack of certainty and hope presents significant difficulties for detainees. We took evidence from three former detainees who told us that being detained alongside individuals who had spent years in detention exacerbated their uncertainty as to how long they would be detained for.² Detainees face other challenges in detention including difficulties accessing legal advice and consequentially limited opportunities to challenge their detention; poor or prison like conditions in some Immigration Removal Centres (IRCs); unnecessarily restrictive regimes where detainees are locked in their rooms for extended periods of time; and in some cases, unsympathetic attitudes, heavy-handedness or ill-treatment by immigration enforcement teams. Such conditions can cumulatively affect detainees' mental and physical health. One detainee told us that the experience of detention was so debilitating that "even the person with the most powerful mental resilience goes through some form of mental torture" in detention.³

1 Home Office, National Statistics List of Tables, Immigration Statistics. 9. Detention. Detention data tables, [dt_06_q](#)

2 [Q40](#) [Jenny, former detainee]

3 [Q53](#) [Arrey, former detainee]

3. The detention system carries a high financial cost as well as the human costs it imposes. The annual detention costs for the year ending March 2018 were £108 million.⁴ In addition, compensation is payable to people who have been wrongly detained—over £3 million compensation was paid in the financial year 2016–17.⁵

4. Given the high human and financial cost of the immigration detention system it is evident that the UK needs an immigration detention system which is fair, humane, decent and quick.

Legal framework

5. Article 5 (1) (f) of the ECHR allows deprivation of liberty in an immigration context if the purpose of detention is to prevent the “unauthorised entry into the country” of a person or where “action is being taken [against a person] with a view to deportation or extradition.”⁶ Article 5 further requires that detention must be proportionate and detention must be in accordance with procedures defined by law and the law must be sufficiently clear and precise. Specific safeguards must be provided when individuals are deprived of their liberty, including the right to bring proceedings to challenge the lawfulness of their detention and the right to compensation if detention is found unlawful following review by a court.

6. UK immigration legislation provides powers to detain foreign nationals for the following purposes:

- for officials to examine a person’s immigration status;⁷
- where there are reasonable grounds to suspect that a person is someone who may be removed;⁸
- where the Secretary of State is considering a deportation order against an individual;⁹ and
- where a deportation order is in force against a person.¹⁰

These powers are vested in immigration officers or the Secretary of State. They are exercised by Home Office officials who make the initial decisions to detain.

4 Home Office, [Annual Report and Accounts 2017–18](#), 19 July 2018

5 Letter from Sir Peter Rutman KCB, Permanent Secretary, Home Office, to Rt Hon Yvette Cooper, Chair, Home Affairs Select Committee, [regarding Immigration Detention](#), dated 25 June 2018. (See Annex C)

6 Human Rights Act 1998, Schedule 1, [Article 5](#)

7 Immigration Act 1971, Schedule 2, [Paragraph 16 \(1\)](#) states: “A person who may be required to submit to examination under paragraph 2 above may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter.”

8 Immigration Act 1971 Schedule 2, [Paragraph 16 \(2\)](#) states: If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 18 to 10A or 12 to 14, that person may be detained under the authority of an immigration officer pending— (a) a decision whether or not to give such directions; (b) his removal in pursuance of such directions

9 Immigration Act 1971, Schedule 3, [Paragraph 2 \(2\)](#) states “Where notice has been given to a person in accordance with regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) of a decision to make a deportation order against him, and he is not detained in pursuance of the sentence or order of a court] , he may be detained under the authority of the Secretary of State pending the making of the deportation order.”

10 Immigration Act 1971, Schedule 3, [Paragraph 2 \(3\)](#) states “Where a deportation order is in force against any person, he may be detained under the authority of the Secretary of State pending his removal or departure from the United Kingdom (and if already detained by virtue of sub-paragraph (1) or (2) above when the order is made, shall continue to be detained [F8unless he is released on immigration bail under Schedule 10 to the Immigration Act 2016.]

7. Under the common law, the *Hardial Singh* principles apply where the immigration authorities are seeking to remove a person from the UK and they set important constraints on the state's powers to detain for immigration purposes.¹¹ The *Hardial Singh* principles are:

- The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
- The deportee may only be detained for a period that is reasonable in all the circumstances;
- 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;
- The Secretary of State should act with reasonable diligence and expedition to effect removal.

In addition, in order to be lawful, immigration detention must be in accordance with Home Office policy and be justified in all the circumstances of the individual case.

8. While these are all important safeguards, a comparison with the criminal justice system shows that there are significantly fewer safeguards in the immigration detention process than those applied in the criminal process.

Immigration detention compared with criminal justice system

Safeguards in the immigration detention process	Safeguards in the criminal justice process
Immigration detainees do not have automatic or immediate publicly funded legal advice or representation to challenge their detention.	When in police custody, an individual has near immediate access to legal advice and representation to challenge the loss of their liberty. The longest an individual can be made to wait before getting legal advice is 36 hours after arriving at the police station (or 48 hours for suspected terrorism). ¹²
The initial decision to detain an individual is not automatically reviewed by a court until after four months in detention (although the Home Office has plans to launch a pilot for an additional bail referral at the 2-month point).	In the criminal process, individuals can be held in pre-charge detention for up to 36 hours under the authority of a police officer of at least the rank of superintendent. If the police want to continue to hold the suspect for more than 36 hours, a warrant of further detention must be sought from a magistrates' court for a period of no more than 36 further hours. Applications may be made and granted for further warrants of up to 36 hours each, up to a maximum total time of 96 hours' detention. ¹³
Other than in the cases of pregnant women and families with children ¹⁴ , there is no upper time limit for immigration detention in the UK.	Once sentenced, an individual will know for how long they will be detained and when they will be released. ¹⁵

11 R (*Hardial Singh*) v Governor of Durham Prison [1983] EWHC 1 (QB)

12 Gov UK, [Being arrested: your rights](#)

13 Police (Detention and Bail) Act 2011, [Explanatory Notes](#)

14 Families with children and pregnant women can be detained for up to 72 hours, or 7 days with ministerial authorisation.

15 Save those for those still subject to indeterminate sentences, which are no longer used.

There are reasons why the regimes differ but safeguards against arbitrary and excessively prolonged detention are needed whatever the reason for that detention.

Policy Framework

9. In order to be lawful, immigration detention must be in accordance with stated policy on the use of detention. The main guidance for Home Office officials making decisions about detaining individuals, Chapter 55 Enforcement Instructions and Guidance, states that “detention must be used sparingly, and for the shortest period necessary” and that “there is a presumption in favour of immigration bail and, wherever possible, alternatives to detention are used.”¹⁶ The guidance also states that detention is most usually appropriate to effect removal; to establish a person’s identity or basis of claim; or where there is reason to believe that the person will fail to comply with any conditions attached to a grant of immigration bail.

Guidance on Immigration Bail for Judges

10. Under the current immigration detention system, individuals can challenge their detention by initiating an immigration bail application, which considers whether a person should be released. Individuals can apply for bail via the Home Office (known as Secretary of State Bail) or via an immigration bail application to the First Tier Tribunal Immigration and Asylum Chamber.

11. The Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber) recognises the gravity of depriving individuals of their liberty. It states that:

“Liberty is a fundamental right of all people and can only be restricted if there is no reasonable alternative. This principle applies to all people in the UK, including foreign nationals. Immigration detention cannot be used as punishment, as a deterrent or for any coercive purpose [...] It is generally accepted that detention for three months would be considered a substantial period and six months a long period. Imperative considerations of public safety may be necessary to justify detentions in excess of six month.”¹⁷

The guidance further states that when exercising the power to grant immigration bail the tribunal must have regard to the matters listed in Schedule 10 of the Immigration Act:

- The likelihood of the person failing to comply with a bail condition;
- Whether the person has been convicted of an offence;
- The likelihood of a person committing an offence while on immigration bail;
- The likelihood of a person’s presence in the UK while on immigration bail causing a danger to public health or being a threat to the maintenance of public order;

16 Home Office, Enforcement Instructions and Guidance, Chapter 55, [Use of detention](#)

17 Tribunals Judiciary, Judge Clements, President of the First-tier Tribunal (Immigration and Asylum Chamber), Presidential Guidance Note No 1 of 2018, [Guidance on Immigration Bail for Judges of the First-tier Tribunal \(Immigration and Asylum Chamber\)](#), Implemented on 15 January 2018

- Whether the person’s detention is necessary in that person’s interests or for the protection of any other person, and
- Such other matters as the Tribunal thinks relevant.¹⁸

12. We note that if bail is granted, the judge must impose one or more conditions.¹⁹ The Guidance lists them as follows:

- (a) An “appearance date condition”, requiring the person to appear before the Secretary of State or the First-tier Tribunal at a specified time and place;
- (b) An “activity condition”, restricting the person’s work, occupation or studies in the UK;
- (c) A “residence condition”, specifying where the person is to reside;
- (d) A “reporting condition”, requiring the person to report to the Secretary of State or such other person as may be specified;
- (e) An “electronic monitoring condition” (meaning a condition requiring the person to co-operate with such arrangements as the Secretary of State may specify for detecting and recording by electronic means the location, presence or absence of the person at specified times or periods), which may be in place of a reporting condition and in some cases will be mandatory;
- (f) A “financial condition” (meaning a condition requiring the payment of a sum of money by the person to whom immigration bail is granted or another person in a case where the person granted bail fails to comply with another condition of bail), which will only be imposed if a judge thinks that it would be appropriate to do so with a view to ensuring that the person granted bail complies with the other bail conditions; or
- (g) Any other condition a judge granting immigration bail thinks fit.²⁰

Our Inquiry

13. In 2018 we conducted an inquiry into the wrongful detention of members of the “Windrush generation”. As part of the inquiry, two individuals shared their Home Office case files with us. These files showed that decision makers had not understood that those individuals had the right to live and work in the UK. They had ignored evidence and pieces of information in the case files and there was an inadequate oversight of decisions. We considered then that “administrative decisions made in these cases were not justified and proportionate and did not protect against unnecessary and unlawful detention.”²¹

18 Tribunals Judiciary, Judge Clements, President of the First-tier Tribunal (Immigration and Asylum Chamber), Presidential Guidance Note No 1 of 2018, [Guidance on Immigration Bail for Judges of the First-tier Tribunal \(Immigration and Asylum Chamber\)](#), Implemented on 15 January 2018, p 3

19 Conditions are listed in paragraphs 2(1), 2(3), 2(4) and 5 of schedule 10 to the Immigration Act 2016

20 Tribunals Judiciary, Judge Clements, President of the First-tier Tribunal (Immigration and Asylum Chamber), Presidential Guidance Note No 1 of 2018, [Guidance on Immigration Bail for Judges of the First-tier Tribunal \(Immigration and Asylum Chamber\)](#), Implemented on 15 January 2018, para 14; refer to the Guidance for restrictions on the power to tag

21 Joint Committee on Human Rights, Sixth Report of Session 2017–19, [Windrush generation detention](#), HC 1034 / HL Paper 160, para 45.

14. The failures uncovered in these two cases prompted us to investigate the use of immigration detention in the UK more widely, to assess whether individuals subject to immigration control have sufficient protection against arbitrary detention. We specifically looked at whether detention decisions are sufficiently robust and what impact the lack of a maximum time limit for immigration detention has on detainees. We assessed whether detainees have sufficient access to legal advice and representation and sufficient opportunities to challenge their detention. Our findings are discussed in detail in Chapters 2 to 6 of this report.

15. We called for evidence on 23 July 2018 and received 64 written submissions.²² In our oral evidence sessions we heard from a diverse range of individuals including representatives from advocacy organisations, independent monitoring bodies, a former Home Secretary, practitioners, former detainees and the Minister of State for Immigration. All the evidence, both written and oral, can be viewed on our website.²³ We are grateful to everyone who gave written or oral evidence. We are also grateful to our Specialist Advisors, Alison Harvey and Shu Shin Luh, for their advice during the inquiry.²⁴

Home Office reforms to the system

16. We recognise that the Home Office has sought to make a number of improvements to the immigration detention system in recent years. The number of people detained under immigration powers has fallen. In the year ending September 2018, 25,061 individuals entered the detention estate—a 9% fall compared with the previous year.²⁵ The department has commissioned two independent reviews looking into the welfare of vulnerable people in detention over the last three years. A number of reforms were implemented following the first Shaw review, including case working changes such as the introduction of a “gatekeeper function” and “case progression panels” and a new Adults at Risk policy. The Government also introduced automatic bail consideration at the four-month point for all those not subject to deportation through the Immigration Act 2016.²⁶

17. Further reforms were announced following the second Shaw review including piloting an additional bail referral at the 2-month point,²⁷ increases to the number of Home Office staff in immigration removal centres and commitment to introduce an “independent element” into the decision-making process. While we welcome the Home Office’s response to dealing with some of the issues facing the immigration detention system, we consider there is more to be done to minimise the use of immigration detention and ensure that where it is used the system respects the rights of immigration detainees. This report makes recommendations to that end.

22 Joint Committee on Human Rights, [Immigration detention inquiry launched](#)

23 Joint Committee on Human Rights, [Immigration detention inquiry - publications](#)

24 Alison Harvey Declaration of Interest: Chair of the Trustees of Kalayaan, Barrister, No.5 Chambers

25 Home Office, How many people are detained or returned? [Table 1: People entering, leaving and in detention, year ending September 2014 to 2018](#) (November 2019)

26 Immigration Act 2016, Schedule 10, [Duty to arrange consideration of bail](#)

27 At the time of writing, this had not been implemented.

2 Detention decisions

Current detention process

18. Currently, the statutory powers to detain for immigration purposes are vested in immigration officers, immigration caseworkers or the Secretary of State.²⁸ It is Home Office policy that an officer of at least chief immigration officer rank, or a higher executive officer, initially authorises most detention decisions. Government policy is that:

“There is a presumption in favour of immigration bail and, wherever possible, alternatives to detention are used [...]. Detention is most usually appropriate:

- to effect removal;
- initially to establish a person’s identity or basis of claim; or
- where there is reason to believe that the person will fail to comply with any conditions attached to a grant of immigration bail.²⁹

19. Since Autumn 2016, all detention decisions are referred to “Detention Gatekeepers” who assess whether initial detention decisions are proportionate; whether there is a realistic prospect of removal within a reasonable timescale; and whether individuals may be at risk of harm in detention due to any vulnerabilities. Once detention is authorised by the detention gatekeeper, it is reviewed after 24 hours by a senior executive officer, and then reviewed again at 7 days, 14 days, 28 days and thereafter every month at increasingly senior levels within the Home Office. Other recent case working reforms include the introduction of “case progression panels.” The Immigration Minister told us that these panels review detention cases after three months “to assess vulnerabilities, progress towards removal and whether any additional or new claims have been made, such as for asylum or other forms of protection.” The Minister told us that cases are kept under review “which enables the different parts of the organisation to see whether the original decision was the right one.”³⁰

Quality of decision-making

20. There are serious concerns about the detention decision-making process at the Home Office. The three main areas raised in evidence were that:

- the initial decision to detain may lack a proper and rigorous assessment of why detention is necessary and justified;
- the inability of the current system to screen for vulnerability and prevent the detention of individuals who are at risk of harm in detention; and
- insufficient independent scrutiny of decisions to detain and maintain detention.

28 Immigration Act 1971, Schedule 2, [Para 16 \(1\)](#) and [Para 16 \(2\)](#); Immigration Act 1971, Schedule 3, [para 2 \(2\)](#), and [para 2 \(3\)](#)

29 Home Office, Enforcement Instructions and Guidance, Chapter 55, [Use of detention](#)

30 [Q68](#) [Rt Hon Caroline Nokes MP, Minister of State for Immigration]

Necessity of detention

21. We heard that initial detention decisions lack sufficient rigour and justification and that detention is frequently not a last resort. Stakeholders and practitioners told us that detention decisions operate like “tick-box”³¹ exercises and that detainees are not provided with adequate justification for the decision to detain them or any evidence showing why the individual cannot be managed in the community. Bella Sankey from the organisation Detention Action told us:

“In our experience, the Home Office very rarely, in the cases of people who are detained, engages with alternatives and tries to avoid detention. Detention is used instead in a very arbitrary way and clearly for Home Office convenience. People are detained to make it easier for the Home Office to keep track of them and know where they are, but very little realistic thought is given to alternatives in those cases.”³²

22. Detainees are given the form “IS91R Reasons for detention” when they are detained. But this form does not include proper evidence or justification for the decision to detain; it is a series of tick boxes. The full evidence and justification is completed separately and inserted into the detainee’s case file.³³ Stakeholders and practitioners expressed concern about the lack of a requirement for the Home Office to evidence statements in which they cite “risk of absconding” as the reason to detain or refuse bail.

23. The content of bail summaries gives some indication of the Home Office’s general approach. Practitioners were concerned about inaccuracies within bail summaries, saying that they could “make previously unaired allegations against the applicant, such as allegations of disruptive behaviour in detention.”³⁴ The President of the First Tier Immigration and Asylum Tribunal also noted:

“The Home Office bail summaries (the reasons for withholding and objecting to bail) are prepared by ‘case owners’ not presenting officers. The applicant often maintains that the bail summary contains inaccuracies, for example complying with previous reporting conditions whilst on bail. The inaccuracies and or omissions are most likely to be prejudicial to the applicant.”³⁵

24. We note that the following factors suggesting that the risk of absconding was low applied in cases of former detainees from whom we took evidence:

- reporting regularly at the Home Office;
- having close family and or dependent children in the UK; and
- living at the same address for many years or owning property in the UK.

31 [Q23](#) [Stephanie Harrison QC]; [Q2](#) Celia Clarke [Bail for Immigration Detainees]

32 [Q2](#) [Bella Sankey Detention Action]

33 Home Office, Enforcement Instructions and Guidance, Chapter 55. 55.6.3. [Form IS91R - Reasons for detention](#)

34 Garden Court Chambers ([IMD0033](#))

35 First-tier Tribunal (Immigration and Asylum Chamber) ([IMD0059](#))

25. The main guidance for detention caseworkers, Chapter 55 Enforcement Instructions and Guidance, states that it is more

“practical to effect detention later in the process, for example once any rights of appeal have been exhausted [...] and/or there are no other factors present arguing more strongly in favour of detention. All other things being equal, a person who has an appeal pending or representations outstanding might have relatively more incentive to comply with any restrictions imposed, if released, than one who does not and is imminently removable.”³⁶

Despite this, stakeholders told us that their clients continued to be detained in circumstances where there was no realistic prospect of removal: “where appeals are ongoing, judicial reviews are live, travel documents have not been obtained and travel arrangements have not been made.”³⁷

26. Several witnesses expressed concern that there are consistently more individuals released from detention into the community than being removed. We note that the statistics on reasons for detention are not robust enough to establish whether this reflects an inability to carry out planned removals effectively, or simply a large number of brief detentions which are not linked to removal. Nonetheless, we note the disparity was raised by independent figures with inside knowledge of the system, including Stephen Shaw, HMIP and the IMB, which suggests that, at the least, there is some cause for concern.³⁸

27. We recognise that some people may be detained and then released because of late identification of barriers to removal or that there may be a material change in the circumstances of a detainee. However, the evidence suggests there is a case for a more rigorous assessment of the individual’s circumstances and whether detention is necessary before detention is authorised.

28. Detention should only be used if necessary and proportionate. Detention is not necessary or proportionate if lesser interferences with an individual’s liberty are available and meet the legitimate aims pursued. We consider that alternatives to detention should be considered in all cases and a record kept. Detention should only be used where necessary and proportionate and where alternatives are not available or would not meet the legitimate aims pursued. We welcome the Home Secretary’s commitment to do more to explore alternatives to detention and the launch of the pilot to manage vulnerable women in the community who would otherwise be detained at Yarl’s Wood. We look forward to the development of alternatives to detention programmes for other categories of detainees.

36 Home Office, Enforcement Instructions and Guidance, [Chapter 55. 1. 3, Use of detention](#)

37 [Q2](#) [Bella Sankey, Detention Action]

38 [Q12](#) Dame Ann Owers, Independent Monitoring Board; Detention Action ([IMD0037](#)); Equality and Human Rights Commission ([IMD0019](#)); Law Centre (NI) ([IMD0024](#)); Medical Justice ([IMD0027](#)); Women for Refugee Women ([IMD0013](#)). Detention Action ([IMD0037](#)). In his second report to the Home Office, Stephen Shaw also states that given the numbers of people that are released from detention, he remains of the view that “detention is not fulfilling its stated aims,” see Home Office, Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons. A follow-up report of the Home Office by Stephen Shaw, [Cm 9661](#), July 2018, pp 22 & 27

Vulnerable individuals

29. We also heard about examples of individuals who have been forced into criminality being detained in immigration detention. Toufique Hossain told us that some of his clients have included women with “all the obvious traits of being potential victims of trafficking and deeply vulnerable”³⁹ who are detained by immigration enforcement officers and detention is authorised by the detention gatekeeper:

“We represent several women from China who were all arrested working in brothels [...] The gatekeeper would have gone through his or her tick-box exercise. One of the questions asks for a brief history of immigration and the encounter, so the detention gatekeeper is clearly failing to pick up that a lot of these detainees are being arrested in brothels. The alarm bells of trafficking should be ringing, but they are failing them.”⁴⁰

We consider that there should be better co-ordination between immigration enforcement and the police so that where it is obvious that individuals have been exploited, detention powers are not exercised.

30. One of the purposes of the Detention Gatekeeper is to identify those who are particularly vulnerable to harm in detention before they enter detention, but this does not seem to be working. Figures released to Stephen Shaw by the Home Office showed that as at 4 February 2018, 1,189 Adults at Risk were in detention.⁴¹ In his report, Mr Shaw considered that more needed to be done to ensure that individuals who are at risk are not detained and identified the need for robust independent oversight of the case working process.

31. Both the gatekeeper function and case progression panels were reforms aimed at introducing more independence to detention decisions, following the first Shaw report. We received evidence which suggests that both reforms have made little difference to the quality of decision making at the Home Office.⁴² Practitioners and stakeholders told us that the effectiveness of detention gatekeepers was limited because they were reliant on the information presented to them by caseworkers. The gatekeepers do not always have access to vital information about an individual case. Stephanie Harrison QC told us:

“I have had cases where the person has served their prison sentence in a secure psychiatric hospital, because they have been so unwell, and there are extensive medical reports from highly experienced psychiatrists who have all assessed this person, including one person saying, “This person should not continue to be detained”. Those reports were not transferred to the Home Office casework file, so the gatekeeper would not see them either.”⁴³

39 [Q23](#) [Toufique Hossain]

40 [Q23](#) [Toufique Hossain]

41 A follow-up report of the Home Office by Stephen Shaw [Cm 9661](#), July 2018, p 32

42 [Q4](#) [Celia Clarke, Bail for Immigration Detainees]; [Q23](#) [Stephanie Harrison QC and Toufique Hossain]; UNHCR, The UN Refugee Agency ([IMD0020](#)); Freedom From Torture ([IMD0009](#)).

43 [Q23](#) [Stephanie Harrison QC, Garden Court Chambers]

32. The Minister of State for Immigration told us that since their introduction in Autumn 2016, detention gatekeepers have prevented the detention of around 2,300 individuals.⁴⁴ In further correspondence the Minister clarified that detention gatekeepers prevented about 5% of all detentions and 20% of the referrals for those who were at risk or vulnerable.⁴⁵

Independent decision making

33. The Home Office gatekeepers and case progression panels may be separate from the initial decision takers, but they are directly under the umbrella of the Home Office. Many of our witnesses spoke powerfully in favour of introducing an independent element into the immigration detention decision making process.⁴⁶ Advocacy organisations told us that the lack of independence in the current decision making process meant that detainees did not have enough protection against arbitrary detention. They argued this was evidenced by the large sums of compensation paid to those who were unlawfully detained.⁴⁷ In the period from 2012–17 the Home Office paid £21 million in damages for unlawful detention claims.⁴⁸ Practitioners also told us that most instances of unlawful detention go unchallenged and damages are not sought due to the difficulties detainees have in securing legal advice and representation, so there is scope for damages to increase.⁴⁹ We also note that if the use of detention can be reduced without risk, public money will be released for other purposes: detention is expensive.

34. The detention gatekeeper is a purely Home Office function, even though there is some distance from the decision maker. Similarly, the monthly detention reviews and case progression panels are internal Home Office processes carried out entirely by Home Office staff. Stakeholders described these too as “tick-box exercises” which seldom result in release.⁵⁰ HMIP said that they have found that “the Home Office regularly ignores the advice of its own case progression panel. For example, in Harmondsworth in 2017, the panel had recommended the release of five detainees in the 12 cases we sampled, sometimes more than once, yet detention was maintained every time.”⁵¹

35. Dame Ann Owers, Chair of the Independent Monitoring Board and former HM Chief Inspector of Prisons, presented the case for greater independence in decision making:

“It will perhaps not be surprising to hear from someone who has been doing oversight for rather a long time that I think that oversight, and judicial oversight in this case, makes for better decision-making. The fact that you have to be accountable to someone for the decisions you make makes for better decisions.”⁵²

44 Letter from Rt Hon Caroline Nokes MP, Minister of State for Immigration, Home Office, to Rt Hon Harriet Harman MP, Chair, Joint Committee on Human Rights, [regarding the use of immigration detention: the Government's strategic approach](#), dated 3 December 2018

45 Home Office (IMD0062)

46 Independent Motoring Board (IMD0040); Bail for Immigration Detainees (IMD0012); Bail Observation Project (IMD0035); Campaign to Close Campsfield and End All Immigration Detention (IMD0031); Q25 [Stephanie Harrison QC]; UNHCR, The UN Refugee Agency (IMD0020)

47 Bail for Immigration Detainees (IMD0012); Freed Voices (IMD0015); Hirst Chambers (IMD0051); Medical Justice (IMD0027)

48 Letter from Sir Peter Rutman KCB, Permanent Secretary, Home Office, to Rt Hon Yvette Cooper, Chair, Home Affairs Select Committee, [regarding Immigration Detention](#), dated 25 June 2018. (See Annex C)

49 Duncan Lewis Solicitors (IMD0047); Q28 [Stephanie Harrison QC]

50 Bail for Immigration Detainees (IMD0012)

51 Her Majesty's Inspectorate of Prisons (IMD0016)

52 Q12 [Dame Ann Owers, Independent Monitoring Board]

36. The Government told us that it is considering introducing “some element of independence”⁵³ into the detention decision-making process at the Home Office. The department is considering the practicability of bringing Independent Monitoring Board members into the case progression panels as an independent voice. Nonetheless these appear to be independent additions to a fundamentally internal process.

37. Some detention cannot be pre-planned. The Home Office cannot anticipate who will arrive at the border. Nor can it predict whether a raid will find people suspected of immigration offences. But many decisions to detain are made in advance. Decisions are taken to detain someone when they next report, or to go to their place of residence and detain them. The Immigration Minister told us that in the year ending September 2018, approximately 45% of all detentions were planned and 52% of all detentions were unplanned.⁵⁴ There is no reason why there should not be some independent decision making in the 45% of cases that are planned.

38. We believe that decision making about detention should be independent. Independent decision making will ensure that the initial decision to deprive a person of their liberty is robust and fully justified. The power to detain should not be wielded by the Department which is charged with removals and deportations. We recommend that alongside the Home Office’s current plans to introduce an independent element into case progression panels, in cases where detention is planned there should be properly independent decision-making. Decisions should be pre-authorised by a person or body fully independent of the Home Office. We anticipate that introducing independent decision-making will help to reduce the significant numbers of vulnerable people being detained each year. This could be implemented in the first instance as a pilot which should be reviewed after 24 months to consider whether it has indeed improved the quality of detention decisions.

53 [Q71](#) [Rt Hon Caroline Nokes MP, Minister of State for Immigration]

54 The Minister told us that it was not possible to determine whether detention was planned or unplanned in 4% of cases for the year ending September 2018, see Home Office ([IMD0064](#))

3 Legal advice and representation

Legal complexity

39. Article 5(4) of the European Convention on Human Rights states:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”⁵⁵

40. It is essential that anyone faced with deprivation of liberty has sufficient and prompt access to the legal advice they need to help them to challenge the loss of their liberty. Legal advice to immigration detainees is even more essential because immigration law, rules and policy have become so complex over time that even the most experienced practitioners find the system difficult to navigate. Immigration law, rules and administrative guidance changes frequently; immigration law is spread between many different statutes and regulations; there is a high volume of administrative guidance and immigration rules are long and complex. Practitioners told us that even senior judges in the Court of Appeal find the immigration system “impenetrable” and difficult to understand. It was “unrealistic to expect anyone, let alone immigration detainees, given the particular obstacles and vulnerabilities that affect many”, to challenge their detention at the High Court or navigate the immigration system on their own.⁵⁶

41. The House of Lords Constitution Committee inquiry into the “The Legislative Process: Preparing Legislation for Parliament” noted that immigration law was among the fields where complexity:

“had developed to the point that it was a serious threat to the ability of lawyers and judges to apply it consistently—not to mention raising rule-of-law concerns as to the ability of the general public to understand the law to which they are subject.”⁵⁷

42. In our inquiry, we looked in particular at appeal rights against immigration decisions and how the changes over the years have created a particularly complex appeals regime. Annex 2 shows a timeline of the way in which such rights have been changed over the years.

43. Individuals cannot enforce their rights effectively if they do not understand them. There is also a greater likelihood of misapplication if the law is overly complex. The Law Commission currently has a project—“Simplifying the Immigration Rules”—considering how immigration rules can be made more simple and accessible. We welcome this. *The Government should also consider asking the Law Commission to look at consolidating and simplifying immigration law more widely.*

55 Human Rights Act 1998, Schedule 1, [Article 5\(4\)](#)

56 [Q21](#) [Laura Dubinsky, Toufique Hossain, Stephanie Harrison QC, Amanda Weston QC]

57 House of Lords, Report of the Select Committee on the Constitution, Session 2017–19, [HL Paper 27](#), para 113.

Availability of legal advice

44. Other than the legal complexity facing individuals seeking to challenge their administrative detention, there are the procedural complexities of challenging detention via judicial review or habeas corpus at the High Court and “evidential complexities” wherein crucial evidence or information often needs to be filtered through “voluminous” and “disorganised” case files or where critical documents such as detention reviews are missing from Home Office case files and need to be requested.⁵⁸

45. Under the criminal justice system, those held in custody in a police station have near-immediate and free access to legal advice to assist them in relation to both challenging their detention and in relation to their underlying case. For immigration detainees, legal aid is available for challenges to detention including for immigration bail and judicial review applications and to challenge a removal decision, but it is generally not available for most immigration applications.⁵⁹ Following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) non-asylum immigration cases were taken out of scope of legal aid, subject to narrow exceptions for some applications by victims of domestic violence, and of trafficking and modern slavery.

46. Witnesses told us that the lack of early legal help and assistance for individuals making immigration applications has fundamental consequences:

“There is a very close correlation between the legality of the detention, the decision-making on detention and the substantive immigration decision. If you cannot challenge the substantive decision, it is difficult to challenge your detention decision because it is all linked to removal. That lack of legal representation at an earlier point in the process has a fundamental knock-on effect... It is very costly to detain a person: £34,000 per year—£125 million. It is used where individuals should not be there because they would have very good claims if they had proper representation. Many of them will only get it at the point where they are detained.”⁶⁰

We note that the Government response to our report on *Enforcing Rights* indicated that the review of the Legal Aid, Sentencing and Offenders Act would cover “the reduction of scope of legal aid for non-asylum immigration matters.”⁶¹

47. Article 5 (of the ECHR) provides that detainees should be entitled to take proceedings by which the lawfulness of detention should be decided speedily by a court and release ordered if the detention is not lawful. Given the challenges individuals face in detention, and the complexity of the law, legal advice and representation is crucial to help individuals to pursue their rights effectively. Legal aid is currently available

⁵⁸ [Q21](#) [Laura Dubinsky]

⁵⁹ Legal aid is available in the following cases: Asylum cases, including applications by refugees and people with humanitarian protection for settlement and claims for leave to enter or remain arising from Article 2 (right to life) and Article 3 (prohibition on torture, inhuman or degrading treatment or punishment) of the European Convention on Human Rights; Applications for indefinite leave to remain by victims of domestic violence whose current immigration status is based on their relationship with the perpetrator; Victims of trafficking, slavery or forced or compulsory labour seeking to regularise their status. Legal aid is also available to challenge a decision to remove someone.

⁶⁰ [Q28](#) [Stephanie Harrison QC]

⁶¹ Ministry of Justice, Government response to the Joint Committee on Human Rights tenth report of session 2017–19: Enforcing Human Rights, [Cm 9703](#), September 2018, p 5

to challenge detention decisions but generally not available for most immigration applications. Restricting legal aid to such challenges without addressing the underlying immigration case may undermine the effectiveness of such challenges. It may also be a false economy. Not only is detention itself expensive, but there are likely to be costs elsewhere in the system, if the lack of legal aid means it takes longer to settle someone's immigration status and wastes more court time with unrepresented individuals. It could be cheaper overall if legal advice were provided at the outset, so that all issues could be properly considered when the issues first arise and thereby reduce the need for repeated court interventions. *We have already recommended that the Government consider whether immigration cases engaging the Article 8 right to private and family life be brought within the scope of civil legal aid, where they would be available on the means and merits test basis. We consider there is a case for similarly reinstating legal aid for all immigration cases.*

Legal advice in IRCs

48. In the criminal context, the longest an individual can be made to wait before getting legal advice is 36 hours after arriving at the police station (or 48 hours for suspected terrorism).⁶² Under the Detention Duty Advice Scheme (DDA), the Legal Aid Agency operates free legal advice surgeries in IRCs in England. Solicitors' firms that have immigration and asylum contracts with the Legal Aid Agency have other contracts to run regular DDA surgeries where immigration detainees can receive up to 30 minutes of free legal advice irrespective of financial eligibility or the merits of their case. But we heard of several problems with the provision of the initial legal advice under the DDA scheme.

49. Detainees need to sign up for an appointment at the IRC's library and due to the high demand, they may have to wait up to two weeks or longer before being able to see a legal adviser. Those detained on the grounds that their removal is imminent may be removed before that. Detainees should have access to legal advisers in the first few days of detention to enable them to challenge any potentially unlawful deprivation of liberty and take advice on their substantive immigration case. Only providing access to legal advice for those in lengthy detention (after 14 days) is unacceptable.

50. Witnesses told us that the half hour slot was insufficient to assess the detainee's case. It included the time for the detainee to "be brought to the legal visits area, to obtain the right interpreter on the telephone, to look at the detainee's documents and take instructions sufficient to understand the case, to explain their legal position to them and give advice, and to obtain evidence of the detainee's means [...]".⁶³

51. Statistical data and data from surveys conducted by HMIP on the number of detainees who have a legal representative is particularly concerning. HMIP's survey of Brook House IRC showed that one-third of detainees did not have a solicitor and only a third of those who did had received a legal visit.⁶⁴ The organisation Bail for Immigration Detainees' legal advice survey from Spring 2018 which interviewed 103 immigration detainees across different detention centres showed that three quarters of immigration detainees were not taken on as Legal Aid clients following their free appointment.⁶⁵ Witnesses told us that

62 Gov UK, [Being arrested: your rights](#)

63 Jo Wilding ([IMD0048](#))

64 Her Majesty's Inspectorate of Prisons ([IMD0016](#))

65 Bail for Immigration Detainees [Legal Advice Survey Spring 2018](#)

detainees were not being taken on as legal aid clients because of the reduced scope of legal aid following legal aid cuts in 2013,⁶⁶ or because of the rigorous application of the means and merits test which assesses eligibility for legal aid.⁶⁷

52. A number of witnesses expressed concern about recent changes to the larger number of firms which can now provide DDA surgeries at IRCs.⁶⁸ Previously DDA surgeries were provided by a small number of firms but as of September 2018, a greater number of firms can receive a contract for detention centre duty work. This has raised concerns about whether there will be a consistent level of expertise, given that the decision to disperse contracts to over fifty firms will mean one firm may appear only once or twice per year in the rota and the possibility that some firms will not have a proven track record in detention work.⁶⁹

53. **Those in the criminal justice system have initial access to prompt legal advice; there should be similar provision for those in immigration detention. *Initial legal advice appointments under the Detention Duty Advice scheme should be made automatically, unless the individual opts out. Surgeries should be long enough to ensure that there is sufficient time for the detainee to explain their case and for the adviser to collect the necessary details needed to take the case forward to representation. The new system for providing advice should be kept under review to ensure that the firms responsible for advising detainees have the necessary skills and experience to do so.***

Legal advice in prisons

54. The practice of holding ex-prisoners, who have completed their sentences and who are subsequently liable to be deported, in prisons has been repeatedly criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT).⁷⁰ Nonetheless, the Home Office's detention statistics shows that there were 301 detainees held in HM Prisons under immigration powers at the end of September 2018.⁷¹ ***If it is necessary and proportionate for an individual to be detained under immigration powers after they have finished serving a prison sentence, then detention should take place in an immigration removal centre.***

66 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) dramatically reduced legal aid available for immigration matters. Legal aid is no longer available for Applications for leave to enter or remain based on an individual's right to private and family life under Article 8 of the ECHR (except under the 'Exceptional Case Funding' scheme); Legal advice or representation in most non-asylum immigration matters including family migration cases (including family reunification applications under the Refugee Convention); student and visitor visas; and deportation cases (unless the case has an asylum or Article 3 (prohibition of torture) element.

67 [Q7](#) [Celia Clarke, Bail for Immigration Detainees]; Jo Wilding ([IMD0048](#)). The merits test involves looking at a detainee's bank statements/proof of income but in some cases legal providers cannot take on a case because detainees may not have documents to show them. This may be because they were detained in a raid or while reporting and a landlord has disposed of their belongings because they did not return.

68 [Q8](#) [Dame Ann Owers, Independent Monitoring Board]; [Q22](#) [Amanda Weston QC, Stephanie Harrison QC and Toufique Hossain]; Jo Wilding ([IMD0048](#))

69 Jo Wilding ([IMD0048](#)); Research report commissioned by the Bar Council, Dr Anna Lindley, SOAS (University of London) [Injustice in Immigration Detention Perspectives from legal professionals](#), November 2017

70 Council of Europe, [Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 30 March to 12 April 2016](#), April 2017, p 93

71 Home Office, [Immigration Statistics, year ending September 2018](#) (table dt_13_q)

55. The term “foreign national offender,” which is commonly used to describe both current and former prisoners, is confusing. It can be used simply to mean any foreign national who commits a crime while in the UK, including offences which do not necessarily attract a prison sentence. It may also be used to refer to those who are liable to automatic deportation under the terms of section 32 of the United Kingdom Borders Act 2007. This applies to individuals sentenced to imprisonment for 12 months or more or convicted of a “serious offence”⁷² and sentenced to imprisonment. In this section we are using the term to apply to anyone who is serving a custodial sentence with immigration issues.

56. There are widespread concerns that those being held in a prison and facing removal or deportation are deprived of all the basic protections available to detainees held in IRCs.⁷³ Individuals held in prisons post custody generally have very limited contact with the outside world and limited access to mobile phones or the internet. As detainees in prison are not covered by the Detention Centre Rules and Detention Service Orders they are also currently excluded from other important safeguards against excessive detention such as rule 35 mechanisms to identify vulnerable individuals at risk of harm in detention.

57. Crucially, there are no detention duty advice surgeries in prisons which inhibits any resolution of immigration cases and inhibits detainees’ ability to apply for immigration bail from prison. HMIP was among the witnesses who expressed serious concern about the lack of legal advice available to immigration detainees who continue to be held in prisons at the end of their criminal sentences. We heard that access to lawyers for these individuals depends on referrals by charities or other detainees passing information to their own lawyers.⁷⁴

58. The Home Office can be slow to notify individuals serving custodial sentences that they will continue to be detained under immigration powers at the end of their sentence. Individuals can be notified a few days before their release date or even on the day they are due to be released.⁷⁵ Foreign national ex-offenders can therefore spend long periods of time in detention without proper access to legal advice or real opportunity to challenge their detention.

59. We consider that immigration issues should be settled, as far as possible, while prisoners are still serving their sentences. The lack of immigration legal advice in prison also means that in some cases there is a period of (expensive) immigration detention at the end of a sentence simply because there are outstanding legal avenues, which, with proper access to legal services, could have been resolved previously.

60. Foreign nationals who are serving custodial sentences in prisons and who are liable to deportation at the end of their sentences are among those detained under immigration powers for the longest periods. This is inappropriate and inefficient. In many cases it should be possible for the Home Office and the Foreign and Commonwealth Office to seek to resolve early in the course of a sentence problems

72 “Serious offences” are defined in [The Nationality, Immigration and Asylum Act 2002 \(Specification of Particularly Serious Crimes\) Order 2004](#)

73 Law Centre (NI) ([IMD0024](#)); Garden Court Chambers ([IMD0058](#)); Virgo Consultancy Services Ltd ([IMD0004](#)); Her Majesty’s Inspectorate of Prisons ([IMD0016](#)); Duncan Lewis Solicitors ([IMD0047](#)); Bail for Immigration Detainees ([IMD0012](#)).

74 Duncan Lewis Solicitors ([IMD0047](#)).

75 Virgo Consultancy Services Ltd ([IMD0004](#)); Research report commissioned by the Bar Council, Dr Anna Lindley, SOAS (University of London) [Injustice in Immigration Detention Perspectives from legal professionals](#), November 2017, p 49.

with documentation or the attitude of the receiving country. Access to legal advice in prison would mean that such offenders could engage with the legal processes to resolve their immigration status while serving their sentence. *The Home Office should make it a priority to resolve the immigration status of prisoners at the earliest opportunity. People liable to deportation should be given notice of the Home Office's intentions to deport as far before their release date as possible. Individuals should then have prompt and automatic access to legal advice so that they can engage with the legal processes for challenging deportation appropriately. This should mean immigration status issues are resolved before custodial sentences end and offenders can either be released or removed at the end of their custodial sentence. This would also help to manage the expectations of both the detainee and their families.*

4 Time limit

Article 5 ECHR and UK legal framework on length of detention

61. The European Court of Human Rights has said that the lack a time limit in the UK's immigration detention system did not breach Article 5 of the ECHR, because there were other safeguards within the system against arbitrary detention, in particular, the "Hardial Singh" principles laid down in *R v Governor of Durham Prison, ex p Singh*.⁷⁶

62. Witnesses told us that there are "countless" examples where the Home Office did not comply with the Hardial Singh principles and that further clarity is required to define what a "reasonable period" of detention is.⁷⁷ As we have seen the length of detention varies from a few days to years.

63. There can be a number of reasons for removal being delayed, including problems securing the detainee's travel documents or the agreement of the receiving country, detainees' initiating further legal challenges to secure the right to remain in the UK, the identity or nationality of the individual being in dispute; or in some cases detainees themselves seeking to frustrate the removal process. While these are all understandably difficult situations to resolve, they do not justify prolonged detention in and of themselves.

Impact on detainee

64. Although official statistics show that the great majority of individuals leave detention within 28 days,⁷⁸ individuals who are detained do not know if their detention will last for a few days or months or even years. A former detainee told us that she was not sure how long her detention would last "because there were other people who had been there for three years. I was wondering if I was going to be there for that long or a lesser time."⁷⁹ She was eventually detained for three months. Two other former detainees described the indeterminate nature of detention and uncertainty associated with it as "mental torture".⁸⁰ The monitoring bodies, HMIP and the IMB, expressed serious concern about the open-ended nature of detention and the impact this had on individuals. HMIP told us that it regularly finds individuals held in detention for extended periods of time, giving the examples of an individual who was detained at Harmondsworth IRC for more than four and half years, and another at Yarl's Wood for three years.⁸¹ Both monitoring bodies said that when speaking to detainees during inspections or visits, the indeterminate nature of immigration detention is a key cause of distress and anxiety.⁸²

76 J.N. v. United Kingdom, Application No. 37289/12, 19 May 2016; for the Hardial Singh principles, see para 7 above.

77 Duncan Lewis Solicitors ([IMD0047](#)); Bhatt Murphy solicitors and Garden Court chambers ([IMD0022](#)). See also similar arguments by Detention Action ([IMD0037](#)): "In the absence of a clearer directive over appropriate lengths of detention, this approach is clearly not working. As Shaw says, "the size of the detained population is determined more by the available bed space, rather than any in-depth analysis of need" and that "the current system must be regarded as happenstance"; and Women for Refugee Women ([IMD0013](#)).

78 Out of the 5,949 individuals leaving detention in September 2018, 71% left detention within 28 days.

79 [Q53](#) [Arrey and Michael, former detainees]

80 [Q40](#) [Jenny, former detainee]

81 Her Majesty's Inspectorate of Prisons ([IMD0016](#))

82 Her Majesty's Inspectorate of Prisons ([IMD0016](#)); Independent Monitoring Board ([IMD0040](#)); [Q13](#) [Jane Leech, IMB]

“[...] IMB members have a unique and clear insight into the anxiety and stress caused by immigration detention itself, and by the fact that, unlike prisoners within the criminal justice system, detainees simply do not know how long they will be detained. This, combined with the stress and uncertainty of their immigration cases, and the worry about families or children living in the community, can cause enormous distress. It is well-documented that detention is damaging to mental health and that the longer the detention continues, the more negative an impact it has upon mental health.”⁸³

65. There is a growing body of research on the negative impact of detention on individuals and their mental health and the worsening of mental health the longer the detention continues as depicted in Mary Bosworth’s literature review on mental health and immigration detention.⁸⁴

Lack of incentive to progress cases efficiently

66. Administrative guidance states that “detention must be used sparingly, and for the shortest period necessary.”⁸⁵ But we heard that the Home Office does not always act diligently and expeditiously when progressing detention cases. HMIP said that while removals can fail for a variety of reasons, some detention cases were prolonged due to factors within the Home Office’s control. HMIP inspections have shown that the Home Office “inconsistently manage and progress cases where people have been detained for extended periods” and “regularly ignores the advice of its own case progression panel.” HMIP told us that in Harmondsworth in 2017, the panel had recommended the release of five detainees in the twelve cases that were sampled “sometimes more than once, yet detention was maintained every time.”⁸⁶ In his observations of detention reviews by case progression panels, Stephen Shaw also found that there were missed opportunities to progress detention cases towards removal earlier in the detention period, leading to detainees being detained for longer periods than was necessary.⁸⁷ Other witnesses said that without a time limit, there is no incentive for the Home Office to progress cases at pace.⁸⁸

Arguments against a time limit

67. The Government’s reasons for resisting the introduction of a maximum time limit for immigration detention have included the following:

- an individual’s continued detention remains under regular review to check that it remains lawful and in line with government’s policy and where these no longer apply, detainees are released;⁸⁹

83 Independent Motoring Board ([IMD0040](#))

84 Review into the welfare in detention of vulnerable persons: A report to the Home Office by Stephen Shaw, [Cm 9186](#) January 2016. Appendix 5, The impact of immigration detention on mental health, a literature review by Mary Bosworth, University of Oxford.

85 Home Office, Enforcement Instructions and Guidance, [Chapter 55. 1. 3, Use of detention](#)

86 Her Majesty’s Inspectorate of Prisons ([IMD0016](#))

87 A follow-up report of the Home Office by Stephen Shaw, [Cm 9661](#), July 2018, p 87

88 Freed Voices ([IMD0015](#)); Jo Wilding ([IMD0048](#))

89 Third Universal Periodic Review: UK response to the recommendations, [Annex](#), 21 September 2017

- individuals have the right to apply for release from detention on immigration bail and challenge the lawfulness of their detention in the courts;⁹⁰ and
- time limits for immigration detention could be used by immigration detainees with unfounded claims to stay in the UK to frustrate the removal process and be released.⁹¹

We do not consider detention reviews and the bail process sufficient safeguards against lengthy detention and in the next Chapter we look at ways to strengthen them. We consider it is possible to build a system with a time limit which is accompanied by measures designed to prevent the abuse of the system. These safeguards are discussed below.

68. Detention should be used only where it is necessary and proportionate. Indefinite detention causes distress and anxiety and can trigger mental illness and exacerbate mental health conditions where they already exist. Moreover, the lack of a time limit on immigration detention reduces the incentive for the Home Office to progress cases promptly which would reduce both the impact on detainees, and detention costs. We recommend that where all other alternatives have been explored and considered unsuitable and detention is considered necessary, the maximum cumulative period for detention should be 28 days. The only exception to the 28 day limit should be that in exceptional circumstances—for example, when there are no barriers to removal and the detainee is seeking unreasonably to frustrate the removal process—the period of 28 days could be extended by a further period of up to 28 days on the decision of a judge. The decision on whether the 28 day period should be extended should be a judicial one, to be considered on application from the Home Office.

69. We consider these constraints should be placed on a statutory footing. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill deals with the rights of those who can currently exercise free movement rights. There will be a change in their position as the guidance currently stipulates that “EEA nationals and their family members should not be detained whilst a decision to administratively remove is pending”. Given that the Immigration and Social Security Co-ordination (EU Withdrawal) Bill is likely to be the most significant opportunity to seek legislative change in the foreseeable future, we will be seeking to amend it to ensure that restrictions on the length of immigration detention apply. It is possible that a time limit on immigration detention could be introduced by administrative action, which would be some improvement, but, in our view a second best.

90 Third Universal Periodic Review: UK response to the recommendations, [Annex](#), 21 September 2017

91 [Q69](#) [Rt Hon Caroline Nokes MP, Minister of State for Immigration]

5 Detention reviews

Independent review of detention

70. Witnesses considered that the introduction of a maximum time limit for immigration detention could lead to it becoming the normal detention period and that the Home Office would continue to hold individuals that would otherwise be released in a short period of time, such as a few days, up until the expiry of the time limit.⁹² **The 28 day limit should be a maximum, not the normal time limit. There is no reason why the existing pattern in which most detention is for considerably shorter periods should change. The introduction of a maximum time limit should supplement the existing other safeguards in the immigration detention system rather than replacing them. The constraints on the state's powers to detain for immigration purposes established under the common law and ECHR will continue to apply in all detention cases, including those involving foreign national offenders.** The current system of reviews should also be strengthened.

71. Under the current immigration detention system, individuals can challenge their detention by initiating an immigration bail application, which considers whether a person should be released. We note that the President of the FTTIAC has told us that applications for bail have fallen in a twelve month period from 1200 per month to 600.⁹³

72. The only automatic court control of the detention decision comes after an individual has spent four months in detention, at which point the Secretary of State is required to refer the immigration detainee to the First Tier Tribunal Immigration and Asylum Chamber for consideration of immigration bail. For individuals held in detention for less than four months, the onus is on them to apply for immigration bail.

73. The Home Secretary has stated that there will be automatic immigration bail referral after two months in detention from January 2019, although this has not yet been implemented. This still stands in stark contrast with the criminal justice system, where if the police need to apply to a magistrate if they wish to detain someone for more than 36 hours.⁹⁴

74. **Immigration detainees should not have lesser protections and rights than those detained under the criminal justice system. The decision on whether to continue detention should be made by a judge and should be made promptly. However, immigration detainees need sufficient time to get advice and gather evidence before such a hearing. A period of 36 hours may be too short for this. We recommend that a judicial decision should be required for detention beyond 72 hours.**

92 [Q14](#) [Dame Ann Owers, IMB]

93 First-tier Tribunal (Immigration and Asylum Chamber) ([IMD0059](#))

94 The Police and Criminal Evidence Act (PACE) 1984 gives the police a power to detain those suspected of an offence under the general criminal law for up to 36 hours before charges are brought. With the authority of a magistrate, this period can be extended to a total of 96 hours. After this period a person must be brought before a court or released. These provisions apply pre charge.

Safeguards for Foreign National Offenders

75. There are other concerns about the way in which the process works. The automatic immigration bail provision, which was introduced via the Immigration Act 2016, excludes foreign national offenders detained pending deportation and persons detained pending removal in the interests of national security.⁹⁵ These categories are known to be held the longest in detention.⁹⁶ ***The Government should extend the current automatic bail referral provision in Schedule 10 of the Immigration Act 2016 to all categories of detainees, including FNOs, to ensure that individuals who are most likely to spend lengthy periods in detention have decisions on their detention reviewed by a judge and are given the opportunity to make representations. This should be done whether or not our recommendation for a time limit on detention is accepted.***

Video links and bail hearings

76. Most immigration detainees will attend a bail hearing at the tribunal using video-conferencing, which is provided at the immigration removal centre to link to the Tribunal. The Guidance for Immigration Bail for Judges of the First-tier Tribunal states that detainees may request to attend the bail hearing in person and a judge will decide whether the person should be brought to the hearing centre.

77. The President of the First Tier Tribunal told us that while the hearings are fair there can be technical limitations, which need to be addressed. Judge Michael Clements said that while the video link system ensures that there are no logistical delays that would be involved in transporting immigration detainees from the centre to court, it is:

“[...] a basic system with variable quality and occasional breakdowns. The HO have shown they are able to provide excellent video linking as seen in the out of country s94B appeals. It is essential for the applicant to be able to give ‘best evidence’. There is concern that on occasions the applicant can be distracted by ‘noises off’ at the IRC, shouting from other detainees and doors banging. The picture quality is generally poor with the applicant often not being able to see all those in court, e.g. their sureties. The FtTIAC do however agree that the hearings are fair and the applicant is able to give evidence for a decision to be reached, as often the evidence is limited.”⁹⁷

78. **Bail hearings are an important safeguard for immigration detainees. We are concerned about the quality of the system when such hearings are by video link. The Home Office should address this as a matter of urgency, and in the meantime the importance of applying for bail, considering the conditions, and being active and energetic in the process should be explained to all detainees. We were concerned by reports that detainees were not always aware of how to initiate bail hearings or of their importance. We recognise that IT needs investment in all courts and tribunals. *There should be better quality IT for immigration bail hearings for all in detention with a dedicated video suite within all IRCs to ensure that all disruptive noise is cancelled out.***

95 Home Office, [Immigration bail](#), published for Home Office staff, 10 August 2018, p. 57

96 Foreign national offenders are those who are most likely to have excessive length of detention – the average on 4 February 2018 was 130 days. See, Home Office, A follow-up report of the Home Office by Stephen Shaw, [Cm 9661](#), July 2018, p 89

97 First-tier Tribunal (Immigration and Asylum Chamber) ([IMD0059](#))

Vulnerable detainees

79. Given that the legal mechanisms to challenge detention before the two month hearing are not automatic and individuals need to initiate an immigration bail or judicial review application, some individuals, such as those with language barriers or vulnerabilities, are at a significant disadvantage. HMIP told us that some inspections have showed that detainees are unaware they have the right to apply for immigration bail because Home Office staff had failed to advise them about their rights to bail.⁹⁸ In particular, there appear to be no policies or mechanisms to support, or even identify, detainees who enter the detention estate with pre-existing mental health conditions, nor to effectively assert their right to initiate immigration bail and challenge the lawfulness of their detention.⁹⁹ This was recently identified in the Court of Appeal in *R (VC) v SSHD* which found the lack of provision of advocates to assist mentally ill detainees to make representations put them at a substantial disadvantage compared to other detainees. The Court of Appeal also held that the Secretary of State's failure to consider the need for such safeguards amounted to a breach of the Equality Act 2010, by failing to make reasonable adjustments to the decision-making processes regarding the continued detention of people with mental health conditions.¹⁰⁰ We note the FtTIAC has said "we would support review to ensure that those detained who may not have recourse to legal advice or fail to understand the process, are detained for the least time necessary." **More regular and more independent review would also increase the protection available to the most vulnerable.**

98 Her Majesty's Inspectorate of Prisons ([IMD0016](#))

99 The Law Society of Scotland ([IMD0057](#)); Bhatt Murphy solicitors and Garden Court chambers ([IMD0022](#)); Equality and Human Rights Commission ([IMD0019](#)); [Q21](#) [Stephanie Harrison QC]

100 [R \(VC\) v Secretary of State for the Home Department](#)

6 Other concerns

Adults at Risk policy

80. We heard widespread concerns about the inadequacy of the Adults at Risk Policy (AAR) in protecting vulnerable people at risk of harm in detention. The AAR policy involves a three-stage assessment. Firstly, the policy sets out a number of ‘indicators of risk’¹⁰¹ which serve to identify those with a particular vulnerability to harm in detention. Previously, if someone was identified as belonging to one of these categories they were only detained under ‘very exceptional circumstances’. However, under the new policy once someone has been identified as having an indicator of risk, Home Office officials determine the ‘levels of evidence’ supporting the indicator.¹⁰² In order to reach level 3, professional evidence that a period of detention would be likely to cause harm is required. There are concerns that this evidence is hard to come by before harm has occurred. The evidence of vulnerability is then balanced against a range of ‘immigration factors’.¹⁰³

81. Two key concerns that witnesses had with the AAR policy were:

- There has been little overall change in the numbers of persons who are at risk of harm in detention. Stakeholders told us that there continue to be failures both in screening for vulnerability prior to detention and in mechanisms for identifying vulnerabilities within IRCs,¹⁰⁴ while HMIP told us that they regularly encounter people in detention who appear to have a high degree of vulnerability, including those who state that they are victims of torture or are experiencing mental health difficulties.¹⁰⁵ According to Stephen Shaw’s second report, there were 1,189 adults at risk in detention on 4 February 2018.¹⁰⁶
- even when identified in detention, vulnerable individuals may not be released as the evidentiary burden requiring them to prove their vulnerability has increased.¹⁰⁷ Medical Justice said that the high threshold of evidence needed for release from detention was “very hard to come by prior to detention, and once

101 The “indicators of risk” are: “suffering from a mental health condition or impairment (this may include more serious learning difficulties, psychiatric illness or clinical depression, depending on the nature and seriousness of the condition); having been a victim of torture; having been a victim of sexual or gender based violence, including female genital mutilation; having been a victim of human trafficking or modern slavery; suffering from post-traumatic stress disorder (which may or may not be related to one of the above experiences); being pregnant (pregnant women will automatically be regarded as meeting level 3 evidence); suffering from a serious physical disability; suffering from other serious physical health conditions or illnesses; being aged 70 or over; being a transsexual or intersex person.” The AAR guidance states that “The above list is not intended to be exhaustive. Any other relevant condition or experience that may render an individual particularly vulnerable to harm in immigration detention, and which does not fall within the above list, should be considered in the same way as the indicators in that list.”

102 Level 1: self-declaration. Level 2: professional evidence (e.g. from a social worker, medical practitioner or NGO). Level 3: professional evidence stating the individual is at risk and that a period of detention would likely cause harm.

103 These relate to removability, compliance and public protection.

104 Freedom from Torture told us between January and September 2017, it received 101 referrals for suspected torture survivors in immigration detention, Freedom From Torture ([IMD0009](#))

105 Her Majesty’s Inspectorate of Prisons ([IMD0016](#))

106 A follow-up report of the Home Office by Stephen Shaw, [Cm 9661](#), July 2018, p 33

107 Bhatt Murphy solicitors and Garden Court chambers ([IMD0022](#)); Bail for Immigration Detainees ([IMD0012](#)); Medical Justice ([IMD0027](#)). Level 1: self-declaration. Level 2: professional evidence (e.g. from a social worker, medical practitioner or NGO). Level 3: professional evidence stating the individual is at risk and that a period of detention would likely cause harm.

in detention the evidence is only likely to be generated as a result of the person deteriorating, at which point the harm has already occurred. Such a ‘wait and see’ approach knowingly places vulnerable people in a harmful environment.”¹⁰⁸

Mental Capacity

82. There is currently inadequate provision for the identification of, and provision for, individuals who lack mental capacity. The Adults at Risk policy and indeed other Home Office policies are silent on how to respond to the needs of those that lack mental capacity. As discussed earlier, recent judgments have found that the current system, with its lack of automatic legal representation and lack of prompt and automatic access to the courts to challenge detention, puts individuals who lack capacity at a disadvantage.¹⁰⁹

83. **We are concerned that the Adults at Risk policy does not give adequate protection to individuals at risk of harm in detention. There is also inadequate provision for the identification of, and provision for, individuals who lack mental capacity in immigration detention. The Government should make better provision for the identification of individuals who lack mental capacity in detention. There should be, at all times, an on-site suitably qualified expert at all IRCs able to make such assessments in accordance with mental capacity legislation. We also consider that there should be automatic provision of advocacy services in cases where individuals do not have full capacity to make decisions for themselves on account of their mental capacity to ensure that such individuals are able to participate in the legal processes to challenge their detention and make representations in respect of any immigration applications.**

Conditions and treatment

84. Conditions across the immigration detention estate vary. We heard that conditions had improved in some detention centres due to the reduction in the detainee population, but a number of issues remained. We were particularly concerned by reports of:

- Prison-like conditions in several IRCs and the extended time periods individuals spent locked in their rooms. HMIP told us that Colnbrook, Brook House, Morton Hall and parts of Harmondsworth IRC look and feel like prisons and not enough has been done to adapt them for an immigration detainee population. HMIP also said that during interviews with detainees, the prison-like conditions of IRC are one of detainees’ main concerns.¹¹⁰
- inappropriate mixing of detainees. We were concerned by the findings in the independent investigation into concerns about Brook House IRC, in particular the impact of mixing violent and intimidating ex-foreign national offenders (awaiting deportation at the end of a prison sentence) with other detainees. The report highlighted that managing and caring for the diverse and demanding detainee population at Brook House IRC is particularly challenging and can “change the entire feeling within the establishment very, very quickly.”¹¹¹

108 Medical Justice ([IMD0027](#))

109 R (VC) v SSHD [2018] EWCA Civ 57

110 Her Majesty’s Inspectorate of Prisons ([IMD0016](#))

111 Independent investigation into concerns about Brook House immigration removal centre, [A report for the divisional chief executive of G4S Care and Justice and the main board of G4S plc](#), November 2018, p 63

Detainees said that they had experienced violence and bullying from other detainees which was not properly managed by staff due to staff shortages. FNOs were disproportionately the subject of reports of security incidents and incidents of violence or threatening behaviour although there were a few disruptive FNOs that were often responsible for a large number of incidents.¹¹²

- unnecessary heavy-handedness or unnecessary restrictive measures taken by immigration enforcement officials during the detention process whether during an immigration enforcement raid or detention in the course of an individual reporting to the Home Office. Former detainees told us that they were handcuffed at the point of detention even when they showed no signs of absconding or being violent.¹¹³ The disproportionate use of handcuffs without evidence of risk was also highlighted by HMIP in their 2017–18 annual report.¹¹⁴ We also heard about the practice of taking away of mobile phones at the point of detention, precluding the detainee from letting anyone know what had happened, and the limited time given to detainees to transfer their contacts over to other phones.¹¹⁵ We heard too that detainees were not given the opportunity to collect toiletries or other personal items.¹¹⁶

85. We are concerned that reports of staff abuse of detainees and or deterioration of conditions in IRCs have been brought to light by undercover reporting rather than through Home Office oversight and assurance processes.¹¹⁷ **The Home Office should give serious consideration to improving the oversight and assurance mechanisms in IRCs and the immigration detention estate generally to ensure that any ill-treatment or abuse is found out immediately and action is taken to correct it, to take steps against those responsible and to ensure lessons are learned to put in place effective prevention mechanisms.**

86. *More needs to be done to make the detention estate less like prisons and create as open a regime as feasible on the inside, which is proportionate when dealing with those detained for administrative purposes. Detainees should not be routinely handcuffed. Under the criminal justice system, there are different prison regimes ranging from category A to D. Consideration should be given to separating individuals who have been convicted of serious offences and those who pose a risk of violence from other detainees.*

112 Independent investigation into concerns about Brook House immigration removal centre, [A report for the divisional chief executive of G4S Care and Justice and the main board of G4S plc](#), November 2018, p 24

113 [Q52](#) [Arrey, former detainee]

114 Ministry of Justice & HM Inspectorate of Prisons, [HM Chief Inspector of Prisons for England and Wales Annual Report 2017–18](#), July 2018, p 77

115 [Q55](#) [Arrey, former detainee]

116 [Q33](#) [Jenny, former detainee]

117 Yarl's Wood has experienced similar problems to Brook House as revealed in a Channel 4 documentary in 2015 in which staff were recorded abusing detainees.

Conclusions and recommendations

Independent decision-making

1. Detention should only be used if necessary and proportionate. Detention is not necessary or proportionate if lesser interferences with an individual's liberty are available and meet the legitimate aims pursued. We consider that alternatives to detention should be considered in all cases and a record kept. Detention should only be used where necessary and proportionate and where alternatives are not available or would not meet the legitimate aims pursued. We welcome the Home Secretary's commitment to do more to explore alternatives to detention and the launch of the pilot to manage vulnerable women in the community who would otherwise be detained at Yarl's Wood. We look forward to the development of alternatives to detention programmes for other categories of detainees. (Paragraph 28)
2. *We believe that decision making about detention should be independent. Independent decision making will ensure that the initial decision to deprive a person of their liberty is robust and fully justified. The power to detain should not be wielded by the Department which is charged with removals and deportations. We recommend that alongside the Home Office's current plans to introduce an independent element into case progression panels, in cases where detention is planned there should be properly independent decision-making. Decisions should be pre-authorized by a person or body fully independent of the Home Office. We anticipate that introducing independent decision-making will help to reduce the significant numbers of vulnerable people being detained each year. This could be implemented in the first instance as a pilot which should be reviewed after 24 months to consider whether it has indeed improved the quality of detention decisions.* (Paragraph 38)

Legal complexity

3. Individuals cannot enforce their rights effectively if they do not understand them. There is also a greater likelihood of misapplication if the law is overly complex. The Law Commission currently has a project—"Simplifying the Immigration Rules"—considering how immigration rules can be made more simple and accessible. We welcome this. *The Government should also consider asking the Law Commission to look at consolidating and simplifying immigration law more widely.* (Paragraph 43)

Access to legal advice

4. Article 5 (of the ECHR) provides that detainees should be entitled to take proceedings by which the lawfulness of detention should be decided speedily by a court and release ordered if the detention is not lawful. Given the challenges individuals face in detention, and the complexity of the law, legal advice and representation is crucial to help individuals to pursue their rights effectively. Legal aid is currently available to challenge detention decisions but generally not available for most immigration applications. Restricting legal aid to such challenges without addressing the underlying immigration case may undermine the effectiveness of such challenges. It may also be a false economy. Not only is detention itself expensive, but there

are likely to be costs elsewhere in the system, if the lack of legal aid means it takes longer to settle someone's immigration status and wastes more court time with unrepresented individuals. It could be cheaper overall if legal advice were provided at the outset, so that all issues could be properly considered when the issues first arise and thereby reduce the need for repeated court interventions. *We have already recommended that the Government consider whether immigration cases engaging the Article 8 right to private and family life be brought within the scope of civil legal aid, where they would be available on the means and merits test basis. We consider there is a case for similarly reinstating legal aid for all immigration cases.* (Paragraph 47)

5. Those in the criminal justice system have initial access to prompt legal advice; there should be similar provision for those in immigration detention. *Initial legal advice appointments under the Detention Duty Advice scheme should be made automatically, unless the individual opts out. Surgeries should be long enough to ensure that there is sufficient time for the detainee to explain their case and for the adviser to collect the necessary details needed to take the case forward to representation. The new system for providing advice should be kept under review to ensure that the firms responsible for advising detainees have the necessary skills and experience to do so.* (Paragraph 53)

Legal advice and prisoners

6. *If it is necessary and proportionate for an individual to be detained under immigration powers after they have finished serving a prison sentence, then detention should take place in an immigration removal centre.* (Paragraph 54)
7. Foreign nationals who are serving custodial sentences in prisons and who are liable to deportation at the end of their sentences are among those detained under immigration powers for the longest periods. This is inappropriate and inefficient. In many cases it should be possible for the Home Office and the Foreign and Commonwealth Office to seek to resolve early in the course of a sentence problems with documentation or the attitude of the receiving country. Access to legal advice in prison would mean that such offenders could engage with the legal processes to resolve their immigration status while serving their sentence. *The Home Office should make it a priority to resolve the immigration status of prisoners at the earliest opportunity. People liable to deportation should be given notice of the Home Office's intentions to deport as far before their release date as possible. Individuals should then have prompt and automatic access to legal advice so that they can engage with the legal processes for challenging deportation appropriately. This should mean immigration status issues are resolved before custodial sentences end and offenders can either be released or removed at the end of their custodial sentence. This would also help to manage the expectations of both the detainee and their families.* (Paragraph 60)

Time limits

8. Detention should be used only where it is necessary and proportionate. Indefinite detention causes distress and anxiety and can trigger mental illness and exacerbate mental health conditions where they already exist. Moreover, the lack of a time limit on immigration detention reduces the incentive for the Home Office to progress cases promptly which would reduce both the impact on detainees, and detention costs.

We recommend that where all other alternatives have been explored and considered unsuitable and detention is considered necessary, the maximum cumulative period for detention should be 28 days. The only exception to the 28 day limit should be that in exceptional circumstances—for example, when there are no barriers to removal and the detainee is seeking unreasonably to frustrate the removal process—the period of 28 days could be extended by a further period of up to 28 days on the decision of a judge. The decision on whether the 28 day period should be extended should be a judicial one, to be considered on application from the Home Office. (Paragraph 68)

9. We consider these constraints should be placed on a statutory footing. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill deals with the rights of those who can currently exercise free movement rights. There will be a change in their position as the guidance currently stipulates that “EEA nationals and their family members should not be detained whilst a decision to administratively remove is pending”. Given that the Immigration and Social Security Co-ordination (EU Withdrawal) Bill is likely to be the most significant opportunity to seek legislative change in the foreseeable future, we will be seeking to amend it to ensure that restrictions on the length of immigration detention apply. It is possible that a time limit on immigration detention could be introduced by administrative action, which would be some improvement, but, in our view a second best. (Paragraph 69)

Independent review of detention

10. The 28 day limit should be a maximum, not the normal time limit. There is no reason why the existing pattern in which most detention is for considerably shorter periods should change. The introduction of a maximum time limit should supplement the existing other safeguards in the immigration detention system rather than replacing them. The constraints on the state’s powers to detain for immigration purposes established under the common law and ECHR will continue to apply in all detention cases, including those involving foreign national offenders. (Paragraph 70)
11. Immigration detainees should not have lesser protections and rights than those detained under the criminal justice system. The decision on whether to continue detention should be made by a judge and should be made promptly. However, immigration detainees need sufficient time to get advice and gather evidence before such a hearing. A period of 36 hours may be too short for this. We recommend that a judicial decision should be required for detention beyond 72 hours. (Paragraph 74)

Safeguards for Foreign National Offenders

12. *The Government should extend the current automatic bail referral provision in Schedule 10 of the Immigration Act 2016 to all categories of detainees, including FNOs, to ensure that individuals who are most likely to spend lengthy periods in detention have decisions on their detention reviewed by a judge and are given the opportunity to make representations. This should be done whether or not our recommendation for a time limit on detention is accepted. (Paragraph 75)*

Video links and bail hearings

13. Bail hearings are an important safeguard for immigration detainees. We are concerned about the quality of the system when such hearings are by video link. The Home Office should address this as a matter of urgency, and in the meantime the importance of applying for bail, considering the conditions, and being active and energetic in the process should be explained to all detainees. We were concerned by reports that detainees were not always aware of how to initiate bail hearings or of their importance. We recognise that IT needs investment in all courts and tribunals. There should be better quality IT for immigration bail hearings for all in detention with a dedicated video suite within all IRCs to ensure that all disruptive noise is cancelled out. *There should be better quality IT for immigration bail hearings for all in detention with a dedicated video suite within all IRCs to ensure that all disruptive noise is cancelled out* (Paragraph 78)
14. More regular and more independent review would also increase the protection available to the most vulnerable. (Paragraph 79)

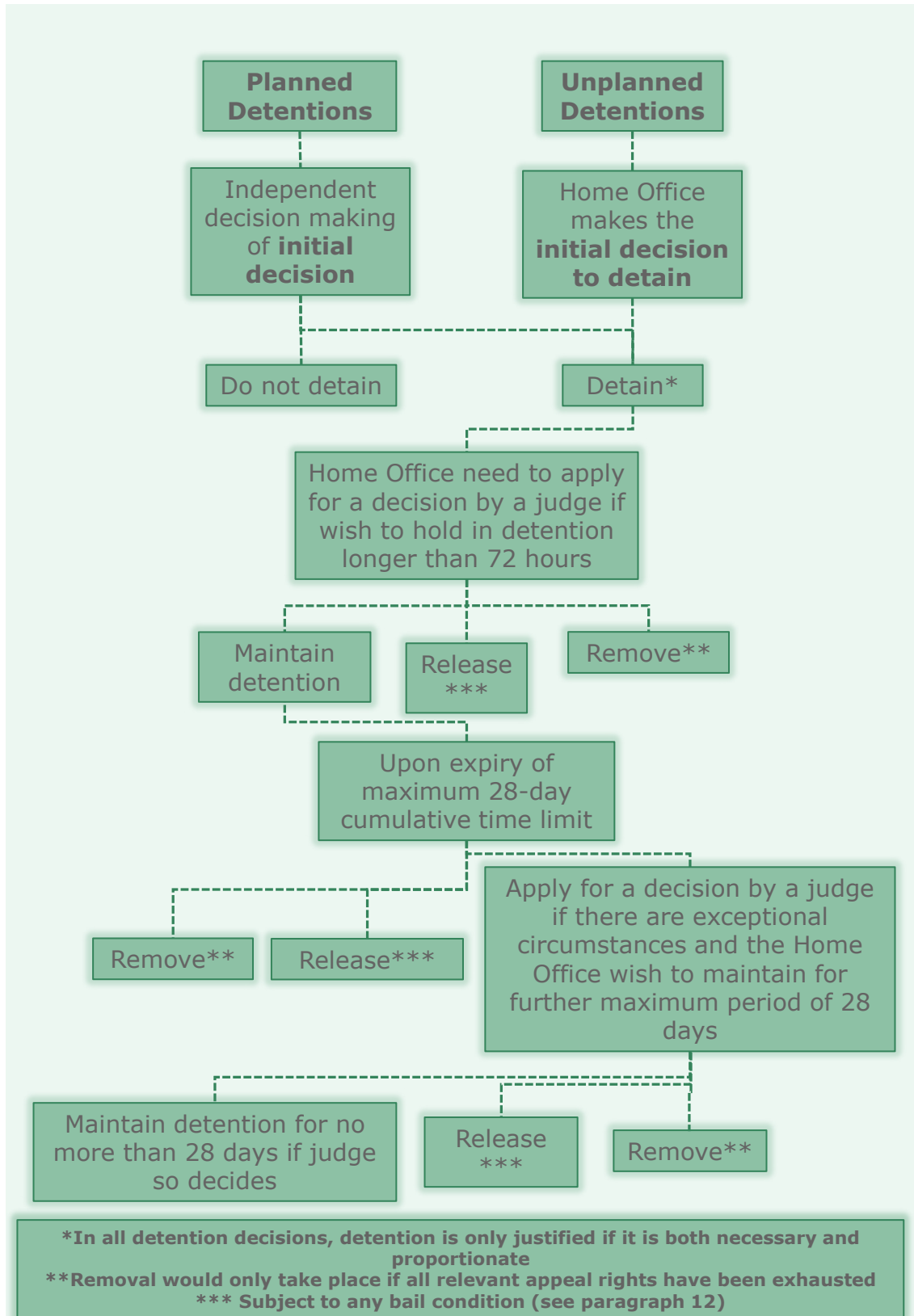
Adults at Risk

15. We are concerned that the Adults at Risk policy does not give adequate protection to individuals at risk of harm in detention. There is also inadequate provision for the identification of, and provision for, individuals who lack mental capacity in immigration detention. *The Government should make better provision for the identification of individuals who lack mental capacity in detention. There should be, at all times, an on-site suitably qualified expert at all IRCs able to make such assessments in accordance with mental capacity legislation. We also consider that there should be automatic provision of advocacy services in cases where individuals do not have full capacity to make decisions for themselves on account of their mental capacity to ensure that such individuals are able to participate in the legal processes to challenge their detention and make representations in respect of any immigration applications.* (Paragraph 83)

Detention conditions and treatment

16. The Home Office should give serious consideration to improving the oversight and assurance mechanisms in IRCs and the immigration detention estate generally to ensure that any ill-treatment or abuse is found out immediately and action is taken to correct it, to take steps against those responsible and to ensure lessons are learned to put in place effective prevention mechanisms. (Paragraph 85)
17. *More needs to be done to make the detention estate less like prisons and create as open a regime as feasible on the inside, which is proportionate when dealing with those detained for administrative purposes. Detainees should not be routinely handcuffed. Under the criminal justice system, there are different prison regimes ranging from category A to D. Consideration should be given to separating individuals who have been convicted of serious offences and those who pose a risk of violence from other detainees.* (Paragraph 86)

Annex 1: JCHR's proposed immigration detention process



Annex 2: Rights to challenge immigration decisions

DATE	EVENT
1 July 1970	<p>1969 IMMIGRATION APPEALS ACT</p> <p><i>Created appeal rights:</i></p> <ul style="list-style-type: none"> - Created rights of appeal for commonwealth citizens against exclusion, conditions of admission, decision to make a deportation order, refusal to revoke a deportation order and removal. Appeal to adjudicator. - Appeal on grounds that decision was not in accordance with the law/immigration rules or, if there was discretion to be exercised, that the discretion should have been exercised differently. - No right of appeal against deportation or other restrictive action on grounds 'primarily of a political nature'.
1 January 1973	<p>IMMIGRATION ACT 1971:</p> <ul style="list-style-type: none"> - Replaced the 1969 Act. - <i>Enlarged appeal rights:</i> <p>Extended scheme of 1969 Act to cover some aliens as well as commonwealth citizens, giving:</p> <ul style="list-style-type: none"> - Rights of appeal against refusal of entry clearance (which commonwealth citizens did not require). - Rights of appeal against a certificate of patriality (confirming father or grandfather was born in UK). - Suspensive rights of appeal to everyone who was subject to deportation as an overstayer or for breaching conditions of stay. <p>The 1971 Act did not give rights to all aliens:</p> <p>those refused leave to enter (which commonwealth citizens did not require) with no entry clearance could exercise their rights of appeal only from abroad. [Someone wishing to challenge a removal on asylum grounds, where an appeal post-removal would be inadequate, would need to bring a judicial review.]</p> <p>No appeal against decision to remove those deemed illegal entrants.</p> <ul style="list-style-type: none"> - Those excluded from the Act (as above) only had a right to an extra statutory advisory procedure where grounds of proposed exclusion were not disclosed.

DATE	EVENT
1 August 1988	<p>IMMIGRATION ACT 1988:</p> <ul style="list-style-type: none"> - The protection of Commonwealth citizens from immigration control ended on 1 August 1988 when s 1 of the Immigration Act 1988 repealed s 1(5) of the Immigration Act 1971. As they were subject to immigration control in the same way as aliens they benefited from the same appeal rights. <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - Immigration Act 1988 restricted rights of appeal against decision to deport for those last given leave to enter the United Kingdom less than seven years before the date of the decision to make a deportation order against them. The only challenge to the merits of such decisions would be by judicial review.
26 July 1993	<p>ASYLUM AND IMMIGRATION APPEALS ACT 1993</p> <p><i>Enlarged appeal rights:</i></p> <ul style="list-style-type: none"> - Introduced appeals against refusal of leave to enter or remain on asylum grounds. Suspensive right of appeal to a "special" adjudicator on grounds that removal/deportation/refusal to vary leave/removal directions would be contrary to UK's obligations under the Refugee Convention. - Appeal from "special" adjudicator to Immigration Appeal Tribunal. Refusal of permission could be challenged by judicial review. - Appeal from Immigration Appeal Tribunal with permission to the Court of Appeal/Court of Session. Refusal of permission by Court of Appeal /Court of Session is final. <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - Removed rights of appeal from rejected visitors (other than those visiting family members), short-term (less than six months) and prospective (visiting to find a course) students and persons who did not meet requirements as to age, nationality or documents for the application they made. The only challenge to such decisions was by way of judicial review. - No onward right of appeal to Immigration Appeal Tribunal in cases where the special adjudicator agreed with the Secretary of State that the claim did not engage in the UK's obligations under the Convention or was frivolous or vexatious. Only challenge to decision was by way of judicial review.

DATE	EVENT
27 January 1997	<p>ASYLUM AND IMMIGRATION ACT 1996:</p> <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - restricting appeals against return to a safe third country within the European Union and other countries so designated: - Introduced certification of appeals on the grounds of: <ul style="list-style-type: none"> Safe third country (person had travelled through another country en route to the UK and there was no risk of persecution in that country or that that country would refole them) Safe country of origin (specified by order) <p>and certain features of appeal, viz:</p> <ul style="list-style-type: none"> Appeal does not disclose a convention reason (race, religion, nationality, membership of a social group or political opinion); Fear is clearly unfounded or circumstances giving rise to fear do not subsist Person claims at port and fails to produce a passport, without giving a reasonable explanation for failure or produces a passport not valid and fails to say that it is not a valid passport Claim is made after notification of liability to removal; decision to make a deportation order; recommendation for deportation by a court or post refusal of leave to enter. Claim is frivolous, vexatious or manifestly fraudulent Claim is made post notification of decision to remove/deport <p>A person could appeal against the certificate to an adjudicator on the grounds that the conditions for its issue were not met. If that appeal failed, then there was no onward right of appeal to the Tribunal. The effect of the certificate was that a person had no right of appeal to the Tribunal. The decision of the adjudicator could thus only be challenged by judicial review.[†]</p>
†	<p>This was followed by the Special Immigration Appeals Act 1997 (which came into force 3 August 1998) which introduced appeals against exclusion, refusal of leave to enter or remain or deportation on political or national security grounds which previously had been subject to an advisory procedure only. (These cases involve the use of closed material procedures and of special advocates.)</p>

DATE	EVENT
	<p>IMMIGRATION AND ASYLUM ACT 1999 AND HUMAN RIGHTS ACT 1998:</p> <p><i>Immigration and Asylum Act 1999 added complexity to appeals regime:</i></p> <ul style="list-style-type: none"> - Rights of appeal consolidated and put in 1999 Act. Aimed to create a 'one-stop' appeals process aimed to avoiding successive appeals (but created enormous complexity). <p><i>Human Rights Act 1998 enlarged appeal rights:</i></p> <ul style="list-style-type: none"> - Rights of appeal against the decision to refuse leave to enter or remain on human rights grounds given to all within the jurisdiction of the UK by the Human Rights Act 1998. <p><i>Immigration and Asylum Act 1999 modified regime:</i></p> <ul style="list-style-type: none"> - jurisdiction to hear appeals in immigration cases was given to adjudicators of the Tribunal. - New right of appeal on grounds that decision was racially discriminatory. Appeals on this ground did not automatically suspend removal. <p><i>Immigration and Asylum Act 1999 restricted appeal rights:</i></p> <ul style="list-style-type: none"> - Rights of appeal removed from overstayers and those in breach of conditions of leave. These people were taken out of the deportation procedure and put in the same process as illegal entrants, that of administrative removal. This removed their rights of appeal. One effect of this was that a person refused was left in limbo waiting until a decision to remove was made, at which point s/he could appeal.
1 April 2003	<p>NATIONALITY IMMIGRATION AND ASYLUM ACT 2002:</p> <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - Removal of right of appeal against destination to which a person was to be removed. Only challenge was henceforth by way of judicial review. - Removal of right of appeal against a decision that a person requires leave to enter (i.e. that the person is not a non-visa national). Only challenge henceforth by way of judicial review. - Removal of right of appeal where Secretary of State certifies that a matter could have been raised in an earlier appeal, whether or not that appeal was actually brought.

DATE	EVENT
4 April 2005	<p>ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC.) ACT 2004</p> <p><i>Modification of regime—narrowing of safeguards:</i></p> <ul style="list-style-type: none"> - Replaced two tier adjudicators and Immigration Appeal Tribunal with a single tier immigration appellate authority: the Asylum and Immigration Tribunal. Tribunal could reconsider its own decisions and remake if these contained an error of law. [The two tier system was reinstated again under the Tribunal, Courts Enforcement Act 2007].
31 August 2006	<p>IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006:</p> <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - restricted appeals for those refused entry to the United Kingdom to work or study. <p><i>Enlarged appeal rights:</i></p> <ul style="list-style-type: none"> - 'Right of appeal for those whose leave is curtailed or not extended on asylum grounds but who have leave in another capacity following the decision. Henceforth they could appeal on grounds that they should not have been refused leave on asylum grounds (this right of appeal was later removed by the Immigration Act 2014)
15 February 2010	<p>TRANSFER OF FUNCTIONS OF THE ASYLUM AND IMMIGRATION TRIBUNAL ORDER 2010/21 MADE UNDER THE TRIBUNAL COURTS AND ENFORCEMENT ACT 2007:</p> <p><i>Enlarged appeal rights:</i></p> <ul style="list-style-type: none"> - A person appeals a decision of UK Visas and Immigration (where there is a right of appeal) to the First- tier tribunal. The unsuccessful party before the First-tier Tribunal can seek permission to appeal to the Upper Tribunal but must show an arguable error of law. - Onward appeal to the Court of Appeal only in cases raising an important point of principle or practice or where there is some other compelling reason for the appeal to be heard. <p><i>Modification of regime:</i></p> <ul style="list-style-type: none"> - A two-tier appellate structure was reinstated bringing to an end the system introduced by the 2004 Act - Judicial review transferred from the High Court to the Upper Tribunal. The same rights of judicial review remained, but the person hearing the judicial review would not necessarily be a High Court judge.

DATE	EVENT
23 May 2011	<p>UK Borders Act 2007:</p> <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - In appeals against decisions under the points-based system, new evidence about the points-based application could only be adduced to rebut an accusation of having submitted a false or forged document.
5 April 2013	<p>LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012:</p> <p><i>Modification of regime—changes in legal aid:</i></p> <ul style="list-style-type: none"> - Legal aid removed from all immigration (i.e. not protection) appeals, save where funding could be secured on an exceptional basis. Funding is no longer available for immigration cases raising Article 8 ECHR issues (except for in cases of domestic violence). Legal aid also removed in respect of deportation (but not if the deportation/removal decision raises asylum, Article 3, or humanitarian protection grounds).
25 June 2013	<p>JUSTICE AND SECURITY ACT 2012</p> <p>Modification of regime—adding complexity:</p> <ul style="list-style-type: none"> - Amendment of the Special Immigration Appeals Commission Act 1997 to provide right of review on ‘judicial review principles’ by the Special Immigration Appeals Commission. Previously, those applying for review would have gone for judicial review in the High Court, where there is no “closed material procedure” because these were cases where there was no right of appeal.
25 June 2013	<p>CRIME AND COURTS ACT 2013</p> <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - Abolition of family visitor’s appeals. - Provision made for the Secretary of State to issue a certificate so that if he decides to cancel or curtail leave ‘wholly or partly’ on the grounds that it is no longer conducive to the public good for a person to have leave to enter or remain in the United Kingdom and they are outside the UK when that decision is taken, they can only appeal from overseas.)

DATE	EVENT
20 October 2014 to 6 April 2015	<p data-bbox="523 286 1241 315">PHASED IMPLEMENTATION OF IMMIGRATION ACT 2014:</p> <p data-bbox="523 342 834 371"><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> <li data-bbox="523 405 1342 685">- The Act reclassified appeals against refusal of leave to remain in the UK under broad headings of protection and human rights. The appeal is no longer against an “immigration decision” as defined under s. 82 of Nationality, Immigration and Asylum Act 2002. That approach was repealed and replaced with a different definition of an appealable decision. An appealable decision henceforth was: decision to refuse a protection claim; decision to refuse a human rights claim; decision to refuse a protection status. <li data-bbox="523 719 1353 1066">- The only rights of appeal are for those who have made a protection (broadly an asylum) or human rights (for example on the basis of Article 8, the right to private and family life) claim as defined, which the Secretary of State has “decided to refuse” or whose leave granted for protection reasons (recognition as a refugee, humanitarian protection) has been revoked. Some of those with no human rights’ dimension to their appeal must settle for a Home Office ‘administrative review’ and if this finds no “case working error” their only option is judicial review. While these are mainly points based cases, they also include bereaved spouses and those applying under the domestic violence rule. <p data-bbox="523 1093 1267 1155">Those whose leave is curtailed henceforth have no right of appeal.</p> <p data-bbox="523 1182 1334 1308">Among the casualties of the changes: rights of appeal on the grounds that the decision is “not in accordance with the law”; rights of appeal against refusal of certificate of entitlement to a right of abode, important for the Windrush generation.</p> <ul style="list-style-type: none"> <li data-bbox="523 1335 1353 1653">- Non-suspensive appeals have been a feature of the landscape since 2002 but the 2014 Act permitted certification on the basis that removal for the period until the appeal is heard before an appeal is heard would not breach the Appellant’s human rights. Deportation appeals could be certified on the basis that removal during the appeal would not breach a person’s human rights and in particular would not cause them serious, irreversible harm. The power did not apply in the case of those facing deportation on the basis of their family relationship to someone who is being or has been deported; it only applied to the principal. <li data-bbox="523 1680 1334 1839">- The Home Office guidance indicated that this certificate was not to be used in respect of Article 2 (right to life) or Article 3 (prohibition of torture) claims. The certificates were challenged by judicial review and reached the Supreme Court in the joined cases of Kiarie and Byndloss [2017] UKSC 42 on 14 June 2017 and

DATE	EVENT
	<p>were found to breach the appellant's procedural rights under Article 8 of the European Convention on Human Rights in that there were no facilities for them to give evidence in person at their appeal hearing, from overseas. The Home Office has not used these certificates since, but persons who had already been removed have not been brought back.</p> <p>Enlarged appeal rights:</p> <ul style="list-style-type: none"> - For overstayers, if a human rights application is refused, there is a right of appeal. (Previously, if refused, they had to wait for removal directions to be set to have an appeal.)
1 December 2016	<p>IMMIGRATION ACT 2016</p> <p><i>Restricted appeal rights:</i></p> <ul style="list-style-type: none"> - Made provision to extend the system of certifying appeals to permit removal before the appeal is heard from deportation cases, to all cases. The Home Office proposed to phase their implementation and use them first where: <p>The person made their human rights claim at a time when they had no leave (overstayers or those who entered without leave); and</p> <p>The claimant does not rely on their relationship with a British national partner, parent, or child (where there is evidence of the relationship).</p> <p>The provisions were not used following the decision in <i>Kiarie and Byndloss</i>.</p>

Declaration of Lords' Interests¹

Baroness Hamwee

- Member APPG inquiry on Immigration Detention
- Recently given award as a Detention Forum Champion by the Detention Forum

Baroness Lawrence of Clarendon

- No relevant interests to declare

Baroness Nicholson of Winterbourne

- No relevant interests to declare

Baroness Prosser

- No relevant interests to declare

Lord Trimble

- No relevant interests to declare

Lord Woolf

- No relevant interests to declare

¹ A full list of Members' interests can be found in the Register of Lords' Interests: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-oflords-interests/>

Formal minutes

Wednesday 30 January 2019

Members present:

Ms Harriet Harman MP, in the Chair

Ms Karen Buck MP	Baroness Hamwee
Joanna Cherry MP	Baroness Lawrence of Clarendon
Jeremy Lefroy MP	Baroness Prosser
	Lord Trimble
	Lord Woolf

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

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 86 read and agreed to.

Summary read and agreed to.

Annexes read and agreed to.

Resolved, That the Report be the Sixteenth Report of the Committee.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the report be made available, in accordance with the provisions of House of Commons Standing Order No.134.

[Adjourned till Wednesday 13 February 2019 at 3.00pm]

Witnesses

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

Wednesday 31 October 2018

Bella Sankey, Director, Detention Action, **Mary Bosworth**, Professor of Criminology, University of Oxford, **Celia Clarke**, Director, Bail for Immigration Detainees, and **Leila Zadeh**, Director, UK Lesbian and Gay Immigration Group.

[Q1–7](#)

Hindpal Singh Bhui, Inspection Team Leader, HM Inspectorate of Prisons, **Jane Leech**, Immigration Detention Representative, and **Dame Anne Owers**, National Chair, Independent Monitoring Boards.

[Q8–14](#)

Wednesday 14 November 2018

Rt Hon the Lord David Blunkett.

[Q15–19](#)

Wednesday 21 November 2018

Amanda Weston QC, Barrister, **Stephanie Harrison QC**, Barrister, Garden Court Chambers, **Toufique Hossain**, Solicitor, Duncan Lewis and Co, and **Laura Dubinsky**, Barrister, Doughty Street Chambers.

[Q20–31](#)

Wednesday 28 November 2018

Jenny, former immigration detainee, **Natasha Tsangarides**, Senior Policy Adviser, Freedom from Torture.

[Q32–49](#)

Arrey, former detainee, **Michael**, former detainee.

[Q50–59](#)

Wednesday 5 December 2018

Rt Hon Caroline Nokes MP, Minister of State for Immigration, and **Tyson Hepple**, Director General, Immigration Enforcement, Home Office,

[Q60–81](#)

Published written evidence

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

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

- 1 Amnesty International UK ([IMD0011](#))
- 2 Anonymous 2 ([IMD0003](#))
- 3 Anonymous 4 ([IMD0030](#))
- 4 Bail for Immigration Detainees ([IMD0012](#), [IMD0029](#), [IMD0053](#), [IMD0060](#))
- 5 Bail Observation Project ([IMD0035](#))
- 6 Bhatt Murphy Solicitors and Garden Court Chambers ([IMD0061](#), [IMD0022](#))
- 7 British Medical Association (BMA) ([IMD0023](#))
- 8 Campaign to Close Campsfield and End All Immigration Detention ([IMD0031](#), [IMD0034](#))
- 9 Campaign to Close Campsfield/Bail Observation Project ([IMD0046](#))
- 10 Care Quality Commission (CQC) ([IMD0018](#))
- 11 Deighton Pierce Glynn and the AIRE Centre ([IMD0054](#))
- 12 Detention Action ([IMD0037](#), [IMD0063](#))
- 13 Duncan Lewis Solicitors ([IMD0047](#))
- 14 Equality and Human Rights Commission ([IMD0019](#))
- 15 First-tier Tribunal (Immigration and Asylum Chamber) ([IMD0059](#))
- 16 Freed Voices ([IMD0015](#))
- 17 Freedom From Torture ([IMD0009](#))
- 18 Garden Court Chambers ([IMD0033](#), [IMD0058](#))
- 19 Gatwick Detainees Welfare Group ([IMD0032](#))
- 20 Her Majesty's Inspectorate of Prisons ([IMD0016](#))
- 21 Hirst Chambers ([IMD0039](#), [IMD0051](#))
- 22 Home Office ([IMD0038](#), [IMD0062](#), [IMD0064](#))
- 23 Immigration Law Practitioners' Association ([IMD0050](#))
- 24 Independent Motoring Board ([IMD0040](#))
- 25 INQUEST ([IMD0028](#))
- 26 Jo Wilding ([IMD0048](#))
- 27 Law Centre (NI) ([IMD0024](#))
- 28 LGBT&T Dorset Equality Network ([IMD0049](#))
- 29 Liberty ([IMD0010](#))
- 30 Medical Justice ([IMD0027](#))
- 31 Mind ([IMD0052](#))
- 32 Mr Robert Della-Sala ([IMD0005](#))
- 33 Mrs Philippa Scott ([IMD0055](#))

- 34 NAT (National AIDS Trust) ([IMD0017](#))
- 35 National Union of Journalists (NUJ) ([IMD0026](#))
- 36 Peter Farren ([IMD0045](#))
- 37 Professor Mary Bosworth ([IMD0044](#))
- 38 Quakers in Britain and the Quaker Asylum and Refugee Network ([IMD0014](#))
- 39 Refugee Tales ([IMD0007](#))
- 40 René Cassin ([IMD0008](#))
- 41 SOAS Detainee Support ([IMD0041](#))
- 42 Stonewall ([IMD0025](#))
- 43 The Association of Visitors to Immigration Detainees (AVID) ([IMD0021](#))
- 44 The Law Society ([IMD0056](#))
- 45 The Law Society of Scotland ([IMD0057](#))
- 46 UK Lesbian and Gay Immigration Group ([IMD0036](#))
- 47 UNHCR, The UN Refugee Agency ([IMD0020](#))
- 48 Virgo Consultancy Services Ltd ([IMD0004](#))
- 49 Women for Refugee Women ([IMD0013](#))

List of Reports from the Committee during the current Parliament

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

Session 2017–19

First Report	Legislative Scrutiny: The EU (Withdrawal) Bill: A Right by Right Analysis	HC 774 HL 70
Second Report	Proposal for a Draft Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018	HC 645 HL 86
Third Report	Legislative Scrutiny: The Sanctions and Anti-Money Laundering Bill	HC 568 HL 87
Fourth Report	Freedom of Speech in Universities	HC 589 HL 111
Fifth Report	Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018	HC 926 HL 146
Sixth Report	Windrush generation detention	HC 1034 HL 160
Seventh Report	The Right to Freedom and Safety: Reform of the Deprivation of Liberty Safeguards	HC 890 HL 161
Eighth Report	Freedom of Speech in Universities: Responses	HC 1279 HL 162
Ninth Report	Legislative Scrutiny: Counter-Terrorism and Border Security Bill	HC 1208 HL 167 (HC 1827)
Tenth Report	Enforcing Human Rights	HC 669 HL 171
Eleventh Report	Second Legislative Scrutiny Report: Counter-Terrorism and Border Security Bill	HC 1616 HL 195
Twelfth Report	Legislative Scrutiny: Mental Capacity (Amendment) Bill	HC 1662 HL 208
Thirteenth Report	Proposal for a draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2018	HC 1451 HL 209
Fourteenth Report	Draft Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018	HC 1547 HL 227
Fifteenth Report	Proposal for a draft Human Rights Act 1998 (Remedial) Order 2019	HC 1457 HL 228
First Special Report	Human Rights and Business 2017: Promoting responsibility and ensuring accountability: Government Response to the Committee's Sixth Report of Session 2016–17	HC 686

Second Special Report	Mental Health and Deaths in Prison: Interim Report: Government Response to the Committee's Seventh Report of Session 2016–17	HC 753
Third Special Report	Legislative Scrutiny: Counter-Terrorism and Border Security Bill: Government Response to the Committee's Ninth Report of Session 2017–19	HC 1578
Fourth Special Report	Windrush generation detention: Government Response to the Committee's Sixth Report of Session 2017–19	HC 1633
Fifth Special Report	Second Legislative Scrutiny Report: Counter-Terrorism and Border Security Bill: Government Response to the Committee's Eleventh Report of Session 2017–19	HC 1827