



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Human rights of asylum seekers in the UK, HC 821

Wednesday 16 November 2022

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Members present: Joanna Cherry MP (Chair); Lord Dubs; Florence Eshalomi MP; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; David Simmonds MP; Lord Singh of Wimbledon.

Questions 10 - 17

Witnesses

I: Pierre Makhoul, Legal Director, at Bail for Immigration Detainees (BID); David Jones, Garden Court Chambers; Dr Rachel Bingham, Clinical Adviser, Medical Justice.

Examination of witnesses

Pierre Makhoulf, David Jones and Dr Rachel Bingham.

Q10 Chair: Good afternoon. Welcome to today's meeting of the Joint Committee on Human Rights. We are a cross-party Joint Committee, which means that we have Members from both the House of Commons and the House of Lords. At present, we are conducting an inquiry into the human rights of asylum seekers in the United Kingdom. Today's session will focus on the rules associated with processing and detaining asylum seekers in the UK. We will also investigate the potential human rights concerns due to the poor treatment of some asylum seekers in detention.

We have two witness panels this afternoon. Our first panel consists of a lawyer, a medical expert and a campaign group working on the detention of asylum seekers. I will introduce them in a moment. Then, later on this afternoon, at about 4 o'clock, we will hear from the Chief Inspector of Prisons.

To our first panel, in no particular order, first, we have Pierre Makhoulf, who is the assistant director at Bail for Immigration Detainees, an organisation that provides free legal advice, information and representation to people held in detention across the United Kingdom. Our second witness is David Jones, a barrister from Garden Court Chambers, who is an immigration and human rights practitioner with expertise in both those areas and more than 20 years' experience. Our third is Dr Rachel Bingham, who is a National Health Service general practitioner and the clinical adviser at Medical Justice, which is an organisation that assesses deterioration in health and the medical mistreatment of people in detention. We are very grateful to all three of you for joining us this afternoon.

I remind Members and witnesses that in our questions and answers we should avoid referring to any matters that are currently before the courts because of Parliament's sub judice rule.

By way of housekeeping, I also apologise to our witnesses and our viewers at home that I will have to leave the meeting shortly because the National Security Bill is in the House of Commons Chamber today. This committee has tabled a number of important amendments to it, and I have to speak to them. Lord Henley, our most senior Peer, will take over the chair from me at some point in the next half hour or so, so apologies if I suddenly get up and disappear. I therefore want to take the Chair's privilege and ask the first couple of questions.

I will direct my first question to David Jones and Pierre Makhoulf, because it is a legal question. This committee is concerned with human rights, and we are acutely aware that the right to liberty and security is protected under Article 5 of the European Convention on Human Rights, which means that any detention in the United Kingdom must be in accordance with the law. Could you set out for us in what circumstances asylum seekers can be lawfully detained in the United Kingdom?

David Jones: There are broadly two contexts in which detention of asylum seekers can occur. One is at the port of entry, and the other is for those who are already in the United Kingdom. I propose to address the circumstances in which detention on arrival at the port of entry can occur, and Pierre will then speak to the latter category.

Chair: That is a good division. Thank you.

David Jones: I will refer to Article 5 first. Article 5 is about protection and the right to liberty. In addition to Article 5, however, we have well-established common law principles that protect people from unlawful detention.

There are, broadly speaking, parallels between the two. Article 5 permits deprivation of liberty in instances where a signatory to the European convention wishes to or needs to control immigration and to authorise the admission of somebody who is irregularly arriving in the United Kingdom or, alternatively, is susceptible to removal. However, the European court has jealously guarded and constrained the use of that power in that context and, indeed, in a variety of decisions has indicated that detention with a view to authorising admission will be tolerated only for very limited periods of time, potentially running into just a few hours, if the conditions of detention are unsatisfactory—for instance, if the individual concerned does not have access to legal advice, if they do not have the facility to communicate with family or other contacts outside the detention facility, or if the detained conditions themselves are poor. In that context, asylum seekers can be held, but that detention is constrained.

Principally speaking, the context in which we deal with detention at the port of entry in this country is with a view to screening those who are entering the United Kingdom. We have the facility under our domestic law to investigate and determine whether a person is admissible and whether to grant them leave, and they can be detained while that exercise is performed.

As I have said, Article 5 enables that too. Once again, the circumstances in which those powers can be used are very limited. In terms of the arrangements that currently operate in this country with regard to the conditions of screening for those who are seeking admission to the United Kingdom, strictly speaking detention would really only be tolerated for hours as opposed to days. That reality is recognised, as we will see in due course, by the short-term holding facility rules, which anticipate in the context of holding rooms that people will be held for a maximum of 24 hours.

Q11 **Chair:** Were those rules made under the auspices of the Immigration and Asylum Act?

David Jones: Yes. These particular rules were formulated in 2018, but probably in response to the 2016 or 2014 Act. Most of the detention powers that we have domestically originate all the way back to the

Immigration Act 1971, which has been repeatedly amended by subsequent pieces of legislation.

For the purposes of screening, there would not necessarily be a breach of Article 5 if a person was held in order to ascertain their identity, to ensure that there were no security issues arising in respect of that individual, and with a view to determining the basis upon which they are seeking admission, so to ascertain whether or not they have a protection claim that they want to advance. All that typically can be achieved within a relatively short amount of time. Consequently, if that screening exercise extended beyond a few hours into days and most certainly into weeks, there would be a very strong likelihood of a breach not only of the domestic provisions that control and organise the short-term holding facilities that we have, but of Article 5.

There are other circumstances in which detention has been found not to be in breach of Article 5 beyond the screening process. In the past, the United Kingdom has operated two forms of detained fast-track scheme. The current one is very much a watered-down version of what has preceded it. Those two detained fast-track schemes originated with the Oakington scheme back in 2000 and morphed into the Harmondsworth and Yarl's Wood schemes in 2003 and then 2005.

The Oakington scheme was introduced under a reformation of immigration law through the Fairer, Faster and Firmer process. When the scheme was advocated for it was fixed on the extension of benefit to asylum seekers. The objective was to ensure that those who had a protection entitlement could be recognised as quickly as possible, because that was beneficial to them. The inclusion of people within that scheme was purportedly typically directed at those who could be processed quickly because they could be granted swiftly, or, equally, at those who could be rejected quickly.

The scheme was tested before the domestic courts and before the European court and it was found to be lawful and not in breach of Article 5. That was because, first, Article 5 does permit detention for the purposes of authorising admission but, secondly, because the constraints around that particular scheme were very tightly drawn. When the courts looked at the proportionality of the scheme, they were able to identify that detention under the Oakington scheme did not typically extend beyond seven days, and that the conditions in which people were held were generally good. Indeed, there was no contest in the litigation that the conditions were unsatisfactory. Oakington was a former military barracks. People had individual accommodation within it. They had proper access to meals and to performance of religious practices. There were proper medical facilities. There were lawyers on site who could assist with the preparation and processing of their applications.

In instances where cases could not be dealt with in seven days, they were taken out. It was a very tightly constrained system, and in those very limited circumstances the courts held that it was a lawful scheme. The House of Lords was very particular to say that had the conditions of

detention not been adequate and of the quality they were, it might have come to a different conclusion. If, for instance, you were implementing a processing scheme as opposed to a screening scheme at short-term holding facilities, there would probably be much more doubt about the legitimacy of that scheme for the purpose of Article 5, because the conditions are just not comparable to what was in Oakington.

Chair: The conditions are actually very important to the assessment of whether the detention is legal under Article 5.

David Jones: Precisely. Speed and the conditions of detention are crucial. This is why the Harmondsworth scheme was eventually found to be unlawful, as is the access of vulnerable people to legal advice at a very early stage in that process.

Chair: Conditions and access to legal advice are two very important issues, which those of us who have recently visited Manston might want to ask you a few more questions about later.

David Jones: Broadly speaking, yes, it is permissible to detain asylum seekers for the purpose of processing their applications at the point of entry, but only in very constrained circumstances where very rigid protections are put around them to ensure that their interests, their vulnerabilities and their needs are met adequately. Absent those things, a breach is very probable, and for an extension beyond days into weeks a breach is almost inevitable.

Chair: That is very helpful. Thank you.

Pierre Makhlouf: To elaborate on that point, that is why the detention centre rule starts off with the description of the purpose of detention centres being to create an environment that is very free and ultimately completely different to a prison. They are meant to be very lax, in the sense of people having freedom to move around and to have access to services and access to visits. When I started in 1989, QA and HA buildings in Harmondsworth had very loose arrangements. You could visit them at any time and see people who were being held there without any difficulties. Now, Harmondsworth and Colnbrook detention centres are much more like prisons. The environment is much harsher than it was and the way we interpret the regimes is very different to how it was.

I want to talk about the issue of imminence. The way we gauge whether time constraints or limitations on detention are lawful or not relates to principles that have come out of case law, *Hardial Singh* and one case, *I*, where Lord Dyson summarised the issues very simply and straightforwardly. A lot of it comes down to common sense, particularly when someone is facing removal.

The issue then comes down to how quickly you think you can remove someone. Imminence of removal was an issue that was described in Home Office policy under what was known as chapter 55 policy and, before that, the chapter 38 of the operational enforcement manual. It

would describe imminence as meaning removal within four weeks. Once you have been processed, if you are facing removal you need to get out of detention within four weeks or else removed in that period.

It has to be said that the revision of that policy recently in what is known as *Detention: General Instructions* has changed that approach somewhat. Now, there is no timeframe, and the specific guidance about what is meant by imminence has changed. Now it is removal within a reasonable timeframe. There is a vagueness to the policy and a lack of guidance for Home Office officials on understanding and assessing removability that makes the interpretation much more difficult for lawyers to understand and argue on behalf of people.

What David said about access to legal advice also needs to be understood. The challenges to detention, which requires access to lawyers, is a glaring problem, particularly when you are looking at the lawfulness of detention or a challenge under Article 5. If you were to read through the principles and apply them to yourself in the context that someone stops you and unlawfully detains you, would you, if you were not a lawyer—I know you are—be able to argue these issues easily? It is not easy at all for an educated person or, indeed, for lawyers who are subject to a process themselves and who would normally seek representation.

If you are detained in certain facilities, as we have now discovered, particularly with the expansion of short-term holding facilities, without mentioning specific places I can certainly say that our organisation, whose bread and butter is making bail applications for people—bail applications assume that there is a power in law to detain someone, which is the avenue of redress that you have—since I began in our organisation in 2007, has not been contacted by one person who has been held in a short-term holding facility.

That is extraordinary. I have read the numbers and read that 4,000 people have been detained in one place. We have been told that two wings of Brook House are now being used as short-term holding facilities. We were told for several months that Tinsley House was being used as a short-term holding facility. I think it was changed last week to an immigration removal centre, but we were completely unaware of this until we heard it through third parties.

Chair: In a nutshell, what is the difference between being held in a facility for screening or processing of a claim and being detained?

Pierre Makhlouf: Bear in mind the lack of experience on my part and that of my organisation in working with people in short-term holding facilities. The purpose of screening is to establish identity and the basics of a claim. It would also, you would think, assess vulnerabilities and needs, the availability of accommodation should a decision be made to grant bail and, of course, support needs if the person is granted bail. Someone who is a genuine refugee, who may have suffered persecution,

you would think would need quite a lot of support if they are going to be allowed out of detention.

A detention centre is a place where an assessment is meant to have been made of a person's absconding risk and any other countervailing factors such as risk of offending or other behaviours that are found to be a risk to the public. That requires a meaningful assessment on the part of the Home Office. Parliament has deemed that if someone is in detention generally—people are normally detained under immigration powers in immigration removal centres but are also detained in prisons—they can be held for a 14-day period during which, if bail is granted, bail can be opposed by the Home Office and prevented, which is one factor that has to be taken into account. A person can also apply for bail every 28 days, which suggests that there is a concept of a limitation for people detained under immigration powers.

I would make a final distinction between short-term holding facilities—I would assume and say that short-term holding facilities are for the purpose of screening, so the conditions there are not intended for longer-term residents—an immigration removal centre, which is meant to be for longer-term residents and is still regulated by the law, and people detained under the same powers but in prisons, where the conditions are much harsher.

Chair: David, just to be clear, how long can asylum seekers be lawfully held in a short-term holding facility?

David Jones: I will come back first to one point about the screening and processing. Those who are held in short-term holding facilities are detained throughout. At the point at which they are admitted to that short-term holding facility, they are subject to detention. For those who are screened in country, if they were not in detention at the time they presented their asylum claim, they are likely to be screened outside of a detention context. Everyone who is entering the UK through a port and into a short-term holding facility will be detained, and they will remain detained for the duration of the time that they are held there.

Chair: Does the law put a limit on how many days they can be held there?

David Jones: It depends on the nature of the short-term holding facility. There are what are known as holding rooms in which 24 hours is the specified maximum period. That is subject, I think, to variation only in exceptional circumstances. That is the context of a short-term holding facility, where it is a holding room situation.

Beyond that, the judgment about how long is too long will be made on the factors that we highlighted at the start: what is the basis for the detention, and does the individual present as any kind of risk? If that initial screening exercise threw up some concerns about the individual's character or conduct, it might be permissible to hold them for longer. If they are presenting as an asylum seeker in respect of whom there is no

history of absconding and no suggestion of offending, release should be mandated within that 24-hour period, if not sooner.

Q12 Chair: What about the Immigration (Places of Detention) Direction 2021? Am I right in understanding that that says that individuals cannot be detained in a short-term holding facility for longer than five consecutive days? How does that fit in?

David Jones: That is absolutely right. That direction specifies all the different forms of detention facility within the detention estate—holding rooms, 24 hours; short-term holding facilities, five days. That is the maximum. Again, there would still have to be justification for keeping an asylum seeker in detention for five days. Merely because the direction allows for five days' detention does not mean that it is reasonable or lawful that they be detained for that long.

Chair: What about all these people who have ended up at Manston—as I understand it, Manston is a short-term holding facility—for considerably longer than five days? Lord Dubs and I visited. We spoke with people who had been there 11 days, 13 days, and one family who had been there 28 days. What is the legal basis for their detention? Are they lawfully detained?

David Jones: We would say no, they were not lawfully detained. Arguably, if the sole purpose of detaining them initially was to screen them and there were no red flags that indicated that they presented some form of risk, they should not have been held beyond the initial 24-hour period once screened. Beyond that, the next maximum period specific to the nature of the detention facility would be five days. Anything beyond that compounds the irregularity of their presence there.

Chair: I suppose the practical position if a Minister were here is that he or she might say they are there because we have nowhere else to put them. Is that an answer?

Pierre Makhlouf: The Home Office policy is a 2018 policy. The 2021 directive deals with the change of the seven-day limitation to five days. The policy talks about the authority to detain in a holding centre for up to 24 hours, but then the requirement for the Minister to authorise further detention beyond 24 hours. Similarly, the policy of the seven days, now five days, needs ministerial authorisation. The responsibility goes to the Minister making a decision, and that decision would have to be what is reasonable and authorised within the policy, and if she goes beyond the policy why that is reasonable and required.

If the issue was, let us say, the availability of accommodating someone outside detention, you would assume that during those periods meaningful assessments have been made by speaking to the people who are detained as to where they might be able to live. We know that a lot of people who try to come to the UK, who are refugees, are trying to join family and friends, so there is a big question as to whether they have been questioned about the availability of alternative accommodation. The

alternative then would go to whether the state can assist them if there is nowhere they can be accommodated.

The fact that NGOs and legal aid lawyers have not reported being contacted by people detained in short-term holding facilities for prolonged periods of time suggests to me that they have not been preparing applications for bail. Applications for bail would involve an assessment of the availability of accommodation as a basic by everyone involved, the Home Office as well as the applicant.

One last thing is that bail entitlement arises if you have been resident in the UK, living and present in the UK, for more than eight days.

Chair: Thank you. I will hand over to David Simmonds for the next question. If you need to take that urgent call—I know that one of our witnesses has an urgent call to take—please do step out to take it.

Pierre Makhlouf: Thank you. I might look at my phone just for a moment.

Q13 David Simmonds: The witnesses have touched a bit on some of the issues with the circumstances of detention. This question is specifically about conditions, which is something that we have heard a great deal about. What are the legal standards for the conditions of detention?

David Jones: I will begin to respond to that and I am sure that Rachel and Pierre can step in.

The legal standards are set down by regulations and directives. In respect of detention within short-term holding facilities, the 2018 rules and attendant guidance specifies the framework and conditions of detention, and they broadly mirror the detention centre rules that apply to immigration removal centres and detention centres. There are quite significant parallels between the two, the major difference being that which Pierre alluded to earlier: that in the IRC context, because detention can be for much longer, there is a greater effort supposedly to facilitate educational, religious, study and other mechanisms to allow people to occupy their time meaningfully.

Generally speaking, the conditions of detention are that there should be free access to visits at any time, and free access to legal visits as and when required. There should be access to internet connections and telephone calls, and if individuals do not have the means to pay for phone calls, the detaining authority should facilitate that also. There has to be preparation of food that is appropriate dietarily, religiously and medically. The conditions of the rooms in which people are held are very tightly specified. Conditions are also specified with regard to hygienic arrangements. It is all quite tightly bound up. It is principally those provisions that dictate the nature of detention.

An umbrella over that are provisions such as the European convention itself, which imposed certain obligations with regard to avoidance of exposing people to inhuman and degrading treatment. Regrettably, our

detention facilities do not always achieve that and there have been a number of instances where the courts have found breaches of Article 3.

Significantly, for the purposes of this committee and the issues that are confronting the immigration system at the moment, in particular with regard to short-term holding facilities, there are provisions in the short-term holding facility rules that enable the application of a lighter touch in terms of the conditions a person is subject to, again in the holding room context. In that holding room context, many of the ordinary benefits and conditions that will apply with regard to freedom of movement, access to outside spaces, medical facilities, lawyers and so forth can basically be put on hold. That is typically the framework.

Pierre Makhlouf: There has been a bit of a learning curve for me recently because of the increased use of short-term holding facilities. I was interested to read rule 7, which includes a requirement to provide access to lawyers. If in one centre 4,000 people have been detained, why have we not been contacted? It is just extraordinary.

Chair: Lord Dubs and I visited Manston, as I said, and my recollection was that in the initial processing facility there were some notices on the wall advising people of their access to legal advice. They were in English, but I think there was some talk of them being translated at a later stage. Beyond what was in the initial processing area, I do not think I saw any signs in the areas where people were being accommodated, which is basically in marquees and in what used to be an officers' mess—sub-hotel type accommodation. To me, that does not seem like enough. I may be wrong about that, and no doubt I will be corrected if I am, but I just wonder what you would expect there to be to justify the legal standards for conditions of detention in terms of giving people advice.

David Simmonds: If I can add to that question, it would be who is responsible for ensuring that those standards are upheld, including the access to legal advice that you have just described.

Chair: Sorry, David, I am afraid I did not hear the beginning of what you said.

David Simmonds: It is just an additional point to the question: can we hear who is accountable for ensuring that those standards are upheld, including the point you made about access to lawyers?

Chair: Yes. Maybe Pierre could answer my question first, and then David Simmonds wants to know whose responsibility it would be to ensure the standards are upheld.

Pierre Makhlouf: In an immigration removal centre, people have mobile telephones that do not provide access to the internet but enable telephone calls to be made. They can call lawyers and lawyers can call them back. That is a minimum that is required. I know there have been reports of telephones being taken away from people arriving at the shores of the UK. I do not really know. I think that not having heard from

people on the telephone indicates either that they are not being given telephones or that the facilities are built with a minimum number of telephones and there are too many people trying to access them. Obviously, people are trying to call families, not just lawyers.

Chair: We are constrained by time, so I will ask you to answer the second part of David's question, which was: whose responsibility would it be to ensure that these standards are complied with?

Pierre Makhlouf: The Home Office is responsible for interpreting and handing out contracts, ultimately. The short-term holding facility rules define centres that are contracted or run by the Home Office and those that are subcontracted. I think Mitie might have Manston, for example. This is the bane of lawyers in terms of responsibility. The Home Office does enjoy, when it is subcontracted to third parties, saying, "We've done our part. We made a telephone call" or, "We'll put forward the issue, but it's not our responsibility". Then we find barriers as to who is responsible for something to do with a poor service or a duty of care. It gets a bit muddled in that way.

David Jones: I completely agree with what Pierre is saying. Essentially, in terms of delivery, there can be obstacles at the moment when the need is there, because you are moving to a subcontractor. In terms of the legal duty and who is ultimately responsible if there is a failure to comply with the rules and regulations, it is the Home Office, the Secretary of State, who is responsible.

David Simmonds: That has clarified it, unless there is anything on the detail. When you said that the Home Office is responsible for upholding those standards, do you mean that it is a ministerial responsibility, an official responsibility? To whom would we address concerns?

Pierre Makhlouf: I am not certain. It may be the Cabinet Office that decides on the contracts.

David Jones: If I were issuing proceedings, I would issue them against the Secretary of State for the Home Department.

Q14 **Lord Dubs:** Could I just add a little question? When we went to Manston last week, I had a vision of a lot of very bewildered people. They did not speak English. There were not many interpreters around. I just do not think they were able to even connect with the concept of getting legal advice. I think that is part of the problem. What happens in theory is one thing, but in practice they are just not able to engage with the system. Is that a fair comment?

Dr Rachel Bingham: May I pick up on that from a clinical perspective? That is a really important point. What we are talking about here is an inherently vulnerable population with a huge prevalence of experiences of trauma, histories of torture or ill treatment in the past. Studies of immigration detention prevalence of mental health issues, for example, show depression at 68%, anxiety at 54%, and post-traumatic stress disorder at 42%. What does it mean to say that 42% of people have

post-traumatic stress? It means a higher number than that, because not everybody will develop a mental health issue who has experienced traumatic events. That group of people are very likely to be frightened or bewildered, as you described.

In that group, our clinical concern is also that disclosure of what has happened—help seeking—is difficult. For people with anxiety or fear, or symptoms of post-traumatic stress like flashbacks or nightmares, if those things are triggered or flare up by talking about what has happened to them, those people may well not proactively seek help and may need lots of extra encouragement, a sense of safety, a sense of trust, meeting the same person more than once, and having things clearly explained in their own language before help is sought, even if information and services are available.

- Q15 **Lord Dubs:** My question follows on very clearly from what you have just said, and it is addressed to you again, Rachel. Can you add a bit more and talk about the actual conditions under which asylum seekers in the UK are being held, as opposed to the legal framework?

Dr Rachel Bingham: Thank you. My experience is in visiting people in immigration detention centres in the UK, and supporting our team of doctors and volunteer clinicians who also do that. We document people's health in medical legal reports for Home Office and legal decision-makers.

The expert consensus, our experience and the clinical research over at least a decade now is that immigration detention is harmful to health and to mental health for a number of reasons. Starting with mental health, immigration detention is associated with high levels of fear and uncertainty, loss of hope, and provocation of the trauma-related symptoms that I mentioned, especially for people who have survived torture but also other groups who have experiences of powerlessness, like trafficking or other forms of violence, in the past.

It can be retraumatising for that group. I just mentioned what a high prevalence there is in this population. People who have been locked up or deprived of their liberty before are very badly affected by that happening again. People who have survived torture or trafficking might be the most affected and then, in detention, subjected to further experiences of segregation or restraint or being placed on a continuous watch that can be strongly reminiscent of what has happened to them in the past.

Everyone in the IRC is exposed to this high-stress environment, seeing high levels of conflict, high levels of stress in other detainees, and high levels of other unwell people. It is very common that our clients may have seen other people who have had suicidal thoughts or expressed suicidal behaviours, which, of course, is extremely stressful and distressing for anyone, even if they were not feeling that way themselves.

There is a further impact on physical health. People may not have had their health needs met prior to arrival in the UK or during their journey,

or may not have accessed care in the UK. If they have, that care will be abruptly discontinued at the point of entering detention in the UK. People who have pending outpatient appointments, even for investigation for serious disease, will lose that appointment and will have to be re-referred in the area of the detention centre.

There is a further difficulty of all these issues being treated or managed in detention. Taking mental health as an example, most mental health conditions cannot be managed in detention. That is the position of the Royal College of Psychiatrists, which has said that people with mental disorders should not be detained because of the stressful environment being so detrimental to mental health, as I briefly described, the lack of specialist services, and the impossibility of planning. We do not know how long the patient will be detained for, so we could not plan for the 12 or 16 sessions that might be advised in the community. The recovery model, which would focus on a sense of forward planning in the community, is simply not feasible in detention.

Mental health that cannot be treated in detention and detention being harmful to mental health leaves a combination of circumstances that is a vicious cycle. Mental health that cannot be treated and is harmed by detention will deteriorate. To manage that, there are mental health teams in detention, but because of the difficulty of treating, their role is limited to a supportive role, accompanying or encouraging the person during that time. The evidence that they can actually improve mental health is not there.

That means that when people's mental health deteriorates or perhaps they express suicidal thoughts or become suicidal, the response is not therapeutic; it is custodial. What I mean by that is that they are placed on a framework to be observed or monitored. They are placed on watch, which is not therapeutic and is experienced by people as very intrusive and invasive. They might be moved to segregation or put in a room in more isolated conditions, and that again is countertherapeutic. No doctor would recommend that a person with mental health issues be more isolated. They might be restrained, which for this population is particularly likely to be harmful or dangerous. That feeds into a vicious cycle where mental health can only get worse, and the custodial response then has to escalate in response. I believe that that lies behind why we see such high rates of very distressed behaviour, suicidal thoughts and suicidal behaviours in detention.

Lord Dubs: Moving on from mental health, do you want to add anything about the general physical conditions?

Dr Rachel Bingham: Do you mean the rooms and facilities?

Lord Dubs: Yes.

Dr Rachel Bingham: Could you expand on the question, please?

Lord Dubs: When we were walking through Manston, there were no

beds. Manston said that this was for fire safety reasons, so they had to sleep on mattresses on the floor, and things like that. There were a lot of people in one room and so on. On the other hand, the food seemed to be not too bad, as far as we could tell.

Dr Rachel Bingham: I have not visited Manston myself. Of course, it is extremely concerning to hear and see footage of vulnerable people, or any people, held in insanitary and crowded conditions. We know that there have been outbreaks of infectious disease as a result. The stresses of that, of course, would have a bearing on people. Immigration detention centres, which is more my experience, are basically prison conditions, as you may be aware: locked rooms, long corridors, double-locking doors, barbed wire rolls.

Pierre Makhlouf: I would reiterate what Rachel has just said. Detention centres are much more like cells. They have cells. People are held as if they are in a prison and controlled as such. For short-term holding facilities, and the news that we have heard about them, despite the fact that we have far fewer asylum applicants coming in compared to the early 1990s, they are being placed in accommodation and treated as if they are in an emergency situation, meaning that the impression given of mattresses on the ground, as you were explaining—I reiterate that we have not been contacted by anyone there—does suggest that there is a lack of preparedness and response. It is not what was intended, and, with people being kept in those conditions, it seems to me that either a signal is being sent to those who intend to follow or the authorities are not coping, essentially.

Q16 **Lord Henley:** This is a question for the lawyers. What is the process for asylum seekers who wish to challenge their detention or, for that matter, the conditions in which they are held, and—I imagine you are interested in this, Pierre—the availability of legal aid?

Pierre Makhlouf: The availability of legal aid is a huge issue for us. We do not receive legal aid. Part of our purpose is to campaign for legal aid and effectively to do ourselves out of a job. We rely on pro bono counsel—David is one, in fact—to be able to deliver legal advice services.

Anyone who has been present in the UK over eight days is allowed to apply for bail. They can apply for bail to the Secretary of State, but our organisation is reluctant to encourage people to do that, because the Secretary of State has made the decision to detain them. We help people to apply to the alternative, which is to the First-tier Tribunal Immigration and Asylum Chamber. That involves the completion of a form and grounds for bail. We guide people through the main issues that they need to consider when applying for bail, and we address what might be one of the statutory requirements of conditions that would be placed on them if they were granted bail, as well as addressing where they would be accommodated and, if it is state accommodation, assisting them with making an application for that accommodation.

Thereafter, a person can make their own bail application and can represent themselves. We assist people to represent themselves. A lot of our work is, in fact, lodging the application forms and then helping and guiding people through the process so that they learn the questions they will be asked and what they need to address.

That is a normal bail application and, as I said before, that process assumes that that detention is lawful and that there is a power in law for the Secretary of State to hold you. The role of the judge is to look at whether or not you present an absconding risk and what mediating factors can be imposed—restrictions such as a reporting restriction or a residence restriction. Unusually, nowadays, there are also restrictions on employment or education. In the old days, certainly—in the 1990s, let us say—the ability to work or the ability to study were always seen as factors in favour of ensuring that someone complies with reporting conditions, because it will always be in their interests to pursue their studies or their work. That is not the case now.

If bail is refused, a person is allowed to apply for bail again after 28 days unless there is a change of circumstances. A person without accommodation can also apply for bail in order to obtain bail in principle: that is, a grant of bail with a residence condition. The timing of that has to be carefully planned, because if you make your application for bail before a decision is made on your claim for accommodation from the Home Office, if you are still in detention and the Home Office makes that decision, your application for accommodation will be refused on the basis that you are adequately accommodated in detention. You need to obtain bail in principle first, and then you apply for accommodation. Then the Secretary of State has to find accommodation. What we are increasingly finding is that people are held in immigration removal centres, not just holding centres, pending accommodation. In other words, they are being accommodated in detention.

David Jones: Just to follow on from that point, we are often finding that we have to judicially review the Secretary of State's failure to provide accommodation. On authority, in cases where there are no risk factors beyond absconding risk and where the person has bail in principle, accommodation should be delivered within days, whereas in fact it is taking weeks and months to be accommodated.

Pierre Makhlouf: Absolutely months.

David Jones: Beyond the facility to apply for bail, there is also the facility to go to the High Court and seek judicial review or a writ of habeas corpus. We do not use writs of habeas corpus very much anymore; we focus on judicial review. The judicial review process has an urgent application aspect to it, which means that you can get in front of a judge very quickly. Typically, once you have legal aid and the proceedings are prepared, you can be in front of a judge or your case can be considered by a judge within the same day or within 24 hours. The process is very effective.

The challenge is not getting legal aid, because typically legal aid will be granted if you have a meritorious case and providers will be covered for the costs of issuing interim relief proceedings and pursuing them. Everything after that in the broader judicial review is at risk. If you do not succeed, you do not get paid. None the less, that does not tend to be an obstacle to seeking relief. The particular obstacle with regard to the crisis we are seeing at the moment is the one we have been referring to: that people are not able to contact lawyers in the first place in order for that intervention to be initiated.

Lord Henley: That was the question I wanted to get to: how is the individual asylum seeker getting to you?

David Jones: As Pierre said, they did not actually get to anyone. It is only after people began to be released out of those conditions that proceedings were initiated. That is the challenge.

Chair: I am sorry we have not got to the questions we would have liked to ask about child asylum seekers, but we will cover that next week when we have a special evidence session on it. For our last question to you this afternoon, I will hand over to Baroness Ludford.

Q17 **Baroness Ludford:** I am a Liberal Democrat Peer. I would like to ask about potential changes in the detention framework, and what changes, if any, you would like to see made to the detention framework to ensure the adequate protection of human rights of asylum seekers. By detention framework I mean the law, statute, but also the various rather confusing short-term holding facility rules, immigration places of detention directions and detention general instructions. I am sure there are more in so far as I have understood it.

Pierre Makhlouf: First, there is automatic judicial oversight combined with a time limit, and not a time limit that would suggest that detention is permissible. The need for automatic judicial oversight should have as its core emphasis the necessity of detention. There needs to be a move away from the use of detention for administrative convenience, because that encourages a lazy approach on the part of authority. People who are detained for immigration reasons are not being punished. Therefore, such detention needs to be treated as a matter of urgency. Just because someone is a foreigner should not be enough. If a British person is placed behind a locked door for an hour, it is a serious right-to-liberty issue.

Home Office policy emphasises the need for detention to be used as scarcely as possible, but if you are going to push that, there needs to be more access to lawyers that takes into account Parliament's decision to allow for people to make bail applications every 28 days. Just as if you are detained for terrorist offences you can obtain legal aid and representation after 28 days, so should someone who is in detention be entitled when they are detained for just a civil offence. I think they should be allowed access to legal aid without a merits test, because 28 days is a long time to be held for no punishment. Just that fact should be enough to say that there is merit, because both the bail process and an

automatic judicial process would allow a regular review of the necessity of detention and the continuing need to keep someone in detention and to deprive them of their liberty.

David Jones: If I can very quickly reiterate the point that Pierre made, the real imperative is to enable access to legal advice at the earliest possible point, whether it be at the port of entry or for those in IRCs. There is simply inadequate provision, and detention is being prolonged because of that. It might be perceived in some ways as a device to avoid scrutiny of a flawed and dysfunctional system.

In addition, we are presented with extraordinary challenges at the moment in how the asylum system is operated. There needs to be some honesty, because at present the movement seems to be towards more extreme responses, more constraint and the imposition of new regimes that enable detention as opposed to recognising the right to liberty. That is unacceptable where the fault to a material extent for the predicament we are in rests with those who are administering the system. For example, on the suggestion of a new detained fast-track scheme for Albanians, yes, there is a challenge that has presented there, but what is being ignored in that context is the Home Office's own statistics, which say that almost 50% of Albanian nationals who come to this country and have been assessed in the last two years have been granted protection. They throw out the rhetoric of it being a safe country and it is simply not accurate.

There needs to be honesty, and there needs to be a sensible and measured approach to this challenge. We can all come together to deliver that, but, with respect, it will not happen as long as the rhetoric that we are hearing from people in positions of authority is persistently of illegality and invasion and as long as this is all presented as a challenge to the country in the impact it can have on us rather than a situation we must embrace, acknowledge and meet, recognising our obligations as opposed to seeking consistently to avoid them.

Dr Rachel Bingham: I will add a clinical perspective to that. These calls to limit powers to detain are strongly supported by medical evidence and expert consensus. If we only take the positions of the royal colleges and the medical bodies going back over years, the Royal College of Paediatrics and others successfully advocated to limit the detention of children. The Royal College of Paediatrics said that immigration detention causes unnecessary harm and further blights already disturbed young lives. That was successful in motivating strong limits on detention of children, so it is very concerning to see that creeping back in through Manston.

The Royal College of Midwifery called for an end to administrative detention of pregnant women. It cited interruptions of antenatal care, impact of stress, and harms to the health of the woman and the baby. The Faculty of Forensic and Legal Medicine considering care of survivors of torture lists a number of harms that victims of torture might suffer in detention, some of which I mentioned earlier. Bringing together a body

that represents around 160,000 doctors, the British Medical Association across all specialties believes that immigration detention should be phased out and “replaced with more humane means of monitoring people facing removal from the UK”. These calls to phase out and end immigration detention are strongly supported by the clinical opinion.

In the meantime, it is essential that there are proper mechanisms for screening prior to detention, which do not exist at all currently, and mechanisms for rooting out of detention vulnerable people who have been detained and would be harmed, which are dysfunctional currently. Where vulnerabilities are flagged up, they need to be fed back immediately to the Home Office with action and possibilities for that person to be supported legally.

Lord Henley took the Chair.

Chair: I thank all three of you very much for giving evidence. I am sorry that we have not got through as much as we would like, but you might want to say a bit more in writing, particularly about vulnerable individuals, who we just touched on at the very end. In the meantime, thank you very much indeed.