

Home Affairs Committee

Oral evidence: Home Office preparedness for Covid-19 (coronavirus), HC 232

Thursday 7 May 2020

Ordered by the House of Commons to be published on 7 May 2020.

[Watch the meeting](#)

Members present: Yvette Cooper (Chair); Janet Daby; Dehenna Davison; Stephen Doughty; Laura Farris; Tim Loughton; Holly Lynch; Stuart C. McDonald.

Joint Committee on Human Rights Member present: Ms Karen Buck.

Justice Select Committee Member present: Sir Robert Neill.

Questions 381 - 506

Witnesses

I: Sarah Burnett, Business Operations Director, Justice and Immigration, Serco; Colin Dobell, Managing Director, Mitie Care & Custody; Steven Lakey, Managing Director, Clearsprings Ready Homes; and John Taylor, Chief Operating Officer, Mears Group.

II: Tim Buley QC, Landmark Chambers; and Rory Dunlop QC, 39 Essex Chambers.

Written evidence from witnesses:

- Serco, (COR0032)
- Mitie Care and Custody Limited, (COR0034)

[Written evidence submissions are available here](#)



Examination of witnesses

Witnesses: Sarah Burnett, Colin Dobell, Steven Lakey and John Taylor.

Q381 Chair: Welcome to this online session of the Home Affairs Select Committee and our ongoing work of scrutinising the response to the coronavirus crisis. Today's evidence session is looking at the Home Office institutional accommodation issues, particularly around asylum accommodation, and also immigration detention.

We also have joining us today, as guest members of the Committee, Sir Bob Neill, the chair of the Justice Select Committee, and Karen Buck, member of the Joint Committee on Human Rights.

We welcome our witnesses to today's panel. We have John Taylor from the Mears Group, Steven Lakey from Clearsprings Ready Homes, Sarah Burnett from Serco and Colin Dobell from Mitie. To all of our witnesses, thank you very much for joining us.

I will begin with some very factual questions. Could each of you tell us how many of the institutions you cover currently have any Covid-19 outbreaks, starting with John Taylor?

John Taylor: Good morning. At the moment we have only two service users with confirmed Covid. Since the beginning of the issues, we have had 442 service users who have self-isolated, and currently 188 are self-isolating but are not confirmed. As I say, only two confirmed cases.

Q382 Chair: How many institutions is that within?

John Taylor: We currently have 7,374 properties—most of those are individual street properties—and we have our initial accommodation building in Wakefield, which houses 264 people at present.

Q383 Chair: Does the Wakefield accommodation have an outbreak currently?

John Taylor: No.

Q384 Chair: Thank you. Colin Dobell?

Colin Dobell: Good morning, Chair. We are responsible for the management of the Heathrow Immigration Removal Centre. At the current time we have no cases of Covid.

Q385 Chair: That is no suspected, as well as no confirmed?

Colin Dobell: That is correct, yes. None suspected, and we have had one previously confirmed but none at the moment.

Q386 Chair: Thank you. Steven Lakey?

Steven Lakey: Good morning, Chair. We currently have one site that has a confirmed case, and that is Barry House in London.



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Q387 **Chair:** Any suspected?

Steven Lakey: No suspected at present in any of the initial accommodations. In dispersed accommodation we have five suspected.

Q388 **Chair:** Thank you, and Sarah Burnett?

Sarah Burnett: Good morning. In our asylum services we have had two confirmed cases in total, one of whom is now fully recovered and one of whom tested positive last week. They are in the community, so in dispersed accommodation, not in any of the centres. In Yarl's Wood we have no cases at the moment. We have had one positive case to date.

Q389 **Chair:** What about suspected cases?

Sarah Burnett: At the moment we do not have any suspected cases. I can give you the numbers of people who are self-isolating across the services if that is helpful.

Chair: Yes.

Sarah Burnett: At the moment, 819 of our asylum service users are self-isolating. Of those, 214 fit within the vulnerable shielding group. Within Yarl's Wood there are three people isolating at the moment. Nobody is symptomatic and no suspected cases.

Q390 **Chair:** What is the difference between people who are self-isolating and people who are suspected cases?

Sarah Burnett: The difference is people who are electing to self-isolate and are advising either us or Migrant Help that they are self-isolating.

Q391 **Chair:** Because they have underlying health conditions or because they suspect that they have Covid-19, even though you do not suspect they have Covid-19?

Sarah Burnett: No, I am sorry, I can explain. The self-isolating are people who have reported to either us or to Migrant Help that they are isolating, either as an individual or generally as a household group. Separately from that we have a shielding population, so those who are more vulnerable: 214 people. We do not have anybody who has reported to us that they suspect they may have Covid-19.

Q392 **Chair:** I am just trying to clarify the numbers—and I think this applies to John Taylor and the other witnesses as well—and get some clarity about your assessment of a suspected case. At what point do you identify that you have a suspected case? Is it only when it is self-reported to you? If people are self-isolating on a precautionary basis because they may have some small symptoms, do you count that as a suspected case or not?

Sarah Burnett: If I were to take Yarl's Wood first, with Yarl's Wood we work closely with our onsite healthcare provider, which is the Northamptonshire Healthcare Foundation Trust. It assesses each of the residents individually, takes daily temperature checks and provides



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individual advice. In Yarl's Wood we would rely on our healthcare partner to advise us if it felt anybody may potentially be symptomatic or may be a suspected case. At the moment, we do not have anybody who falls within that bracket.

Within AASC, for those people who are in dispersed accommodation, the same guidance applies as would do in the community, so members of the general public. What we do is provide an additional level of support in terms of outreach, phone calls from our housing officers, care packages for people who are reporting as shielding, and so on.

We have a vulnerability tracker, on which we work with the Home Office and Migrant Help, to make sure that everybody is getting the support they need.

John Taylor: Of those who have self-isolated at various times during the period of Covid, 442 have declared to us either that they are worried and consider that they want to be self-isolating and need that support, or have said they have symptoms that are similar to what is reported as Covid and, therefore, have chosen to self-isolate. We phone service users once a week to make sure they are okay. If they say they have any Covid symptoms we would advise them to self-isolate. Therefore, they are not confirmed tested cases. They are people who have chosen to self-isolate, and we will support them while they are self-isolating for that period of time.

Steven Lakey: Since the beginning, we have had a total of 360 cases that have reported as symptomatic, and we follow the same process in terms of self-isolation.

Colin Dobell: In immigration removal our approach would be the same as Serco's, as Sarah has described.

Q393 **Chair:** Can each of you tell us what is the current average length of stay in the accommodation you are providing, and how has that changed as a result of the coronavirus and the way you are having to respond?

Steven Lakey: The average length of stay has increased significantly. We started out at around about 20 days on average. That is now beginning to increase, particularly for single cases, but we are continuing to disperse families where it is better for them to be in dispersed accommodation than in initial accommodation. Where they can go into self-contained accommodation, those are continuing. So, not so much of an effect on families; more of an effect on singles.

Q394 **Chair:** Do you still have new people arriving into your accommodation?

Steven Lakey: We do.

Q395 **Chair:** Does that include into your initial accommodation and your institutional settings?

Steven Lakey: Yes, that is correct.



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Q396 **Chair:** Sarah Burnett?

Sarah Burnett: The impact of the crisis has been to extend the amount of time that people are staying in initial accommodation in particular, partly because of an increase in the numbers we are accommodating, but also because of the restrictions in moving people between different types of accommodation and different regions. Our current length of stay in initial accommodation averages 115 days.

Q397 **Chair:** How does that compare with what it normally would be?

Sarah Burnett: It has increased. In the midlands and east of England regions in particular, we have always had some people who have had a longer than average length of stay. We have some people who have been in since December. Prior to this, it would typically be closer to 30 or 35 days.

Chair: That is a very big increase.

John Taylor: A very similar experience. Since the Covid crisis started, from early April the IA building in Wakefield has essentially been closed to new entrants because we want to create a safe environment. There are 263 people in that property and they have been there for a number of months. We have been advised by the director of health at Wakefield that, unless there is a pressing medical need, they should remain there as a single household until we are in a position to move people safely, so we are obviously seeing a much longer stay in that accommodation because of that.

We are receiving a good number of new entrants into the system, and they are primarily being housed in hotel accommodation. Where we have a safe place to place them in dispersed accommodation, we will do so, but primarily into a hotel setting.

Colin Dobell: At this stage there is no real significant impact on length of stay. It is really around the number who are in detention. So, fewer numbers moving through the system, but it is hard to say whether there has been any significant impact on the length of stay at this stage.

Q398 **Chair:** Have you had a significant drop in numbers?

Colin Dobell: Yes, very significant. We are at probably 20% of the numbers that we had prior to CV-19.

Q399 **Holly Lynch:** I know that on 27 March asylum accommodation providers were tasked by a Government Minister, Chris Philp, to source more accommodation for the reasons you have already explained, that there are more people in the system at this moment in time than there would ordinarily be. Are you able to confirm just how much accommodation you were tasked with sourcing and provide an update on where you are with that?



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John Taylor: We have sourced in the region of eight hotels across the three contract regions that we manage: a very small hotel in Northern Ireland, five hotels in Glasgow and I think three at the moment in the north-east, Yorkshire and Humber. We are looking to source one or two further hotels in the north-east, Yorkshire and Humber, as the numbers continue to rise and we need to make sure we have somewhere safe to house people.

Q400 **Holly Lynch:** That is all initial accommodation, is it?

John Taylor: That is being used as initial accommodation for people coming into the system and, if anyone is vulnerable, we can provide better care for them there than out in the community on their own.

Q401 **Holly Lynch:** Have you been able to source dispersed accommodation in addition to that?

John Taylor: Very little, unfortunately. The lettings and property market has pretty much closed down. Landlords are unable to get out and get properties prepared. A few properties have come through, but it is very, very limited and we have seen that reduce over the last few weeks. Landlords are saying they have property available when we get out of restrictions, so hopefully we will be able to agree an exit strategy when restrictions are relaxed. At the moment, there is very little new DA property coming through the system.

Steven Lakey: We have sourced 13 hotels in the south and four hotels in Wales, and it is the same situation in terms of dispersed accommodation. We have had some successes, but it is quite slow at the moment due to the restrictions.

Sarah Burnett: Yes, very similar. We have four hotels in the north-west and three additional hotels in the midlands and east of England, so that totals to 980 additional hotel beds. As you say, we are using them as initial accommodation for new people coming in but, also, prior to lockdown where we identified people who were particularly vulnerable within the core initial accommodation, we have been able to move people into those hotels.

In terms of dispersed accommodation, a very similar picture. We have a pipeline of properties, but it is very slow to come onboard.

Q402 **Holly Lynch:** Further to that, can I ask you about your relationship with local authorities in those areas that would not normally be part of the arrangement to house asylum seekers in their local authority area? Have you had a good relationship with them, given the relaxing of that arrangement as requested by the Government Minister, or have you had push back from local authorities where you have been able to secure those hotels?

John Taylor: All the hotels we have taken are in existing dispersal local authority areas. All have been procured with communication with the local



authorities. For a number of the hotels that we proposed, local authorities had very good reasons to suggest that they were not appropriate, because of either location or their own needs, so we did not take those hotels. Each hotel has been taken with communication and agreement and, as I say, we are currently consulting with two or three other councils on taking further hotels.

We have not gone into any new council areas that do not currently take dispersed accommodation. That is partly because of support; our staff would have to drive further to support people. The NHS and other NGO groups are not necessarily established in those areas, so we are mindful that we need to support that group of people in those hotels and moving into a new area may make that harder. If we find appropriate accommodation and we feel we can support it—our staff are making sensible journey times—we would certainly look at that and discuss it with those local authorities.

Steven Lakey: For us it is about 50:50, so half the accommodation is in existing dispersal areas and half is in non-traditional dispersal areas or new areas. Again, it has been about 50:50 in those new areas. Some areas have been very welcoming and very supportive; some areas have been less so and have been concerned, so we are in consultation and are talking to those areas about how we deal with those concerns.

Sarah Burnett: We broadly found the engagement with local authorities to be very good. As you know, the Home Office wrote to local authorities before we went out to try to secure additional hotel contingency. What we have done, once we have proposed a property and the Home Office has approved it, is engage with the regional strategic migration partnerships, the local authorities and the local healthcare providers. Yes, engagement has been positive.

Q403 **Holly Lynch:** That is reassuring in that instance. Just before we move on, John, can I talk to you specifically about Urban House in Wakefield, which is run by Mears? There were some worrying photos and a video that were published by *The Independent* newspaper on 28 March, showing in the region of 60 residents at Urban House all in one room where they were enjoying lunch together. Based on what you said in a previous answer, the information that you had had was to the effect that it is operating as one household. Can you confirm what the situation is at Urban House?

John Taylor: We had a visit to the building from the director of public health at Wakefield Council and the Home Office on 7 April. I am not sure when those pictures were taken, but certainly we have been exercising social distancing from the outset of the restrictions. On 7 April we had that visit from the director of public health, where she was able to confirm that the social distancing, the mealtime arrangements, the washing arrangements and the household arrangements were in keeping with the guidance. She said she was happy, but to make sure that we did not exceed 270 people in the building. She requested that no new people were to enter the building, because that would essentially be a risk, and only people who



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were particularly vulnerable or needed more care should leave. Therefore, we have, as you say, a sort of household group that have been in that building together since the restrictions.

We have followed her advice based on the guidelines ever since. We are very mindful of the need for social distancing, advising all the service users in their own language how to meet those guidelines, and we are doing that on a regular daily basis.

Q404 Laura Farris: I think I am right in saying that three pieces of guidance literature were published by the Home Office between 16 and 20 March about how to manage prescribed places of detention during the Covid-19 crisis. Please correct me if I have that wrong, but I want to ask each of you how much of an operational challenge it was to implement the recommendations in that guidance and what you had to do.

John Taylor: It was a huge challenge because, obviously, we were all trying to understand what the guidance meant in practice and how to implement it. Our buildings are not places of detention. At Urban House people have the right and should be able to have their daily exercise, so they are allowed to leave the building for their half hour/hour exercise. We ask people to sign in and sign out, and we make sure they understand about social gatherings when they are outside and about the purpose of that exercise.

Our staff have been trained on that guidance. As has been reiterated, we work very closely with NGOs, with the Red Cross and with the health organisations to make sure we fully understand the implications and how to implement that guidance in a sensitive way, understanding people's needs. We have understood in our hotel settings how to assist people with observing Ramadan, for example, and we work closely with local mosques in Glasgow to make sure that prayer mats, Qurans and so on are provided and that we are able to provide food at the right times of the day so that people can observe Ramadan safely.

It has been a huge challenge to get the balance right in making sure all our residents understand how to observe the guidelines, whether they are in a building such as Urban House, in a hotel or in their own home, which is the vast majority. That is something our staff do when they call them once a week to make sure they are okay. It is a big challenge and we have learned, and we think we are meeting those guidelines in all our buildings.

Steven Lakey: It is a similar situation for us. We do not run any of the detention estate. It is just initial accommodation in that regard. We have implemented all of the social distancing. We have also put in additional signage translated into the top 10 languages, as well as making sure that meals can be delivered to rooms or collected from dining rooms at appropriate times. It is the same sorts of challenges as John was describing in the estate, but it all seems to be going quite well.



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Now one of the biggest challenges is communicating with everybody and making sure all the residents understand what the rules are and what they need to do to follow them.

Sarah Burnett: Yarl's Wood is our detention centre. At Yarl's Wood we held a full pandemic contingency planning exercise at the end of January, which ensured that we were as prepared as we could be. We have been able to run a—

Q405 **Laura Farris:** Can I just jump in? Was that planning exercise done on the advice of the Home Office or was it done at your own instigation?

Sarah Burnett: This was done at our instigation but with the Home Office and also with our healthcare partners, Northamptonshire Healthcare Foundation Trust. We worked on that as a sort of tripartite plan. That enabled us to get to a position where we could ensure we had sufficient stocks of PPE, for example, but also to redesign the regime to ensure that we could continue to deliver essential services while maintaining the social distancing controls.

Colin Dobell: In common with Sarah, in February we held a contingency planning exercise around pandemics. Again, similar to Sarah, we did that with the Home Office, so we made sure that we were well prepared. The main challenge for us has been around communication. That is communicating with detainees so they understand what is happening but, also, communicating with colleagues, making sure that they are clear on what we are trying to do and what the desired outcomes are, but I think it has been a fairly successful exercise.

Q406 **Stephen Doughty:** Just to follow up on that point about the planning exercise, you said those took place in January and February, is that right?

Colin Dobell: Yes, February for us.

Q407 **Stephen Doughty:** Were you surprised there was so much time between being asked to do those planning activities, doing them with the Home Office, and the formal imposition of lockdown on 23 March?

Colin Dobell: What we found was that we were communicating with the Home Office all the way through it, and it was clear from late February into early March what the strategy would be, which was to reduce the number of detainees in the IRC. We started to see that take effect from early March. From 8 March onwards, the numbers in detention started to reduce quite dramatically.

Q408 **Stephen Doughty:** Steven Lakey, you run dispersed accommodation. You said a number in the hundreds of people who had wanted to or had been self-isolating at some point. Can you just clarify that number again?

Steven Lakey: Yes, certainly. Across the entire DA estate we have had 360 people to date who have required self-isolation due to being symptomatic. We also have a further 23 people who are shielding in London and the south, and nine people in Wales who are currently shielding.



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Q409 **Stephen Doughty:** Of the 360 who were symptomatic, what is the breakdown between Wales and the south?

Steven Lakey: South 260, Wales 98.

Q410 **Stephen Doughty:** How many did you say have tested positive?

Steven Lakey: For positive tests, we have two swabbed in Wales, one positive, and in London and the south, 12 swabbed and 11 positive.

Q411 **Stephen Doughty:** Of all the 360 who were symptomatic, how many of them have received tests?

Steven Lakey: I don't know. That information has not been shared with us by Public Health.

Q412 **Stephen Doughty:** Have you requested tests for all 360?

Steven Lakey: No. We have been talking to Public Health England. The advice that we were provided with at the time was that they were to self-isolate and they would only have needed to be tested if they went to hospital.

Q413 **Stephen Doughty:** Did any of those individuals access the online booking for testing that is available now?

Steven Lakey: We are not aware if they have. That information isn't shared with us.

Q414 **Stephen Doughty:** What about in Wales, because obviously it is not Public Health England that you go to in relation to Wales?

Steven Lakey: Exactly the same; the same situation. However, the difference with Public Health Wales is it is happy to test anyone in an HMO scenario. To date we are not aware of any tests that have been actioned, but we have not been informed of that information, so we are not aware.

Q415 **Stephen Doughty:** You are correct about Wales and, of course, there has been a list of people who are available for testing, which was longer than the England one for some time, but it has to be requested through the employer or organisation they are working with. Have you requested tests on behalf of the symptomatic individuals in Wales?

Steven Lakey: We haven't, no.

Q416 **Stephen Doughty:** Why?

Steven Lakey: We can take that up with Public Health Wales, but that hasn't been the advice that we have received from them to date.

Q417 **Stephen Doughty:** Well, the question is for you: have you requested the testing?

Steven Lakey: No.

Q418 **Stephen Doughty:** Why?



Steven Lakey: Because we were not aware that we were able to do that for service users. The advice that we received from Public Health Wales is to provide the service users with the advice and guidance to contact them if they require testing, not to do it through us. In terms of the testing for staff, obviously as an employer we would put forward testing for any of the key frontline workers but—

Q419 **Stephen Doughty:** Have you done that?

Steven Lakey: No. We have not had any frontline staff who require testing to date.

Q420 **Stephen Doughty:** Have any of those staff come into contact with the individuals who tested positive?

Steven Lakey: No.

Q421 **Stephen Doughty:** Who has come into contact with them?

Steven Lakey: In terms of staff or—

Stephen Doughty: Yes.

Steven Lakey: No, staff have not been in contact with anybody. We have a system in place whereby, once we are informed that somebody is symptomatic, we switch to telephone-only support. We have telephone numbers for all the service users. We have provided handsets and telephones for anyone who does not have access to it and we, therefore, do telephone welfare checks instead.

Q422 **Stephen Doughty:** What about the provision of food and cleaning? Somebody is coming into contact with these individuals.

Steven Lakey: In terms of food provision, that is done on a doorstep drop. That is handled by the local authority and the voluntary sectors.

Q423 **Stephen Doughty:** And cleaning?

Steven Lakey: Cleaning is all done—in dispersed accommodation, not in initial accommodation—by the service users themselves, so they carry out their own cleaning. For cleaning of communal areas, we have PPE for those who need it, but it is put on hold for any household that is symptomatic until reported as no longer symptomatic, and then we go in and clean from there.

Q424 **Stephen Doughty:** Can I ask the other witnesses that question about testing? Have you been requesting tests on behalf of the symptomatic individuals in your accommodation and, indeed, your staff?

John Taylor: Yes, we have. We have been talking to the Cabinet Office about getting testing available for service users. We have not been able to verify whether service users have taken advantage of testing because it is very early days for that being available.



We now have an employer portal, where our key worker staff who are on this contract can request a test from the NHS. We hope people take advantage of that now it has become more readily available and better understood how that system works. It is very much an evolving situation where the availability of testing is much better now. Hopefully, our service users will be able to take advantage of that, and we will do what we can to make sure they can access it.

Q425 **Stephen Doughty:** How many individuals have been tested?

John Taylor: At the moment, I do not know whether any of our service users have been able to get a test.

Q426 **Stephen Doughty:** Your staff?

John Taylor: I have not been told that any of our staff have had a test. I do know that, of our staff, 67 have self-isolated voluntarily over the course of the period. Only seven are currently self-isolating. Everyone else has returned to work. We have had, I think, two confirmed cases, so they must have had a test. Of the 307 staff on the contract, two are confirmed to have had Covid, so they would have had a test. Everyone else has returned to work apart from seven who are currently self-isolating voluntarily.

Colin Dobell: All colleagues have access to testing, should they need it. Similarly, where people are self-isolating, we ask them to request the test. In terms of detainees, there is no routine testing. However, we have onsite professional medical care, and if anybody displays any symptoms, they are dealt with by the onsite medical team.

Sarah Burnett: Our key workers can access the key worker testing. We do not have reliable records at this early stage as to how many have accessed that because there are multiple routes in. In terms of self-isolating staff, we currently have 11 in our AASC contract and 12 in the Yarl's Wood contract. We have had two Serco staff confirmed as positive in Yarl's Wood, both of whom have fully recovered and are now back at work. We have had one member of staff confirmed as positive in AASC and they continue to self-isolate.

Q427 **Stephen Doughty:** Sarah, one last question specifically. There is a concerning story today about Serco, in relation to its staff who are working on the national shielding helpline apparently not being able to have safe social distancing in their own workplace and being asked to sign a waiver absolving the firm of any blame if they get sick. I understand there is an investigation into this, but are you absolutely clear, in relation to your part of the Serco operations, that your own staff are following the guidance on social distancing and are not being asked to sign any waivers absolving Serco of any liability?

Sarah Burnett: Yes, absolutely confident of that. We have very clear social distancing measures within the centre and within the asylum services. Within Yarl's Wood, in particular, we have made huge efforts to ensure that people are not coming into work unnecessarily. We no longer



have people sharing offices, so whereas you may have had two people in a function you now have one with another person working from home.

We operate one in, one out processes in confined areas—for example, through the gate—so I am very confident of the measures we have in place.

Q428 **Chair:** Can I just quickly follow up with Steven Lakey? Can you just confirm when you were talking about the number of people you have self-isolating, the vast majority of whom obviously have not been tested in any way, how many of them are in dispersed accommodation, how many of them are in any kind of initial accommodation or any form of HMO?

Steven Lakey: Certainly. For initial accommodation we have 17. The remainder are all in the dispersed accommodation, and it is a mix of family and HMOs. I don't have the breakdown but I can provide that afterwards.

Q429 **Chair:** You do have significant numbers of people, whether it is in initial accommodation or in HMOs, who are self-isolating because of potential symptoms who are not being tested?

Steven Lakey: We have, yes, up until now. Those figures are figures to date. Currently, in terms of live cases, it is only one in Wales and two in the south.

Q430 **Chair:** Does it concern you that you have not been able to get people tested, given the potential for them obviously to spread it to other people if they are in that kind of accommodation?

Steven Lakey: Yes. We have issued the advice for everybody in the accommodation, particularly HMOs, in terms of what to do and how to keep safe. We have used the public health advice from both Public Health England and Public Health Wales, but testing certainly isn't something, until very recently, that was part of that consideration. It was just advice, guidance and what to do to self-isolate and how to get further support.

Q431 **Ms Karen Buck:** I am coming at this as a member of the Joint Committee on Human Rights. You may be aware that we produced a report last year looking at the conditions of prisoners in detention, so I think my questions are primarily for Sarah and Colin. We heard figures from Sarah—I may have missed Colin's figures—on the numbers of self-isolating people in detention. I know you confirmed that you had not had any cases, but how many people have been self-isolating?

Colin Dobell: In terms of detainees, we do not have anybody self-isolating at the moment.

Q432 **Ms Karen Buck:** Has anybody been self-isolating since the beginning of the pandemic?

Colin Dobell: No. We had one confirmed case, and that individual was released to identified accommodation immediately.

Q433 **Ms Karen Buck:** Sarah, you gave us the figures for the numbers who have been self-isolating and who are being shielded. Of those, have any been in



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a position where they have been asked to stay in their cells and to avoid face-to-face contact?

Sarah Burnett: In Yarl's Wood, if I can describe the centre, we have two very specific functions. There is the main centre for residents and then there is also the Midlands Intake Unit, which is a short-term holding facility. We have approached those situations in two very different ways. The short-term holding facility, as the advice has developed as this situation has evolved, we have configured to be able to hold different individuals or groups of people in isolation when required.

We also have the onsite healthcare provider and medical facilities to be able to provide a full medical quarantine facility as required. In total, we have had 11 people quarantined because they were symptomatic, and then we have had a further 62 who, at various stages, have been in isolation because they have had suspected potential contact with people who may have been positive or symptomatic.

Q434 **Ms Karen Buck:** Just to be very clear about that, in each of those categories are they people who have been asked to remain in their cells? Are they effectively in solitary confinement?

Sarah Burnett: No, absolutely they are not. In Yarl's Wood we have rooms rather than cells. All the residents have their own room key. Nobody is locked in their cell. What we have done—as other providers have described—is ensure that we communicate actively with people so that they know what measures to put in place.

The other things that we have done are identify anybody who has particular underlying vulnerabilities. Each of those individuals has a supported living plan in place, so that there are additional protections around those, but we certainly have not confined anybody to solitary confinement.

Q435 **Ms Karen Buck:** In both cases—Colin and Sarah—people who are self-isolating or people who are shielding are not being held in their cells? If necessary, they are able to maintain face-to-face contact, presumably with staff protected by PPE in those circumstances?

Colin Dobell: Yes. Everybody has full access to staff regime. We do not have any individuals who are effectively confined, no.

Q436 **Ms Karen Buck:** Just to absolutely confirm, is that true for you as well, Sarah?

Sarah Burnett: Yes, absolutely.

Q437 **Janet Daby:** Good morning, everyone. Could you just say what your policy is on testing and implementing this, and when your policy came into place? That would be helpful.

John Taylor: I think policy has been evolving. We are working with health colleagues, Migrant Help and the Home Office. Testing has not been readily available, so we have been following the advice of social distancing,



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restrictions on movement and making sure people are aware of how they should observe those guidelines, whether they are in initial accommodation, a hotel or dispersed accommodation.

We are now seeing more availability of testing, or certainly availability starting to come into place, and we are discussing how we can have a clear policy that any service user who wants and needs a test has access to that test. We hope to set that up as a very formal process so we can track that people are getting the assistance they need. As I said earlier, we are making sure that our staff, who are key workers and who come into contact with service users on a daily basis, also have access to that testing through our portal to the NHS.

It is an evolving policy, but it is about trying to react and make sure that people have access to the tests they deserve.

Q438 Janet Daby: Who are you working with on getting that testing done? Are you working with the NHS and with the Home Office?

John Taylor: It is through the NHS, yes.

Q439 Janet Daby: When do you expect that policy to be in place?

John Taylor: As I say, it is evolving. We are hoping that early next week we should be able to see more and more people access that test. There are a number of local testing centres being established—certainly in Yorkshire, the north-east and Glasgow—where we will be able to let service users know those testing facilities exist and help them access those facilities. Obviously, if it is around journeys, we need to make sure those journeys are done safely. We will do all we can to make sure people can access those test centres.

Q440 Janet Daby: Have you had any clients who have been hospitalised due to the virus?

John Taylor: I don't believe anyone has been hospitalised. We have only had a small number of confirmed cases—just two confirmed cases in Scotland. I do not believe they were hospitalised.

Colin Dobell: Colleagues were identified as key workers very early on, so as soon as testing became available for key workers, it was available to staff through the drive-through centres. That has been replaced now by the NHS portal, so we encourage all staff to request a test should they need it. That is our general policy, and certainly where people are self-isolating there is an expectation they will take a test.

For detainees there has been no particular policy around testing. It is monitoring as much as anything else. If detainees do have symptoms, it is working with the onsite healthcare team, which is Central and North West London NHS Trust, to test individuals at that point. We have recently written to the Home Office asking that testing becomes available as a matter of routine for detainees as well.



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Q441 **Janet Daby:** With your health service that goes in, are they referring anybody to be tested?

Colin Dobell: No, we have not had anybody tested on site at the moment. We have had no detainees who have been symptomatic.

Q442 **Janet Daby:** Sarah, the same?

Sarah Burnett: Yes, a very similar picture. In terms of the immigration estate, the testing policy has evolved over time and it has been a matter for Public Health England and the Northamptonshire Healthcare Foundation Trust to identify which individuals they were testing and by which trigger points. We have had three tests, I believe, to date, of which only one was positive.

Staff, as we have covered, qualify for key worker status. We are rolling that through and supporting it through our central HR to try to move that along.

On the asylum side, for people in dispersed accommodation, to date we have had no access to anything beyond what would be available to the general population in the community. Within the initial accommodation, it is being driven by different healthcare trusts. On one occasion, for example, we had seven tests take place in one of our initial accommodation blocks in Birmingham. All of those were negative.

Q443 **Janet Daby:** You mentioned two staff having tested positive. In terms of who they came into contact with before they were tested, how did you manage that type of situation?

Sarah Burnett: We are very fortunate that it is just a handful of individuals that we are talking about. In those instances, the individuals had been self-isolating prior to testing positive, so they had not been at work and we did not have the concern about contagion.

Q444 **Janet Daby:** And Steven, please?

Steven Lakey: Yes, in terms of policy, similar to everybody else really, it is evolving. As far as staff are concerned, we now have a policy in place so that staff can request testing if required. As far as service users are concerned, there is a different approach in England than in Wales because there are slight variations. We are working with both Public Health England and Public Health Wales to look at how we roll that out and how best to do that. There are still some questions around how that is accessed and how that is going to be done, but we have meetings coming up next week that will hopefully mean we get some resolution to that.

Janet Daby: Obviously, we need a very clear policy around testing for each of you.

Q445 **Chair:** Can I clarify? All of you have different forms of group accommodation, whether it is HMOs, initial accommodation, detention centres and institutions, but it still does not sound like you have ready,



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organised and easy access to testing for anyone who may need it, whether that is a resident or a member of staff. Is that fair?

Steven Lakey: We do for staff, but certainly for service users it is still a challenge.

Q446 **Chair:** Presumably, they cannot get access to a lot of the testing centres where you need transport to be able to get to them and to access them?

Steven Lakey: That certainly would be a challenge, yes.

Q447 **Chair:** Is it fair to say you have people who are in the kinds of accommodation where it is more difficult to self-isolate and there is a higher risk of spreading the infection, and who currently cannot get access to tests?

Steven Lakey: Yes, I think that would be fair to say.

Q448 **Stuart C. McDonald:** Three questions, first of all, on asylum accommodation. I have been informed that in hotels, for those who are on section 98 support, the Home Office has stopped paying any cash allowance to them. It previously paid a very small cash allowance of £5 or £10 a week, so that even though they are on full board they could get small things like fruit or sweets for their room or a phone top-up, for example. Am I correct in understanding that has stopped, and do you have any concerns for the impact that has on the wellbeing of the people who are staying in your hotels—on their autonomy and their mental health, for example?

John Taylor: That is correct. People who move into the hotels do not receive a financial payment from the Home Office through the system. It would be fair to say that it is a concern. Service users have expressed concern that, as you say, they do not have access to a small amount of money for a few bits and pieces. That is unfortunately where we are at the moment.

Sarah Burnett: I think there are differences between whether they are in catered accommodation or self-catered accommodation. Certainly in our self-catered IA, people are still receiving a daily allowance.

Q449 **Stuart C. McDonald:** But in the catered accommodation that has stopped?

Sarah Burnett: They receive the standard weekly allowance, but there is no incremental allowance on top of that.

Steven Lakey: The same answer from me.

Q450 **Stuart C. McDonald:** Do you all agree that that raises some challenges for people in hotels if they have absolutely no access to any cash at all?

Steven Lakey: Yes, definitely of concern.

Sarah Burnett: Yes, it is a concern.

Q451 **Stuart C. McDonald:** Can I turn to the issue of room sharing? Back in



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2017, this Committee said that room sharing by unrelated adults should be finished altogether. I would hope you all agree that that is absolutely imperative, given that we are living in a country where we are not supposed to come within two metres of each other, but we have evidence that this is still happening in asylum accommodation in Wales, Birmingham, London and Wakefield. To what extent is this happening with your companies, what are you going to do to stop it, and do you agree that it should be stopped immediately?

John Taylor: When we tendered for the contracts, we were clear that we did not agree that anyone should room share in DA with someone who was not part of their household, so two single people should not share a room together if they did not know each other. When we took over the contracts last summer, there were 2,350 people sharing a room in DA with someone they did not know. We have tried to keep that promise, and we now have only 114 people sharing accommodation in that DA estate. That 114 would probably now be in their own rooms, but we have had to stop moves since late March. Certainly when we get back to normal business, we would expect those 114 people to have their own rooms.

I agree that in DA, where you are going to be in occupation for a period of time, we do not share rooms. We do have people sharing rooms in Wakefield because that is the nature of the building, which has been in use for many years and was the IA facility. People are meant to be in Wakefield for only a short number of weeks, two to three weeks at most. There is room sharing there and there will continue to be, on the basis that people should not be there too long and they should then move out.

Q452 **Stuart C. McDonald:** Has the Home Office said anything about getting people out of these shared rooms just because of the very fact of the coronavirus pandemic?

John Taylor: When there is a concern, we should. In Wakefield there are 330 beds available and we have only 263 people in the building. As I said earlier, we are not going to increase that number because that would be wrong. A number of people have expressed concern and we have moved them to their own rooms, so at the moment no one has to share a room in Wakefield if they are unhappy. We have moved a number of people into their own rooms, and the Home Office agrees that that is what we should do.

We are constantly talking to the people in Wakefield and making sure they are happy with their current arrangements, and we are very sensitive to the concerns they have.

Q453 **Stuart C. McDonald:** If I picked you up right, you have said you are committed to getting rid of this practice elsewhere, but did you say you had stopped making these moves at the start of March, so essentially the position is that people are being left in shared rooms?



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John Taylor: We had 2,350 people sharing rooms when we took over the contracts back in September. We now have only 114 people, so we have managed to reduce that.

Q454 **Stuart C. McDonald:** From what I picked up, you were saying that, because of the coronavirus crisis, you have stopped this process of moving folk. Should you actually not be accelerating that process?

John Taylor: Of those 114, the view has been—and this is the view taken in agreement with the Home Office—that to move people unnecessarily should be avoided and to avoid journeys. If there was any concern from those 114 people, we would look to make a move, but obviously any moves involve our staff, the service users and being able to move them into another accommodation. The danger for us, though, in moving someone from a shared room is if they were to go into another HMO, where they would effectively come into contact with new people, so we are restricted under the current circumstances in being able to effectively move those 114 people.

Q455 **Stuart C. McDonald:** Before I bring in Sarah and Steven on that point, Mr Taylor, I understand recently there have been about 200 or 300 people moved in the space of about 10 days or two weeks in Glasgow from self-contained accommodation into hotels. How is that consistent with what you just said about trying not to move folk unnecessarily?

John Taylor: It is consistent with trying to move people only when it is deemed to be the best way of making the restrictions work. We were very concerned in Glasgow that we had a number of people who were in dispersed IA-type accommodation, in flats rather than an IA building. We do not have an IA building in Glasgow. Therefore, once the restrictions were put in place, our staff would have to hand over cash to these people. That was a lot of journeys and lots of difficulties in terms of paper notes being handed over to people. Then they would have to go out to get food.

Equally, as they were in the IA system but in flats, it was considered back in March that it would be harder to get access to the health service that people in IA should have. That would again cause the health workers a number of journeys and other interactions. The view was taken on balance that we would move them into a hotel where we could provide that service.

Q456 **Stuart C. McDonald:** That makes sense. One other question on that particular issue is: how much consultation did you do with, for example, the health service or with NGOs about how this should be planned? Because you are talking about a very vulnerable group. As I understand it, you have already had to move some people on again because, for example, there were seven women alongside 110 men in one hotel. Because it was not planned properly, they had to be moved on again. Is that right?

John Taylor: In the circumstances and the speed at which the situation developed, I think we planned it as well as could possibly be done, to be honest.



Q457 **Stuart C. McDonald:** In consultation with whom?

John Taylor: We obviously consulted the Home Office. We talked to Migrant Help. Certainly, the health partners in the IA facility in Glasgow were notified, and we were talking to the NGOs as well. Over the last few weeks we have worked very closely with the NGOs to make sure the hotel estate is well managed. We had a visit from the Red Cross and from ASH, who are a support group. They visited the hotels to see how they are managed and how we are organising them. They were very happy and content with how it is organised. We have invited the Scottish Refugee Council to also visit, but unfortunately they have not been able to.

Q458 **Stuart C. McDonald:** Sarah Burnett and Steven Lakey, can I ask you about room sharing? Do you accept it is totally inappropriate in the current circumstances, and what are you doing to stop it?

Sarah Burnett: The only people that we have sharing a room are people who were sharing before the current restrictions and lockdown came into place.

Q459 **Stuart C. McDonald:** Again, is it not all the more urgent to get them out of shared rooms rather than waiting for the crisis to be over?

Sarah Burnett: The advice that we have been given from PHE and through UKVI has been that, where people were already sharing, we should consider it in a similar way to an HMO or student accommodation, where that would be considered as a household, so they practise social distancing as a shared accommodation. The exceptions to that have been where people have a particular vulnerability and they have been moved.

Q460 **Stuart C. McDonald:** It is hard to see how you can practise social distancing in a shared room. Steven Lakey, is it the same approach? Have you had the same advice?

Steven Lakey: It is the same approach and same advice for us, yes.

Q461 **Stuart C. McDonald:** How many people do you have in shared rooms?

Steven Lakey: I do not have the exact figure with me, but I can certainly forward that information. It is predominantly in London for us. I can tell you that in Wales we are down in dispersed accommodation to just six people. We were making moves to relocate those but, again, the advice was to lock everybody down as a household and only move people if it was appropriate to do so in conjunction with Public Health.

Q462 **Stuart C. McDonald:** If everyone could give us the up-to-date figures on who is in a shared room, that would be great.

A final question, and it relates to what I was asking Mr Taylor earlier, is when this all comes to an end—the temporary support measures that have been put in place, including, for example, no move ons from asylum accommodation—do you all agree that it is not enough just to go about implementing the contract? You have to work incredibly closely with local stakeholders, health boards, and so on to make sure that this is done in a



managed way that does not undermine the public health effort here. It cannot just be evict without any thought to the consequences.

John Taylor: I absolutely agree with you. It is something we have been talking about very closely with the Home Office, in that we need to develop a very formal exit strategy. It cannot be one day everything has to change. We have to exit this very, very sensitively.

There has been a lot of change, disturbance and worry for our service users and our clients, and moving people out of hotels and into their own accommodation, dealing with people who have a discontinuation, that has to be done in a very measured and balanced way. As you say, we will have to work incredibly closely with the local authorities, NGOs and health authorities.

There will essentially be a big impact on local authorities. I talk very regularly with Glasgow City Council's housing department about its capacity to assist people if and when they need to move out of our estate. You are quite right, it has to be done incredibly sensitively and have a very clear, measured plan that is well communicated.

Steven Lakey: I absolutely 100% agree. It needs to be a managed and staged exit.

Sarah Burnett: The Home Office has committed to working with us and with all of our stakeholder agencies to make sure that is managed in a phased fashion.

Q463 **Chair:** Can I just follow up to clarify? On that shared room accommodation, where you have people newly arriving—so the people who have newly arrived in the country as asylum seekers—and who are going into different forms of your initial accommodation, how many of them are going into shared rooms?

Steven Lakey: Anybody newly arriving in, if they are a single person, will go into a single room.

Sarah Burnett: Yes, the same situation, only families will share.

John Taylor: Absolutely. No single people will share.

Chair: Say that again, most single people will share or will not share?

John Taylor: Every single person will have their own room, absolutely, as Sarah said. Families may well have children in their room with them but, no, our commitment is no room sharing.

Q464 **Chair:** Evidence that we have received from organisations quoting asylum seekers, quoting people who have newly arrived, talks about people being put into hotel accommodation and having to share hotel rooms. As far as your accommodation is concerned, that would be inaccurate; is that right?



John Taylor: I believe so. Everyone has their own single hotel room. I would need to be passed that evidence, and I will look into it.

Chair: Could you all just confirm that? We have been given some evidence, reports from people saying that new arrivals are being put into shared accommodation and shared rooms, either in hotels or in other forms of initial accommodation, so that would be very helpful for you to check.

Q465 **Sir Robert Neill:** Thanks for letting me join the Committee to ask some questions. My questions are predominantly for Sarah and Colin because they relate to the IRCs. Although there are differences between IRCs and prisons, there are obviously similarities in the sense that you have people detained in close quarters, and the challenges around social distancing, cohorting and quarantining people are much the same. I would like to understand to what extent, if any, there is any sharing of experience and of good practice in working between yourselves and the Prison Service. To what extent is that happening?

Colin Dobell: If I can speak first, we are not working with the Prison Service on any of that at the moment. Our strategy and the Home Office's strategy has been to detain fewer people, so there are just fewer people in the estate. People are kept in single occupancy rooms, so again we do not have any sharing, and the way that people are moving in and out of the centres at the moment is very much on a rotational basis. We are only taking people into the centre every 14 days and each new cohort is effectively isolated in a unit until they are all clear and then they are dispersed into the centre. We are running the centre as a series of households. The way we are approaching things is that we effectively have around 20 people in each household, so they are self-contained. They have full access to all the regime, but they do not mix with the other households within the centre.

Sarah Burnett: Serco obviously run both prisons and immigration detention. While I would say Yarl's Wood is very different from a prison, where we have been sharing a lot of good practice in particular is around how we are supporting our staff and our people. Where we are looking to recruit and train additional DCOs and PCOs, for example, we have had to think carefully about replacing face-to-face assessments and training with virtual training. We are considering, for future requirements, how we can deliver physical training in a different and safer way. There is quite a lot of best practice, particularly in the welfare and support space, between the two sectors.

Q466 **Sir Robert Neill:** In the Public Health England guidance and analysis, which the MOJ has for prisons, obviously a particular concern is in relation to how you handle new arrivals and transfers between establishments; perhaps that is less of an issue. Have you been able to pick up on any of the work it has done there, either of you? How are you handling new arrivals to ensure there is not any risk of transmission?



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Colin Dobell: To repeat what I said earlier, the approach is very much to receive detainees as cohorts on a regular basis, so every 14 days those individuals are taken effectively into isolation and then they are dispersed into the centre. That has been the approach.

Sarah Burnett: We are practising the same approach.

Q467 **Sir Robert Neill:** Can you help me around the issue of time-served foreign national prisoners who you may have? Of course, we know back in December of last year there were about 1,600-odd such people. How many foreign national prisoners have come out of the prison estate and are now detained pending, one assumes, deportation within the estate at the moment?

Colin Dobell: From our perspective, our current population is 95%, 96% time-served foreign national offenders, so virtually everybody that we have within detention at the moment fits that category.

Sir Robert Neill: Time served, virtually everybody.

Sarah Burnett: We are in the same position. Our numbers are currently very low indeed within the centre, and it is a population of time-served foreign national offenders.

Q468 **Sir Robert Neill:** Finally, the Ministry of Justice has a policy, perhaps very slowly implemented, of releasing people who are particularly vulnerable, perhaps because of their underlying health situations or other matters. Are you aware of any such approach being adopted by the Home Office or other agencies in relation to the people that are within your estate?

Colin Dobell: Certainly, where people are proving to be vulnerable or are risk assessed as not posing a high risk to society, they have been released from accommodation.

Sir Robert Neill: Is that the same, Sarah?

Sarah Burnett: It is, yes. That is the policy, that people are not released only if there is a very specific reason for them not to be.

Q469 **Sir Robert Neill:** What has been the drop in numbers, do you think, compared with where you were before the outbreak started?

Sarah Burnett: We are currently exceptionally low in numbers. Our core residents population this morning is 15 individuals.

Colin Dobell: Similarly, I think today we were around 130, around 20% of normal population.

Q470 **Stuart C. McDonald:** I have a factual question for Sarah and Colin about detention. If you do not have the numbers today and could follow up, that would be brilliant. I do not know whether you have figures for the number of adults at risk, especially at levels 2 and 3, who are currently still detained in the detention centres. Similarly, do you have any numbers relating to the individuals who have particular vulnerabilities for Covid-19, such as



diabetes, asthma or whatever else?

Colin Dobell: In terms of adults at risk, we have none at the moment. For adults who are particularly vulnerable, we have a cohort of those. I think it is around 70 at the moment, but I can confirm those numbers. Each of those has a vulnerable adult care plan in place.

Q471 **Chair:** Can I ask some quick final questions? John Taylor, on the specific issues raised around Urban House, obviously you will know that we hear a lot of concerns, including from residents. I know that you changed the way you were running things as a result of the intervention of the local public health director. Had you not had that public health director intervention, would you, therefore, have carried on the way that you were operating?

John Taylor: No, I do not believe so. I think the intervention was a mutual wish to engage and understand how best to implement Public Health England guidance, to make sure that we are doing things correctly and safeguarding the wellbeing of all the residents and, indeed, our staff, who are there 24 hours a day. No, I do not believe we would have done. I think we engaged with the public health director positively. We wanted her to come in and look around the building and make sure we are doing things correctly.

Q472 **Chair:** Have all of you had local public health directors visiting the accommodation or direct engagement? It is one of the issues we raised in our previous reports about wanting much stronger local authority engagement. Would it not be helpful for all of you to have direct public health director engagement in each area?

Sarah Burnett: We have a dedicated partnership team that works with Public Health England on a national and local level with the local authorities. I would have to check at what level that is. I do not know whether it is at director level, but I can come back to you on that.

Steven Lakey: We have that available for us both in London and in Wales in our initial accommodation centres. I have to say during this period it has given some opportunity to work more closely with both Public Health England and Public Health Wales to establish or, rather, reinforce those relationships. I guess that is a positive that has come out.

Q473 **Chair:** Is that with local authority public health directors as well?

Steven Lakey: Yes.

Q474 **Chair:** A final question. Another thing that has been raised with us in the evidence we have received is a lot of concern, following up Stuart McDonald's point earlier, about the financial support for asylum seekers. Are you confident that people have enough money to be able to buy soap, toiletries or cleaning equipment to maintain the hygiene, and so on, they need to prevent infection spreading?

John Taylor: Certainly in the hotels where, as Mr McDonald pointed out, people do not receive any cash, we receive all the necessary toiletries and



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health equipment needed—including PPE, if residents wish to have PPE—so we are confident hotels have access to it. Where people receive payments in the DA estate, obviously it is a sum of money and they need to source that equipment and those items through the money they are given. But certainly, where people are not in receipt of any cash, we make sure they have everything they need.

Steven Lakey: I would reflect that, yes, absolutely. In the hotels it is very much provided, and in dispersed accommodation it is about support through their ASPEN cards.

Q475 **Chair:** Yes, but if they cannot use ASPEN cards to buy things online, do they have enough money to be able to buy enough toiletries or cleaning equipment, especially given that in some areas prices have also gone up for some of these things, too?

Steven Lakey: Any of those issues are reported through Migrant Help, and then we would get a request for assistance, to go out and support where necessary, but we have not had that to date.

Q476 **Chair:** The reality is people are trying to budget on very small amounts of money. They are continually juggling. Do they buy enough cleaning materials, or do they buy enough food for the kids, or whatever? Can you put your hand on your heart and tell me that you are confident—just a yes or no answer—that the asylum seekers who you provide support or accommodation for have enough money to pay for the kinds of toiletries and cleaning equipment that they need in the current circumstances?

Sarah Burnett: Yes, we provide additional equipment and essential supplies where people highlight that they cannot.

Steven Lakey: The same answer. Where we get it highlighted that they cannot access what they need, then we are providing it.

Q477 **Chair:** Where you get it highlighted? Realistically, though, given the circumstances people are facing—I am sure if you get a detailed case put to you—in how many cases do you think people are not reporting it to you because they are desperately trying to manage?

Steven Lakey: It is a difficult one for me to answer in terms of the payment. That is a different part of the contract and not something we are in control of. We provide the accommodation rather than the payment piece, so it is probably a question for the Home Office and Sodexo rather than for me.

John Taylor: I fully understand your question. It is an amount of money that is very hard to budget for. We phone every service user once a week, and we do ask that question. A number of people have said they are struggling and we have gone out, as Sarah has suggested, to support them and provide them with extra materials. Can we hand on heart say that everyone who is struggling has told us they are struggling? Maybe not, but we are doing our best to find out where people are and we do our best to



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get materials to them and to help them budget, but it is very difficult, no doubt, in the current climate.

Q478 **Janet Daby:** I just want to go back to somebody who has symptoms of the coronavirus. Obviously, if the symptoms are quite severe, the fever and so on, then it is going to be difficult for them to manage their own care and food, and so on. If they have dependants, that makes it even more difficult for them. What would you do in a situation like that?

John Taylor: From our perspective, if someone is self-isolating because they have symptoms that make them concerned about Covid, we make sure that food is delivered to their doorstep, as Steven mentioned earlier, and we make sure they have access to other items they need. We make sure those deliveries are made and we make sure they have access to health services. If they needed to go to hospital, we would provide transport. We have adapted our vehicles to be able to move people safely, and our staff know how to do that. As far as we are able, in very difficult circumstances, we do make sure they get food, we do make sure they have cleaning materials and we help—

Q479 **Janet Daby:** Sorry to cut in on you. How would you know? Who would be monitoring? Who would be checking in on them? How would you do that?

John Taylor: Our welfare managers. We employ a team of welfare managers who would be ringing them. If they have told us they are in self-isolation, they would ring them every day to see how they are, whether they are getting better, whether they are getting worse. If we think they are getting worse, we would escalate it to the health authorities and raise that as a concern. We have a dedicated team of people who are in constant contact, and they would go out and talk to them from a safe distance if needed. Just yesterday, we visited a single mother who was very panicked about the situation. She had no symptoms but was very panicked, struggling. We went out and supported her and sorted out a number of things that made her life much easier, so we have a dedicated team of people who do that.

Q480 **Janet Daby:** What if somebody missed a telephone call? What would happen in that situation, if they did not answer the phone?

John Taylor: We would continue to phone. If we could not get hold of them after a number of days, we would visit to see if they are still there, to see if they are okay and to make sure they are not left alone. We have protocols in place to make sure that is picked up.

Q481 **Janet Daby:** Sorry to push you on this, John, but what do you mean, “a number of days”? Anything could happen within a number of days.

John Taylor: Yes. We would phone every day for someone who is self-isolating. If we could not get hold of them within 24 hours, we would go out and visit and find out where they are. That has not happened at the moment. We have always been able to get hold of people on the phone.



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We have always been able to make sure they are coping as best they can in these very difficult times.

Q482 **Janet Daby:** Sarah, how would you manage that in terms of monitoring people's ability to manage their own self-care if, obviously, they had the symptoms of the virus?

Sarah Burnett: Yes, that is very similar. We are very conscious that this is, at times, distressing, and we are very conscious of the impact on mental health as well as physical health. As John has described, for us it is housing officers who check up on people, it is a safeguarding team. Again, we can put additional support packages in place.

Janet Daby: I imagine it is probably the same answer for the other two, or similar answers. Would that be correct? Okay, thank you.

Chair: I thank our first panel for your time this morning. We appreciate the evidence that you have given.

Examination of witnesses

Witnesses: Tim Buley QC and Rory Dunlop QC.

Q483 **Chair:** We are now going to move on to the second panel. We are hopefully going to get away from the technical side of it, and we will be welcoming Tim Buley QC from Landmark Chambers and Rory Dunlop QC from 39 Essex Chambers. This evidence session will be looking at some of the detention issues and legal issues underpinning detention and the response of the asylum system at the moment. I welcome our two further panellists.

Dehenna Davison: Thank you to the new panellists for being with us this morning. My question is a broad overview, essentially. In your view do you believe there are issues with the existing legislation or policy on detention? If so, what sort of recommended remedies would you say are needed? If you do outline any, would you say the issues are more policy related, or are they to do with the actual interpretation of the policy?

Tim Buley: I do think there are issues. It is not necessarily an area of the problem itself, but it is important to underline at the outset that the nature of immigration detention law is that it is very broad brush, so there is a bare statutory power to detain people that is not subject to any limits on the face of the statute. The courts have imposed limits—and you may want to talk about that—under the *Hardial Singh* principles, but those have been developed by the courts over time. That means, just by way of a starting point, that it is very important to have policies in place, and policies that are clear, to give some structure to the way in which the detention power is exercised.



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In terms of where I think problems arise, I will just briefly summarise them and then you can ask me, if you want, to develop some of these points. First of all, there are issues around the critical policies themselves. In particular there is the Adults at Risk policy, which you have probably come across by now. That is the critical policy in relation to detained people who are vulnerable, whether by reason, for example, of mental health problems, which is where it commonly arises in cases I have been involved in over many years, but it is now also potentially relevant to people who are vulnerable because they are at heightened risk from Covid-19.

It seems to me that there are issues around the AAR policy, the Adults at Risk policy, essentially because it is not very clear, so it leaves an awful lot of room for quite mechanical decision making and, if you like, for lip service to be paid to the policy in a way that does not really achieve its stated aim, which is to ensure that fewer vulnerable people are detained.

Secondly, I think there have been problems—and, again, I will just say this briefly, and I can go into it in more detail if you like—about the policies the Secretary of State has put in place to deal with the Covid-19 issue specifically. For example, there is a policy that has been talked about, and it is talked about in the Detention Action judgment, which I think you are aware of, that relates to not bringing new people into detention where they are from a country to which you cannot remove them, but it is not clear whether that policy remains in place. I am not sure about that, and in some of the cases I have been involved in we are trying to get an answer to that. There are also issues about whether the policies that have been put in place to deal with the problem are being properly disseminated to caseworkers who have to apply them.

The third problem is that, because there are quite a lot of these policies, there can be a problem around joined-up decision making, so one decision maker looks at one policy and one decision maker looks at another policy three days or five days later, but they are not being joined up so that you get a cohesive decision that takes account of all the policies and their cumulative impact.

Fourthly, I am afraid I do think—and this is partly a result of the issues around clarity—that there can be issues about caseworkers applying the policies, not so much their interpretation but simply that lip service is paid to them, perhaps because of the lack of clarity around them. I am happy to develop those points, but I do not want to speak for too long at the outset, so I will leave it there. I do not know if Rory wants to add something.

Rory Dunlop: I do not have much to add. Tim is right that when you can detain someone is mostly not on the face of the statute. The statutory laws are very broad, as he said. If there is a deportation order, for example, they basically say you can be detained pending deportation. It is the court's decisions—Hardial Singh—and the policies that limit that power. There are always problems, and have been, when you rely on policies as a way of



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shaping quite a significant power like that, because policies do not tend to be drafted with the clarity and precision of statutes or statutory instruments. Over the years that has created an awful lot of uncertainty and litigation as people attempt to interpret these policies.

The second thing, as Tim also pointed out, is that there has been confusion. There have been times—and it probably still happens—where there have been so many different policies in so many different places that the officials who are responsible for making the decisions make mistakes and do not refer to all the right policies. That has led to unlawful detention in the past.

Q484 Dehenna Davison: Does that mean you would both like to see some of those policies brought more formally into the legislation? If so, are there any specific examples that you could think of?

Tim Buley: That is a very broad-brush question, but my personal view is that it is time to have some of the rules that are reflected in policy put into the legislation. Yes, I think that is right.

Rory Dunlop: That might help. There is, to some extent, secondary legislation covering this. The Adults at Risk policy had to be approved by Parliament but, because detention is such a big and important decision, it can only help if the policies are drafted by the sort of people who are drafting legislation and maybe if they are subjected to the same sort of scrutiny as legislation is subject to.

Q485 Dehenna Davison: One more question from me. This is specifically for you, Tim, and it is jumping forward a little bit on the Detention Action judgment. I believe you wrote an article stating that you believe the Home Office's reliance on the judgment is misplaced or overstated. Could you expand on that and explain the meaning behind it?

Tim Buley: I have not looked back at what I wrote. I wrote a blog post rather than an article, and it is a bit out of date now. There has been quite a lot of water under the bridge since I wrote that. The specific point I was making at that stage, if I remember rightly—I am sorry, but I will go back and check this—is that one of the things the court said in a fairly general way in that judgment is that parties need to act proportionately in bringing litigation and, particularly those acting for claimants, need to act proportionately and allow for the fact that the Home Office may need just a little time to review cases and things like that.

My impression at the stage that I wrote that blog piece was that the Home Office was kind of seizing on that to say to people who were proposing to bring cases, "You really should not be doing this. You have been told it is disproportionate to bring cases altogether." That is not how I read the judgment, and it is not how the courts I have subsequently appeared in front of in some of these cases have interpreted the judgment. Indeed, that sort of point has not surfaced.

The courts have accepted it, rightly, and I have been quite encouraged because, obviously, the courts face their own difficulties in holding remote



hearings and doing these cases relatively urgently. I have been encouraged by their willingness to engage. There has not been a suggestion that it is disproportionate to bring these sorts of cases at all. If I remember rightly, and I will have another look if you want me to, that was the point I was making. They were making too much of it in that sense.

Chair: Karen, before you start, we do not currently have the Division bell going in our sessions, but this is just to inform Committee members and our panel that there is currently a test Division under way. We will not be halting the evidence session in order to vote, but if members on the panel look a little bit distracted, they may be wrestling with their phones to try to vote electronically while we are listening to your answer.

Q486 **Ms Karen Buck:** Thank you very much. I think I have just cast my vote while I was about to formulate the question, so hopefully that will have worked.

Just to put it on the record, I am guesting at this meeting as a member of the Joint Committee on Human Rights. We published a report last year on immigration detention, which raised a number of issues about the treatment of immigration detainees and concerns about the lack of time limits. It is on that that I want to probe your thinking a little bit. The position of people being detained pending deportation hinges on the concept of what is reasonable. I wondered if the two of you could explore for our benefit what you think the definition of “reasonable” would mean in the circumstances of the pandemic and, particularly, the preclusion of the ability to deport to so many countries.

Rory Dunlop: “Reasonable” is one of those words that if you try to define it, it does not really help. I can tell you what the case law has said over the years, and it depends on a lot of different factors like the risk of absconding and the risk of reoffending. There have been quite a few cases involving Somalia, for example, where people have been detained for very long periods where there was only a possibility of removal not in the short term but in the medium to long term. Those detentions have sometimes been held to be lawful because, even though removal was very unlikely to be imminent for whatever reason—there were no carriers going to Somalia, or something—the person presented a very high risk of offending and absconding.

The courts have been very keen to make “reasonable” a very flexible concept, so if someone was not presenting a risk to the public and removal was not likely to happen in the imminent future, then it may well not be reasonable, and the prospect of removal may not be sufficient. But if they are someone who presents a very high risk of absconding, a very high risk of offending, then it might be reasonable even if removal to their country was not currently possible.

Q487 **Ms Karen Buck:** That is very helpful. Just before I ask Tim, in terms of the reduction in the number of people detained since the start of the pandemic, would that be what you might expect, given the balance of



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different factors that help to determine whether in each case bail, say, would be reasonable? Would you expect the numbers to have reduced more?

Rory Dunlop: To be honest, I do not think I can give a helpful answer to that. I am sorry, but I just do not know what to expect. I do not know how that number breaks down. I have read the numbers in the Detention Action judgment, but I do not know what has moved on since then. I do not know what proportion of them are high-risk offenders or not, so I cannot provide any help on that, sorry.

Tim Buley: I agree with what Rory said. The courts have been very resistant to the idea that they should do things like give a tariff for the length of time that people, or people in particular categories, can be detained. That is understandable in many ways. I have sometimes wondered if a little bit more willingness from the courts to give a range of circumstances would be helpful, because I suspect it would promote clarity, but I can understand why they have not been willing to do that and a lot of different factors go into it.

It is important to say, before you get to the issue of reasonableness, that perhaps key to it all is that the purpose of detention is for removing someone; it is not for punishing them or for stopping them offending per se, although that can be relevant. You have to intend to remove them and have, as a sort of baseline, some chance of doing so. If you can say that, you then get into the question of reasonableness. The things that I think come up as the main factors—Rory has mentioned some of them—are risk of absconding, risk of reoffending and the nature of the harm that might result, because obviously there is a big difference between someone reoffending and committing a violent crime and someone reoffending and committing a petty crime, for example.

Time for removal. Once you are over the basic hurdle of saying that removal is possible in some sense, you still need to look and see how realistic it is, how long it is going to take and how likely it is to occur. That is one of the reasons why the Covid-19 pandemic is so critical as a kind of game-changer in terms of numbers detained and whether it is appropriate to detain people.

The nature of the obstacles. I mention that because there is a big difference, the courts have said—and you can see why, because it is common sense—between cases where a person cannot be removed because they are doing something to stop themselves being removed and cases where they cannot be removed because there is something outside their control, like the country in question having closed its airports or is not letting anyone in from the United Kingdom, or something of that kind.

The last factor, which is often critical, is the impact of detention on that individual. If they are at risk of catching Covid-19, again that is going to be critical but, for example, if the evidence is that their mental health is suffering because of this indefinite detention, as is quite common, then



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that may be an important factor. But it becomes very hard to say how long. Unless you are talking about a very particular set of facts and you have all those facts before you, it become very hard to apply those broad principles. Inevitably, there is some room for people to reach different conclusions about what is a reasonable period.

Q488 Ms Karen Buck: Is there anything that the Government should say or do to help give greater guidance on that in the context of Covid-19?

Tim Buley: There has been a policy promulgated, and I think you heard about it briefly in the last session, which is effectively—I am slightly simplifying it, but in substance—that people who are at high risk from Covid-19 are treated as being level 3 under the Adults at Risk policy, which, in effect, means they should not be detained unless there are some very powerful reasons, such as a high risk of serious reoffending or something of that nature. That is welcome. The problem around that has been—certainly in my experience of a few cases—that it does not seem to be being disseminated to caseworkers, and decisions are being taken without being made aware of it.

Slightly more troubling, the other reason that Covid-19 is so important, as I have said, is because it is a barrier to removal. It means that people definitely cannot be removed in the near future, or almost definitely, and may well not be able to be removed over a longer timeframe. At the time of the Detention Action judgment, the Government seemed to have a policy that went some way to addressing that. I have touched on it already and, as I understand the way the policy works—it has never been fully disclosed to us—it is about countries that have closed their borders, but it is not clear that that policy remains in place. That leaves caseworkers in a position where they are kind of guessing, or my impression is that they may be guessing, at what the timeframes may be. Greater clarity from some sort of central guidance, whether it be from the Home Office or even from the Home Office in consultation with the Foreign Office or something, would be really valuable.

Q489 Laura Farris: I have some similar questions to Karen. We heard evidence from Detention Action before this session. One of the things that struck me from the High Court's decision in that injunction application is that it seemed to be quite alive to the fact that the Home Secretary was dealing with novel circumstances, so in considering the reasonableness of detention it was looking at the strategies that had been put in place. I think some people had been released and there seemed to be a sensible system in place. Detention Action, when they gave evidence to us, suggested—they are now pursuing a JR—that the time that has elapsed between that decision and where we are now, so I suppose a month, maybe more than a month, materially changes the way that the court would consider their application. Would it be consistent with what you both just said, that that is not necessarily the case, that the novel circumstances persist and that the same sorts of tests would be applied? Do you think anything has been changed, basically, by the passage of a month or two?



Rory Dunlop: Thanks for the question. I think the judgment itself was, effectively, about an application for the immediate release of quite a lot of people, and what the Home Office said was, "Do not rush into this. We are going to review the detention of everyone. We have a system for doing it." The court thought that was a very good answer, effectively, to the urgent application because, when things change, the Government need time to look at what has changed and make decisions accordingly. The court does not want to jump in and pre-empt them, but it is true that, when time has gone on and a month has passed, it may be the case, depending on the outcome of that review, that the situation may have changed.

I do not know exactly what is happening in the Detention Action case, whether it is going to go to a final hearing or be settled, but theoretically, if the Government have reviewed the detention of everyone and said, "We have come to the end of our review. We are leaving everyone in detention" the situation would be very different to the one considered in the judgment. That is just a theoretical hypothesis. For all I know, the Government have come to the end of that review and have decided to release lots of people and the Detention Action case may well settle. I am sorry, that is all rather lawyerly, but I hope I have explained the rather limited scope of that judgment. It is not saying, "You can carry on detaining these people for as long as you want." It is just saying, "You have a system for looking at it now. We are not going to jump in."

Q490 **Laura Farris:** On the back of that, just to help us on the Committee, what criteria would the court perhaps be looking at with more rigour, now that more time has gone by, to judge whether or not ongoing detention is lawful and proportionate, and so on?

Rory Dunlop: There are generally two ways that these challenges are formulated. They are either under *Hardial Singh*, and we have heard some discussion of that, or they are arguments that detention is inconsistent with policy. To be honest, the litigation from now on is more likely to be individual cases. There may be individual cases—and Tim may be instructed in some, I do not know—where people have had a review and the detention has been maintained and they say, "Look, in my case you have not applied the policy properly because you failed to recognise that I am someone at high risk of Covid" or, "In my case, I personally do not present a high risk of absconding or offending so it is not appropriate to detain me in circumstances where there is no chance of removing me to my country for several months." I think that is the sort of litigation, the sort of problems that may still arise, notwithstanding that Detention Action judgment.

Tim Buley: To follow on, first of all, I echo what Rory says. One should not make too much of the judgment in terms of what it means going forward. It is an interim judgment, so it is not a final judgment. It is the court hearing the case quickly, looking at it relatively quickly and making a judgment about what is the best thing to do in the immediate term while this case progresses. Linked to that, it is critical that it is a case that was



seeking very general relief. Except for one individual, and he was released before the hearing took place or before the judgment was handed down, I think, it was not about looking at one individual; it was saying, "You have to adopt this approach that we, Detention Action, dictate to you." In fact, it is fair to say that the Government had done at least some of the things that Detention Action was asking for by the time the case was heard.

There will be arguments—I do not have a view about it—that the Government will say, "We would have done that anyway" and Detention Action will say, "You only did it because Detention Action brought the case". I do not know the answer to that.

Q491 **Laura Farris:** There is something in the judgment about that at the end of the decision.

Tim Buley: Yes, there is something on that in terms of costs, but at any rate, I do not know which of those views is right. The point you picked up on is that these are novel circumstances, and I think that is about novel circumstances in terms of, "We have just had this general big problem, Covid-19, and we are going to need some time to think about it, because we have however many hundreds of people who we are detaining and some of their cases require an individual review." But the context of that is that the Home Office is required, by its own policy, at minimum to review detention every month, or I think it may be every 28 days. As at now, the judgment was 25 March, and we are 7 May, six weeks on. Every one of those detainees, even in the ordinary course of events, would have had their detention reviewed at least once since the judgment.

The nature of immigration detention, especially for those detained over long periods of time, is that on every one of those reviews, the Home Office should be looking at whether there is a reasonable prospect of removal, what is the timescale, because there will often be complex negotiations going on with foreign Governments about whether they will take someone back or issue a travel document, that sort of thing. Yes, there is a novel situation as at March, but it is a novel situation that is reasonably well understood, I would have thought. It is uncertain, as is the nature of all immigration detention, but it is reasonably well understood in terms of its implications.

When the court talks about giving time, my understanding of that—and this goes back to the point in relation to what I said in my blog post—is that that is about having time to review the individual cases, in a case where Detention Action is asking for immediate action in relation to several hundred people. I do not see that that is a basis to give a lot of leeway now, six weeks on, when detention should have been reviewed in the ordinary course of events. My experience when I have been in front of the court is that the court has looked at it with the same scrutiny that it ordinarily would.

Q492 **Stuart C. McDonald:** To follow up on that, basically, as I understand it, the impact of that judgment is that Covid-19 is not justification for any sort



of blanket release, but Covid-19 may well be and is, in fact, a relevant consideration as the Home Office goes through each of the individual assessments of whether detention should be maintained. We have had evidence from one of the groups acting on behalf of detainees that the percentage success rate that they are having now before tribunals is way up in the 90s, whereas usually it would be about 40% or 50%. Does that indicate that the Home Office is increasingly getting a lot of the assessments wrong and is not moving far enough to take into account Covid-19 in these individual assessments?

Rory Dunlop: I do not think that in itself does indicate that the Home Office is necessarily getting things wrong. On a purely lawyerly basis, bail presumes that detention is lawful. Bail is a discretion that in this case the First-tier Tribunal has to grant. Even in circumstances where detention would be lawful, they can just say, "Given the surety, given the risk of absconding, we do not think this person should be kept in detention." Put it this way, I have also heard about the high percentage of success on release on bail. That does not necessarily mean that what the Government are doing is unlawful, but it speaks for itself as to the attitude of the judiciary on whether they think bail is appropriate.

Q493 **Stuart C. McDonald:** Tim Buley, any thoughts on that? Should we be concerned about the fact that there are obviously lots of decisions being made to maintain detention that the tribunal does not like—pushing on to 95%?

Tim Buley: First, can I just say that I think you capture in a nutshell the Detention Action judgment very well? It is not a blanket basis for removal but it is highly relevant to release.

Secondly, I tend to agree with Rory that one has to be a little bit cautious about drawing conclusions from what is going on in the bail courts, in the First-tier Tribunal that deals with bail, because it does not deal with the legality of detention. On the other hand, I suspect—and I am a bit reluctant to express a final view about it—that that is a much higher percentage than you would normally get being granted bail. I do not know if those figures are correct, whether it is 60% or 90%, and I do not know what the normal figures are, but it does suggest at least that judges who are very experienced in these sorts of issues are taking pretty seriously and significantly different kinds of views from the Home Office.

The other point to make is that the cases I have been doing are immigration detention judicial reviews, which are engaged with the legality of detention. I can only speak to the relatively small number of cases I have been involved in. I have to be a little bit cautious about this, but I would be a little bit troubled by what I have seen in those cases and, in particular—and I have touched on this already—about the consistency with which the policies are being applied or taken account of. That may account for problems with the judgments that are being made on the ground.

Q494 **Stuart C. McDonald:** Just because it is perhaps a little bit relevant to what



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we are discussing now, I do not know if either of you will have seen the letters that were released overnight between the director of appeals at the Home Office and the president of the First-tier Tribunal, where the Home Office indicated that it is “somewhat surprised” at the level of grants. Is it not quite unusual to have a Government Department writing to a tribunal to express displeasure at the rate of success that applicants to that court are enjoying?

Tim Buley: I think it is unusual.

Rory Dunlop: Tim has answered it for me.

Q495 **Stuart C. McDonald:** Tim Buley, could I also follow up on something you said earlier in your introductory remarks? You spoke about Covid and the Adults at Risk policy. It brought me back to what one of the witnesses said at the end of the first panel. It was one of the detention centre witnesses. I asked him about the number of adults at risk who are detained by his company and he said there were none, if I recall correctly. Then, when I asked him about the numbers that had vulnerabilities in relation to Covid-19, he said 70, but based on what you were saying earlier that cannot be right because, if you are vulnerable to Covid-19, you should be assessed as an adult at risk. Have I understood you correctly?

Tim Buley: I think that is right. I want to be a little bit cautious, because there is a policy that the Home Office has promulgated that says that not only should you be treated as an adult at risk, but you should be treated as a level 3 adult at risk, which is the highest level, if you have certain comorbidities—for example, asthma and diabetes, and I forget what the others are. I do not think that is exhaustive of the things that would make you at somewhat greater risk from Covid-19 but, on the other hand, if you have one of those, you should be treated not simply as an adult at risk but as a level 3 risk. I think one can say there is a tension between what he said and the policy, as I understand it. I think it might be a bit too simple for me just to say, “Yes, gotcha.”

Stuart C. McDonald: Absolutely, and we can go back and look at that.

Tim Buley: It may be oversimplistic to say there is a slight inconsistency, but it does sound a bit troubling. I do not know what the position is as at 7 May, but I can certainly say with confidence that the Home Office was detaining people who were in that category during the course of April, for example, because I have seen those cases.

Q496 **Stuart C. McDonald:** The Home Office would continue to detain people, for example, because it deemed they were at very high risk of absconding or at very high risk of offending and that sort of consideration, is that right?

Tim Buley: Yes, potentially. Those are going to be the factors that the Home Office is going to look at, but on one interpretation of the Adults at Risk policy—and it is an interpretation that I think gained some support from a case that I argued and the court decided on 29 April—you really should not be detaining people who are, at any rate, in the highest risk



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category from Covid-19 just on the basis of the risk of absconding, or at any rate it would be exceptional to do so. There is a bit in the caseworker guidance for the policy that talks about what they call compliance factors, which is, "Are you going to abscond?", as not being a basis to detain someone in that level 3 category.

Certainly on that reading of the policy, which I think gained some support from the court's judgment, it is only really people who are a high public harm risk, because of reoffending of a relatively serious or very serious nature, who should be being detained under the policy. Whether that is what is happening on the ground is a different question, but that is how I would understand the policy.

Q497 **Stuart C. McDonald:** That brings me on to my final question, and I will go to Rory Dunlop for this one. It is about the Home Office's approach to foreign national offenders in particular. Are there any particular implications from Mr Justice Swift's decision that are specific to foreign national offenders? Secondly, how does the Home Office, and indeed the tribunal, go about assessing risk? Looking on from the outside, we sometimes get the impression that the Home Office just treats every foreign national offender as posing a risk. Is there a danger that that is what happens in reality?

Rory Dunlop: It should not be. Answering your first question first, I think you are talking about the Detention Action judgment. Maybe you are not, maybe you are talking about a different judgment. The Detention Action judgment did not, as I read it, say anything in particular about foreign national offenders.

In terms of the assessments of risk, risk of reoffending and risk of harm, I believe it is still the case, it certainly was the case, that the policy required the Home Office to use the information they get from the Probation Service, the National Offender Management Service, which will typically for an offender produce a report called an OASys report, where they assess the risk of offending—they use various kinds of metrics and tools to calculate it as a percentage—and then the risk of harm. You are supposed to put that into a grid, and from that you can assess the risk of offending. If the policy is applied properly, and I am not saying it always is, it should rely on evidence that comes not just from the Home Office person reviewing detention but from the Probation Service as to what the risk of offending is.

I have probably seen, in my experience, more errors when it comes to risk of absconding than when it comes to risk of offending, because there the person making the decision has much broader discretion and does not have to look at any of the metrics that come from the Probation Service.

Tim Buley: I have some sympathy with your question, as I understand it. Rory is absolutely right, chapter 55 of the Enforcement Instructions and Guidance tells you to go to the professional risk assessment, which would normally be the NOMS—National Offender Management Service—



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assessment, but could, for example, as in a case I did recently, be an assessment by a mental health tribunal that had ordered the release of an individual on the basis that they no longer presented a risk. Those are assessments by people who are professionally qualified or trained in assessing that kind of risk, which Home Office caseworkers generally are not.

I do think it is a problem that the Home Office often either disregards or downplays those reports, and one can see a jump from, "They have committed a serious offence, no matter how long ago it was and no matter the circumstances" to, "This person is a risk of serious harm." It may even be that they have committed a not terribly serious offence in the great scheme of things and that they are at high risk of harm. The slight problem with these terms is that, on one level, one can understand the judgment that a person who has committed any offence is some risk to the public, that is fair enough, but the context is long-term detention and you have to apply that kind of language, high risk of harm to the public, in that context. I think that is one of the areas where things very frequently go wrong.

On your question of whether the Home Office assumes that everyone is a risk if they have committed an offence, I think that is the case more often than it should be.

Q498 Holly Lynch: For reasons that we have already discussed, there has been a big push to remove people from detention centres into community alternatives due to the coronavirus crisis. However, we have seen examples where people are in destitution in those circumstances. We have already heard this morning about the pressures on asylum accommodation out in the community. What is your understanding of the obligations placed on the Government to provide accommodation, food and financial support to those who have been moved into community alternatives to detention accommodation? Can I perhaps come to you first, Mr Buley?

Tim Buley: I was hoping you would go to Rory. I am not sure this is something I am particularly well placed to answer.

As in the cases I have dealt with recently, there will be cases where someone is entitled to some other form of support because, for example, my most recent client had been put in a mental health hospital and he was entitled to support under section 117 of the Mental Health Act. In fact, that has been the position of quite a few of the people I have dealt with in these urgent cases recently.

More generally, I think the position is that the Home Office will be entitled—I am sorry, but I do not know off the top of my head the extent to which they are obliged to provide people with support. In practice, if the consequences of leaving someone without support would be that they are destitute, unable to feed themselves, then they would be required to provide support, not least under the European Convention on Human Rights. I think the Home Office policy recognises that, but I would have to



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provide you with some sort of note on that after the session. That is about as much as I can do.

Q499 **Holly Lynch:** Okay, and that would be welcome, thank you. Mr Dunlop, do you have anything further to add?

Rory Dunlop: Not really. There is a complicated patchwork of legislation covering when the Home Office should provide accommodation or other support to people leaving immigration detention. It depends on whether they are an asylum seeker, a failed asylum seeker and so on. The bottom line or safety net is that, as I understand it anyway, some sort of support should be provided where that is necessary to prevent a human rights breach. Going back to a case many decades ago called *Limbuela*, basically if you leave someone destitute on the street that is likely to be a breach of their human rights in circumstances where you, the state, are preventing them from being able to work and look after themselves because of their immigration status.

I think the simple bottom line is that accommodation should be provided where the alternative is destitution for these people who are being released.

Q500 **Holly Lynch:** What are the expectations placed on an individual in those circumstances, with a view to the lockdown being eased or coming to an end? What are the expectations placed on them? What is their legal status in that intervening period, and how would they be expected to return back into the system at that point?

Tim Buley: I do not think, in legal terms, that the Covid-19 pandemic will alter that. There are all sorts of reasons, quite apart from this, why a person might not be able to be removed and might be in the community. There are some slight nuances to this for certain deportation cases, but they will not generally, by virtue of the fact that they are liable to detention, have any immigration status. They used to be released on what was called temporary release, which I think is now just called bail for all of them, and they are in a sort of limbo, if you like. They are entitled to a very minimal level of support to avoid destitution.

Quite apart from the obvious difficulties in working that all sorts of people face at the moment, these people are generally not entitled to work, so they are not allowed to go and fend for themselves, but they may simply be unable to go back. At the moment there will be people who cannot go back because, even if they tried to, the airport in the country to which they would return will be closed, there are not any flights, that sort of problem. That is not in itself a novel situation because there might be other reasons; for example, they may not be able to get a travel document to return. Some countries in particular are notorious for not being willing to issue travel documents. So, they are in limbo but that is not specifically to do with Covid-19 or the lockdown.



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I assume, although I do not know for sure, that whatever lockdown rules are in force would apply equally to them in the same way as they would to everybody else.

Q501 **Holly Lynch:** Rory, anything further to add to that?

Rory Dunlop: I do not really have anything further to add to that, thanks.

Q502 **Chair:** Can I just ask a few broader follow-on questions to finish? Do you have any broader reflections on the way in which the courts and tribunal processes are operating for immigration cases and detention cases at the moment, given the remote working? Are there particular pressures that you are facing or particular difficulties that you are finding in those processes, either around delays or around people's access to legal advice and so on?

Tim Buley: I have been involved, as I have said, in a number of cases about immigration detention. Those cases take place in the Administrative Court and I have to say I have been extremely impressed, frankly, by the extent to which the Administrative Court has dealt with remote hearings, by the speed with which it has been willing and able to bring cases on, and generally the smoothness of the experience. It is obviously different from going off to court, but in this particular field of judicial review, which is what I specialise in, those courts do not generally hear from live witnesses, so it is fair to say that the difficulties you might have in a live witness trial, let alone a jury trial, are much diminished. Even allowing for the fact that it is relatively doable, I have been very impressed.

I am aware—but I have not been directly involved and am a bit reluctant to give evidence—that there may be much more significant problems around the tribunal system hearing cases. Other than in relation to bail that would not be about immigration detention, and the view may be taken, I don't know, that those cases are not urgent. I have not had direct experience of that, so I do not want to say too much, but I do think the Administrative Court has been very impressive.

Rory Dunlop: Yes, I agree about the Administrative Court, and I have seen on the ground some problems with the tribunals. I was in a case in front of SIAC, the Special Immigration Appeals Commission, and that sits in Field Court. It was an open session, so it could be done by telephone, and one person needed to do it by telephone because they were in a high-risk group. There were real difficulties because the judge said, "We only have two telephones that we can use and they are already booked." What we ended up doing was having a solicitor using their mobile phone and passing it around from advocate to judge. The judges and the staff were all super-helpful and did everything they could, and we made it work, but just in that one instance it seemed there was a lack of appropriate equipment in that particular court building. I do not know if that has been solved since then.

Q503 **Chair:** As a follow-up on the James Stevens and Michael Clements



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correspondence, it refers to the Home Office not adapting to the “minded to grant bail” procedures that the courts and the judges have been operating and still simply continuing with the Home Office’s previous stance on pursuing bail and not providing further evidence. Has that been your experience, and have you seen cases of that happening?

Tim Buley: I have not directly, because all of the cases I have been involved in have been in the Administrative Court about legality rather than bail hearings in the First-tier Tribunal. I have briefly read that correspondence, but it was the first time I was aware of that.

Rory Dunlop: I cannot help on that either, I am afraid. I have not had a bail hearing for quite a long time.

Q504 **Chair:** Again, is it your experience, or the experience of others you have worked with, that the Home Office is still pursuing detention cases and deportation cases for people from outside Europe?

Tim Buley: Yes, certainly in my experience, they are still detaining people. I do not know about deportation, but they are certainly still detaining people or were until very recently detaining people who are not from Europe and who have to be returned, therefore, to a country outside Europe.

Q505 **Chair:** The correspondence says that the Home Office is only pursuing cases where they think deportation is possible, and there seemed to be a difference of view between Mr Stevens and Michael Clements on whether or not it was possible to deport cases outside Europe. You do not have any further information on that?

Tim Buley: I think that does go back to something I said earlier about it being regrettable that there is not any centralised guidance that I am aware of on what countries are hard to remove to or impossible to remove to, or whatever it may be. Just to give you an instance of that, the case I argued on 29 April was about an individual from Nigeria, so at least as at 29 April I can tell you for sure they were detaining people from non-European countries.

One of the things they had done in that case was that Nigeria, when we had an interim hearing, had closed its airports until, I believe, 23 April. They had booked a flight for him to be removed at some point after that closure came to an end, but obviously it was a closure that was liable to be, and frankly likely to be, extended, and not surprisingly the closure was extended shortly after the hearing and the airline separately cancelled the flights for lack of demand. On one view, they are entitled to say, “Look, we are trying to remove this person,” but I think a real question has to be asked about whether that was a realistic assessment. That is why I think it really would be valuable to have some sort of guidance or publicly available information about what is realistic for countries like Nigeria that seem to be behind us on the curve and presumably are going to be facing these issues for some time.



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Q506 **Chair:** Finally, are there any broader reflections you have on the overall functioning of the immigration system and the legal aspects of it during Covid-19? I am particularly conscious of the fact that there will be more people who will find difficulties continuing with their immigration status, renewing their visas, meeting salary thresholds and so on. Do you have any other reflections, on the basis of either your own work or the work of others you have worked with, around immigration law and how the rest of the system is working and the Home Office's response to other difficulties in the visa and immigration system that might ultimately lead to somebody being detained because they no longer have leave to remain?

Tim Buley: I think anything I could say about how it is working currently would be too anecdotal to be worth my putting it forward as evidence to the Committee. I suppose the only thing I would say, and I hope the Home Office is thinking about this, is that it is obvious that problems of that nature are going to arise in the future where people have been unable to renew leave, and if the Home Office does not address its mind to that problem—and it may be a future problem—then I think problems are going to arise. I cannot tell you they are not doing it; I am not in a position to do that.

Rory Dunlop: I do not really have anything helpful to say either. It would be at best anecdotal and second hand. I can tell you of people who would probably be able to give better answers than me, if it helps.

Chair: Thank you very much for your evidence. We really appreciate it. This ends the evidence session of the Home Affairs Select Committee this morning.