

Home Affairs Committee

Oral evidence: [Immigration Detention](#), HC 913

Tuesday 11 September 2018

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Members present: Yvette Cooper (Chair); Rehman Chishti; Stephen Doughty; Kate Green; Kirstene Hair; Tim Loughton; Stuart C. McDonald; Alex Norris; Douglas Ross; John Woodcock.

Questions 486–560

Witness

I: Stephen Shaw CBE, author of the follow-up report to the Home Office on the assessment of Government progress on the welfare in detention of vulnerable persons.

Examination of witness

Witness: Stephen Shaw CBE.

Chair: Can I welcome everybody to this session of the Home Affairs Select Committee into immigration detention? Welcome, Stephen Shaw, who is giving evidence to us today.

Stephen Shaw: Thank you very much.

Q486 **Chair:** To begin, you have produced this very detailed second report and had the initial response from the Home Secretary to the report. The Home Secretary's response was very general on a series of areas. Could you tell us where it is you think we need to go further than the general response we have had from the Home Office so far?

Stephen Shaw: I would begin by saying that, in both tone and content, I was very pleased by the Secretary of State's response. In politics, as in life, symbols are often important. He gave an oral statement—compared and contrasted with the first report, where the Government's response was via a written ministerial statement that talked about accepting the broad thrust of what I had recommended. What the Home Secretary said in his oral statement was that he wanted to pick up the pace of reform. I welcome that as an indication of a direction of travel.

As I say, I welcomed the tone. Watching when the Secretary of State gave his statement, there seemed to be a welcome in both Houses of Parliament, which again is encouraging. He made six or seven specific commitments in that initial statement, all of which I found to be very welcome. Much of what we will talk about is what more needs to be done, what I want to see done and so on and so forth, but it would be somewhat discourteous not to acknowledge that there has been a change. It may have been pure happenstance, but one could produce a visual aid: this report in my hand is from when they produced my first report, with this plain cover and the typescript simply reproduced inside, but the second one has the full works. As I say, there are messages in some of those symbols as well.

In terms of what more needs to be done, obviously I stand by the thrust of the report itself. I want to see much more done by way of voluntary returns to ensure that people who have no right to remain in the country are assisted out of the country without recourse to detention. I want to see a much more joined-up approach with the Ministry of Justice. I want to see a greater independent element in a lot of the casework decisions.

Those are three areas that doubtless we will explore in more detail in due course, but the Secretary of State has in some ways gone further than my report already. He was talking about the automatic bail system, and he is, as a pilot, halving the time within which somebody would expect a bail hearing. That is great. It should be welcomed.



Q487 Chair: On the issues around the vulnerable adults, there have obviously been a lot of concerns. You have made a lot of recommendations, and again the Home Secretary has been very clear that he wants to respond to those recommendations, but in terms of things that could be done very quickly, what would you say was the priority in terms of making sure that vulnerable adults are either not in detention at all—not in detention in the first place—or are swiftly given the support that they need?

Stephen Shaw: This speaks immediately to the Adults at Risk policy, which was introduced following my first report. I did not call for Adults at Risk. I suppose I was more conservative in my recommendation, which was about changing the way the then existing framework operated. I do not decry Adults at Risk as it has a huge amount of potential, but of course what I found when carrying out this second review was that, while there had been very significant investment both of time and of money in developing the Adults at Risk policy and rolling out the training and what have you in support of it, it was not delivering what I assume the Home Office, or certainly I, had anticipated would have been the result, which was a reduction in the number of vulnerable people in detention.

I can only speak, of course, of the fieldwork that I and colleagues carried out approaching 12 months ago—we began in September last year, and all the fieldwork was completed by February this year—but what I found at that time was that there were very disappointingly large numbers of vulnerable people in detention. I tell the story of one very elderly lady who I discovered in Colnbrook, part of the Heathrow estate, who I could not comprehend had gone through all the various safeguards to end up in detention.

I think that Adults at Risk needs addressing, and in the report I talk about essentially two ways that could be done. One is to look again at the various categories, the three levels, in particular at the middle level, level 2, which I think is too broad. One option for that would be to introduce a subdivision, maybe 2(1) and 2(2)—I do not know. That might help. For those in the upper end, you would be strengthening the presumption against detention. Another way that could run alongside that is to introduce greater independence and greater separation into a caseworking decision. I think those things could work quite well together, and that is something I would like the Home Office to take forward with some urgency.

The other aspect of this—again, we may talk in more detail about it—is the so-called Rule 35 reports. In the first report, I said that nobody has any confidence in this—neither the doctors, nor the Home Office caseworkers, nor any of the interest groups. I said, "Nobody has any confidence in it. Think again". What the Home Office then did was to say, "What needs doing is we need more training, we need to help the doctors to write better reports and so on". I must say I was rather sceptical about whether that would deliver anything, and certainly at the time of my second report it really had not achieved anything very much. I did not



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come across anybody who had any confidence in that Rule 35 system. Nobody told me to tear it up and nobody came forward with a better solution than the rule, but again I think there would be greater confidence in it if the decision-making was not in the hands of the caseworker who was managing the person themselves.

It is unhealthy that the doctors who complete these reports feel it is a waste of time and it is not going to achieve anything, and it is not unfair to say there is a good deal of scepticism anyway, to put it no stronger than that, on the part of the Home Office about the quality of those reports, which are not triggering the releases that you might anticipate. As with the whole Adults at Risk policy, the introduction of a more independent element might begin to command confidence.

Chair: We will follow the issues about the Rule 35 a little bit further.

Q488 **Kate Green:** I am very interested in what you say about Rule 35. First of all, may I ask whether you were able to assess to what extent detainees knew about the process and could ask for such a report to be prepared? There have certainly been criticisms from, among others, Women for Refugee Women, that some of the detainees they have worked with had never been made aware of such a process.

Stephen Shaw: I am not sure that I had direct evidence on that part, other than what others told me. Anybody in detention is in a vulnerable position, and if they little have command of English, if they come from countries where the authorities are not to be trusted in any regard, or if they are fearful that the more they share and say, the more it will count against them rather than for them, those are real problems.

I think advice to detainees is pretty strong. It may be stronger in some centres than in others, but I do not regard access to advice as one of the greater of the structural weaknesses. However, the processes only work as well as people having confidence in them and wanting to use them. We are talking about communities, are we not? I suspect what happens is that if someone is successful in a Rule 35 application, it spreads quite soon, people will know about it and it is likely to encourage others. If, on the other hand, somebody says, "I had one of these and it did not make any difference at all", that will discourage.

Q489 **Kate Green:** On that point, the Immigration Minister recently, in a response to the Chair of the Committee on available data relating to Rule 35 reports, stated that the rationale for decisions not to release individuals subject to Rule 35 reports is not centrally recorded. Do you think that is a weakness, and how do you think transparency and monitoring of the Rule 35 process can be achieved?

Stephen Shaw: It is not the only weakness in terms of basic management information or just data about the system. There are a lot of weaknesses in that regard.



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In terms of monitoring, one of the announcements that the Home Secretary made in his statement was related to the role of the Independent Chief Inspector and their continuing annual responsibility to report to the Home Secretary on the Adults at Risk policy, which I would take to include the workings of Rule 35 because, clearly, if somebody is subject to Rule 35 they, by definition, must be vulnerable. That provides me with a certain amount of comfort. I used to joke with my colleagues that they had had me in twice to look at this system and they were not going to have me a third and fourth time, and so I was looking for ways of hardwiring a system of oversight in which we could all have some confidence. The involvement of the Independent Chief Inspector provides that, so long as he has sufficient resource to be able to do that extra task properly.

Things change, do they not? Priorities change. At the moment, I feel as confident as I ever have been in my involvement in public life that the direction of travel is an encouraging one. But does Rule 35 work? No, manifestly it does not. As I say, it is almost corrupting of the public spirit where those who are involved in it on both sides have so little confidence in a procedure.

Q490 **Kate Green:** The Home Secretary's response said, "We will look again at how we can improve the consideration of Rule 35 reports on possible cases of torture". Presumably your view is that it is important that this is looked at for Rule 35 cases around health issues and so on, as well as torture.

Stephen Shaw: All three components of Rule 35, indeed. In fact, the majority of Rule 35 reports, I think I am right in saying, are Rule 35(3) reports relating to torture. Rule 35(1), I think, is problematic for medics. We know that detention affects people's health: it deteriorates, and it deteriorates the longer that they are in detention. That is a given. The number of Rule 35(1) reports is fairly limited. Rule 35(2), which is the one about self-harm and suicide, you could argue should be triggered if somebody is subject to an ACDT or increased observations. I am not sure how often that happens either. I absolutely agree: most of the focus, and most of what I was told in terms of both the first report and the second, related to Rule 35(3), but there are questions to be asked about whether the other limbs of the rule also work.

Q491 **Stuart C. McDonald:** Mr Shaw, can I take you back to the Adults at Risk policy, which was obviously a central plank of your first report? I think you have welcomed the focus that places on vulnerability, but obviously we are dealing with a situation where we now seem to see more vulnerable people being detained rather than fewer. You have mentioned the independence of the system and obviously the possibility of reorganising the tiers of evidence, as it were, but some of the criticisms we have seen include the fact that the policy seems to put an extra burden of proof on vulnerable individuals to evidence the level of risk, and also it seems to stack up immigration factors quite heavily. Do you



accept those criticisms?

Stephen Shaw: The second point you make is a description of what the Adults at Risk policy is. As I say, I did not invent Adults at Risk. I think there is greater honesty in Adults at Risk in terms of the weight being given to immigration factors. Immigration factors always played a part, except that it was less explicit. There is a benefit in that.

It is a system that is predicated on evidence. That is what distinguishes the three levels. We will come on to the biggest group, which is the level 2, in a moment, though I have already, in answer to the Chair, made some comments on that. The first thing that I recommended in this follow-up report relates to the Adults at Risk level 3. I argue that continued detention should only be in exceptional circumstances. That is a clear recommendation to try to strengthen the safeguards when it comes to level 3. It is difficult to imagine, but the exceptional circumstances, I suppose, might be if we had a flight arranged for tomorrow or if somebody is very risky and we have not put in place any sort of plan for their care and supervision. I am as shocked at finding people at level 3 where detention is continued as I am concerned about that large group of people in level 2.

As I say, just to re-emphasise the point, my two proposals—perhaps people cleverer than me can think of other options—are, first, that level 2 is just too broad. It embraces everybody from somebody who has asthma, which can of course be exacerbated in detention because it is stress-related, or can be stress-related, to somebody with florid psychiatric symptoms. That is too broad. By itself, if you were to divide it in two, or however you wanted to do it, and then emphasise that detention for those at the top end would again be very unusual—whether you use the term "exceptional circumstances" is another matter—I think it would help, and it would help drive policy and practice, because at the moment level 2 just covers too many people.

The second thing I suggest relates to the answer on Rule 35, and it is who should make this decision. You could argue about whether it is inside or outside the Home Office, but I suggest taking it away from those who are responsible for the overall immigration case.

- Q492 **Stuart C. McDonald:** Can I just ask you a little bit more, following up on what you have said about splitting up category 2 in the Adults at Risk policy? One of the more fundamental criticisms is that we should not be splitting into levels based on the type of evidence that is offered and that it should be about, for the reasons you have just given, the nature of that risk rather than how you prove it. You have said that, on one scale, you might have asthma or psychiatric problems. That is because they are able to get to the same evidence stage; it does not mean they are remotely comparable in terms of how dangerous detention might be for someone. Does that not suggest you need more fundamental reform?



Stephen Shaw: The fundamental reform, following that logic, would be going back to something like the category approach that preceded Adults at Risk. There are dangers in that as well. I thought that category-based approach was not delivering what I wanted when I conducted the first review.

Q493 **Stuart C. McDonald:** When you are advocating splitting the second tier up, on what basis are you doing that?

Stephen Shaw: No, you are quite right. I have another example. I suggest there should be an upper age limit for detention. I cannot see why we are locking up people who are over 70. That reintroduces an element of the category approach, as would dividing the level 2, and it would have to be related to the seriousness of the vulnerability, in addition to the evidence. Level 2, essentially, as you have pointed out, is having a clinician say that I have some form of vulnerability. It says nothing about the respective seriousness of that vulnerability. Because it embraces such a wide range of conditions, I think it undermines the protections that it is supposed to provide.

Q494 **Stuart C. McDonald:** Some NGOs have argued for a return to a stronger presumption against detaining vulnerable people except in exceptional circumstances. I think you have said that you would be okay with that in terms of level 3.

Stephen Shaw: Yes.

Q495 **Stuart C. McDonald:** Would you expand that into upper level 2?

Stephen Shaw: That was the implication. I did not actually say that I would do it in exactly the same way, but that was the implication of the answer I gave earlier. In doing so, the implication is that you are strengthening the protection for those people who are in that upper tier of level 2, were the Government to go in that direction.

Q496 **Stuart C. McDonald:** Could I just ask you briefly about the definition of torture, which was revised in July of this year in light of the earlier High Court judgment? Did you find evidence that that had changed practice?

Stephen Shaw: I cannot say very much about that. The implementation of the new definition was only in July and, as I say, my most recent fieldwork was in February. One can speculate about what impact the Home Office's definition, found flawed by the courts, may have had, but it is not an area of specialist knowledge for me so I am probably better not following you down that road. What I cannot say and what would be interesting—you may want to take further evidence from others on this—is whether the new definition, which has now been in place a couple of months, is really making a difference. I do not know the answer to that.

Q497 **Stuart C. McDonald:** Sure. I take it you would not want to comment on whether the definition may be too complex, as some have suggested?



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Stephen Shaw: It might be too complex for me—it is certainly too complex to comment on. I can speak to what I did with some authority because that is an area of expertise, but you will forgive me if the definition of torture and the law surrounding it is not an area of expertise.

Stuart C. McDonald: OK. Thank you.

Q498 **Tim Loughton:** Mr Shaw, on detention time limits, obviously you came up with some interesting contrasts in your report, showing that the number of people detained has fallen but the number of people detained over six months has increased since your last review. What is your analysis of exactly what is going on there? It is still obviously a long way away from where we want to be in terms of this being a short-term process.

Stephen Shaw: Yes. I probably should have said this by way of preface. Since the time certainly of the fieldwork for my first report, the number of men in detention has fallen by about a third, and the number of women in detention has fallen by about 10%. These are significant reductions and very welcome reductions, but in terms of the people staying the longest—and, of course, as a proportion of the smaller population, they are growing—some of those figures have gone in the wrong direction.

On the time limit issue, I had a sentence I think in the foreword to the report that was picked up by some of the NGOs, but more significantly by the Home Secretary himself, which was that the case for time limits has been articulated more as a slogan than as a fully worked-out policy.

I did not look in detail at time limits in the first report and thought it was silly to then do so in the second one, but my own personal view is that I have no principled objection to time limits whatsoever. Most of my career has been spent in criminal justice, where we are very used to time limits. I work currently for the Crown Prosecution Service in part of my time, and the custody time limits before trial have been in place the best part of 30 years. They are a mainstream part of the system.

What do we know about those time limits? Well, in the jargon, they have to be "stretching but realistic". Before trial in the magistrate's court, they are 56 days—roughly a two-month maximum period in custody. Before trial in the Crown Court, it is 182 days. There are some exceptions to that but, essentially, that system ensures that people do not spend endless periods on remand before trial. There is some analogy between that principle and the idea of time limits.

My—not so much a—criticism of those advocating this is that it had not really been worked through. I did not understand where the idea of 28 days came from. I do not know anywhere in Europe that has a policy of 28 days; some of them have limits very much higher than that indeed. I do not know whether there is anywhere else in the world that has a limit of that kind.



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One of the reasons I may have influenced the Home Secretary to set up his own review of time limits is to see what is feasible, what is reasonable and what fits alongside other mechanisms, notably that of being able to apply for immigration bail, as well as to ask questions about whether the time limit would apply to everybody in detention or whether there would be different categories—in particular whether it is going to apply to foreign national offenders, who, in the main, are the ones who spend the longest in detention. If it is going to apply to foreign national offenders, what, then, are the implications in terms of support and supervision on release?

Q499 Tim Loughton: I do not think anybody would disagree with you that, obviously, it is desirable to have more closely defined limits that people can work around. There will be exceptions, but the absence of those limits means there is no incentive for a sense of urgency in some of these cases.

What is your take on the greater proportion now, because of the numbers having come down overall, who have been there for long and problematic periods of time? We have heard about people in the past who have spent three years. What is the problem for those people? Is it allied to the countries to which they are looking to be sent back? There are clusters of countries who have a particularly high number of people because of refusals to take them back—whether they be offenders, asylum seekers or whatever. Is it a disproportionate use of the appeal system that is causing that? When we went to Brook House, certainly when we drilled down, in some of the cases there was what one could perhaps call a "gaming" of the appeal system. The fact that they were there for so long was because they were exhausting all the options. Do you have a take on why that number has gone up and what we need to do to stop that?

Stephen Shaw: I do not know that I have a view on why the number has gone up. You have outlined particularly the barriers to removal, whether involving particular countries, people who are stateless or people whose country of origin is uncertain, some of whom may not be co-operating with the authorities here. That is a significant problem.

I do not know whether there is anybody at the moment who has been in for three years. I think the most I came across on the first report was over four years, and they were ex-offenders. That does not mean it is justified—ex-offenders are entitled to the presumption of liberty like anybody else—but they were very difficult cases. There are certain countries where it is very difficult for people to be removed, and therefore it is questionable whether the legal standard of whatever it is—a reasonable prospect of leaving within a reasonable time—is actually met.

I give the example in my report, and it is a hard example, of a young man who I met, who was, on the face of it, as British as anybody. I do not think he was born in this country, but the Nigerians refused to accept him as their citizen. We are trying to remove him. He was convicted of a



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serious offence when he was a young man. I do not think I am naive about these things, having spent half my life in and out of prisons, but he is a more mature chap now, in his late '20s. One of the case progression panels had recommended that he be released. That had not been accepted, so he was serving longer and longer in detention, and it was far from clear to me where on earth he was going to end up. They are difficult cases on an individual basis.

I do not know why the numbers have gone up—in general, I was probably pretty kind to the Home Office in terms of the way it had treated the first report—but it is evidence, if evidence were needed, that there is still a very long way to go.

Q500 **Kirstene Hair:** Just to follow on from Tim Loughton's points around the length of detention, you mentioned other countries, and one is France, which obviously deports a large number of people, yet the time limit of detention is, I think, 32 days.

Stephen Shaw: It is 45, I thought, in France, but I stand corrected if it is not.

Q501 **Kirstene Hair:** OK. It is a considerably shorter time. I just wondered, if you were looking at other countries such as France, would you suggest that their system was perhaps more efficient?

Stephen Shaw: I hope that is what the Home Secretary's review will look at. I have not done this, so I am only reporting what I have read, which is that there are very different time limits across Europe and that the rules governing those time limits also differ. In France, if you are released and you do not co-operate with the authorities, you can be re-detained. It is important to compare like with like.

Having said all that, would time limits assist in focusing attention, prioritising and avoiding the extreme lengths of detention to which Mr Loughton referred? The chances are they would, unless it was a system that did not apply to those who are in detention the longest—the foreign national offenders. I do not mean this to trivialise it, but if you had a time limit—say, just four months—virtually everybody would go through that, with the exception of a small number of asylum cases and a larger number of offenders. The Government will have to make a decision, if it wants to go down the road of time limits, whether it is going to apply to those who are in detention for the longer periods. Almost all of those are offenders.

Q502 **Kirstene Hair:** If there were a move to seek to put a time limit on the level of detentions, do you think there would be enough resource in order to reach these people? That is another area.

Stephen Shaw: The majority of people can be released, and they will go back to their home and their family and all the rest of it. For the ex-offenders, if they are not still within the period of statutory supervision after the end of their sentence, there are some really difficult questions



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to be asked. Will the public be sufficiently protected, and do we have arrangements that can provide appropriate supervision and care of those people?

Right at the beginning, I talked about the need for a more joined-up approach with the Ministry of Justice. In the prisons, I found that work on preparing people who are going to be removed or deported from the country did not start in sufficient time. I found people in some of the specialist foreign national offender prisons who were not going to be deported and yet were not receiving the rehabilitative care that they would if they were not in those jails.

In terms of the probation service, I found a lack of knowledge about this group of people and an understandable prioritising of those who they know are going to remain in this country. There is a shortage of approved premises—we call them probation hostels—and there are some dangerous people in detention who you would want to ensure you were providing appropriate supervision for on release. It is a question mark whether that is in place at the moment. I suspect it is not.

Q503 Stephen Doughty: We have talked a lot about mental health, and, obviously, the impact on mental health of detainees being held for indefinite periods is very clear, but it is also about the day-to-day activities that are available to them and the access they have to the outside world. We visited Yarl's Wood. It was the first time I had visited a detention centre, and I was quite shocked to find out that there were quite heavy restrictions placed on internet access externally, including the use of social media, Skype and so on. I know the Government has said that they are going to trial use of Skype. It seems to me this is pretty basic stuff. Why on earth do they need to trial it? Surely they should just be making communication with the outside world—family members and that—a basic standard for detainees.

Stephen Shaw: Broadly, I agree with all of that. I argued, I think, three or four years ago in favour of, maybe not Skype, but generally access to the outside, not least in terms of preparing people for their return. I would feel less anxious about being returned to my mother country if I knew that my mum, my dad or somebody was going to greet me. They would say, "Come home. The country is not like it was 10 years ago", or whatever. It has that benefit as well in terms of the overarching goal of all of this, which is to return people who have no continuing right to remain in the United Kingdom.

Fair play, the Home Secretary, unlike his predecessors, has followed that argument. I found nobody in any of the IRCs—any of the staff, any of the managers—who thought that access to at least some forms of social media would present an overarching security problem. I think I quote one of the centre managers saying that ordinary visits are much more of a threat to security than being able to use the computer or the phone to access members of your family.



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I am pleased that we are close to that, and I think it will have benefits beyond reducing some of the stresses and strains. Again, I tell a story in here of a chap who was on ACDT, which was triggered by the fact that he could no longer see or speak to his children. This is not a bit of do-goodery. This is intended to reduce stress. It is intended to help the Home Office in its overarching aim of returning people safely and securely to their country of origin. I think it is pretty well win-win-win but, as with any technology, there may be a risk some people may abuse it. In the main, I think it is going to be a great success and in five or 10 years' time people will pinch you and say, "You did not allow them to?"

Q504 **Stephen Doughty:** Yes. My view is that they should just get on with it across the estate because it is very basic.

Stephen Shaw: In the days when I was a young man in a hurry, I would have said, "Yes, just get on with it".

Stephen Doughty: Good.

Stephen Shaw: I understand now that planning things, preparing them and introducing them takes a little bit longer, but I am impatient for this because there was no substantial principled objection that I encountered three or four years ago when I proposed this, and I certainly have not encountered such an objection now.

Q505 **Stephen Doughty:** Can I just ask you about the numbers of wrongful or unlawful detentions and the costs associated with them? I have really struggled to get answers out of the Home Office as to the numbers of people who have been wrongfully detained or unlawfully detained, depending on the language used. We have managed to get some answers as to the cost.

Stephen Shaw: Yes. The costs have come down, as I understand it.

Q506 **Stephen Doughty:** They have come down, but 2016-17 was still £3.3 million in detention claims paid. Those are obviously compensation claims paid. You made it very clear about the costs of detention on a day-to-day basis versus, for example, monitoring a migrant using an electronic tag. Do you have any idea as to the costs of—

Stephen Shaw: I do not know how much has been paid out to individuals, no.

Q507 **Stephen Doughty:** Do you have any idea as to the ongoing cost of detaining people wrongfully or unlawfully? Do you have any metrics on that at all?

Stephen Shaw: In addition to the compensation claims?

Stephen Doughty: Yes. Forget the compensation. The day-to-day.

Stephen Shaw: I could not answer that, I am afraid.

Q508 **Stephen Doughty:** Do you have any idea as to the number of people



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who have been wrongfully detained?

Stephen Shaw: No. I did not ask that. I must not speak for the Home Office, but I cannot see, if a question was asked on that, what justification they would have not to answer it.

Q509 **Stephen Doughty:** We have asked a number of times.

Stephen Shaw: They have not—I cannot help you as to why they have not. I cannot see why that is a state secret. We know how much public money has been paid out. You could say it is a good story, because it is still millions of pounds a year but it is on a downward trend. You would have to ask others why there could be an objection to saying how many people are involved.

Stephen Doughty: That is fine. Thank you.

Q510 **Rehman Chishti:** I just wanted some clarification on foreign national offenders. You started by saying the Home Secretary in certain areas had gone above and beyond what you had recommended. In relation to foreign national offenders, would you apply the same statement there as well?

Stephen Shaw: No, I would not. This is one of the more challenging areas of my report. I found it very difficult in carrying out the fieldwork. Part of the methodology was of course wandering around and talking to detainees, either individually or frequently in groups. One of the things that is striking, and I do not know if you found the same on any of your visits, is that—I would say more in the male institutions, though perhaps that is just my experience—you meet lots of people, not the majority, but lots of people, who speak rather better Queen's English than I do. That raises some interesting ethical issues in my mind about, "What is a foreign national offender?"

On my first review I did meet a young man who had been born and brought up in north London. I think the only time he had been out of north London was into the prison and then into an immigration removal centre. My own view is that those people who have either been born here or come here at a young age are, in effect, more British than they are foreign. We talk about "return" but there is no notion of return, really. Again, if I may use an example, I met a young man in Maidstone Prison still serving his sentence. He was going to be removed to north Africa. He came here at the age of two and he spoke no Arabic. He was, to all intents and purposes, as British as you and I.

It seems to me that the current approach—I do not think it is so much the law as the approach or the balance we have had—splits up families in this country, prioritising removal over existing family ties, and it can be monstrously disproportionate to the offence that has been committed. This particular young man was serving a 14-month sentence, beyond the one-year threshold, but had he pleaded guilty he would have come below it. It was his decision to plead not guilty which, in effect, resulted in—



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Q511 **Rehman Chishti:** Sorry, just on that, for clarification so that we get the context, you said the gentleman you are referring to was given a 14-month sentence.

Stephen Shaw: Yes.

Q512 **Rehman Chishti:** Was that 14 months for robbery, sexual assault—

Stephen Shaw: That I cannot—

Q513 **Rehman Chishti:** That 14 months takes a different approach if one looks at the nature of the offence and public protection.

Stephen Shaw: I do not disagree with that. My argument is, first, about whether it is disproportionate to the offender, secondly whether it is fair to their families, including often their children, and thirdly whether it is fair for what is still, I believe, the sixth richest country on earth to, in effect, be expelling people whose crimes were made and committed in this country to countries with which they have no ties and where their chances of survival, except by way of further crime, are frankly rather low. In meeting with these people and being asked, "Why am I being thrown out?"—and they are talking to me in a south London accent—I find it really quite difficult to explain that to them. Some of it, of course, is chance. They may have come here, and it is not the first thing on their parents' mind to regularise their own nationality status. I find it a cruel policy and one which, as I say, is unfair not just to individuals and their families, but to the often third world countries to which they are being returned, which do not have the same sort of criminal justice infrastructure we do.

Q514 **Rehman Chishti:** Could I just seek clarification in relation to public policy and the issue of what the Government has to deal with? Whichever kind of Government it is, the first duty of the state is to protect its citizens and public protection, making sure the policy is as fair it can be.

I will give you my example. I come to this country at the age of six. I did not speak a word of English. You go on to a high school that closes down the year you leave, a sixth-form high school. It is not because of you, but it closes down. There are challenges. You go on off to university. You go and be a lawyer. You get to be a Member of Parliament. You work hard, you do the right thing and you have opportunities.

If you come here, you commit crime and you then pose a risk to the public, is it not right that the public expect those individuals to return to their countries? I expect the detachment from the individual to their country of origin, but the presumption you start with is that if you come here, the land of opportunities, you go by the rule of law. If you commit a crime—in that example you gave, you talked about 14 months—and that 14 months is for a certain type of offence, I start from the presumption that, on that basis, that person should go back to their country of origin.



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Stephen Shaw: I understand that argument. Most people who come here at the age of two are not choosing a land of opportunity; their parents are choosing the land for them.

I have found it impossible to explain to people in the position that we have described why it is legitimate for us to be removing them and why it is proportionate. I do not believe it is proportionate. The public may expect it, and that is why, of all the areas I talk about, "foreign national offender" are the three words that are not going to resonate very readily with people at the bus stop, many of whom would probably take the argument that you do. I do not. I think it is a policy that is frankly shameful.

I do accept that there is a balance here. I do not know that the law needs to be changed on any of this. It is about the weight to be attached to family ties in this country vis-à-vis the public interest in those who, as you say, have abused the freedoms in this country and that we simply want rid of. Everyone, though, I think, is entitled to an understanding of the lives that they have led, which perhaps did not have your good fortune or my good fortune.

A single mistake has unintended, unexpected consequences. We talked a little earlier about what people know about the system. Most young men on the streets of south London do not talk a lot about their nationality or what the consequences are if they were to go to prison and serve a sentence of over 12 months. It comes as a great shock to people that that is going to be the consequence. Is this likely to be the most popular part of my report? No. I never thought it would.

Q515 **Rehman Chishti:** Can I just clarify? The point where you say "good fortune", many of us were not born with a silver spoon.

Stephen Shaw: No, no, I did not mean to suggest that.

Q516 **Rehman Chishti:** You go to a failing high school, you take the chances, but you know the right from the wrong. Just coming back to the point that you mentioned earlier—countries not co-operating—you mentioned that in answer to my colleague Mr Loughton. Which countries would you say are not co-operating?

Stephen Shaw: I cannot give up-to-date information on that. At the time of the report or the fieldwork, it was near impossible to remove someone to Zimbabwe. I do not know whether that is still the case, but it was. There were countries like Iran where it was very difficult to remove. There were countries in the Horn of Africa where it was very difficult to remove. I am afraid you would have to ask others for a more up-to-date list or account of that.

My answer to Mr Loughton was not just about countries that were difficult; it was that if people are in dispute themselves as to their nationality, or various countries will not accept them as being nationals, which can happen because borders are fluid, that presents a significant



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problem as well. I do not know whether there are more people in that category than in the category of the difficult countries. I do not know the answer to that.

Q517 Rehman Chishti: I was going to ask about this, but you have already clarified to my colleagues that the four-month rule does not apply to foreign national offenders in terms of detention. You are saying that that is not fair and it should be consistent across the board. I am just trying to get clarification.

Stephen Shaw: That is absolutely what I am saying. The automatic bail system, both the one that was introduced after my first report and with the Home Secretary's new accelerated version, is an important safeguard. Access to the courts is the safeguard for anybody in detention or in custody. However, foreign national offenders are excluded from that automatic bail procedure. That does not mean to say they cannot make their own application for bail, but what one knows is that the longer you spend in detention—I do not mean this clinically—the more depressed and the more disaffected you are, and the less likely you are to use those safeguards.

Q518 Rehman Chishti: Just on that, and this is my final point on it, what is the contrary argument from the Government to say why it should not be four months for foreign national offenders? You have given your view as to why it should be consistent, but in terms of the Government's view of why they do not agree, what is their argument for that?

Stephen Shaw: I have not heard their argument, so I could not advance it for you.

Q519 Rehman Chishti: In terms of the point you made earlier, that the Home Secretary has gone further and beyond what you had—

Stephen Shaw: On the two-month, absolutely.

Q520 Rehman Chishti: On this one you have not heard back from Government?

Stephen Shaw: I have not heard back, no.

Q521 Douglas Ross: Mr Shaw, can you give us your view on the fact that you have to request from the Home Office the number of people who had self-inflicted deaths? Do you feel, following your request for that information, that it should now be presented without request?

Stephen Shaw: I do. I spent 10 years of my life as Prisons and Probation Ombudsman and had the mournful responsibility, for most of those years, for investigating all deaths in prison custody and some in immigration detention as well. I was responsible for 500 or 600 different investigations and conducted 20 or 30 of them personally, so I have some experience in this field. I find it, frankly, odd and self-defeating that the Home Office does not follow normal practice in the MOJ of making a



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statement when there is an apparently self-inflicted death in detention. I think they should do so. I think they should do so routinely.

It is all part of one of the underlying themes, both of the first and second report, to try to open up this world. To some extent, the Committee's inquiry is achieving that as well. Again, these should not be state secrets. One of the consequences is that, when I was taking evidence from the interest groups and what have you, you would see different figures bandied around. This is all complete nonsense. I think there is too much secrecy generally. I want to see it opened up. In respect of apparently self-inflicted deaths of those in the care of the state, it is outrageous that there should be any question other than that those figures are made available routinely.

Between the first and second report, I think there were four apparently self-inflicted deaths—probably suicides but that is a legal judgment. That may have come about through happenstance. Small numbers cluster. It may have come about because there was a slightly different make-up of the population and certain nationalities and certain religions have a higher propensity for self-harm and suicide. I do not know why it is. It may be the deterioration in the state of the IRCs. It may be that the ACDT system was not working. We can talk more about that.

What I think the Home Office should have done and should now do is address the problem face on. What are the levels of suicide and self-harm that we are facing? Is our strategy appropriate? We have applied, essentially, the Prison Service's arrangements to try to monitor and support people who are at risk. Do they translate as well as we would like them to? There is something fundamental to be done, as well as ensuring that when you ask for the figures or when anybody asks for the figures, you should not need to ask. They should be available. This is the death of people in the care of the state, and there should not be any secrecy about them.

Q522 Douglas Ross: I fully agree with that, and I would like to know why that is not happening. Hopefully that may change. Have you found any reason for the increase in the number of self-inflicted deaths? I know you have given some examples there. Perhaps if I phrase it a different way, do we learn enough from previous deaths?

Stephen Shaw: Do we learn enough? Each death will result in a coroner's inquest. It will result in an investigation by my successor as Prisons and Probation Ombudsman.

Q523 Douglas Ross: Did you look into how long that takes?

Stephen Shaw: We know how long inquests take. Inquests take a long time.

Q524 Douglas Ross: But longer in IRCs than in the general population?



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Stephen Shaw: I do not know. Most of the delays are regional. I could not answer that.

Q525 **Douglas Ross:** We had a witness, Kris Harris, who said at one of our evidence sessions in March that the length of time for the inquest was a problem, particularly for IRCs. You did not—

Stephen Shaw: I have not picked up on that, but I do not say that is not the case. I simply do not know that. The coronial system is under considerable pressure and there are long waits for inquests.

Do we learn enough? The second part of my earlier answer was that the Home Office does not learn enough, and it needs to address that, both in terms of the deaths but also the acts of serious self-harm. There are proposals in the report for that to happen.

What I did do was that I looked at the ACDT system, and I think, to be candid, it works perhaps slightly better than I had seen more recently in the Prison Service. There were more staff involved and the quality of the documents was pretty good. But I have never felt, either in prisons or in IRCs, that the formal processes for monitoring and supporting people who are at risk of harm, though they are important, are more important than wider issues like family ties, the certainty of what is going to happen to you, anxiety, the support you receive from staff or—if you can use the word in IRCs—the regime that you are in. Those things have always seemed to me much more significant in terms of self-inflicted death in institutions than the formal procedures, important though those are.

Q526 **Douglas Ross:** Can I move to staffing in general now? What was your overall assessment of the quality of staff in IRCs?

Stephen Shaw: There are many good staff who are very committed to what they do. There are differences between the institutions. In Dungavel it is much more stable in the sense of less staff turnover. People have worked there for a long time. In the IRCs around Gatwick and Heathrow, there is much more turnover of staff.

I made three visits to Brook House, for reasons that are evident. Of course there are issues about the quality of staff, but the striking thing was the numbers of staff, which were too low. The first thing I discovered on that first visit to Brook House was that the contractor was planning essentially to double the number of frontline staff on the wings when the units were open. The numbers had been cut too low. As in prisons, when the numbers are so low, the staff tend to retreat. You find the staff in the offices.

There was one particular unit in Brook House—I must be careful not to use more colourful language than the circumstances justify, but it was not a notably controlled environment. I think I do say in the report, so I can say it without being accused of just going for colour, that there was an evident drug deal happening on the landing opposite, and the members of staff who were there were in their office. They were not out.



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That was completely hopeless, and it would be hopeless for the very best staff as well as those who wanted to retreat. If people do not feel safe themselves and confident, they find safety in numbers by retreating. I do not say that happened on all the wings in Brook House, but it certainly happened on one. This was not to do with the quality of the individuals or how they had been recruited or trained or anything. The numbers were simply too low and there were no management grades in place to ensure that they were properly supported and supervised.

Q527 Douglas Ross: I want to come back to general issues about staffing. On numbers, one of the agreements from the Home Secretary was to increase the number of Home Office staff in IRCs. Do you have an idea of that number, or the percentage increase, and what uplift would be required?

Stephen Shaw: No, I do not know that, but I very much welcome that as well.

Q528 Douglas Ross: I want to drill down on this. If we increased it by one, then you would not be satisfied. You welcome that recommendation, but how do we quantify that?

Stephen Shaw: Let me explain why I welcome it and then that might help towards looking at what the numbers will be. Both in prisons and in IRCs there has been a weakness in the level of Home Office assurance of what is going on. In other words, the Home Office has been quite good at monitoring the contract and handing out penalty points when the contract is not met, but the quality of what is being provided, the real life of the institution, was missed out in that. I have said, maybe after this report was finalised, that the post-Carillion world means monitoring a contract is not enough. You need to have a form of assurance about what is actually happening and not just about ticking numbers, what time it was open and all the rest of it.

What I welcome in terms of the Home Secretary's announcement is that it will be a means of the Home Office, on behalf of all of us, having greater assurance that the quality of support, care and supervision—whatever word you want—in institutions run on our behalf and for our benefit does not slip, as it had done in Brook House and as it has in recent examples in prisons as well. Contract monitoring is no doubt beneficial, but it is quite a different thing from assurance. That is what I want the extra staff to be doing.

Does that speak to your question about numbers? Possibly not, but it does speak about a related issue, which is what sort of person do you want doing this. Those who are good at monitoring contracts may not be the best people for assuring themselves, and therefore the Home Office, that the regime, the activities and the preparation for return is as it should be. You need to have people who know more about institutions than has been currently the case in the Home Office. I want people



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recruited or deployed by the Home Office who know something about institutions, as well as those who know something about contracts.

Q529 Douglas Ross: The final area I want to look at is that, obviously, the Home Office asked you specifically to look at the whistleblowing policy following the “Panorama” programme. You found that copies of whistleblowing procedures for each of the companies running IRCs were available; there were clear written processes in place, including the ability to raise a concern with an external body; and you also concluded that all of them appeared to be best practice, as outlined in “BIS: Whistleblowing: Guidance for Employers”. Therefore, why is it not working?

Stephen Shaw: That is a really fundamentally important question. Let us start with what we did find. The formal processes in terms of how these various companies recruit people, the initial and continuing training schemes they have in place, their formal whistleblowing arrangements and their complaints procedures were pretty good as bits of paper or as procedures. However, you are quite right that there is a lack of trust, I think, on the part of many members of staff in the whistleblowing arrangements and/or they are affected by wider loyalty. I think we refer to it as the “blue code of silence”, which you find in lots of walks of life—you find it in the Army, the police and the fire service: support for your colleagues and losing sight of what is proper and what is not proper.

My starting point is not a happy one. For my sins, I investigated some egregious examples of staff behaviour at Yarl’s Wood and at a place that has long since closed called Oakington in the early 2000s. I am very familiar with how badly things can go wrong when they do go wrong. My starting point is that the potential for abusive behaviours is ever-present. It is ever-present in closed institutions. You could argue it is ever-present in any institution where there is an imbalance of power, but particularly in closed institutions.

What can be done to improve all of that? None of recruiting the right people, supporting the right people and training is unimportant. However, the one new proposal I make is whether it would be possible to provide for staff what I called a safe space—a facilitated opportunity for reflection and discussion without fear of repercussion. Whether you did this one to one or in groups does not bother me—others can think about it. It is an opportunity to be able to say, without fear of discipline or management action, “I do not think I did this quite right”, “I was fearful in this situation” or, “I would like help doing something”. That might help people have more confidence in expressing their own anxieties, and they can also express anxieties about the behaviours and performance of others.

Q530 Douglas Ross: I am worried about that because I cannot see how that will work. We had evidence from the Inspection Team Leader for Immigration for HMIP, who said on the current system, so before your recommendation came out, that staff still do not have confidence in the system and the system is not clear and easy enough to use. If we had



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this gold standard before—you highlighted that everything was great, and if you looked at the paperwork on a desk, it looked great—and staff did not have confidence then, why would they have any more confidence because you are recommending a safe space?

Stephen Shaw: I cannot guarantee they would. What we are trying to find is a way in which they can have more confidence.

Q531 **Douglas Ross:** Do you think a safe space is going to make a difference to staff who currently do not have confidence to speak to managers or others to report things?

Stephen Shaw: I am not suggesting it is a panacea. What I am saying is that you faithfully described an issue—on paper these policies look all right and appear to be in line with best practice—yet, from the evidence you have received and from what the Inspectorate told you, individual members of staff do not have confidence in them or do not want to use them. We have to try to find some way in which they do have that confidence. If my suggestion is not the right one, it behoves us to try to think what could give people that confidence.

All the things we know about leadership and management—whether it is a corner shop, an office or a big institution—are important, making sure the people at the very top are demonstrating the behaviours they want to see demonstrated by others. Can I give you a guarantee that my suggestion—it is not a formal proposal—would deliver that? No.

As I say, I am tired of this in a way. I think it is now 15 years ago that I did the first review for the Government of abusiveness that had not been identified by the formal oversight mechanisms, had not been seen by management and had been revealed by an undercover reporter. The means by what was revealed at Brook House—leaving aside the appalling nature of it—came to public view was exactly the same as at Yarl's Wood two or three years ago and exactly the same as at Yarl's Wood and Oakington in the early 2000s. Therefore, we have not solved the problem.

As I say, I am not going to hang my coat on one particular proposal, but if there is a problem that people do not trust the existing procedures, when the existing procedures adhere to best practice, then you have to try something else to encourage them.

Q532 **Douglas Ross:** My final question is, given the importance of staff to the relationship between people in these facilities and the general feeling they have while in there—you have the fabric of the building and the conditions, but probably staff is the key issue—do you think the Government have put enough in their response on staffing? The only point I could find was they were going to review the training and support of staff, and increase the number of Home Office staff in IRCs. Should they be doing more in their response to your report and recommendations specifically on staffing, or are you satisfied that one



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bullet point in the Home Secretary's response is enough to overcome the issues you have highlighted?

Stephen Shaw: There is a structural issue here in that we have a system where four or five companies, plus the Prison Service, contract to run the places. We have that system in place in the belief it encourages innovation. Each company is encouraged to go about the way it runs the IRCs in the way it sees best, and the theory is that will drive up performance.

It is difficult for the state, when it has established a system of contracting for services, to be too explicit about who is going to be recruited and how they are going to be trained. That seems to undermine the basic principle. There are certain rules about what you have to meet in order to become a DCO. If you go beyond that then you are into a different issue about how far you are allowing companies to innovate in a way that lies behind the principle of contracting out.

That probably takes me too much into a political issue into which I should not go any further, I suspect.

Q533 **Chair:** Can I take you back to some of the casework questions now? First of all, we were told at one point there were no asylum seekers in the immigration detention estate, other than those who had some other criminal issue or reason why they might be detained. Is that accurate?

Stephen Shaw: I am not quite sure I entirely follow; there are people who are seeking asylum who have been in detention for longer periods than I would have anticipated. I think it is true to say they are those who were already in detention and then made asylum claims. I think that was your point—I am sorry.

Q534 **Chair:** Are there also people in detention who have made asylum claims, who do not have any other criminal reason to be detained and who were not previously detained when they made their asylum claim?

Stephen Shaw: I do not know the answer to that, I am afraid.

Q535 **Chair:** Did you look at that at all?

Stephen Shaw: We looked at routes into detention. I am afraid I probably need notice of the specific question so I can give you the figures.

Q536 **Chair:** It would be useful to know whether this was something you were able to look at. In your report you say, when looking at detained asylum casework, "I am told that the majority of those individuals managed by DAC have claimed asylum only after being detained for removal".

Stephen Shaw: That is the point I just made to you, yes.

Q537 **Chair:** We were told at one point in oral evidence by the Home Office that there were no asylum seekers other than those who had claimed asylum after being detained for removal. You only suggest the majority.



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This is obviously quite significant, because there is something a little bit troubling about people who have claimed asylum and then end up in detention when their asylum case has not been dealt with. There is no other reason for detaining them, and there is something troubling about that.

Stephen Shaw: I do not know whether the language in the report is loose or deliberate. I assume what the report says is correct. I was told it was the majority. What I cannot recall is if we then dug down any deeper into that. I suppose it is possible that what I am describing and what the Home Office told you refer to different time periods, so that I am not certain of.

Chair: It feels like it would be reassuring for at least one of us to know this because it is quite an important question.

Stephen Shaw: I agree, for both of us it would be reassuring.

Q538 **Chair:** Can I ask you then about the detention gatekeeper process? Obviously it was introduced or changed after your previous report. Is it right they only look at the case on paper and never meet?

Stephen Shaw: I must be careful now, mustn't I? As far as I am aware, they do not meet the individual.

Q539 **Chair:** Does somebody meet an individual? If an individual is going to be detained, does somebody who is involved in making the decision, as opposed to executing the decision, about whether to detain meet them first?

Stephen Shaw: No, in most cases they would not do so. If somebody is detained at a reporting centre, the decision will have been made elsewhere. They will come to the desk and be invited into a separate room. That face-to-face contact between caseworkers making the decision and the individuals on whom they are making those decisions was absent at the time of my first report and, so far as I am aware, remains absent.

The only area where there has been a change is that, within the IRCs themselves, there are other embedded—I do not know if they are in all the IRCs yet—Home Office staff who will speak to detainees about the process of accelerating their return.

Q540 **Chair:** They are not making the decisions, are they?

Stephen Shaw: They are not making the decisions, no.

Q541 **Chair:** They are also not meeting them before they are detained either?

Stephen Shaw: Subject to correction, I do not think there has been any change in that whatsoever.

Q542 **Chair:** In a judicial process, in a bail decision, there will be some ability to meet someone at that stage, but that might not be for two months or



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four months. Does it not really trouble you that individuals on behalf of the state are making a decision to lock somebody up, not on the basis of guilt or a crime being committed, without ever having met them?

Stephen Shaw: I share the underlying concern in the question. Caseworkers refer to cases; they tend not to talk about people. I think I refer to a caseworker saying she was unnerved by the process of going to an IRC or meeting people about whom she may have made decisions, because it humanised them. Whether it would be practical, bearing in mind where the caseworkers are and where people are reporting to, for them to meet, I do not know.

Q543 **Chair:** Do we not have a responsibility if the state is locking people up, taking away their liberty?

Stephen Shaw: This is the state at its most coercive, I quite agree with you.

Q544 **Chair:** You said in your report you were told repeatedly by the Home Office that the detention gatekeeper process was working and was preventing people who should not be locked up being locked up. You also then say, "I found many people who should not be there. Every one of the centre managers told me they had seen no difference in the number of vulnerable detainees and in some cases that the numbers had actually increased." That is a huge gap, is it not?

Stephen Shaw: An absolutely huge gap.

Chair: It is a huge gap between what the Home Office say is working as a screening process in advance and what is actually happening in practice.

Stephen Shaw: There may be a middle way of understanding that. The gatekeepers are indeed diverting some people. However, absolutely, the thrust of the second report is that these various filters and measures were not working in a satisfactory way and far too many people were going into detention who should not have been going into detention. We are at one on that.

Q545 **Chair:** A further reason for raising this is because, when we were looking at some of the Windrush cases, we had cases of being people detained. You cannot understand how anybody in the process could have gone along with the detention of Paulette Wilson as part of the Windrush cases, for example—an elderly woman who has been here pretty much all her life. There had been no way of flagging that up. That is why I am concerned. You have a whole load of centre managers who are saying there are people in the system. The reason I am pushing you on this is, do you think your recommendations and report are being a bit too soft, given the scale of what is at stake here?

Stephen Shaw: That is obviously for others to judge. The first report has contributed to a substantial reduction in overall detention. What it had not achieved was a substantial reduction in vulnerable people in



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detention. In that sense, the various ways in which the Home Office operationalised my proposals, certainly at the time of the second review, were not achieving what they should do.

To some extent, I am now taking the new Home Secretary at his word that he wants to—what was the phrase?—push forward the pace of reform. Two or three years down the line, we may be able to make a judgment about this.

There is nothing in the second report that says the changes brought in after the first were working as they should do, far from it. I think I referred earlier to the particularly egregious example of the very elderly woman whom we found in detention in a very bad personal state herself, and even her medication was still at home. I could not, for the life of me, understand how she had ended up in detention. To be fair to the staff—this probably refers back to Mr Ross's question—it was the staff in the IRC who were so appalled by this that it was their energies that were designed, from the moment she arrived, to try to get her out.

Q546 Chair: In the most extreme cases, the staff in the IRC are saying, "The system has gone wrong somewhere down the track", and there is a concerted effort to solve that. However, clearly, from the evidence you report, there are a lot of cases where it is not extreme enough for that concerted effort to take place and you do see those cases lasting for a long time.

Stephen Shaw: Neither the gatekeeper proposal nor the case progression panels—the other internal means in the Home Office to try to ensure that detention should not continue for those who are vulnerable—were working. Again, I must be fair, this was nine or 10 months ago. I do not know what the state of them is now. We originally intended just to see one of them in action. We were so bemused by the way in which it was operating that I think we saw five in total; we just kept going back and back and back. Therefore, the case progression panels were not working either.

I have no magic bullet for any of this. One of the reasons I proposed, and the Home Secretary and the Chief Inspector agreed, that the Independent Chief Inspector should have this continuing involvement is that, once a year at least, the Home Secretary will receive a report—no doubt the Committee can take evidence on the report—to see whether we have had any progress here or not: Was Mr Shaw too soft? Were his proposals not to the point, and have they not delivered what he wanted them to deliver?

Q547 Chair: The primary reason I am pushing you is that it is obviously very welcome that the Home Secretary has said he wants to take forward a lot of these areas.

Stephen Shaw: Yes.

Chair: However, you seem to be describing a situation where the



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detention gatekeeper is not working, the screening process is not working at the beginning, the three, six and nine-month case review processes are not working and the rule 35 process is not working. You obviously make an important recommendation about having some form of independent process and independent check that is not just the caseworker system.

I am pressing you because, do you not think you should be recommending something much more radical, given that, where the system goes wrong, you are depriving people of their liberty and effectively their human rights? Clearly there will also be a need for detention, but in cases where it goes wrong, the damage to that individual and that family is so substantial that surely the reforms should be more radical.

Stephen Shaw: If the new set of recommendations I propose does not deliver what I want them to deliver, and what it appears the Home Office wants to deliver, then that case would make itself.

I am content, I think, that, with the suite of proposals I make and the cultural change that lies behind it, we will see a continuing reduction in the use of detention overall and a reduction in the number of vulnerable people.

I do not decry what has already been achieved. Do I think for a moment it is sufficient? I spent—goodness knows, in the age of Twitter, it is much too long—lots of pages saying it was not sufficient and it was not working. I tried to report back to the Home Office as I was going along, and it was a surprise to them. It goes back to the thing about assurance. There was a sense in which administrative reforms had been put in place, and significant investment of time and money to back them up. That is one of the reasons I do not decry Adults at Risk, because it has meant a real, genuine focus on vulnerability. But that does not matter; what matters is what is the end result of all this. The end result at the time I carried out this review—it may still be the case today, but I could not tell you because it is six months on—was very disappointing.

Q548 **Kate Green:** I wanted to first of all pursue very slightly further the questions the Chair has been asking. There is no meeting taking place between the caseworker and the detainee. The reliance is entirely on paperwork, which is presented from within the system. In your view, are there other places where additional information should be proactively sought?

Stephen Shaw: I do have one thing to say about the assessment of vulnerability. The assessment of vulnerability occurs far too often in an IRC healthcare environment and not before the decision to detain has been made. That is easy to say; it is slightly more difficult to then operationalise how you remedy that problem, because a significant investment would have to be made in doing so. However, I am concerned about that. We start worrying about vulnerability after the clang of the



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gate, and we know relatively little before that. If it were possible for vulnerability assessments to be made before somebody goes into detention, I am sure that would greatly strengthen the protections.

Q549 Kate Green: I would argue that means looking at a system that can gather as much information as possible in advance of that detention decision. In the same way as if you were looking to put a vulnerable person into custody in the criminal justice system, you would expect mental health reports and so on would be obtained upfront, with suitable diversion to a mental health bed rather than a custodial bed.

Stephen Shaw: I do not disagree. How best to operationalise that is probably not for me to say. I absolutely agree with the principle you advance.

Q550 Kate Green: You raise in your report concerns about the length of time people wait in some cases to receive healthcare services, and the pressure on those services. Why do you think that is taking place, and what improvements are needed in healthcare?

Stephen Shaw: Healthcare is interesting. At the time of the first report, I thought I knew a bit about these places. I had no idea of the level of healthcare demand I would encounter and the degree of frustration and dissatisfaction that was expressed. It was absolutely palpable, particularly at Yarl's Wood, but also in the male institutions as well.

At the time of the second review, demand for healthcare remained extremely high, and I think it is fair to say dissatisfaction with healthcare remained very high. Overall, my view was that there had been improvements. Not every centre manager likes the commissioning framework involving the NHS, because they have sort of lost control. However, I think that framework is a good one and is one of the drivers of improvement.

We talked in a number of questions about data problems. I was told healthcare is improving, and I would ask for something to demonstrate that, which was difficult to come about. We had a colleague from the NHS as part of the team. He was pretty appalled by some basic failures in hygiene levels, which really should not happen. It does not matter who is commissioning or providing, that was a disappointment. One of the consequences of commissioning, like contracting, is that you get a silo effect. Sharing best practice is made more difficult, it was not happening and a lot of the clinicians would talk about that.

Overall demand for healthcare in IRCs remains very high. If you talk to detainees, their lack of confidence in the provision of healthcare remains very high. I think the direction of travel has been towards improvement, and I think commissioning is beginning to deliver. Initially when the NHS took over, I think it underestimated both the level and complexity of need that it had to deal with.

Q551 Kate Green: You are optimistic that, in time, NHS commissioning will



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lead to improvement?

Stephen Shaw: I think the present arrangement is a driver for improvement. None of us should be over-confident about any of those things. Healthcare is so central to the whole IRC experience, particularly in Yarl's Wood, but in all the institutions. It is a core aspect of the regime, using healthcare. The proportion of the women in Yarl's Wood who are using healthcare is absolutely extraordinary. It is true even in the male institutions as well, with predominately young men still making huge demands.

Although we found lots of things that we did not like, I think we felt there had been improvement over the three years between the two reports. This is the challenge the Chair has very recently asked about more generally, whether that improvement will be visible in three years' time. I cannot be certain of that, but I felt, in that area, and perhaps more generally as well, there were improvements being made—let us put it no stronger than that.

Q552 **Kate Green:** Another area where we have seen some improvement is the reduction in the number of pregnant women in detention. However, even yesterday, *The Independent* was reporting still—

Stephen Shaw: This is one of the recommendations I made in the first report which the Government did not accept. I wanted an absolute bar on the detention of pregnant women. There was then legislation, as you know, which has restricted the numbers very significantly but which, none the less, has not ended the practice. I repeat the recommendation in the second report for an absolute ban.

Q553 **Stuart C. McDonald:** We are still hearing quite a lot about some policies that could be improved and so on. The Chair touched upon the fact that perhaps a fundamental question is not so much about what should be in the policies but who should be applying and implementing them, perhaps nowhere more so than this caseworker system we were talking about earlier and the casework panels that occur after six months, eight months and 12 months. As I understand it, they are made up entirely of Home Office officials. Did you make any recommendations about that?

Stephen Shaw: Again, I was not as prescriptive as perhaps I could have been about how you introduce independence into those procedures. With the case progression panels, a way of doing so would be to have an independent chair. Where you recruit them from and all the rest of it is a different matter. However, that would introduce a degree of challenge that is not there at present. That is right in principle because we are talking about the removal of liberty, as extreme a thing as the state does. I also think, in a practical sense, that bringing in somebody from the outside who is not part of the Home Office mainstream introduces an element of challenge into the decision making. Therefore, it is right in principle, and I think it would be helpful in practice.



What I did not do in the report, which you will forgive me if I do not do now, is say, "We should recruit a raft from this profession" or anything like that. There are different ways in which it could be done. If you take the case progression panels as an example, it is all public money, so you might have different arrangements for the 12-month panel than you had for the three-month panel. It does not have to be exactly the same for each of them.

Q554 Stuart C. McDonald: There were other criticisms you made of these panels. I think at one point you suggested the Adults at Risk factors were not really being given—

Stephen Shaw: I must be fair because they were relatively newly established, but witnessing them was not very fruitful. The amount of time on each case was very small indeed. There was some quite fancy technology, but it was very difficult for people to follow it. I was not certain the make-up of the panels had the relevant expertise to the cases they were considering. Adults at Risk information was not always present. I used the word a couple of times I think in my evidence, but, certainly at the three-month period, there was a cultural assumption that, "We are not going to release somebody, but there might be a problem with information so we will set in train further inquiry". There was not a presumption of liberty; there was almost a presumption of continued detention, but with further inquiries to be made. None of this was satisfactory.

I had never described case progression panels—they were not a specific recommendation I had made. They were an attempt by the Home Office to operationalise what I had said in the first report. Were they working particularly well? No, they were working, I would say, particularly poorly at the time.

Q555 Stuart C. McDonald: In terms of what you refer to as a culture and almost a presumption that detention at three months would be carried on, is that not ultimately what the problem is? If you have an institution with, as we have heard a lot about, a culture of targets, pressure to remove people and so on, so long as you still have that and that same body making those decisions, you are not going to escape that.

Stephen Shaw: I agree with that. That is right. Public servants, in the main, will follow the lead they are given politically. If you go right the way back to whether I have confidence in what the Home Secretary has announced so far, it suggests to me that he wants to change that culture. Public servants will take their lead from that. If that is not followed through, or if there is a different objective, which places greater emphasis on targets or whatever it may be, then that will not happen. I think we were talking about legislation, and legislation might be important for some of the things we have been recently discussing, but how people do their job is as important as the rules by which they do their job.



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I give a terrible example in the report of a chap in a wheelchair who was trying to leave the country voluntarily, but he was not allowed to do that. He was picked up by an ICE team with the view, we suspected anyway, he would therefore meet a target for enforced removals; he could be added to that list rather than another one. We do need to change the culture, including the culture that denies there is a presumption of liberty that applies to everybody.

Q556 Stuart C. McDonald: With that in mind, a couple of quick questions finally on bail. If it is important to try to bring back independence into oversight of all these systems, is two months not still far too far away? Should we not be talking about within a couple of days of a decision to detain, or is that unrealistic? Secondly, did you do an analysis of how effective these automatic provisions are, for example, if people do not have access to legal aid?

Stephen Shaw: No, I did not carry out that, so I cannot really assist you on that. Let us see what the two-month pilot shows. Absolutely, two months is a long period. Three months, when the case progression panel comes into play, is a very long time in detention. As I say, I have spent my whole life in and around places of custody and detention, and I do not doubt for one moment the significance of even a day in which you lose your liberty.

However, one cannot just pluck figures out. Let us see if the two months makes a difference. Let us see if the decision making is any different, because access to a court is not the same thing as the decision of a court. There has been criticism, as you know, of decisions made by immigration tribunals very often. Let us see how that works, but loss of liberty should be determined ultimately by a judicial process and not an administrative one.

Q557 Chair: Given that is the case, would you accept that making the recommendation, "Let us see how this progress works. Let us see how the pilot works. Let us see if the numbers come down. Let us review it and see if the numbers come down", makes sense if you are viewing this in abstract, in terms of overall policies and overall policy numbers? If, instead, you look at this from the point of view of whether individual injustices are taking place, then waiting and allowing a whole series of further potential injustices to happen while the two-month process is trialled could mean you clock up quite a lot of further individual injustices along the way.

Stephen Shaw: If the Committee takes the view that two months is still too long, then I will defer to the Committee's view on that. I do not think I should be making up policy on the hoof. I was not smart enough to propose two months in the report, which is what the Government has decided. I think it is a welcome change. That is really all I think I can properly say about that.

Q558 Chair: Can I ask you a quick final question? You do refer in your report



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to a case where there was a parent separated from children, contributing to a mental health problem in that case.

Stephen Shaw: Indeed. I referred to it in my answer, I think, to Mr Doughty.

Q559 **Chair:** Did you look more widely at the issue of separating parents from children in detention decisions?

Stephen Shaw: I did not look in detail at that. It is part of the conversation you will have with any detainee, many of whom have children in this country, about the separation they feel in the short term and about the longer term prospects for seeing that child. That relates to some of what I said about the importance of family ties, even for those who have committed offences in this country, and about that particular policy of routinely seeking to remove—not everybody is removed, of course—those whom I described as “made in this country”.

Q560 **Chair:** You did come across quite a lot of cases where parents were being separated from their children by a detention process.

Stephen Shaw: I would not like to give you numbers, but I would say lots and lots, yes.

Chair: Thank you very much for your evidence. We very much appreciate it. We appreciate too the detail you have gone into, both in the evidence to us today and also in the very detailed evidence you have gathered and submitted as part of your report. It is very much appreciated.

Stephen Shaw: Thank you very much, Chair.

Chair: Thank you very much for your time today.