



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Immigration detention](#), HC 1484

Wednesday 31 October

Written evidence from witnesses:

- [Detention Action](#)
- [Bail for Immigration Detainees](#)
- [UK Lesbian and Gay Immigration Group](#)
- [HM Inspectorate of Prisons](#)
- [Independent Monitoring Board](#)

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Jeremy Lefroy; Baroness Lawrence of Clarendon; Lord Trimble; Lord Woolf

Questions 1–14

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

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

Q1 **Chair:** Thank you, all four of you, very much indeed for joining us. As you know, we are the Joint Committee on Human Rights, which means half of us are House of Lords and half of us are House of Commons, and we are concerned with human rights. In that regard, we are looking at the question of immigration detention, both how you get put into immigration detention and whether that process has sufficient challenge, independence, oversight and due process. It is about the decision to go in and, once you are in there, whether you have the ability to get out with due process,

access to legal advice, et cetera. It is also about how human rights-compliant the regime is once you are in there in relation to inhuman and degrading treatment and right to family life, particularly for vulnerable detainees. There has been a great deal of expertise, engagement and wise thought on these very issues by you who have been good enough to come to give evidence to us today.

Perhaps I could ask an opening question. What do you think about human rights and detention? Are there no problems? If there are problems, what are the key ones and what should be done to sort them out? Other Committee members will pick up further issues as we go along, so could we have a very short, focused response to those points to start with? We will untangle them further on.

Bella Sankey: I am the director of Detention Action. There are many very serious human rights issues involved in our immigration detention estate. They range from inhuman and degrading treatment, which is systematic, to barriers to access to justice, the routine detention of vulnerable people, and family separation. The most serious issue, which makes all these other issues more serious and exacerbates them, is the fact that immigration detention in this country is currently indefinite.

Celia Clarke: I am the director of Bail for Immigration Detainees. We provide legal advice and representation to people in detention on the matter of their detention, bail, and deportation. We do that through a telephone advice line and legal visits to detention centres. We represent people in the tribunal for release on bail. We supported nearly 6,000 people across detention in the UK. We visited every detention centre and we visited eight prisons where people are held under immigration powers in prisons. Currently 378 people are held in prisons under immigration powers.

Echoing exactly what Bella said, you find people deprived of the right to private and family life in detention. There have been instances of the Home Office being found to be in breach of people's right to be free of inhuman and degrading treatment and torture on several occasions. Treatment is very bad in detention.

Central to the whole issue of detention is the right to liberty, which this country holds very dear. In fact, it has existed for years, since Magna Carta. It should be taken lightly, yet we have a group of people here whose right to liberty is treated with casual disregard.

The decision to detain someone is taken by an individual immigration officer. It is not subject to any independent oversight. It is not subject to judicial oversight. When you get into detention there is no automatic legal representation and no time limit, as Bella said. This means that people are detained for weeks, months and even years. There are lots of examples of people detained for years. We have had clients who have

been detained for five years, which is equivalent to a 10-year prison sentence. The fact that they have no automatic legal representation means that they have less protection and fewer safeguards than people who are charged with a criminal offence, or indeed terrorism suspects. People who are charged with a criminal offence are brought before a court, a magistrate, within 24 hours, extendable up to 96 hours, whereas people who are held in immigration detention can be held indefinitely. Currently, the onus is on them to apply for bail.

Bail is a process that does not look at the lawfulness of detention. It does not look at the legality of that decision to detain. It decides whether someone's removal is imminent. You can see that you have a group of people who are incredibly vulnerable. One of the worst things that people tell all of us, time and time again, is not knowing exactly what is going to happen to you, what you can do and how you can get out of there. There is legal aid in detention. You can get appointments with the legal advisers in detention who you can sign up to see for half an hour at a time, but that does not mean that your case will be taken on, and there is often a delay in getting those appointments.

I am going to stop there, because other people will have things to say, but you can see that, in terms of human rights, there are lots and lots of issues that are incredibly serious, not least of which is people's right to liberty, which is being breached daily.

Chair: The point that you would be better off if you had committed a crime is very telling. Your legal rights are better protected in the criminal justice system.

Leila Zadeh: I am the director of the UK Lesbian and Gay Immigration Group. We support lesbian, gay, bisexual, trans, queer and intersex people through the asylum process, who I will refer to from now on as LGBTQI. I agree with much of what Celia and Bella have said, but I will talk about issues that are very specific to the population we support.

The detention system in the UK has the potential for indirect discrimination towards LGBTQI people. We regularly hear from people who are or have been in detention that they suffer abuse and harassment from fellow detainees. The Home Office is not routinely considering the fact that somebody who is LGBTQI could be at risk of harm once they are in detention.

Added to that, it is very difficult for an LGBTQI person to represent a successful asylum claim when their liberty has been taken away from them. LGBTQI claims can be quite complex and they go to the very heart of somebody's personal identity. In a claim, you often have to talk about your whole life story. It is very difficult to do that in detention, where you are afraid of who is around you and what other people might overhear. Added to that, in our experience there are not necessarily many lawyers with experience of how to present these claims well. I will stop there in order to allow the remaining panellist to speak.

Mary Bosworth: I am a professor of criminology and director of the centre for criminology at the University of Oxford. I have been conducting independent academic research inside British immigration removal centres since 2009. I agree with all the other panellists in so far as I think that the human rights issues in detention stem from the imbalance between the power of the individual who has been detained and that of the state. Unlike in the criminal justice system, for instance, in which the rule of law provides a necessary check on the Government when they seek to deprive someone's liberty, in the administrative system of immigration detention the state has far wider leeway and far less scrutiny.

This imbalance, which is particularly acute in this administrative system, is inherently connected to the lack of automatic judicial oversight and the lack of transparency in the Home Office decision to detain. It is no doubt compounded by the lack of a time limit and the difficulty that many detainees face in accessing legal advice and legal representation, as well as by the various extensively documented pains of detention and other factors, such as language competence. We know from the literature on mental health that a period of detention itself compounds matters further, as is evidenced in the very high levels of distress that psychiatrists and psychologists have measured, and which I have measured in the measure of the quality of life survey.

There are also a series of other quite practical problems, which are worth keeping in mind. There is extensive evidence about the quality of healthcare in detention as an ongoing issue. Then there are perhaps narrower problems that spring from the manner in which the system is contracted out. As the companies reduce their numbers of staff, as they adopt the so-called hotel model, the staff have less and less interaction with detainees, which can exacerbate some of the problems. It makes it harder for problems to be picked up, for instance. There may well be mechanisms in detention to try to pick up mental health problems or other issues, but if there has been very little interaction between officers and detainees, those things can be missed. Potentially at least, looking forward as the plans to demolish Heathrow IRC start to come into play, there will be questions that need to be considered about conditions in detention centres that are slated for demolition.

Chair: Perhaps Harry could pick up on some of the points you raised about the inherent balance that is right at the heart of the criminal justice system, which seeks to level the playing field between the power of the state and the lack of power of the defendant, and explore that further from his judicial standpoint.

Q2 **Lord Woolf:** I have form here. You all will know that the only case that looked at this in real detail was one I decided, which has been taken up not only in this country but elsewhere.

Starting off from a legal position, what is always said about immigration people is really illusory. It is said that if they wanted to they could always leave detention. They are detained only because they want to stay here. Otherwise, they would not. That is—very, very technically—probably right, but surely what one has to go to on the law is the fact there should not be detention at all unless there is no alternative for good public reasons. Would you agree with that statement?

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

Lord Woolf: How does one get over the fact that the Home Office has this fear that if it does not detain them it will not be able to find them?

Mary Bosworth: It is worth recalling that very few people are detained relative to the numbers of people who could be detained. For the vast majority of people, the Home Office is using other mechanisms. Mainly, it uses reporting as the mechanism. The question about why this particular set of people, the 2,200 or so who are currently in detention, and not the others is very unclear. We do not really have evidence about how they are selected for detention versus the others who are not. That argument is relatively easy to poke holes in, because most people are not detained.

Celia Clarke: By the Home Office's own admission, just 5% of those who are subject to immigration control abscond. You have to remind yourself of the purpose of detention and the power to detain. The power to detain can be used only for the purposes of verifying someone's right to be in the country, or for removal. As Mary says, there is nothing to prevent the Home Office obliging people to report regularly. They know where they are. That is a non-custodial alternative to detaining.

As Mary also says, it is really not clear—it is worryingly unclear—why the kinds of people who end up in detention end up in detention. Very often, people will be served with a decision that carries an appeal right on the day they are detained. Alternatively, they will have been detained before, with all the fear that that involves. They are dreading the possibility that they will be detained again. They go to report, they have been perfectly compliant, nothing in their circumstances has changed, and they will be detained again. It is very hard to see the consideration. I have brought with me an IS91R form, which is the form that people are given when they go into detention.

Lord Woolf: Before we leave what you have said, could you help with regard to the right to appeal? You mentioned that.

Celia Clarke: No, you do not have the right to appeal.

Lord Woolf: I understood that. That is what I was interested in.

Celia Clarke: You get served with this IS91R form, and at the top it says something like, "You are being detained because all alternatives to detention have been considered". There is no obligation on the Home Office to evidence that it has considered alternatives to detention and why your detention is thought to be appropriate. This is the wording: "Detention is only used when there is no reasonable alternative available".

Lord Woolf: That seems to me to be the starting point of a proper approach.

Celia Clarke: Absolutely, in that you need to make some assessment of why that person cannot be dealt with through existing alternatives such as reporting.

Lord Woolf: Is there a need for alternative methods of preventing them? Have they been lost sight of? Could you have some of the things that are done with people who are charged with committing an offence? Could they be tagged?

Celia Clarke: They can be. That is another method of keeping in touch with people which the Home Office already has at its disposal. The worrying thing for the Committee is the process that underpins the form. The form is a form. It is a tick-box exercise, but where is the process that leads to the decision to detain that person? Where is the consideration of the alternatives, including tagging, if there is evidence that that person is going to abscond? Where is the legal representation? I go back to the criminal justice system. You have due process there, yet in detention you do not. You do not even have automatic representation for bail, let alone any other legal process that you might wish to undertake or have the right to undertake.

Lord Woolf: What sort of reasons does the Home Office record on the form if it decides not to allow the person not to be detained?

Celia Clarke: It will be things such as absconding, but they do not have to provide evidence of that. They can say that you do not have a family life and, again, they do not have to provide evidence. None of this comes with a requirement to provide the evidence as to why you are ticking these particular boxes.

Chair: You have described, in response to Harry's questions, a system that is wholly arbitrary as between the 5% and the 95%, and a lack of requirement for any evidence to back up the boxes that are ticked and which then justify detention. Do you propose that there should be retraining of those involved in detention? Can the Home Office be ameliorated in this respect? Do you think it should be taken away from them and become the responsibility of an independent process? You have explained the problems very well. What solution are you proposing to the problem of this arbitrary detention of liberty? As Celia rightly says, taking away

their liberty is one of the most serious things that the state can do to somebody.

Bella Sankey: You absolutely need independent judicial oversight of the system. There is no way in which further training or changes to staff culture in the Home Office can deal with this problem. In no other area of public or social policy do we have a system whereby people can be deprived of their liberty without coming before a judge very, very quickly, in a matter of days or weeks, and without the person seeking to deprive the person of their liberty—the arm of the state—having to show, with good reason, why they are doing that.

In the criminal justice sphere, as Celia has said, this happens within a matter of hours. There is no good reason why the same system should not exist in the immigration sphere. There are no reasons of principle or practice why this cannot happen. As a matter of principle, this safeguard has been shown to be essential in other areas and is essential here.

Lord Woolf: Bella, would it help if there was clearer legislation identifying precise reasons why people can be detained and saying that without those being established they must not be detained?

Bella Sankey: Absolutely, there needs to be clearer legislation. That legislation really needs to tie the Secretary of State to the purposes for which detention is currently justified, i.e. principally to deport or remove somebody from the country. People should not be being detained in circumstances where appeals are ongoing, judicial reviews are live, travel documents have not been obtained and travel arrangements have not been made.

At the moment, that happens, which is why we see people detained for months and many of our clients detained for years. If the Secretary of State had to show to a court that certain conditions had been met, and those conditions were set out in legislation, it would introduce a proper, independent check and a measure by which an independent body could see whether a deprivation of liberty was justified.

Lord Woolf: Should there be a cut-off point in any event after a certain time?

Celia Clarke: The Home Secretary has been delegated with this power to detain, and, as we have all said, this is very serious. Deprivation of liberty is not something you take lightly. They are the detaining power, and there is nothing to say that they should not come before a court within 24 hours of making that decision and show the court why they need to detain that person and that it is for the purpose for which it is intended, which is removal or assessing someone's right to be in the country. They can only detain somebody for those two reasons.

The third element that they would need to have in place is the evidence that they had no more appeal rights, that they were removable, and that the current alternatives were not appropriate. At the moment, they do not have to provide that.

The person who is being detained should also have automatic legal representation. The onus should not be on the person to say why they should not be detained and deprived of their liberty. The whole balance is wrong. The burden should be on the detaining power.

Lord Woolf: That would be a huge change to the thinking. I am afraid the thinking at the moment, which we probably have to face up to, is the other way round. They say, "You do not have the right to come into the country unless you can show some justification for that".

Celia Clarke: You might well remember that when immigration detention was first used the numbers were tiny. It was 200 a year. What has changed in that time from 200 to 27,000, other than some kind of deterrent, some kind of normalisation of detention, which is not normal?

Lord Trimble: Excuse my ignorance. Is there any legislation on this subject?

Lord Woolf: There is just the Immigration Act and the Immigration Rules. There is nothing that does what I put to the witness of saying what has to exist before you detain someone.

Lord Trimble: Is there any chance of the legislation being developed.

Chair: We have an immigration Bill coming before the House next year, which will deal mostly with EU migrants. The question is whether it is wide enough to deal with these issues. I think the Home Office is probably hoping that it is not wide enough.

Celia Clarke: The power to detain is in the 1971 Immigration Act, but that is a limited power, as I said, for the purposes only of removing someone from the UK and for assessing their right to be here.

Q3 **Ms Karen Buck:** You are painting a picture of quite an arbitrary set of outcomes here. You have talked about some people being detained for, I think, five years. What are the characteristics, as you understand, of people who are detained for long periods of time? Are there particular sets of characteristics that explain that? They do not explain it, but—

Bella Sankey: Again, it can be very arbitrary. There are certain groups that are more liable to prolonged detention. One of those groups is ex-offenders, who are liable to the longest detention periods. That said, we have clients with all sorts of experiences who fall into different categories, whether it is victims of human trafficking and modern slavery, victims of torture, or people with very serious mental health problems, who have been detained for many, many months, into years. It is incredibly arbitrary.

Ms Karen Buck: The ex-offenders group are people who may have committed an offence in this country and have been detained, and then are detained subject to removal but cannot be removed.

Bella Sankey: Exactly. They are people who have been convicted of committing a criminal offence, have served a custodial sentence, and then, under the current system, are basically automatically transferred to immigration detention centres, where many of them remain for very long periods of time. That is probably the group of people who are most liable to the longest detention periods.

Chair: So I can understand this clearly, are you saying that it is all right for the Home Office still to be taking the decision about detention, but that you want it to have to come up with the goods and explain why it has done that, and that independent challenge to their decision should be available, or do you think it should lose the power to decide about detention and instead should have to ask an independent authority to make the decision to detain? Do you want it left with the Home Office and more accountable, or do you want it taken away from the Home Office?

Celia Clarke: The Home Office should ask for it in exceptional circumstances, given that there are means at its disposal to keep in touch with people.

Chair: You would take it away from the Home Office and give it to an independent tribunal. That would be the detaining tribunal, at the request of the Home Office.

Celia Clarke: Well, yes. That also comes with its own difficulties, because that also has to be limited. If it is going to be for the purpose of removal, you could have the Home Office presenting those criteria—"This person is about to be removed. There is a ticket. They have exhausted all their appeal rights"—and they should have the right to be represented. If at that stage the court is satisfied that all those elements are met, it decides: "Okay, you can detain that person".

Chair: I get all that. I am just trying to work out whether there is a consensus between you on whether you still want the Home Office to make the decision but it be subject to proper challenge, or whether you want the Home Office to be a party in court, as the CPS is, on behalf of the state, with an independently made decision to detain.

Celia Clarke: Exactly.

Chair: Which?

Celia Clarke: Yes, that. The Home Office would present its case for depriving this person of their liberty to an independent court within 24 hours.

Chair: It would no longer be the deciding authority.

Celia Clarke: The court would be the one to decide that all the conditions were met.

Chair: Sorry, I am obviously not making myself clear. Do you want the Home Office still to have the power to detain, subject to challenge independently, or do you want it not to have the power to

detain so that it cannot detain until it has a decision by an independent tribunal?

Celia Clarke: I am suggesting that they would have 24 hours, similar to the criminal justice system, or up to 24 hours, to assess that person's particular circumstances and whether they could keep in touch with them.

Chair: They would have 24 hours' worth, and thereafter the decision would be by an independent tribunal.

Celia Clarke: Yes, and then it would be by the tribunal: two days, one day, they have the ticket for tomorrow, or whatever it is. It would have to be limited. It goes back to the purpose of detention in law.

Chair: I think that is clear.

Q4 **Lord Trimble:** On the detention of vulnerable people, there have been cases where the Home Office has been found in breach of the convention. We have had reviews, and apparently there have been policy changes. Are things any better now than they used to be?

Leila Zadeh: The Home Office introduced the adults at risk policy in 2016 in response to the first review of the welfare of vulnerable people by Stephen Shaw. You may be aware that in Shaw's latest review he is of the opinion that the policy has not bedded in. We as UKLGIG still see a lot of people who have been detained who have been victims of childhood sexual abuse or trafficking, or have experienced sexual violence as adults. The adults at risk policy requires certain levels of evidence from people. There are three levels of evidence, the first of which is self-declaration. Levels 2 and 3 require some kind of independent or professional evidence to be supplied. When it comes to LGBTQI people, trans and intersex people are mentioned on the adults at risk policy as possibly vulnerable to harm inside detention, but lesbian, gay and bisexual people are not. It would not necessarily fit well under the adults at risk policy, given the requirement for evidence. You cannot get independent evidence to prove your sexuality or gender identity. That is almost impossible.

The fact remains that LGBTQI people are, or can be, vulnerable in detention. This has been clarified, or a statement to that effect has been made, by the UN Subcommittee on Prevention of Torture. It was also in a decision made by the European Court of Human Rights in 2016 concerning Hungary. The court expressed concern that, in the case of an Iranian asylum seeker, the Hungarian authorities had not considered that he was a gay man and that by detaining him they were putting him at risk, because he was going to be among a population of people who shared similar characteristics to the people he was trying to flee, in the sense of exhibiting prejudicial attitudes and behaviour.

The policy has changed, but I do not necessarily believe that the practice has followed. I do not necessarily believe that the policy in itself is adequate to prevent vulnerable people being detained. It is similar to issues that Celia raised in that the onus is often on the vulnerable person to prove their vulnerability, and the Home Office can also discard it if it

believes that the enforcement considerations outweigh the vulnerability considerations.

Lord Trimble: We might come to time limits in a moment. Again, there may be something here that I am not aware of. Clearly, some people are held for long periods of time. Is there any mechanism to review from time to time whether they should continue to be detained?

Celia Clarke: There is a monthly review, so everybody's detention has to be reviewed every month by the Home Office. They are usually handed another piece of paper that says, "Your detention is going to be continued". There is a monthly review.

Lord Trimble: What does the review consist of?

Mary Bosworth: It looks at their file. Part of the issue with the system is that there are not very many opportunities for face-to-face encounters. It is an administrative system, so they just look at the paperwork. If the paperwork is the same—

Lord Trimble: Is there any arrangement whereby people who are detained can send in representations, even if it is done on paper?

Celia Clarke: They can. There is nothing to prevent them doing so, but it usually does not result in release. There is no formal process, except that in the Immigration Act of 2016 the Home Office has introduced automatic bail hearings after four months. That came into force in January. That is relatively new and it is very, very problematic already, unfortunately. On the wider detention system, as I described at the beginning the onus is very much on the person. They have to understand what has happened to them and they somehow have to work out that their one chance of getting out of detention is probably to go for bail. But nobody comes along and says, "Here you are. Here's a bail hearing", other than now with the new four-month bail hearing. Incidentally, that excludes former foreign national offenders.

Lord Trimble: Do they explain to people the grounds on which they are being held?

Celia Clarke: They are supposed to explain the reasons for their detention in a language that they understand. When they hand them this paper, part of the process is to explain to them why they are being detained, but that does not give them a process to challenge it, unfortunately.

You also asked about vulnerable people. The Home Office put two mechanisms in place following Stephen Shaw's review of vulnerable adults in detention. One is their gatekeeper process, which was designed to prevent the detention of vulnerable adults, to prevent people being detained in the first place, and the adults at risk policy that Leila referred to. That is supposed to be a means through which people can get released from detention once they have been in detention.

Before the adults at risk policy was put in place, the percentage of people being released who had a report from a doctor confirming that they had a

vulnerability of some sort, whatever that may be, was 35%. Following the adults at risk policy, it dropped to 15% of people being released, so the protections were much less than they had been prior to the introduction of the adults at risk policy.

I also have some figures from an FoI on the gatekeeper function. Only 141 people were prevented from entering detention by this gatekeeper function, which is 0.5% of those who were detained.

Q5 Baroness Lawrence of Clarendon: My question is on the detention of children and families.

In the notes we were given on the safeguarding of children of parents who could be detained, the Home Office admitted that it was in breach of the human rights of separated families. Could you say a little more about that? There is a case where a father was separated from his daughter and the local authority more or less said, "This is what would happen if you detained the father", yet they proceeded to do that. Eventually, they moved him far away from his daughter and they were separated for three years. Could you say a little more about detention and families?

Celia Clarke: That is right. That case was taken by Bhatt Murphy Solicitors. We provided a witness statement, because we have a focus on families that have been separated. We used to have a focus on ending the detention of families with children, and in 2010 that was ended—rather, it is now limited; the detention of families was not ended completely, but families can only be detained for 72 hours. However, families can still be separated, so parents can still be separated from their children by detention.

The policies you refer to that the Home Office admitted it was in breach of take the separation of families very seriously. The Home Office has a statutory duty to safeguard and promote the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act of 2009. That means that, along with every government department, it is supposed to take any decision that affects children while having regard to what is in the best interest of the children. That should, and does in policy, involve going through a process of finding out, for example, what children there are, how they will be affected and so on.

The Government do not keep any numbers or statistics on how many parents they separate from their children, so we do not know the scale of the problem. When Stephen Shaw recently gave evidence to the Home Affairs Select Committee about his second report, he was asked how many people with children he saw, and he said something like "most of them" or "lots of them". We support 167 people, with something like 320 children between them.

Chair: Presumably you think that those figures should be kept.

Celia Clarke: Yes, absolutely. I do not understand how you can have a statutory duty under law to safeguard and promote the welfare of children but not keep records of the numbers of children you are separating from their parents.

Chair: You mentioned that there should be time limits within which the detention that could be effected by the Home Office runs out because it has to get endorsement, and in effect the decision to detain passes to some independent tribunal, as with the magistrates' court authorising detention of a suspect in the criminal justice system.

Leaving that aside, should there be any term of detention, in that detention should not go beyond a certain period? Or do you think that, subject to it being re-authorised by an independent procedure, it could carry on being indefinite, as it is now? Should the state have a backstop time limit either to investigate somebody or transition period deport them, or, if not, to let them go? You will all remember the big hoo-ha in the House of Commons about 90-day detention, but that does not seem to have applied to immigration detention. Name a period of time, or say if you are happy with it being indefinite.

Bella Sankey: There must absolutely be a statutory backstop. Without one, the system will not be able to safeguard liberty.

Chair: How long would you say it should be?

Bella Sankey: At an absolute maximum, 28 days would give sufficient time for the Home Office either to examine someone's immigration status or to deport or remove them, which is why it is supposed to be detaining people in the first place. It would allow for short extensions of time while removal or deportation is ongoing, but it has to be accompanied by somebody having legal representation and being able to apply for bail within days of their detention. That would be a sensible, practical time limit that I think could work in practice to deliver justice and ensure that the Home Office can carry out its functions.

Chair: Is the 28 days a collective view?

Mary Bosworth: It is worth remembering that a shorter period of time already exists in the system. Pregnant women and families with children can be held for only 72 hours, and then, with ministerial authority, up to a week.

Chair: Can that not be renewed?

Mary Bosworth: It can be renewed, I guess.

Chair: Then it is not finite.

Mary Bosworth: Pregnant women in particular are not held. Great efforts have been made to get them out of detention.

Chair: This is a different point. That is about practice. I am asking about the point I addressed to Bella, which is whether there should be a finite limit beyond which the state has to have done whatever

it is going to do or its time runs out and it has to release the person.

Celia Clarke: For families, there is an outer limit, which is seven days, subject to ministerial authorisation. The limit is actually 72 hours, extendable to seven days on ministerial authorisation.

Chair: After that, it goes no further.

Celia Clarke: After that, that is it.

Chair: What about the others who are not families?

Celia Clarke: In our view, the 24 hours should be sufficient to say that someone is about to be on a plane, that you have means through which you can keep track of them if they are not about to be removed, or that you are assessing their right to be in the country. If a time limit was introduced, it should not be longer than that afforded to families in detention centres, so 72 hours, or seven days maximum.

Chair: Basically, everybody is at seven days. If they have the seven days for families, why not for everybody else?

Celia Clarke: It should be perfectly possible, but that has to come with legal representation because of what we have all said before: people do not have legal representation and often they have cases ongoing. It is very frightening for people to be detained and not to know where they are in the system.

Chair: That is true even within seven days.

Celia Clarke: Yes.

Chair: I think that point is well understood.

Q6 **Jeremy Lefroy:** I just wanted to ask about 28 days. I certainly believe that it is absolutely necessary. Is there not a risk, as with other targets, that people tend to work to the target? Looking at the figures for 2017, we see that more than 7,000 people were detained for three days or less, nearly 2,000 were detained for four to seven, and 3,600 were detained for eight to 14. There might be a risk that people who in the current circumstances are released in seven days or 14 days, irrespective of the special rules on children and families or pregnant women, would end up being detained for longer because the system would work to the 28-day target rather than to the best interest of the individual.

Bella Sankey: That is a very important point. That is why a 28-day backstop statutory limit would need to be accompanied by the other safeguards that we have been discussing: automatic bail hearings after a matter of hours, accompanied by automatic, legally aided legal representation for individuals; and a very clear test which the Secretary of State has to satisfy, at that stage and at any other interim stages, to show that removal or deportation is imminent and happening very soon. If he is unable to satisfy that, a release must be ordered earlier. It is not 28 days and that is it. It must be accompanied by a very rigorous set of safeguards.

One more relevant point of detail is that the 28-day limit that is being discussed would include within it periods of re-detention. It is a very common feature of the system that people may be re-detained: detained, released from detention, then re-detained. Under the 28-day model, the system would be quite similar to what works currently with police bail and the detention time clock. People can be released, but if they are re-detained by police in the criminal justice system the clock starts ticking again, so 28 days would work as a cumulative period for which any one person can be detained under immigration powers at any stage of their immigration case.

Q7 Baroness Lawrence of Clarendon: How much information are the detainees given at the start of their detention about their rights, whether or not there is legal advice if they want that?

Celia Clarke: They are given an induction process when they arrive in detention, which includes all sorts of things, such as their right to bail. Whether that happens consistently and the degree to which people actually absorb that information I cannot tell you. Do not forget that there is no warning that you are going to be detained. It is a very, very frightening process. You can arrive in the middle of the night. You might even have experienced a dawn raid and been taken into detention then. You find someone telling you how the place works and what your rights are difficult to understand. Yes, they are told about their rights and there is legal aid. Everybody in a detention centre at least—not those held in prisons but in a detention centre—is entitled to 30 minutes of free legal advice provided by the Legal Aid Agency. They will be informed about that, but, again, the onus is on them.

It is hard to convey this to the Committee, but if you are somebody who we have referred to as vulnerable, who has been trafficked, who has a less than perfect command of English, who has mental health problems, you will not very easily be able to find your way to the library to sign up for the legal advice session. We do a legal representation survey every six months and we find that, even with the legal aid appointments, there are delays in waiting for an appointment. Every day is a day in detention. You may not get your legal aid appointment for three or four weeks, and even then your case may not be taken on because it is subject to a means and merits test.

Baroness Lawrence of Clarendon: You mention dawn raids. It reminds me, going back to 1993 or 1994, of when that woman was—

Celia Clarke: Joy Gardner.

Baroness Lawrence of Clarendon: Joy Gardner had all that tape around her. She suffocated and died at that point. Do dawn raids happen quite regularly?

Celia Clarke: I do not know if they happen regularly, but they happen. It is a very brutalising experience. Where there are children involved, it

makes it even worse. We have had clients with children who have been extremely badly affected by the experience of their parent being taken into detention. You wonder, as a human being, how on earth you can recover from something like that.

Chair: Thank you very much indeed to all of you on the panel who have brought your very deep experience of what is going on in the system. Thank you very much as well for the good work you are doing for individuals, as well as spreading the knowledge of academia and conducting research on it. Thank you very much indeed for coming to give your evidence.

Examination of Witnesses

Dame Anne Owers, Jane Leech and Hindpal Singh Bhui.

Chair: Thank you very much indeed for listening so patiently to the first panel of our evidence session.

Q8 **Fiona Bruce:** Good afternoon and thank you for coming today. You will have heard the evidence of our previous panel, with particular reference to access to legal advice and representation, which was a thread through that evidence. Do you think that detainees have adequate access to such advice?

Hindpal Singh Bhui: Good afternoon. I am the inspection team leader at the Inspectorate of Prisons. I spend most of my time in prisons, but I lead on all the immigration detention work. There is access to legal advice in immigration removal centres, which is in excess of what immigration detainees are able to obtain in prisons. I think Celia mentioned earlier on that it is really only a very short, sharp period of advice. It is half an hour. It could take a week or two weeks to get on to the advice surgery.

The real issue is that, even though you can get a short period of advice, representation, which is very important for detainees, will probably not follow, because of the cuts in legal aid. The organisations that used to provide free legal advice and representation by and large no longer exist, because of the lack of funding, so it is more difficult.

There are differences up and down the country, though. If you look at the centre at Dungavel in Scotland, for example, you can see that there are different rules in Scotland, so the amount of legal advice available is greater. That seems to have an effect on every other aspect of the detention experience. We often find that detainees in Dungavel are less distressed than detainees we see in other parts of the country. It is complex, but at least one of the reasons is because they have very good access to legal advice up there.

Fiona Bruce: Can I unpack this for a moment? They have a right to a 30-minute meeting, presumably with an immigration solicitor who is working on a legal aid basis. Perhaps I should declare my own

background as a community lawyer. That is just the meeting with the solicitor, is it not?

Hindpal Singh Bhui: Yes.

Fiona Bruce: Are you saying, then, that many of them do not have an opportunity for further legal representation at a later stage?

Hindpal Singh Bhui: That is what I am saying, yes.

Fiona Bruce: Resources are not there, because there are not the solicitors who can come forward to help them.

Hindpal Singh Bhui: Yes.

Fiona Bruce: Secondly, you said that there was a difference between the rights and treatments of detainees in immigration removal centres and detainees held in prisons. I would be grateful if you could clarify that difference for us.

Hindpal Singh Bhui: The Home Office funds legal aid surgeries in immigration detention, but it does not fund those surgeries in prisons. About 400 detainees are held in prisons, and they do not have that free access to legal advice. A foreign national prison with a legal surgery was set up fairly recently, but they are not, by and large, detainees; they are serving foreign national prisoners. Generally, prisoners have less access.

Fiona Bruce: Perhaps I can open up comments to the panel. Has any survey been done on the adequacy and extent of legal advice for detainees across both centres?

Dame Anne Owers: I am not sure I can assist you on a survey, but it may be worth the Committee recognising that, in the immigration removal centres where this advice is available, it used to be provided by two or three solicitors firms. Our independent monitoring board at tells us that there are now 40 or 50 solicitors' firms on the list, which may be there for only one week in a year because they change around. In another centre, there are now 25. There is some concern about the spreading around among so many different firms. That is a very new thing, I think with new contracts.

In the short-term holding facilities, where people may be held when they first arrive, there is no access to legal advice, and legal advisers cannot get airside, so there is no possibility of getting advice at that point. There are some concerns about the way that legal advice is trending, even though, as you say, it is only 30 minutes' advice. It is not representation.

Fiona Bruce: That barely gives one time to acquaint oneself with the circumstances of the individual. Are you saying that there being only 40 or 50 firms means that there is perhaps a lower level of specialist expertise?

Dame Anne Owers: We could not possibly comment on that, but it may be worth inquiring into further.

Q9 **Lord Trimble:** My question goes back to the detention of vulnerable people again, in this respect. There are horror stories of people who have died in custody. Policies have also been introduced recently. Have they been effective in preventing the

detention of individuals who clearly have complex needs?

Dame Anne Owers: I think we would say that they have not been entirely. Jane, I think you have some examples of the complex needs we have come across.

Jane Leech: Yes. Thank you, Anne. I am on the independent monitoring board at Yarl's Wood immigration removal centre. In the last year, we have seen some very vulnerable people there. About a year ago I saw a Zimbabwean woman who was in her room. She would not sleep on her bed. She was too scared. She had put her mattress on the floor. She would not put any clothes on, because she said they were poisoned. She was in a very, very distressed state. She imagined that she could see the men who took away her husband and who put her into a mental hospital in Zimbabwe. She was released, I believe, a few days after I visited her. We have also seen an example of a young man who was 22, I believe. He was there in the family unit at Yarl's Wood, which is not for the detention of children; it is for the detention of family groups, so children over 18. This young man, who had severe learning difficulties and epilepsy, was brought into detention in April this year and stayed a week. He reacted very badly to his detention, as you might imagine, with serious panic attacks. After a week, he and his family were released. We are still seeing people with difficulties like that.

Hindpal Singh Bhui: I would agree. A number of people are still slipping through the net. The horror stories you referred to probably include the case of the 84 year-old man who was detained in Harmondsworth some years ago. It was a disgraceful case, and he died in handcuffs eventually. We have conducted a couple of recent inspections where we have seen people we consider to be very vulnerable. At one recent inspection there was an elderly disabled couple. One of them was in a wheelchair. The other one had other concerns. Immediately on arrival in the centre they were assessed by healthcare to be unfit for detention and they were put at level 3 of the at-risk policy. They remained in detention for five days before being released. They should never have been there in the first place.

We found other cases. There is one case of a man in a wheelchair who set fire to himself. He was very disturbed and should clearly not have been in detention for any length of time. In the same centre, we also came across a blind detainee who was on an ACDT because of risk of self-harm. These men both spent more than a year in detention.

There are very definitely some very vulnerable people who are still in detention, and the process does not always work effectively at the front end. The gatekeepers who were mentioned earlier do not always manage to catch the right people. The mechanisms that are meant to safeguard people in detention are not always as effective as they should be. I imagine we will talk about rule 35 later, but that is something on which we have some evidence, too.

Dame Anne Owers: Very often, these very vulnerable people, particularly those who are mentally ill, end up in the equivalent of the segregation unit. One of our boards found that 20% of those in the segregation unit were people with mental illness. It is not just the fact that they are in detention but that they are in the deepest form of detention.

Q10 **Baroness Lawrence of Clarendon:** I wanted to ask about the monitoring of these individuals, especially the one you talked about who set fire to himself. Who monitors these individuals once they are in the detention centre? Clearly, they are vulnerable, so where is the monitoring of that?

Hindpal Singh Bhui: If you mean who has responsibility for looking after their welfare, that falls very squarely to the management of the centre. There are healthcare services in the centre. There is a manager who has a duty of care. The staff all have a duty of care. If such vulnerabilities arise and people know about them, they should be reported very quickly to the Home Office. The Home Office also has an on-site presence, so there should be staff who become aware of those people very quickly and they should be assessed for their suitability for detention. If they are found to be unfit for detention, they should be released.

Baroness Lawrence of Clarendon: If an individual had been there for a year and more, you would have thought that by then there would have been some assessment of their vulnerability, rather than them being left.

Hindpal Singh Bhui: My inference was that the system had failed in those cases.

Dame Anne Owers: Either they have been assessed and no one has taken appropriate action, or they have not been properly assessed. Either or both of those things can happen.

Baroness Lawrence of Clarendon: That does not help those individuals.

Q11 **Ms Karen Buck:** What steps should be taken in the procedure to make sure that those assessments take place?

Dame Anne Owers: It would help to have people actually in the centres. The gatekeeping facility, which is in Croydon, never sees the people involved. Bringing that decision-making as close as possible to the people who are vulnerable would help. You cannot do it on paper. It is much more difficult to do that.

It is also about what healthcare says. For the 22 year-old who Jane mentioned, healthcare knew immediately that this young man and his family should not be in detention. Immediate action should have followed. Of course, he should never have been detained in the first place.

Hindpal Singh Bhui: Part of the problem is that the safeguards that are in place consistently do not work as effectively as they should do. We mentioned the article 3 cases earlier on. In one case, someone was

subject to monthly progress reports. Mental health issues were not taken sufficiently into account. Doctors' views were not taken sufficiently into account. The rule 35 reports that were put in were not good enough and were not responded to effectively enough.

That led to an escalation of a whole range of issues. Someone was presenting with mental health problems. The mental deterioration became acute and was more rapid. That person started to self-harm and ended up being restrained to prevent self-harm. Use of force came into play and that person ended up, as Anne mentioned, in separation. If those sorts of things are not nipped in the bud early, they can lead to an escalating problem.

I mentioned earlier the responsibility of all the players in immigration detention. It is very important to make sure that managers, healthcare staff and the Home Office all work together to identify the most vulnerable people, to do quick assessments and then to go over the details very thoroughly so as not to miss out important things such as mental health issues and the opinions of doctors.

Q12 Baroness Lawrence of Clarendon: On the question of accountability, if all the staff are supposed to have responsibility for the detainee, who holds those staff to account where vulnerable adults are concerned and where things have gone wrong? Where is the accountability in the detention centre? Is there any?

Jane Leech: The Home Office has contract monitors in place who are supposed to monitor the execution of the contract. They will have a degree of accountability over the staff and the officers. Ultimately, there is, of course, the legal one. If the detainee has people supporting them, which is often the problem, these cases can be brought before the courts, but the ones that are brought before the courts are very few.

Baroness Lawrence of Clarendon: They are quite vulnerable, so they have no idea of the process and the things they need to do. For the ones who have died, there is no way in which any legal remedy can be brought for them, which seems quite a distressing thing to hear.

Hindpal Singh Bhui: An obvious answer is that part of our role is also to hold them accountable.

Baroness Lawrence of Clarendon: We should hold you accountable.

Hindpal Singh Bhui: You should also certainly point the finger at us. I totally accept that.

As for the Inspectorate of Prisons, we do in-depth inspections every two to three years. Inevitably, they are snapshots, but they go into some detail and find the kinds of cases I mentioned earlier. It is important that when we make recommendations they implement them. Part of the problem has been that we have found some concerns, we have highlighted them, and we expect centres then to implement our

recommendations. In our last annual report, we reported that only 35% or 36% of recommendations we made were fully implemented. There is a problem there.

Baroness Lawrence of Clarendon: Would you say that there is probably overcrowding or shortage of staff in these centres? Does any of that have anything to do with it?

Hindpal Singh Bhui: There is certainly no overcrowding. The number of people in detention has gone down quite markedly recently. In fact, the last centre I went to had only 80 or 90 people in it, with a capacity of well over 200.

Dame Anne Owers: Could I make a slightly broader point? You asked your last witnesses quite a lot about judicial oversight. It will perhaps not be surprising to hear from someone who has been doing oversight for rather a long time that I think that oversight, and judicial oversight in this case, makes for better decision-making. The fact that you have to be accountable to someone for the decisions you make makes for better decisions.

The backdrop to what we are talking about is the fact that, of those who have been detained, in the most recent year only 45% have been removed from the UK from detention. Only 36% of women in Yarl's Wood were removed from detention. People are being detained who are then not removed, which indicates that the decision-making, as your previous witnesses said, is not as focused on the purpose of detention as it ought to be, and it allows for detaining and re-detaining people who in the end are not removed from those centres. There is a point there.

It is also interesting to reflect upon the fact, as Hindpal said, that the numbers in detention over the last year have dropped quite dramatically. There were 36% fewer people in detention in June this year than there were in June last year. Of course, that has coincided with a great focus on detention because of the Windrush issue. The number of people in the Windrush generation who were detained is thankfully very, very few, but it focused on decision-making about detention, and the number of people in detention dropped. It is now rising again, but it dropped significantly. There is an awful lot of administrative discretion in the system, which would benefit from more oversight.

Chair: Are you saying that in a more or less arbitrary system that gives a bit of a sense that people are looking at it, so it profoundly affects the figures, but for a short period of time, and then it wears off?

Dame Anne Owers: It can do. I am just making the general point that there is an awful lot of discretion in those decisions. I would not go so far as to say that it is arbitrary, but there is an awful lot of discretion.

Chair: You think the Windrush focus is not a coincidence.

Dame Anne Owers: I would suggest that might be a reason. I do not know. I can only speculate, but it is noticeable.

Chair: It is a bit of a coincidence otherwise.

Dame Anne Owers: Yes, exactly.

Q13 **Chair:** Who should make the decision? If you think there are people in there who should not be in there, should the Home Office decision-making be improved? Should they lose the right to decide, perhaps after 48 hours, so they get to choose to detain for the first 48 hours and thereafter the decision belongs to somebody else?

Dame Anne Owers: We do not have a concluded position on that, other than to say that there is a need for more judicial oversight. I would point out to the Committee that legislation was passed in Parliament in 1999, which I remember because I was doing work on it at that stage, to say that within eight days a detainee had to be brought before a court, and at that point there was a general right to bail, unless the court had substantial evidence that the person might abscond, commit an offence or whatever. It was a very, very powerful piece of legislation. Unfortunately, it was enacted, never implemented, and since then it has been abolished. We have had parliamentary attempts to make sure there was really quite strong judicial scrutiny and not just a presumption but a right to be released, a right to liberty, unless there were substantial reasons for someone not being at liberty. I recall that as something that shows that at one point Parliament thought this was the right thing to do.

Chair: There is the difference, is there not, between judicial oversight and actual judicial decision-making?

Dame Anne Owers: There is.

Chair: I think we are talking about judicial decision-making, are we not, in individual cases?

Dame Anne Owers: The initial decision to detain would have been taken by the Home Office, but then the court would have to decide on not just a presumption but a right to be released.

Chair: The onus was different. The burden of proof was different.

Dame Anne Owers: Yes. We would make the point that some of these decisions about whether to detain, for example whether someone has been tortured, are very complex, legally and factually, and deserve to be pulled out in front of a judicial authority. They are very complex decisions to make.

Chair: Should there be a finite time? Do you think the question of the indefinite nature of the detention affects the human rights of people in the system? If so, should there be a finite period beyond which the Home Office is not allowed to detain somebody? If so, how long should it be?

Hindpal Singh Bhui: I absolutely believe that, and that is the position of the Inspectorate of Prisons. The question of a time limit has come up many times over past years. We do not have a particular position on how long that time should be, but whatever limit is decided on should take account of the evidence of the impact on detainees of prolonged detention, such as: how quickly does mental health deteriorate, how

much time has to elapse before there is no reasonable prospect of someone being removed from the country? All those sorts of considerations need to be taken into account before a time limit is decided.

Clearly, having no time limit is very punishing and very distressing for detainees. One of the most common things we hear from people we interview in detention is that the very fact that they do not know when they are going to be released is very stressful. That has a link to mental health problems. The longer that continues, the worse it becomes. There definitely should be a time limit, but we have no position on how long.

Chair: What about you, Jane? What is your observation on the impact or otherwise of the nature of the detention being indefinite?

Jane Leech: It has a very profound impact. I know that all my colleagues at other removal centres certainly agree with that. Speaking about the women I have met at Yarl's Wood, it includes low-level degrees of distress and anxiety, and this is not only a mental health thing. Of course, these stresses affect their physical health. They are not able to cook for themselves, other than in the cultural kitchen. They might choose what they want to eat perhaps once a week, but otherwise they have to have the meals they are given by the centre.

All those factors combine with the uncertainty of their immigration case—do not forget, they might be uncertain about what the outcome will be if they have appeals or judicial reviews pending, so they do not know where they might end up—and the fact that they do not know how long they are going to be there. Yes, it is very damaging.

Chair: Do you have an idea about how long the Home Office should be allowed to keep people, after which its time should be up and it should release them?

Jane Leech: We do not have a definite idea of the finite time, because there is also a concern about the possibility of very rapid removals and deportations in that time if you had too short a period. We have talked about the problems with legal representation. There is a danger that people could be removed before they have had time to sort out any representation or challenges.

Dame Anne Owers: As IMBs, we have not taken a position on a length of time, but we very strongly believe there should be a finite length of time. The indefinite nature of it makes for a huge problem.

Chair: You think that a time limit without the underpinning legal rights and challenge could mean that people were deported before the Home Office had properly considered their case.

Jane Leech: There is a risk that that might be the case.

Dame Anne Owers: There is also a risk of re-detention. Your previous witnesses talked about a cumulative time limit, but in certain European countries people were released at the time limit and re-detained afterwards. That kind of cat and mouse approach is clearly not something you would want to happen.

Chair: There could be a provision whereby the clock would start running again, but only if there was new evidence, or some such provision.

Dame Anne Owers: Exactly, such as it went to a court.

Jane Leech: It might be a flight date.

Q14 **Baroness Lawrence of Clarendon:** In part of our notes it says that the UK is the only European country that does not have a time limit, and that the EU returns directive has set a time of six months. I do not know if you all agree. Obviously you cannot agree with the fact that the UK does not have a time limit, but the EU directive has talked about a time of up to six months.

Dame Anne Owers: That is correct. I would be quite worried about something that, as your previous witnesses said, assumed that you could carry on to six months, given that most people, as you said, are released a lot earlier than that. At all points, there would need to be justification for detention and continued detention.

Hindpal Singh Bhui: It is probably worth bearing in mind that the EU returns directive has come in for a lot of criticism in those countries where it is applied. It is not just six months. It can be extended to 18 months, and that is a very, very long time to hold someone in detention.

Baroness Lawrence of Clarendon: Would you give a maximum time of what you think a detention should be? Are there any views on that?

Hindpal Singh Bhui: The Inspectorate of Prisons has no position on that. As I said before, we think that the impact on detainees of being held for extended periods should be taken into account. When a time limit is decided on, it was mentioned earlier that the family returns process is one from which we could learn, and I agree. Children and families are only held for a maximum of 72 hours, extendable to a week. It is an absolute maximum, so they cannot be detained for any longer than that, and it seems to work. Lots of people are removed without using detention, and very few families are taken into detention now through the family returns process. It is preceded by a very long process of support, assistance to families, persuasion. It seems to be very different from the process that precedes detaining adults from the community.

When we went to the family detention place, which was earlier this year, not many families were detained. Those who were there said, surprisingly, that they would rather be detained in the conditions they were in, which were very open, very decent, welfare orientated—a children's charity was involved in helping them—and have that level of support, if they had to be removed from the country, than not have it. It was very unusual to hear that. If that kind of process preceded the decision to remove someone from the country, we would be looking at a period of detention that would not need to be very long at all. Maybe it would not be as short as seven days, but it would still not be very long.

Chair: Thank you very much indeed, not only for the clarity of your evidence to us but for the good work you do in this very important area of human rights and accountability. Thank you very much.