



# HOUSES OF PARLIAMENT

## Joint Committee on Human Rights

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

Wednesday 5 December

Written evidence from witness:

- [Home Office](#)

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Baroness Hamwee; Baroness Lawrence of Clarendon; Baroness Nicholson of Winterbourne; Lord Trimble; Lord Woolf.

Questions 60–81

Witness[es]: **Rt Hon Caroline Nokes MP**, Minister of State for Immigration; **Tyson Hepple**, Director-General, Immigration Enforcement, Home Office. gave evidence.

**Q60 Chair:** Good afternoon and thank you for coming to give evidence to our inquiry. As you know, we are the Joint Committee on Human Rights, which means that we are half from the House of Lords and half from the House of Commons, and our focus is on human rights. I know that other Committees have been looking at aspects of immigration detention, which our inquiry is looking at, but we are particularly focused on the question of human rights in immigration detention. We are very grateful to you for coming along to help us with this inquiry. I would like to start off by asking Fiona to ask a question.

**Q61 Fiona Bruce:** Our first set of questions revolves around the quality of decision-making with regard to immigration detention. We have been looking at this for some time now as a Committee and it might be helpful if you, Minister, could first set out the reasons for detaining somebody.

**Caroline Nokes MP:** There may be a number of reasons for detaining an individual, and a variety of circumstances in which somebody might come to the attention of the Border Force or Immigration Enforcement. One of our main principles is that we want to uphold our immigration policy. We want to be able to remove people when they have no lawful basis for staying in the country, but there is also a public protection aspect. Particularly in the case of foreign national offenders, the detention

gatekeepers who will consider whether somebody would be suitable for detention also consider whether it is in the public interest that they should be placed in an immigration removal centre.

**Fiona Bruce:** Thank you. Do you know what proportion of people who are managed in the community abscond, compared with the proportion of people who are released from detention on immigration bail who abscond?

**Caroline Nokes MP:** I would like to be clear about the term “abscond”. When we talk about absconders, somebody might just have missed one reporting incident. I am always very concerned when discussing immigration that we do not talk in tabloid headlines. I can see that a message about absconders might be absolute manna from heaven for some headline writers. But the reality—I am not sure whether I am allowed to give our management information, because the statistics are not published, so it would require quite cautious verification—is that we think that in the region of 500 to 600 people might miss a reporting incident or otherwise abscond every month.

**Fiona Bruce:** What proportion of those would you say are on immigration bail?

**Caroline Nokes MP:** If they are reporting, they are on immigration bail of some sort or other. They are not in the detention system, and we know that 95% of all people who have no lawful basis to stay and have come to our attention are managed in the community.

**Fiona Bruce:** So you are saying that about 500 to 600 of those released on immigration bail abscond each month.

**Caroline Nokes MP:** You say “released”, but they may well never have been in detention.

Q62 **Fiona Bruce:** It might be helpful if you were able to clarify this to the Committee, perhaps by writing with some more information on those figures.

I have two further questions. First, if there is perhaps a genuine risk of absconding, why cannot electronic tagging be used?

**Caroline Nokes MP:** Electronic tagging is used in some instances. I am conscious that we need to look carefully at all the alternatives to detention. Indeed, we are doing so, and following Stephen Shaw’s review, which reported over the summer, we have launched the trial of a pilot scheme to manage in the community a group of women who would otherwise be in Yarl’s Wood. We are hoping to extend that pilot project in due course.

We do use tagging, particularly for the foreign national offender cohort, as opposed to those who are otherwise just immigration offenders. But I am very conscious that for those who are determined to evade immigration control, there is always a high incentive simply to remove the tag and disappear into the community again.

Q63 **Fiona Bruce:** Thank you. My final question gives you an opportunity to comment on the NAO report that came out today. You may want to make a general comment, but I would like to refer to just two points. One is that the report says that “compliant environment policies might have unintended or unfair consequences”, and that perhaps “The Department’s impact assessments did not analyse sufficiently the risk” of this. It also says: “Some of the Department’s processes contributed to the risk of wrongful detentions”.

**Caroline Nokes MP:** I am very keen that the Wendy Williams lessons learned review is given the opportunity to report. We are expecting that in the spring of next year. The National Audit Office report does not make happy reading; I am clear about that. It is obvious that there were failures from which we must learn the lessons and make sure that there cannot be an incident like Windrush again.

I may be too much of an optimist, but when something as horrendous as Windrush happens it is absolutely incumbent upon us to take a positive from it. If the positive that we can take from it is that we are very conscious that people who should not have been detained were detained, we absolutely have to strengthen our processes. I think the detention gatekeepers have helped, but there is certainly more work to do there. It is very much incumbent upon the Home Office to take in all the reports—the report of this Committee, that of the National Audit Office, and the Wendy Williams review—and make sure that we strengthen our processes.

**Fiona Bruce:** Thank you. I am sure that my colleagues will have further questions on that during this afternoon.

**Chair:** I am sorry, Minister, I forgot that you wanted to say a few words at the outset. Do forgive me. I forgot that I had agreed to that when I invited Fiona to put her questions.

**Caroline Nokes MP:** Chair, I am absolutely happy if we just bowl along with questions. I am sure I will manage to cover everything that I wanted to say in my opening statement during this session. As we have started, it makes sense to carry on.

**Chair:** Okay. Any time that you feel a statement coming on, warn me. If you have things you want to say that do not fall subject to our questioning, we will obviously be interested to hear them.

Q64 **Lord Trimble:** Looking at the Windrush situation, one of the factors behind the problems there was the legislation, which places an obligation on the individual to bring information to the knowledge of the officials, to supply information. That contributed to the problem, because it meant that officials did not have to bother themselves. They could always turn round and say, “Insufficient information”, and send it back. They had no obligation to think about how they help someone. Do you see what I am getting at?

Should there not be a consequent change in the law in that respect, because the law has been too kind to officials?

**Caroline Nokes MP:** I do not wish to disagree with you, but, first and foremost, a change in culture was absolutely essential.

**Lord Trimble:** But this legislation contributed to the culture.

**Caroline Nokes MP:** I absolutely take that point. I would emphasise that we have already learned the very hard way. When it comes to things like the EU settled status scheme, we, first, have the presumption that we will grant, but, secondly, we are using information that the Government already hold on individuals—whether that is HMRC records or at the DWP—and automatically crosschecking it.

I will try to speak generally, without picking out individual cases, but it is obvious to me that individuals were caught up in the Windrush scandal for whom there would have been a solid HMRC record going back over many years, I would like to say. The reality was that it was many decades. By enabling our Home Office processes to data share much better with other government departments, and deploying that via the settled status scheme and through the Windrush task force, we have seen ways in which we in government can be much more proactive in helping people. When it comes to people who have particular vulnerabilities or are in difficult situations, of course the Home Office should seek to help and not to be a faceless bureaucracy.

From my perspective, one of the hardest things was that it was really obvious that people were reluctant, for which read “scared”, to engage with the Home Office. As a Home Office Minister, it does not make you feel great that people were too anxious about their interaction with the Home Office to be happy to engage. Through the task force, we tried hard to make it much more personal and human-facing. I spend a lot of time focusing on how we can make our processes much more helpful.

**Lord Trimble:** In which case, you would be comfortable with the repeal of the legislation that I mentioned.

**Caroline Nokes MP:** My only reluctance is that, as you will understand, there is a logjam of legislation. There are some challenges to that.

**Lord Trimble:** We may find that there are other aspects of your procedures where a review of the legislation would be desirable.

**Caroline Nokes MP:** That would not surprise me.

**Chair:** Can I take you back to Fiona’s question about the quality of decision-making? You mentioned in response to David’s question the Government proactively getting information that was held elsewhere. But in the case of the two Windrush detainees that we saw—and we saw their whole Home Office files—that information was actually on the file. It was not a question of them not feeling able to engage with the Home Office. They were engaging with the Home Office, deluging it with the information that showed they had been working since the 1970s and paying national insurance.

It was actually on the file. It was not the need to get the information, it was the quality of the decision-making in deciding whether or not they were liable to be detained. Are you happy with the quality of decision-making in relation to the information that is on those files in the Home Office?

**Caroline Nokes MP:** I cannot be, and almost the hardest words for me to read in this Committee's report was that the information had been ignored. It should not be. It should never be ignored. Our decision-makers have a duty of care to those individuals to make sure that they consider every piece of evidence that has been provided.

**Q65 Baroness Lawrence of Clarendon:** On the subject of individuals finding it difficult to get in touch with the Home Office, we heard that they were contacting the Home Office but they were ignored and continued to be ignored, to the point where they were detained, and even then, with solicitors, they were still ignored. The Home Office just ignored them.

**Caroline Nokes MP:** As I said to Chair, that was a horrendous thing for me to read in your report. It was not just individuals. I am very conscious that it was their families, their lawyers, their Members of Parliament—and it was not good enough.

**Tyson Hepple:** Perhaps I could add a couple of examples of how the Home Office has changed over the past six months to allow much better-quality contact with individuals using our system. UK Visas and Immigration are introducing a customer service network at the front end when people apply, which will be used particularly in cases of people who have complex needs.

In immigration enforcement we have a network of reporting centres, and we have produced an electronic way of reporting that means that my teams now have much more time to have meaningful conversations with people who are brought into the system. There will be an induction interview of 45 minutes to an hour before someone is put on reporting, and we will have more time to talk about vulnerabilities and voluntary return. Those are examples of how the system has changed over the past six months.

**Chair:** But on the general quality of decision-making, one example we heard was the officer asking, "Which airport would you like to go back to in Jamaica?", and the detainee saying, "I don't know which airport. I don't know anything about Jamaica. I left there when I was 10". It was not that there was not enough time to talk, they were just not listening. They were going to go ahead and make these detentions.

We do not want to flip over into blaming the victim here and implying that they have to have more time with the people who are asking the questions. It is the people who are asking the questions who have to listen to the answers and read the file—unless they do something, which I will put to you later.

Q66 **Baroness Hamwee:** This rather neatly picks up what you described as wanting to be human-facing; it is about how detainees are treated at the point at which they are picked up for detention. We heard how one of the Windrush generation was taken into detention straight from reporting. She was not allowed to have her daughter with her. It was clear that she depended on her daughter. We heard from a young woman who was detained in her own home. She was manhandled downstairs. She was in her nightdress in front of her sister's young children. She was taken into detention with no toiletries with her. She was not even able to put her shoes on. Is it appropriate for detainees to be treated in this way?

**Caroline Nokes MP:** Of course it is not appropriate for people to be treated badly. We have rigorous training for all those in enforcement teams, and our new escorting contractor, Mitie, has very rigorous training processes. Everything has to be risk assessed, but it is important that we make sure not just that officers are well trained but that people are given sufficient information about how to make complaints if they do not feel that they have been well treated.

Our training programmes are accredited by the College of Policing. Our officers are required to undergo mandatory refresher training every year. That is a two-day annual course. There are occasions when use of force will be appropriate, but also occasions when it will not be. I want to make sure through both our training and our monitoring of activities that we make sure that people are treated well.

Q67 **Baroness Hamwee:** I wanted to ask about monitoring. It strikes me that these two people, and others I have met, would not have been capable of complaining, frankly, so I cannot see that it will get into the system in any easy way. Does your new contract contain provisions for monitoring?

**Caroline Nokes MP:** I might have to refer to Tyson on the escorting contract and the monitoring levels there are.

**Tyson Hepple:** The Home Office will have some of our people on each of the flights. If we are talking about people being removed from detention—

**Baroness Hamwee:** No, people who are removed from home into detention.

**Tyson Hepple:** We keep some statistics on the number of times that force is used in an arrest. In the last year, it was around 5% of times. But each situation is risk-assessed.

**Baroness Hamwee:** Are you satisfied that you understand force in the same way the escort service understands it?

**Tyson Hepple:** The training that my officers have is regulated by the College of Policing.

**Baroness Hamwee:** The young woman I mentioned was put in handcuffs. What criteria are there for the use of handcuffs? From the individual stories I have heard, I accept that sometimes people can be



obstreperous and difficult and physically resistant, but with so many of them, looking at them you would think they would be physically incapable of taking much action.

**Caroline Nokes MP:** In each case, officers will look at the individual circumstances. They will consider the safety of the person who has been arrested and indeed the safety of officers and members of the wider public. They will look at individual's levels of compliance and whether there have been previous incidents of non-compliance. They will look at the risk factors of the environment. They may well look at considerations such as whether it is a busy road and somebody might seek to run off and put themselves in danger. They will also consider things like the physique and strength factor of the arresting officer in comparison with the person being arrested. As Tyson and I have both said, the training is accredited by the College of Policing, restraint is used in only 5% of cases, and obviously we would want that to be at a minimum and only when strictly necessary.

**Baroness Lawrence of Clarendon:** It seems that the people who are put into detention are already seen as criminals, from the fact that you are putting them in handcuffs, but at the end of the day some of these people are probably just overstayers or whatever, so they are not really criminals. I associate handcuffs with criminals, whom you would need to put in handcuffs more than a young woman who you are going to escort into a van. She was handcuffed in front of a two year-old. Can you imagine the trauma for that child, seeing all that happening in front of them? They are not criminals.

**Caroline Nokes MP:** It is fair to say that some will be, and some will have a history of non-compliance. But, as Tyson indicated, restraints are used in only about 5% of cases. It is important that we balance up the risk factors.

**Q68 Baroness Lawrence of Clarendon:** My question is about lessons learned and accountability. What mechanism exists for the Home Office to review the outcomes of cases involving unlawful detention to ensure that lessons are learned and that the individual decision-makers involved are competent and able to make lawful decisions?

**Caroline Nokes MP:** A number of elements of the process have been strengthened, certainly following the initial Shaw review. One example is the detention gatekeepers, who will make the initial decision independent of caseworkers who have previously worked on someone's case. They will have to look at vulnerability as opposed to the immigration factors. The case progression panels will consider somebody who is in detention after three months. They initially look at them—Tyson may correct me on this—after a week and then a month.

**Tyson Hepple:** The gatekeeper looks at them after 24 hours.

**Caroline Nokes MP:** So there is the gatekeeper's review after 24 hours, then one week and then one month.

**Tyson Hepple:** Three weeks and one month.

**Caroline Nokes MP:** Then the case progression panels will consider cases every three months to assess vulnerabilities, progress towards removal and whether any additional or new claims have been made, such as for asylum or other forms of protection. Cases are kept under review, which enables the different parts of the organisation to see whether the original decision was the right one.

It is true that people will be released from detention for a number of reasons. We have the ability now to request immigration bail at any time and automatic bail after four months. In the new year, we will trial automatic bail after two months, because we are conscious that people's circumstances and the progress of their case may well change.

One of our big challenges is that we can take people into detention only if there is a realistic chance of removal within a reasonable timescale. I am sure you will want to dig down into that during the session. There are challenges to removal, and sometimes it is not easy to get an individual documented. Sometimes fresh or different asylum claims will be put in while an individual is in detention. We have to consider all those factors when deciding whether or not it remains reasonable to keep somebody in detention.

**Baroness Lawrence of Clarendon:** We are talking about lessons to be learned and accountability. Who ensures that lessons are learned? Has there been any discipline relating to how individuals have been treated? I have here, "Was anyone promoted?" We are talking about lessons to be learned. If somebody has been ill treated, how is that fed down into the organisation so that that mistake does not happen again?

**Caroline Nokes MP:** In considering whether people have been treated wrongly or mistreated, I can identify a number of circumstances. To focus on Windrush, the Wendy Williams lessons-learned review will be valuable to us. But, to be frank, we are not waiting for that. It is perfectly obvious that there has been a significant drop in the number of people in detention. I am convinced that a significant element of that is our gatekeeper process and the original decisions being much more cautious, having already learned from some of the terrible mistakes that were made over Windrush.

There are other incidents that it is right to highlight and identify. I point to the "Panorama" programme on Brook House last year, where we know that the contractor dismissed people as a result of some of the lessons that were learned from that. We are working very hard to embed many more Home Office staff in our detention estate and to make sure that those members of staff engage with detainees much more effectively and have more constructive conversations with them about voluntary departure. Whether it is at reporting centres or in detention, we are emphasising the need for Home Office staff to engage with detainees and to have much more constructive conversations about what the future



might hold for them. They are all important steps that we have taken prior to seeing what Wendy Williams' review comes up with.

I do not want to be trite and say that we have a journey to go on, but actually the direction of travel is already better. I am personally very pleased that we have fewer people in detention. I am pleased to see that the numbers of people leaving detention within the first month are edging up, so we are now at 64%. That is important, I think. Having spent time both with the gatekeepers and with the case progression panels quite recently, I can say that there is a real emphasis on a commitment to make sure that if we are keeping somebody in detention it is because we consider that there is a realistic chance of removal.

Watching a case progression panel last week, it was interesting to note that it reflected on whether documents had been forthcoming from embassies, whether there were realistic flight opportunities for people to depart, et cetera. Every time, the consideration is, "Is it still reasonable to keep somebody in detention?"

**Chair:** I think we have got a bit ahead of ourselves. Let us double back and go to the question of time limits.

Q69 **Ms Karen Buck:** You have just used the expression again that the Government would use detention where there is a realistic expectation that somebody will be able to be removed in a reasonable time. What is the department's working definition of "reasonable"?

**Caroline Nokes MP:** There is case law on how one should define reasonable, or indeed whether reasonable is definable in a set period of time. Lord Dyson said way back in 2002 that you cannot produce an exhaustive list of the circumstances that are or may be relevant to the question of how long somebody should be detained pending deportation. Of course we always have to weigh relevant risk factors, such as whether people have previously absconded, particularly in the case of foreign national offenders.

I am conscious that the people who are in our detention centres for the longest are invariably foreign national offenders who we are seeking to return to their country of origin and to protect the public from. So there will be different thresholds. I am conscious that we can detain pregnant women for only 72 hours, so they would be brought into detention only if a flight was booked and the paperwork was all in order and there was a confident expectation that they would be returned very quickly.

**Ms Karen Buck:** There may be some more statistics that I have not seen but that may be able to help the analysis. We have seen, as you have said, an increase in the number of people being released from detention after short periods, but there has been an increase in the number of people being held for six months plus, with a particularly sharp increase in the number of people being held for between six and 12 months, which I think has now gone up from 789 to 935.

First, is that reasonable? Secondly, can you help us to understand how reasonable it is by producing an analysis for us that shows the characteristics of that group? For example, would the Government contend that the increase in longer-term detention is because of a changing profile in the people who are being detained?

**Caroline Nokes MP:** I can certainly assert confidently that everybody who has been in detention for over a year is a foreign national offender.

**Ms Karen Buck:** Six months plus?

**Caroline Nokes MP:** I was just going to say that the vast majority—I do not have the precise stat—of those who have been in detention for between six and 12 months are also foreign national offenders.

**Ms Karen Buck:** Who have already served a sentence.

**Caroline Nokes MP:** Absolutely. We return in the region of 2,000 FNOs directly from prison under the early removal scheme every year. But there are some FNOs whom we cannot remove directly from prison. That would always be my preferred option: that they should be deported directly from prison. Those whom we cannot deport directly from prison we bring into the immigration estate, although there are 400 beds in the prison system where they may also be kept. Perhaps Tyson can add some detail on the specific numbers of detainees between six and 12 months.

**Ms Karen Buck:** And why it has risen so significantly.

**Tyson Hepple:** The vast majority are FNOs—foreign national offenders. There will be a small number of people who have claimed asylum in detention—looking at some of the case histories, some of those asylum claims were quite late on in the period of detention—or they may be people who have absconded before. But the vast majority of people who have been in detention for six months are foreign national offenders.

**Ms Karen Buck:** And who have already served a sentence—to be clear.

**Tyson Hepple:** Yes.

**Ms Karen Buck:** Are there any instances, just out of interest, where people have been detained after having served a sentence in which their period of detention is longer than the original sentence?

**Tyson Hepple:** I do not know. I would have to come back to you on that.

**Ms Karen Buck:** The number of people being returned from detention in the UK has also fallen from 64% to 45%, which is a significant fall. Perhaps you can help us to understand the characteristics of those people. Is that consistent across all periods of detention, or is it concentrated among people who are being released from detention after only a short time?

**Caroline Nokes MP:** I will have to refer to Tyson for the specifics on that. We try hard to make sure that we make the right decision, and once someone is in the detention estate they are removed as quickly as they can be.

One of the impacts of the availability of immigration bail and auto-bail at four months has been an increase in the numbers released. It is probably a good thing that we have been obliged to take a long, hard look at

people who have been in the detention estate for a long time. If there is no realistic chance of removal, they are released. I am not sure I would see that as a negative. There are some real challenges to how we encourage people—

**Ms Karen Buck:** I am not saying that I see it as a negative. I am just trying to understand it.

**Caroline Nokes MP:** I do not know whether Tyson wants to add anything on that.

**Tyson Hepple:** The higher percentage of people being released rather than returned from detention will have something to do with how we deal with people with vulnerabilities at the moment. Across immigration enforcement we are now much more alive to issues of vulnerability in the people we come into contact with.

**Ms Karen Buck:** Finally on this, can you give us an indication of when you expect the Home Office review of time limits to be completed?

**Caroline Nokes MP:** That is an internal review which the Home Secretary decided to look at some months ago now. It is an important piece of work. I am not sure whether any of you were in the Commons Chamber earlier when Tulip Siddiq had her 10-minute rule Bill looking at time limits. This is something I have a keen interest in. There are a variety of different time limits the world over. Countries look at time limits in different ways. The EU returns directive puts a six-month time limit on detention, but we know that some countries routinely extend that to 18 months, which is a long time to be in detention. Canada and Australia, for example, do not have a time limit.

What I do not want is an arbitrary time limit that would encourage and incentivise people to try to frustrate the removal process. One of the challenges that we face and that I sporadically get to see as a Minister is the number of times we have attempted to remove someone and they have physically disrupted the removal process. Another of my big frustrations is late asylum claims, either in detention or literally on the steps of the plane.

I am conscious that there are potential negatives to setting a time limit. This was something that Stephen Shaw commented on in his report and, as the Home Secretary has indicated, we are looking closely at. France has just increased its time limit from 45 to 90 days. That is three months, and we know that 91% of people in this country will have left detention within four months and nearly two-thirds within the first month.

There are some really interesting challenges to how you set a time limit and how you make sure that your systems are sufficiently robust that the time limit itself does not cause you problems and challenges or incentivises some negative behaviours, such as, "If we can detain someone for a month, let us do it anyway because it is only a month". I would much rather have a robust system that looked at whether or not there was a good chance of removing someone, that looked at their

vulnerabilities and considered their individual circumstances, rather than saying, "They will be in for only a month".

That could drive the negative behaviour that we would take the view that a month in detention is not very long. I am not saying that we would do that, but I do not want to run that risk, so we have to consider it very carefully before we go down that route. Obviously the Home Secretary has commissioned some work into that which we will look at very closely.

**Chair:** We heard from people who have been detained that, when they are taken into detention, the fact that they have no idea how long they will be there, and there is no upper time limit because detention is indefinite, has a very bad effect on them. They do not know whether they are among the two-thirds who are going to be released within a certain period of time.

That is your management and policy information, but the detainee steps into that detention centre and that detention is indefinite. They have no idea when they are going to be released. Obviously, you acknowledge that that can have a very bad effect on people. Do I take it, then, that you are pro a time limit but are trying to sort out what it should be and how it would not have downsides?

Of course, indefinite detention is not just something from this Government. I am not making a particular point about this Government, but are you thinking that there should be specific time limits and that the question is how you would ward off the downsides? You would actually like to have a time limit, in the way all other European countries have time limits; even if they are longer or shorter, the fact that there is a time limit is very important for detainees.

**Caroline Nokes MP:** Of course a detainee can apply for immigration bail at any point. A detainee can decide to return to their country of origin, which would obviously mean that their time in detention was not indefinite. My preferred option is that those who have no lawful basis for being in the UK take the option of voluntary return, which we will always assist them with. But it is fair to say that I am looking closely at the issue of time limits to understand how we can best have a detention system that is fair to those who may be detained but also upholds our immigration policies, and can act as a deterrent to those who might seek to frustrate those policies.

**Chair:** You mentioned Tulip Siddiq's Bill, which has the support of Dominic Grieve, David Davis, David Lammy, Andrew Mitchell and Dame Caroline Spelman, among others. What attitude will you be taking to that Bill?

**Caroline Nokes MP:** I was in the House to listen to Tulip's Bill. I thought she made some interesting points. As a Parliament and as a society, over the last few years we have developed a much better understanding of mental health and are trying desperately to get that parity with physical health.

I am very conscious that to deprive somebody of their liberty impacts on their mental health. We have to look closely at Tulip's Bill. You will understand, as I do, that 10-minute rule Bills seldom come into law, but it has been very helpful to me to have the cross-party nature of that Bill, in the support that she has secured from around the House, and I will certainly reflect really closely on that.

**Q70 Lord Trimble:** We came across an interesting case last week. A gentleman committed an offence, was sentenced and spent 20 months in prison. When he went into prison he was assessed and moved to an open prison, where he was released each weekend. There was no problem with him absconding, which he could have done.

Then, when he was coming to the end of his sentence—I cannot remember whether it was the day before or the day he was expecting to be freed—the Home Office turned up and he ended up spending the next two and a half years in immigration detention. It was under a more oppressive regime, because in the detention centre they had no means of assessing him. He had been category D and he found himself rated back to category A. In the prison he was clearly considered not to be appropriate for category A, but immigration detention put him in that category. It is quite a sad story, is it not?

**Caroline Nokes MP:** It is difficult for me to comment on an individual circumstance without knowing all the facts of the case.

**Lord Trimble:** You have heard enough.

**Caroline Nokes MP:** And I know enough to know that we do not have any open detention centres, so we do not have ones where people can come and go at weekends.

**Lord Trimble:** This is a person who was in prison for 20 months and released every weekend; a model prisoner by the looks of it. Why are we detaining him in the first place?

**Caroline Nokes MP:** Because we would be seeking to remove him from the country.

**Lord Trimble:** But he had been living in this country nearly all his life.

**Caroline Nokes MP:** But he was a foreign national offender, and when somebody has been sentenced to a year or more in prison we seek to remove them.

**Lord Trimble:** Irrespective of the circumstances?

**Caroline Nokes MP:** No, not irrespective of the circumstances, but the 2007 Act makes it very clear that foreign national offenders should be removed at the end of their sentence. Obviously I cannot comment on why he was not immediately removed.

**Lord Trimble:** Was he a foreign national? I do not think so.

**Caroline Nokes MP:** He must have been.

**Chair:** He has been released, because that is how he was able to come and give evidence to us. He is not detained at all now.

**Lord Trimble:** He gave us a potted history of his life. There was no indication there that he was a foreign national.

**Baroness Lawrence of Clarendon:** He left his country years before and travelled to different African countries with his parents. I think he got here at the age of 12. When he was about 16, his father threw him out with his siblings. He was trying to look after them. Eventually the siblings were taken into care because they were too young. Because of his age he was left to fend for himself. He ended up taking someone else's ID and was working. That is how he ended up in prison in the first place. He left his original country—I think it was Ghana—at the age of four and is now in his 20s. He has no relations or anybody in Ghana for him to be deported to. That is the story that we heard.

**Caroline Nokes MP:** It is really important that I do not delve too far into commenting on individual cases, but the reality is that when somebody has served a prison sentence and they are a foreign national offender, we seek to remove them.

Q71 **Lord Woolf:** Do you have any reservations about thinking that we keep too many people in detention?

**Caroline Nokes MP:** The numbers for June 2018 show a drop of 41% on the previous year. I am conscious that the direction of travel over the past few years has been to close immigration removal centres, including Haslar in Hampshire and The Verne in Dorset. In the last month I have announced my intention to close Campsfield House in Oxfordshire.

We are quite definitely detaining fewer people. I am interested to see how the pilot with the women in Yarl's Wood that we have just started progresses. We will be carrying out a number of pilots hot on the heels of that one. We will not wait for the conclusion of the first pilot before we trial various other detention-in-the-community models. I was pleased to have a number of faith and community groups come and see me a few months ago to talk about how we can best progress that. It is fair to say that it is my intention to seek to detain fewer people.

**Lord Woolf:** That does not constitute the answer to my question.

**Caroline Nokes MP:** Do I think we detain too many? I am saying that I want to detain fewer, so I think we can deduce from that that, yes, I probably do.

**Lord Woolf:** That is what I wanted to hear from you, and you have now made that clear. You have indicated some of the ways in which you are hoping to reduce numbers. You referred to training in the same way the police are trained. Do you treat somebody who may be here unlawfully as being in a similar category to the sort of person the police arrest?

**Caroline Nokes MP:** When it comes to the physical moment of arrest, it is important that we have accredited training for immigration enforcement officers who will be coming into contact with people, in the same way in



which it is really important that our escorting officers who take people on to planes for removals have proper training in how to manage individuals. It is really important that they treat them with dignity and as people. But the way we manage immigration offenders within immigration removal centres is primarily a matter for the contractors, obviously, with oversight from the Home Office to understand how they are making sure that their staff are trained.

Following the Brook House incident, there have been some good strides forward, such as increases in staffing levels and the introduction of body-worn cameras. Some of the recent independent monitoring board reports and the independent chief inspector's reports, particularly on Yarl's Wood, have indicated that there is an improved atmosphere and culture in the centres. These are not prisons; they are places where people can move freely about. We want to make sure that people have access to the facilities they need and things such as constructive activities. I have been pleased to see some of the training opportunities that are available to them.

But we are also trialling things that seemed to me really self-evident and straightforward. I am sorry if I am drifting off, but, for example, you and I might regard Skype as fairly old hat and we all use FaceTime nowadays. When I became Immigration Minister, people in immigration removal centres did not have access to Skype. I gather that the Skype trial is not going too well because they are all used to using FaceTime and are finding the technology to be old hat, but it is important that we enable people to have modern channels of communication so that their time in an immigration removal centre need not feel like—

**Lord Woolf:** Yes, what you are describing is very helpful. This all seems to be efforts to reduce the amount of people being detained.

**Caroline Nokes MP:** I have been quite open about that. We are detaining fewer people. Over the last couple of years, the detention gatekeepers' refusal rates—decisions not to take people into detention—have been running at about 20%. I want to see them making the right decisions in the first place and making sure that people's vulnerabilities are properly understood and judged against the immigration aspects of their case.

**Lord Woolf:** So your state of mind is that there is still room for improvement.

**Caroline Nokes MP:** Absolutely, and I think the Shaw re-review made it really plain that we had made progress. We had picked up his first report and made changes, and we have picked up his second report and instigated additional changes. The direction of travel is better, but I do not pretend that it is yet perfect.

**Lord Woolf:** Are there perhaps some shortcomings in the extent of overseeing the way in which people are detained?

**Caroline Nokes MP:** There are some interesting questions to do with independence among case progression panels and detention gatekeepers. I would like to see some element of independence brought into them.

One tool we have that works well is the independent monitoring boards in each immigration removal centre. The point they would always make is that the inspections happen every two years and give you a snapshot of what is going on in an IRC, whereas the independent monitoring boards are, in their words, there the whole time.

I do not know whether it is practical or feasible somehow to bring them into the case progression panels as an independent voice, but I know that one of the criticisms of those panels is that they are rather like us marking our own homework. Actually, it is about peer review and having senior officials looking at cases, but I am very open to the idea of bringing some independence into that as well.

**Lord Woolf:** So you are very keen on seeing that. What steps are you taking to bring it about?

**Caroline Nokes MP:** Tyson might like to update you on where we have got to with that.

**Tyson Hepple:** Since Stephen Shaw's report was published in July, we have been talking to a number of non-governmental organisations about this. They all support the direction of travel, obviously, but feel that if they were on the panels it would be a bit of a conflict of interest.

We have been talking to the independent monitoring boards in a similar way. We are looking to have something similar to those boards, which would have some independent people who we will employ, maybe on a voluntary basis, to attend panels and make judgments on our decisions.

**Lord Woolf:** How close is that to reality?

**Tyson Hepple:** I am hoping that it will come to fruition in the next few months.

**Q72 Chair:** Have you considered whether there should be independent decision-making? The decision to detain is a major invasion of someone's human rights—obviously you are depriving them of their liberty—but it is made by people who are all within the purview of the Home Office, or that has been the situation.

Are you looking perhaps at piloting the idea of having not just independent people in the room when the Home Office people make the decision but independent decision-making? This is because if you commit or are suspected of committing a crime, you are, of course, detained by the police, who are independent. You are then brought before a court, which is independent. People have said to us, "It's unfair. We are detained by the Home Office, which after all is driven by targets to reduce the number of immigrants to the tens of thousands"; the Home Office has a policy that is driving towards that. We heard from Lord David Blunkett on this. There is a sense that the Home Office officials, trying to be helpful, respond

to that atmosphere and the signals being sent. They are then taking the decisions about detention but are not independent.

As well as having an element of independent oversight of the decision-making, would it not be a good idea to trial independent decision-making to see whether that helped you not to detain people who really should not be detained?

**Caroline Nokes MP:** I do not want to lecture you when you all know where the statutory power to detain lies; it is vested in the immigration officer and the Secretary of State. My view is that we have made a huge stride forward with immigration bail with the ability to apply for bail at any point and the four-month automatic bail. As I said earlier, we are going to trial reducing that to two months, at which point there is judicial oversight. At the current time, I think that gives us the oversight that we require but we continue to look at it.

Q73 **Fiona Bruce:** Could you reassure us as to how you are going to look at it? The Committee is concerned that those charged with criminal offences have a right to bail within 72 hours, which is a lot sooner.

**Caroline Nokes MP:** Tyson will remind me how quickly you can apply for immigration bail, but we are certainly starting a pilot in January at the two-month point. My understanding is that when somebody comes into detention, they can apply for bail pretty much immediately.

**Tyson Hepple:** Immediately, as long as they have been in the country for eight days. Unless they have been detained at the border, most of the people we detain will qualify to apply for bail immediately.

**Fiona Bruce:** We would be interested in some more of your statistics on that, Mr Hepple. You are going to give us some statistics about what proportion of the people who are released from detention and immigration bail actually abscond. My ears pricked up a little at those figures of 500 to 600 a month. That is quite a number over a year, so we would be interested in more information about that proportion, and perhaps also what action you take. That is a whole other area.

**Tyson Hepple:** Yes, there is a lot of action we are taking.

Q74 **Fiona Bruce:** What percentage of those who apply for immigration bail—as you have said, they have the right to apply—are successful? When there are automatic immigration bail hearings after four months, what percentage of those are successful? These are figures that the Committee would like.

**Tyson Hepple:** I can answer the second question. I have the answer to the first in my pack, which I will want to find. Since the four-month auto-bail was introduced, 170 people have applied, of which 17 have been granted bail, so it is 10%.

**Chair:** Sorry, could you give us the figures again for those who were granted and refused bail, and work out the percentage for us?

**Tyson Hepple:** One hundred and seventy have applied for the four-month auto-bail, at the four-month point, of which 17 have been granted it.

**Chair:** Oh, 17. I thought you said 70.

**Caroline Nokes MP:** Between 1 April 2016 and 31 October 2018, which if I am brutally honest seems an odd period of time, there have been 25,000 immigration judge bail hearings, with just over 6,000 applications granted.

**Fiona Bruce:** Can I go back to quality assurance for a moment? One thing the Committee was concerned about with regard to the way files were dealt with was that they were really process driven. Yet I am interested to note that the National Audit Office says that your quality assurance systems do not really reflect the complexity of the processes that you have to undertake. It says that only “2% of completed cases within each immigration route” are quality assured and that it is therefore likely that the Windrush matters, which “make up a relatively small proportion of the outcomes”—it is 5.6%—could have been reviewed even less frequently. Are you going to look at this in the light of the recommendations in this report?

**Caroline Nokes MP:** In both the recommendations of today’s report and as part of the lessons learned review, there are some challenges with quality assurance that we will have to address.

**Fiona Bruce:** It is interesting, because you published a revised strategy in October 2017 and said that more could be done to focus your quality assurance approach on outcomes. What have you done since then, and what will you do differently now? Perhaps Mr Hepple could respond, because it is over a year later now.

**Tyson Hepple:** On the specific quality assurance point about case files, I will have to come back to the Committee. We have changed the way we provide quality assurance in the detention estate and manage the contractors with a more in-depth approach to assurance, as well as second-line assurance, which goes some of the way towards making the right decisions.

**Fiona Bruce:** We would be interested, because 2% is a tiny percentage of matters to be looked at. Thank you.

**Q75 Baroness Lawrence of Clarendon:** When detainees are detained, they may be given some information about the reason but not be properly advised as to why they have been detained. I presume this goes to the young lady we were talking about earlier, who was reporting every week or two and was then told that she did not need to report until six months later. Then there was a dawn raid and no explanation was given. Do detainees get a reason? Are they given something with real information about why they are being detained?

**Caroline Nokes MP:** That should not happen. Immigration officers should verbally explain to an individual why they have been detained and give them the proper reasons. Where possible, a translator should be there if required to enable them to explain that.

In addition, something called an IS91R form is given to all detainees on initial detention. On that form, it gives the reason why they have been detained. This should give the individual detainee sufficient understanding and reason if they wish to challenge their detention.

I cannot comment on that individual case, but certainly that is the process that we want to be followed.

**Baroness Lawrence of Clarendon:** Okay. Sometimes they are probably requesting the evidence. I think detainees sometimes say, "What evidence do you have for you to be able to detain us?", and they have not been given that evidence. You may collect the evidence to say why you believe they should be detained, but that explanation has not been given to the detainee themselves.

**Caroline Nokes MP:** That should not happen. The IS91R form should adequately explain to them the reasons for their detention, which should give them enough evidence if they wish to challenge it. Obviously it is regrettable if there are circumstances in which people do not feel that has been properly explained to them.

**Chair:** So the IS91R is just a tick box whereby "Grounds for detention—absconding" would get ticked. It is supposedly "a properly evidenced and fully justified explanation of the reasoning behind the decision to detain" and should be placed on the file. Why are they not given the justification for what is written on the IS91R or, as Doreen was saying, the evidence?

**Caroline Nokes MP:** If the evidence means more details from their file—

**Chair:** If the grounds are "You're going to abscond", do they just tick the box? We saw those forms from the Windrush detainees who came to give evidence to us, and there was literally just a tick in the box. They were not given the properly evidenced and full justification that is supposed to be placed on the file.

**Caroline Nokes MP:** I will have to refer to Tyson to understand how much access people have to their files.

**Chair:** I do not mean access but something given automatically to them when they arrive saying, "This is why we think you're at risk of absconding, because you've lived in 15 different places", or "You've lied and refused to report", or, "You've got aliases". That is the evidence behind the reason.

**Tyson Hepple:** That should be part of the interaction that my officers have with the person they are looking to arrest and potentially detain. The gatekeeper will have more information about the individual circumstances. Then, when somebody is in detention, they are able to ask for legal aid at a legal aid surgery. We also have more Home Office people in the detention estate who can at that point start to explain to people why—

**Chair:** Should they not automatically be given the evidence that justifies the decision that they are an abscond risk, rather than having interaction or, further on down the line, hoping for a legal aid appointment? Why are they not just given it so that the Home Office is clear that this is why? Then they could know whether they want to challenge it and see whether it is accurate.

**Tyson Hepple:** My expectation is that that should be explained, but I am happy to look at whether we need to make a change in the process. We will encounter some people who we were not planning to encounter. For example, if we visit a restaurant, they may also be on the premises and be here illegally. We will not necessarily know the background to their case, but we probably can improve that for the planned operations.

Q76 **Baroness Lawrence of Clarendon:** As a follow-up, you talked about detainees having access to legal advice. One thing we were told is that you may have over 300 detainees and one solicitor coming in. She or he may have only a couple of hours. There is no way that person can get to see everybody to help to facilitate whether they can get bail or have legal advice. There are not enough of those lawyers, because they have been given only a certain amount of time. They probably come for two or three days a week and are not able to see everybody, so there is a conflict there. Detainees do not really have easy access if they want to apply for bail, or apply about their case, because there are not enough solicitors available to help to support them.

**Caroline Nokes MP:** We have a relatively new contract with regard to legal access for detainees. But everybody should get the opportunity to have 30 minutes with a solicitor very soon after they have been detained; Tyson may have to remind me how quickly.

I saw some of the evidence that you received from solicitors, who made the point that there was a vast expansion of the numbers of them who are now able to go into immigration removal centres. In many ways, that cuts both ways: we want there to be a good number of solicitors who offer the service, but they made the point, and there probably is some validity to it, that it might now mean that each firm goes in only very rarely and that there is therefore almost a lack of continuity.

The legal aid review is ongoing. That is a Ministry of Justice lead, so I cannot comment on access to legal aid at the moment, but I am conscious that there is access to legal materials in IRCs. There is access to telephones and to the internet, but I have heard the criticism that there is not enough access or free advice from the initial encounter. Tyson, do you want to add anything?

**Tyson Hepple:** All I would add is that when somebody is inducted into an immigration removal centre, they will be told about their rights with regard to legal aid. Those will also be explained to them when a member of the Home Office team meets them within 48 hours, and they will be



handed a bail form, should they want to fill one in. That is in addition to legal aid and the solicitors' point.

**Q77 Baroness Hamwee:** To pursue that for one moment, you may also have read the comment that the 30 minutes gets eaten into: the detainee has to be fetched to the room where the solicitor is, the files have to be brought and all that sort of thing, so 30 minutes becomes considerably less. I make that comment, because it seems to fit with your observation.

I want to turn to adults at risk—vulnerable people. First, I have a question about the data. How many rule 35 reports were made in the year ending June 2018, and how many of these led to release? I hope we have picked a time period that fits what you have in front of you.

**Caroline Nokes MP:** The number of rule 35 reports made by a medical practitioner to the Home Office has decreased. In quarter two of 2018, there were 600 rule 35 reports, and in quarter three that had reduced to 528. The number of rule 35 reports relating to those deemed a suicide risk increased from zero to five in the same period. What I do not have in front of me are the outcomes of those rule 35 reports. I am not sure whether Tyson has that information.

**Tyson Hepple:** I do not, I am afraid.

**Baroness Hamwee:** I wonder whether you would be able to—

**Caroline Nokes MP:** Yes, we can certainly write to you about that.

**Baroness Hamwee:** A witness we encountered last week did not talk about this, but it was in the report that the Committee had. The medical practitioner reported burn marks and scars of abuse, and said that the individual was "struggling with detention as it is intensifying her flashbacks from past tortures". This was through Freedom from Torture, a respected organisation. The Home Office responded: "It is not accepted that the medical report is independent evidence of torture. The evidence before the medical practitioner was only your own account and observation of the physical injuries and your demeanour." When I read that, I wondered what other evidence there could be.

**Caroline Nokes MP:** While I cannot comment on individual cases, when it comes to adults at risk and rule 35, it is important that, in the words of Shaw, we regard that policy as a work in progress. "Adults at risk" is better than what it replaced but is not yet perfect, and we have to continue to work on it.

I know one criticism of it is that there is not enough differentiation in level 2. I am certainly keen to hear from NGOs, this Committee and other organisations as to how we can improve "adults at risk" to hone it and better differentiate level 2. From my observations of the case progression panels that I sat in on, the adults at risk information is taken very

seriously by those panels when they consider whether somebody is suitable to remain in detention.

While I would obviously not expect doctors to make judgments on people's immigration status, equally I would expect detention gatekeepers, caseworkers and staff embedded in IRCs to take the medical evidence from the medical practitioner and accept it, not challenge it. They are the experts. Currently, the rule 35 reports come from GPs, and I am quite interested in having scope for widening the number of health professionals who can provide those reports. For example, it strikes me as slightly odd that it can come from a GP but not from a psychiatrist. Perhaps there is real value in expanding the range of medical professionals who can make those reports.

**Chair:** If you are sitting in on a meeting considering a rule 35 report, we would expect the panel to take it very seriously. We would be very surprised indeed if you were to say anything other than that they considered it very seriously with you in the room. It is the ones where you are not in the room that we are concerned about, so I am a bit surprised that you do not know the data on the responses. Sally has put one case to you, where the response was, "Well, there's only the scarring, your own account and your demeanour, and we don't accept it". Do you have no idea how many are accepted and how many are just binned?

**Tyson Hepple:** I do not know when this case was from.

**Chair:** No. We are asking, in relation to these rule 35 reports, whether you have any idea how many are accepted and how many are rejected in the way we heard this one was.

**Tyson Hepple:** I do not have that figure with me at the moment. I apologise.

**Chair:** How do you know how the system is working if you have no idea what happens after the report has been made?

**Tyson Hepple:** I will have the information somewhere here. I need to find it for the Committee.

**Chair:** If you find it before the end of the session, let us know.

Q78 **Baroness Hamwee:** I move on to mental capacity. There has recently been litigation, with the courts finding that the system does not make adequate provision for individuals who lack capacity. What changes have you made, or have in mind, following that?

**Caroline Nokes MP:** I am obviously conscious of the Court of Appeal ruling. We are currently working with the Ministry of Justice on how to best address this. I am sorry that I cannot give you more information at the moment, but once we have formulated the way forward with the MoJ, I will certainly be happy to write to the Committee.

**Baroness Hamwee:** Do you have a timescale for that piece of work, and what are you doing in the interim? After all, the individuals are still caught up in the system.

**Caroline Nokes MP:** They are indeed. The adults at risk policy reflects upon and adds to the list of vulnerable characteristics those who might suffer from mental illness, which would include those who lack mental capacity. I am sorry, but I cannot give you a timescale at the moment. I have been criticised in the past for reacting too quickly to court judgments, so I will make that an absolute priority.

**Baroness Hamwee:** I am not asking for a knee-jerk reaction. There are medical staff involved who are obviously healthcare professionals, and there are the non-professional staff working in immigration removal centres. Does their training involve how to identify issues of capacity?

**Caroline Nokes MP:** All staff working in IRCs will be trained to consider elements of vulnerability. I would expect them all to be able to feed in to Home Office staff, and centre managers, concerns about individuals' mental well-being, mental capacity and any other type of vulnerability.

**Baroness Hamwee:** Is this part of the training, parallel to the training for staff involved in removals? Is it part of the contract with private providers?

**Tyson Hepple:** The Home Office detention engagement team, who are the new people we have put into the detention estate, will be trained on these issues of well-being and safeguarding.

Q79 **Ms Karen Buck:** Minister, you referred earlier to the Brook House case. That investigation was fairly damning about what happened and the lack of oversight. Can you tell us what the Home Office, having looked into the management record of Brook House, knew about the reports of the problems that were identified in the independent investigation?

**Caroline Nokes MP:** Post the "Panorama" programme, we certainly did not wait for the Lampard report. I am conscious that immediate steps were taken by the provider to deal with staffing issues and to make changes. I think I highlighted some of them earlier, such as the introduction of body-worn cameras. Following the second Shaw report we have made significant changes in Brook House, including the removal of the third bunks in rooms that were designed for only two individuals.

I am conscious that there are ongoing legal proceedings around this which might make it difficult for me to comment. But we have seen the steps that the Home Office has taken, quite apart from the contractor, to embed immigration staff within our removal centres. This is being rolled out across every centre; they are already in Brook House, Tinsley House, Harmondsworth and Colnbrook—to make sure that there are better channels of communication and more constructive conversations with detainees. There is a real determination to build relationships with them and to understand how we can best work with them, either to effect removal or to make sure that their protection claims are being assessed rapidly.

Nobody can be happy about what happened at Brook House. It was appalling, and following the immediate actions taken and the ongoing ones it is really important that we embed a culture among our staff, and among the removal centre or contractor's staff, so that they treat people with dignity and respect at all times.

**Ms Karen Buck:** Indeed, but is it not deeply depressing that it takes undercover reporting of this kind to reveal the conditions? It is not an isolated example. Does it concern you that the contract management in these institutions is so weak that it takes that kind of exposé to bring these conditions to light?

**Caroline Nokes MP:** You used the word "depressing". I would say appalling.

**Ms Karen Buck:** We can have a battle over the words.

**Caroline Nokes MP:** We could probably keep going for hours, could we not? We have done more to strengthen the oversight of those contracts and will continue to do more. The Brook House contract is to be re-let, I was going to say "shortly", but the new contract will be in place by spring 2020. These procurement processes take an inordinately long time and have to be done through the appropriate procurement rules. But there is a real determination across the estate to improve conditions and make sure that staff, both our own and contractors', are treating people properly.

**Ms Karen Buck:** Why do you think that contractors do not understand that at the beginning of the contract process?

**Caroline Nokes MP:** I think they do. Clearly, there were significant failings at Brook House. I am conscious that contractors have been involved in our immigration removal estate for a very long time—since, I think, the 1990s. We also have some immigration detention spaces in the prison system.

When you look at what happened in Brook House, it is a depressing picture. However, we have the oversight of the independent monitoring boards, which do fantastic work on our behalf. I cannot pay tribute to them enough. Whenever I have met members and chairs of independent monitoring boards, I have been really impressed by their commitment to making sure that standards are upheld, and to making themselves accessible to detainees, but there is always more to be done.

**Q80 Baroness Hamwee:** I have one question about the re-letting of the contract. Three of us—not quite three of this Committee but, quite separately, three cross-party—met your predecessor shortly after that programme. I asked him why the contract had not been terminated and he made a point that, frankly, had not crossed my mind: that the people who would be at Brook House as staff were likely to be the same people who were there at the time, apart from the individuals who were fingered, as it were. What were you able to do about that? The recruitment of staff is obviously an issue.

**Caroline Nokes MP:** We have immigration removal centres up and down the country, and the recruitment of staff is more of an issue for some areas than others. But yes, of course, we know that under TUPE rules they would be TUPE-ed across to a new contractor. What is imperative is that a member of staff who has treated somebody improperly goes through the proper disciplinary channels and is potentially dismissed. That happened at Brook House, and I am relieved that it did.

**Chair:** Did that happen in relation to any of the Windrush cases, where clearly wrong decisions were made that caused perfectly innocent people to lose their liberty? Was there any disciplinary action in relation to any staff?

**Caroline Nokes MP:** You will be conscious that one member of staff has left the Home Office, but the lessons learned review may well indicate additional concerns.

**Chair:** Might it deal with disciplinary action against individuals involved in those cases?

**Caroline Nokes MP:** I cannot comment on that without having seen the lessons learned review, which is ongoing, but that is perfectly feasible.

**Chair:** But do you not think that odd? We were told that these were mistakes that were made on these files. I do not think we entirely accepted that; it seemed to us that the system just required these boxes to be ticked. Normally in an organisation, if there are mistakes involving such a serious thing as the deprivation of somebody's liberty you would expect some action, whether that is retraining, extra supervision or some sort of disciplinary action. But there was none at all.

Does it not make you feel a bit nervous as a Minister that we are told that mistakes were made, yet the department in which they were made has taken no action in relation to those individuals? How can you ever improve a system if there is impunity where you have mistakes?

**Caroline Nokes MP:** As you will know, Wendy Williams has all the case files. I am looking forward to what she discovers in her review. I am conscious that she—

**Chair:** So is disciplinary action within her remit?

**Caroline Nokes MP:** She is meticulously interviewing staff members and former Ministers to ascertain exactly what has happened.

**Chair:** So disciplinary action might follow from that.

**Caroline Nokes MP:** I cannot pass comment at the moment, but it is really important that she is doing that as rigorously as she is.

Q81 **Chair:** There is the potential for nearly 4 million EU citizens who are here to apply for registration. Bearing in mind that we have been focusing on detention as a very serious deprivation of human rights, are you confident that the quality and independence of decision-making, and the quality and availability of legal advice, will all be in place so that we do not have a Windrush situation with EU citizens but on a much bigger scale?

**Caroline Nokes MP:** I spend a lot of my time at different Select Committees talking about this, as you might expect. I am conscious that one of the challenges with Windrush, from my observation, was the loss of institutional memory and the number of people who were simply not aware of the Immigration Act 1971, which came into force in 1973 with the deemed leave provision.

We cannot afford for that to happen again, and I am conscious that there are children who will potentially live to 120 and who will go through the EU settled status scheme in the next few months. We therefore have to make sure that this is absolutely robust, because if we had lost institutional memory over 40 years, we sure as hell could do so over three times that number of years.

We have to make this robust, and as you will know we are currently in phase 2 of the private beta testing of the settled status scheme. I am a bit prone to touching wood at this point and saying that so far it is going very well, but the point of testing is that we have to give it the challenge that it needs. We have to look at the way decisions are made, how quickly and efficiently people are granted status and how they will evidence that status going forward.

I regret that I do not have the precise figures with me, but in the first phase of beta testing we had in the region of 1,000 people go through, the vast bulk of whom achieved their status quickly and efficiently. For those who did not achieve settled status, it was because they had not been here for the five years. So they got pre-settled status and will be upgraded to settled status once they have reached the five-year point.

I do not underestimate the scale of this challenge. It is enormous, which is why we did a tightly controlled test cohort in the first phase. The second phase is much wider and brings in employees from NHS trusts and universities across the whole country, making sure that we bring in that challenge from working with the devolved Administrations.

Over the last couple of weeks, we have also introduced the first cohort of vulnerable people who are being helped through the process. Back in October, I announced the £9 million-worth of funding that will go to community groups and charities to help vulnerable people through the process. I am acutely aware that this has to work, which is why we are doing very robust testing, and it has to be ready and available widely by exit day on 29 March.

**Chair:** Thank you very much indeed, Minister and Mr Hepple. We will write to you with some further requests for information and look forward to receiving your replies.

**Caroline Nokes MP:** Thank you.