

Written Evidence submitted by Medical Justice (COR0013)

About Medical Justice

1. Medical Justice has been helping people held under immigration powers to document their scars of torture and challenge instances of inadequate health care since 2005. We work with over 80 volunteer clinicians and 100 volunteer interpreters, and handle between 700 and 1,000 referrals per year.
2. As well as our work with individual detainees, Medical Justice also undertakes research, advocacy and litigation on immigration detention policy to bring about wider systemic change.

Summary

3. An immigration detainee has already tested positive for COVID-19 at Yarl's Wood Immigration Removal Centre (IRC). IRCs are high risk for clusters of COVID-19, and staff provide a conduit for infection to and from the community. The response to COVID-19 within IRCs has already been problematic. It is widely acknowledged that even at the best of times, healthcare in IRCs is entirely inadequate and that detention can exacerbate existing medical conditions. Many detainees are especially vulnerable due to their co-existing physical illnesses.

Recommendations

4. **The Home Office should release all those held under immigration powers in prisons and close all IRCs with immediate effect.**
5. **Failing that, the Home Office should:**
 - a) Immediately cease receiving new detainees into IRCs and stop all transfers between IRCs
 - b) Make urgent arrangements to release all detainees held under immigration powers in IRCs and prisons within the next few days.
 - c) Provide anyone who lacks an appropriate release address with appropriate alternative accommodation so that they can self-isolate, and financial support, regardless of immigration status.
 - d) Once IRCs are closed, healthcare staff and resources at the centres should be redeployed to assist the mainstream NHS.

Detailed evidence

Immigration detention is not safe in normal circumstances

6. Immigration detention is damaging to the mental health of those detained.¹
7. Medical Justice has demonstrated how people's health and wellbeing is placed at risk by an ineffective detention gatekeeper function as well as the failure of vital safeguards and inadequate healthcare in detention.²
8. Inquests have found that neglect contributed to deaths in detention and the courts have found 'inhuman and degrading treatment' in breach of article 3 of the European Convention on Human Rights.

Certain features of immigration detention make it particularly dangerous during a pandemic

9. Shared spaces³

- i. IRCs house large numbers of people in a confined space
- ii. Detainees usually share cells (two to a cell)
- iii. Detainees share bathrooms
- iv. Detainees share eating and recreational spaces, including canteens, TV rooms and outdoor areas.

10. Poor hygiene standards and cleaning regimes

- i. Poor hygiene standards and cleaning regimes have been found repeatedly during inspections and reviews of IRCs in recent years.⁴

¹ Mary Bosworth, 'The impact of immigration detention on mental health: A literature review' in Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons* (Home Office 2016) 305-306. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

² See Medical Justice, *Putting Adults at Risk: A Guide to Understanding the Home Office's "Adults at Risk" Policy and its History* (Medical Justice 2017). Available at: <http://www.medicaljustice.org.uk/wp-content/uploads/2018/09/Putting-Adults-at-Risk-CONCISE-WEB.pdf>. For further discussion about the detention gatekeeper function see Shaw, *ibid* 74-78.

³ For a detailed expert analysis of the conditions inside of IRCs which may potentially contribute to the spread of COVID-19 see Richard Coker, *Report on Coronavirus and Immigration Detention* (Detention Action 2020); and *Supplementary Report on Coronavirus and Immigration Detention* (Detention Action 2020). Available at: <https://detentionaction.org.uk/wp-content/uploads/2020/03/Report-on-Detention-and-COVID-Final-1.pdf> and <https://detentionaction.org.uk/wp-content/uploads/2020/03/Supplementary-report-on-COV-and-Detention-Final-1.pdf>

⁴ See for example: HM Chief Inspector of Prisons, *Unannounced Inspection Colnbrook Immigration Removal Centre (19 November – 7 December 2018)* (HMIP 2019), 20. This found inadequate hygiene and filthy toilets. Available at <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2019/04/Colnbrook-web-2018.pdf>; Kate Lampard and Ed Marsden, *Independent Investigation into Concerns about Brook House Immigration Removal Centre* (G4S plc 2018), 14 and 16. The found an unacceptable standard of cleaning and overcrowding. Available at: <https://www.g4s.com/en-gb/-/media/g4s/unitedkingdom/files/brook->

- ii. Cleaning at IRCs is mostly conducted by detainees, rather than trained professionals. In the current circumstances, such an arrangement may not be sufficient.
- iii. We are not aware of any additional cleaning products or personal protection equipment being made available at IRCs to facilitate an increased cleaning of facilities.
- iv. Poor ventilation has been reported in many of the centres.

11. Staff as a conduit for infection

- i. The arrival and departure of IRC staff members, including those working in healthcare, provides a conduit for infection to/from the communities in which centres are situated and those held in IRCs.

12. Inadequate isolation facilities

- i. There are a limited number of single-person isolation rooms available at each IRC.
- ii. Once these are filled, the approach as set out in Public Health England's policy dated 16 March 2020, is to 'cohort' detainees.⁵ This involves placing all detainee with symptoms into the same wing of the centre without testing. The absence of testing introduces the possibility of detainees who are symptomatic but are not positive for COVID-19 being isolated with those who are positive – thus increasing the risk of exposing already ill detainees to additional infection with COVID-19.

13. Difficulty of consistently practicing self-distancing and isolation

- i. The aspects listed above make it impossible for detainees and staff to consistently practice social-distancing and isolation in an IRC,⁶ as now required by the government.
- ii. There are now reports from detainees being held in IRCs, in particular Brook House, that detainees are being locked in their rooms and being brought food. This obviously increases self-distancing but may constitute a breach of human right for a population that are not held as part of criminal sentence and should be held in humane conditions with as much freedom of movement and association as possible⁷. This

[house/brook house kate lampard report november 2018.ashx?la=en&hash=42B2E56AD3E9946AC659516AB1D6D919](https://www.gov.uk/government/publications/welfare-in-detention-of-vulnerable-persons-review-progress-report); and Stephen Shaw, *Welfare in detention of vulnerable persons review: progress report* (Home Office, 2018), 69. This found poor awareness of basic hygiene and cleaning regimes at IRCs, and delivery of care in sometimes insanitary and unsuitable conditions. Available at: <https://www.gov.uk/government/publications/welfare-in-detention-of-vulnerable-persons-review-progress-report>

⁵ *COVID-19: prisons and other prescribed places of detention guidance* (Ministry of Justice and Public Health England 2020). Available at: <https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

⁶ Hilary G Pickles, Mary Kamara, Teresa Wozniak, 'Re: Covid-19: control measures must be equitable and inclusive. Covid-19 should trigger release of detainees from Immigration Removal Centres', *BMJ* 2020: 368. Available at: <https://www.bmj.com/content/368/bmj.m1141/rr-3>

⁷ The Detention Centre Rules 2001, SI 2001/238, s 3 (1). Available at: <http://www.legislation.gov.uk/uksi/2001/238/article/3/made>

is particularly concerning in light of the fact that, as outlined in Professor Richard Coker's recent report on Coronavirus and immigration detention, there is no evidence that these measures would prove effective in preventing the virus' spread and indeed the evidence from cruise ships is that it may well not work.⁸

14. Health needs of detainees

- i. Many detainees in IRCs have ongoing and complex health needs. This includes detainees with underlying conditions which put them at risk of severe illness of COVID-19.⁹
- ii. IRCs host a population with high proportion of pre-existing mental health conditions. In addition immigration detention has been shown to be damaging to the mental health of those detained.¹⁰ Concern about COVID-19, both for detainees and for their family and friends on the outside whom they are powerless to help, will lead to increased stress and anxiety for all and in particular for those with pre-existing mental health issues. Observing the deteriorating mental health of cellmates and others in the centre may add to the stress. The sorts of steps reportedly taken in IRCs, e.g. restricting detainees to their cells, may contribute to anxiety and further deterioration in mental health, especially in the absence of clear news about what is going on.

15. Inadequate mechanisms for identifying vulnerable people

- i. The inadequacies of the Home Office's Adults at Risk policy in identifying vulnerable individuals has been well documented, including in the Home Affairs Committee's 2019 report on Immigration Detention.¹¹
- ii. One of the failings highlighted was the lack of a dedicated mechanism for bringing vulnerabilities, other than those resulting from previous torture, to the attention of the Home Office. This includes mental and physical vulnerabilities that are not considered to meet the threshold of a Rule 35 (1) report.
- iii. Amongst these are the underlying conditions which put people at risk of severe illness from COVID-19.¹² We are therefore concerned that the Home Office has no effective mechanism to assess which people

⁸ Coker, *ibid*, 16.

⁹ These underlying conditions are set out in *Guidance on social distancing for everyone in the UK* (Public Health England 2020). Available at <https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults>

¹⁰ Bosworth, *ibid*.

¹¹ Home Affairs Committee, *Report on Immigration Detention* (House of Common 2019), 35-55. Available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

¹² These underlying conditions are set out in *Guidance on social distancing for everyone in the UK* (Public Health England 2020). Available at <https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults>

held at IRCs may be at increased risk from COVID-19.

16. Poor standards of healthcare

- i. Medical Justice and others regularly document poor standards of healthcare. Inadequate healthcare in detention was also highlighted by the joint APPG Migration/Refugee inquiry,¹³ by the Shaw review and is often raised at inquests following a death in detention.
- ii. Detainees report many problems, including long waiting times, brief assessments, rude and dismissive staff, disruption of medication and treatment, not being taken to hospital appointments due to shortages in staff and escorts, failure to ensure continuity of care upon release etc.
- iii. The above calls into question IRCs' ability to care for detainees and put healthcare policies into practice.

Given these dangers, Home Office response has been wholly inadequate, putting detainees and staff at unnecessary additional risk

17. Response too slow

- i. It was clear from the very start of the COVID-19 crisis that IRCs would be high-risk environments. However, guidance for IRCs was only published by the Ministry of Justice and Public Health England on 16 March 2020.¹⁴

18. Response unclear

- i. We would have expected the Home Office to take clearly stated steps to:
 - a) End any new admissions to IRCs
 - b) End transfers between IRCs
 - c) End non-essential visits to IRCs
 - d) Systematic approach to identifying anyone with an underlying health condition that puts them at risk of severe illness from Coronavirus.
 - e) Robust planning for isolation of anyone symptomatic and adequate facilities for social distancing and isolation.
 - f) Release anyone without reasonable prospect of removal and anyone vulnerable to severe illness.
 - g) Release all detainees and close IRCs
- ii. It is not clear how many, if any, of these steps have been taken:
 - a) We are aware of more detailed Home Office policies relating

¹³ *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* (All-Party Parliamentary Groups on Migration and Refugees 2015). Available at:

<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁴ *COVID-19: prisons and other prescribed places of detention guidance* (Ministry of Justice and Public Health England 2020). Available at: <https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

to dealing with those held in IRCs that have been disclosed in response to an ongoing legal challenge by Detention Action.¹⁵ These policies are not in the public domain; however we consider them too to be inadequate. We urge the Committee contact the Home Office for further information about this.

- b) Anecdotal evidence suggests that new detainees are still arriving in at least one centre (Brook House) and that these are individuals who have been held in under immigration powers in prisons and are being moved to IRCs.
- c) All visits, including independent doctors and legal representatives, were stopped as of Tuesday 24 March 2020. This severely restricts the access to assistance and justice for those who remain in IRCs.
- d) There has been no public announcement of a systematic approach to identifying anyone with an underlying health condition that puts them at risk of severe illness from Coronavirus.
- e) Inadequate planning/facilities for social distancing and isolation (see paras 5(a)-(d)).
- f) There are reports from at least one centre (Brook House) that detainees are being locked in their cells. Phone reception at Brook House is notoriously poor, particularly in detainees' cells. We have been experiencing problems getting in touch with detainees and we are concerned that this situation compromises detainees' ability to exercise their right to a second medical opinion and to access legal advice.
- g) As of Friday 20 March 2020, the Home Office had released approximately 300 detainees.¹⁶ More releases may have been made on Tuesday 24 March 2020 but this has not been officially confirmed by the Home Office. It is not clear, however, on what basis the Home Office is making its decisions to release detainees. We are aware of clients, for example, whose health conditions mean they are vulnerable to severe illness from Coronavirus but remain in detention.
- h) The steps that have been taken have come too late, as there is already a confirmed case of COVID-19 at Yarl's Wood IRC,¹⁷ and another reported at Harmondsworth IRC. There are likely to be other unidentified cases. The Home Office must

¹⁵ For information about the legal challenge, see 'High Court orders government to respond urgently to COVID-19 immigration detention legal challenge' (Detention Action, 20 March 2020). Available at: <https://detentionaction.org.uk/2020/03/20/high-court-orders-government-to-respond-urgently-to-covid-19-immigration-detention-legal-challenge/>

¹⁶ Diane Taylor, 'Home Office releases 300 from detention centres amid Covid-19 pandemic' *The Guardian* (London 21 March 2020). Available at: <https://www.theguardian.com/uk-news/2020/mar/21/home-office-releases-300-from-detention-centres-amid-covid-19-pandemic>

¹⁷ May Bulman, 'Woman in Yarl's Wood tests positive for coronavirus in first confirmed case in UK removal centre', *Independent* (London 23 March 2020). Available at: <https://www.independent.co.uk/news/uk/home-news/coronavirus-yarls-wood-immigration-detention-removal-centre-home-office-a9417056.html>

therefore act swiftly now to release all remaining detainees and close IRCs.

19. Response not tailored to specific context of immigration detention

- i. As noted above at para 6(a)(i), guidance for IRCs was published by the Ministry of Justice and Public Health England on 16 March 2020.¹⁸
- ii. Importantly, this document does not recognise the key difference between those held under immigration powers and those serving criminal sentences, namely that the decision to detain someone under immigration powers is discretionary, and is a power that officials can choose not to exercise.
- iii. By failing to recognise this key difference, the guidance fails to address the most pressing issue of whether there is justifiable reason for holding people in detention under the circumstances.

20. Lack of communication about response

- i. It appears that little information about the Coronavirus response in IRCs has been provided to detainees by the Home Office. We have seen that this is causing considerable anxiety and panic amongst our own clients.
- ii. On 11 March 2020, ten organizations working with those affected by immigration detention sent a letter to the Home Office raising our concern at their handling of Coronavirus in immigration detention, and requesting that they release all detainees in order to prevent an uncontrolled outbreak inside of an IRC. We have yet to receive an answer to this letter.
- iii. As noted at para 6(b)(ii)(1), we are aware that Home Office has shared additional information about its approach in IRCs with Detention Action. However, the information has been disclosed in the context of a legal challenge and is therefore only available to those involved in the case. In a crisis such as this, information is vital and should be made as widely available as possible, with or without litigation.
- iv. It is worth noting that had the Home Office been more transparent about their approach from the start, costly litigation could have been avoided.

21. Detainees and staff put at unnecessary additional risk

- i. In our view, the inadequacies of the Home Office's response listed above have put detainees and staff at unnecessary additional risk during this crisis.

Other important points to note

¹⁸ *COVID-19: prisons and other prescribed places of detention guidance* (Ministry of Justice and Public Health England 2020). Available at: <https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

22. Lawfulness of detention

- i. For detention to be lawful, there must be an imminent prospect of removal. In the current circumstances, the prospect for removal is now effectively zero in most cases due to:
 - a) The closing of many international borders.
 - b) Even in cases where borders remain open, the considerable risks involved in putting someone who has been in an IRC (i.e. a potential hub for infection) onto a flight. These include risks to the detainee's health (e.g. if they become symptomatic during the flight), and the risk of transmission to/from escorts (who will be spend many hours in close contact with the detainee) and to/from other passengers on flight. It is worth noting that the risks increase for long-haul flights, due to the longer period of time spent on the aircraft.
- ii. The extent to which a detainee can access legal representation and advice also affects the lawfulness of immigration detention. We are aware that legal surgeries for detainees in IRCs have now been suspended, and legally-focused NGOs such as Bail for Immigration Detainees have announced they are no longer sending representatives into IRCs. Medical Justice has been unable to visit detainees for medical assessments since Tuesday 24 March 2020 but we continue to provide urgent telephone assessments where possible. All these developments are limiting detainees' ability to effectively challenge their detention, potentially rendering it unlawful.

23. Accommodation

- i. In the inquiry's oral evidence session held on 18 March 2020, a representative from the Immigration Services Union suggested that where detainees do not have release addresses, it may be preferable to continue holding them in IRCs.
- ii. It is important to note that the law does not allow for individuals without a reasonable prospect of removal to be detained simply for their own protection e.g. because they do not have accommodation. Equally, however, it is clearly not desirable to release detainees to destitution and homelessness, particularly in the current crisis.
- iii. Therefore, the Home Office should be providing appropriate alternative accommodation and financial support to those who do not have an appropriate release address or face destitution. They should be released from detention as a matter of urgency. This should apply, regardless of immigration status, in order to enable them to comply with social distancing and isolation requirements.
- iv. The announcement by the Mayor of London that 300 rooms will be

(COR0013)

made available to rough sleepers in the city in order for them to self-isolate provides a useful example of how such situations can be responded to effectively.

March 2020