

# **Written evidence from Detention Action (COV0218)**

## **Introduction**

1. Detention Action is a charity that seeks to defend the rights and improve the welfare of people in immigration detention by combining support for individuals with campaigning for policy change. We work with around 1000 individuals held in detention each year.
2. Given our remit and area of expertise, we are specifically addressing the question of how the Home Office has responded to COVID-19 in the context of immigration detention, how it has failed to protect the human rights of individuals in detention during the pandemic, and how this has led to those at risk of immigration detention being disproportionately affected by COVID-19.

## **COVID-19 risks within IRCs**

3. In the early stages of the COVID-19 restrictions, we commissioned a report by a public health expert, Professor Richard Coker; this report projected an infection rate of 60% across the detention estate if the virus were left unchecked.<sup>1</sup>
4. The primary mechanisms for identifying vulnerability prior to and during immigration detention are the Adults at Risk policy (AAR) and the Rule 35 process. We have serious concerns regarding these mechanisms. We consider AAR to be fundamentally flawed, most notably because it balances vulnerability and risk against 'immigration factors', with the latter outweighing the former in the majority of cases.<sup>2</sup>
5. Rule 35 is the critical process for helping the Home Office identify vulnerable detainees, but in our experience Rule 35 reports are rarely carried out unless the detainee is a torture survivor.
6. We therefore have had serious concerns, since the start of the pandemic, that individuals with underlying physical health problems which put them at increased risk of suffering serious harm or death if they contract COVID-19 have not been and will not be identified by the Home Office.
7. Our clients have raised a wide range of concerning issues with us since the start of the COVID-19 restrictions. To give just a sample of these concerns, we had first-person reports from:
  - A client who has only one kidney and felt very vulnerable. He reported symptoms to IRC healthcare of high fever and a cough but had not been tested for COVID-19.
  - A client in Harmondsworth IRC who had been quarantined due to flu-like symptoms. The client told us that he had been feeling unwell since the previous Wednesday but had been moved into isolation only on the Friday. He described having a high temperature and pain all over his body. The client worked as a cleaner in the induction wing, and cleaned all the rooms between a detainee moving out and a new detainee moving in. Despite the above

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<sup>1</sup> <https://detentionaction.org.uk/wp-content/uploads/2020/03/Report-on-Detention-and-COVID-Final-1.pdf>

<sup>2</sup> <https://detentionaction.org.uk/publications/adults-at-risk-in-immigration-detention/>

symptoms, he was still cleaning the induction wing. When he was eventually taken into isolation, he was not tested for COVID-19.

- A detainee held in Brook House IRC who had been diagnosed with HIV and had not had access to his medication for six days. He was quarantined on arrival into detention due to having a cough and had been isolated for five days. He had been unable to leave his room or speak to a solicitor, and understood that he would be kept there for two more days at least. He had not been tested for COVID-19.

### **Apparent death of a detainee immediately following release**

8. On 7<sup>th</sup> April, a man being held at Harmondsworth IRC informed us that he understood a fellow detainee (“A”) to have been released from the centre recently with ‘flu-like symptoms’. Friends of “A” within the IRC subsequently learnt that A had died. We understand that “A” left the IRC around 20<sup>th</sup> March. We understand “A” to have had a fever and a cough for about a week prior to release and to have died within 24 hours of being released. He had apparently been refused bail at a hearing two days before release. During those two days, “A” went to healthcare with his symptoms; healthcare apparently informed him that they couldn’t help because he ‘didn’t have COVID-19 symptoms’. Far from being isolated as a precaution, “A” continued to share a cell with another person until his release date from the centre.

### **Detention Action’s legal challenge to the Home Office**

9. On 19<sup>th</sup> March, we initiated a legal challenge to the Home Office in relation to its response to COVID-19 in the detention context. We asked for interim relief in the form of the release of all those being held under immigration powers who suffered from a COVID-19 comorbidity, and the review of all ongoing detentions in the light of the impact of COVID-19 on the third Hardial Singh principle<sup>3</sup> and the Adults At Risk policy. At a subsequent hearing on 25<sup>th</sup> March, the High Court refused to grant interim relief in light of the Home Office committing to reviewing all decisions to detain. In the week prior to the hearing, the Home Office had released over 350 detainees.

### **The current situation in immigration detention**

10. There has been a significant reduction in the detained population since mid-March. Close to 1000 people have been released, with 368 people being held in IRCs by the end of April, compared to 1225 at the start of 2020. However, we do not believe that any continuing detentions can be justified, given the high COVID-19 risks and poor protection measures within IRCs, and given the fact that removals from the UK remain impossible and unsafe in the vast majority of cases. We are

<sup>3</sup> <https://www.tandfonline.com/doi/abs/10.5235/108546810793129330?journalCode=rjdr20>

unclear as to how the Home Office reviewed all detentions, as they claim to have done. Despite bail continuing to be granted at a high rate by the First-Tier Tribunal, we believe there to be between 200 and 300 people still held in IRCs at the time of writing.

11. In addition, as of 21<sup>st</sup> April 340 people were being held under immigration powers within prisons. The high rates of COVID-19 (including a number of deaths) within the prison system make this deeply concerning. We understand that transfers from prisons to IRCs are continuing. We know of at least one case of a detainee with COVID-19 being transferred from prison to Brook House IRC and allowed to mix openly with other detainees and staff before being tested and isolated.
12. The Home Secretary is under no obligation to maintain any detentions at all. The Home Office is currently excusing detentions by referring to "high harm" individuals, but any ex-offenders in immigration detention have already served their custodial sentence. We note the Government's moves to release 4000 British citizen prisoners before their term has expired in response to the COVID-19 crisis. It is discriminatory to continue to detain non-British citizens long past the end of their custodial sentence. Any perceived risk posed by a small minority of those detained under immigration powers should be managed by the probation service, not through indefinitely maintaining detention.
13. There would appear to be minimal testing taking place within IRCs. We have received many reports from clients with COVID-19 symptoms who have not been tested. Clients report unsanitary conditions in detention, including lack of soap and hand sanitiser, insufficient cleaning materials, rats, and lack of ventilation.
14. To our knowledge, there have so far been two confirmed positive cases of COVID-19 within IRCs. However, we strongly suspect there to have been more cases than those officially confirmed.
15. We question the safety of any removals from the UK for the foreseeable future, whether or not countries are accepting removals, due to the lack of testing within IRCs and the risks of further COVID-19 transmission, including to escort staff.
16. Access to justice for detainees has also been severely compromised by the suspension of legal visits by solicitors. We understand that legal advisors are now providing advice solely by telephone, a mechanism with serious limitations. This undermines detainees' ability to challenge their detention, making any forced removals during this period potentially unlawful.

## **Recommendations**

17. **Recommendation 1:** All detainees should be released, given that the Home Secretary is under no duty to detain anybody; the extreme and deadly risks posed by COVID-19; and that individuals no longer meet the criteria for detention as their removal is no longer imminent. All detainees must be assessed to determine if they have been exposed to COVID-19 before being safely released.
18. **Recommendation 2:** All released detainees should be provided, where necessary, with adequate financial support and suitable, safe accommodation which allows for self-isolation and access to essential services, regardless of immigration status.

19. **Recommendation 3:** No new detentions should take place while the COVID-19 risks remain high.
20. **Recommendation 4:** The death of a detainee (“A”) immediately following release to his home from Harmondsworth IRC on 20<sup>th</sup> March 2020 should be urgently investigated.
21. **Recommendation 5:** In light of the widespread failings we have evidenced in this statement, along with the serious long-term failings within the detention system, the government should urgently commit to a strict statutory time limit on detention.

*22/07/2020*