

Written Evidence from Medical Justice (COV0244)

About Medical Justice

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.

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.

Evidence

1. Introduction

- a) A considerable number of people have been released from immigration detention in response to the Covid-19 crisis. However, most recent figures show that the government is continuing to hold around 650 people under immigration powers, either in immigration removal centres (IRCs) or prisons.¹
- b) The government's decision to continue detention during the Covid-19 pandemic has negatively impacted on the human rights of those detained, in particular on their rights to liberty and health.
- c) Reduced external oversight and monitoring of detention means that negative impacts on detainees' human rights are less likely to be picked up and addressed.
- d) People from black, asian and minority ethnic (BAME) backgrounds are disproportionately experiencing these negative impacts, given the higher proportion of people from these backgrounds in detention.
- e) Few removals are going ahead so immigration detention cannot serve its stated purpose.

¹ Home Office, *Statistics relating to COVID-19 and the immigration system, May 2020* (Home Office, 2020), 10. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887808/statistics-relating-to-covid-19-and-the-immigration-system-may-2020.pdf

- f) The use of immigration detention is discretionary, and detainees are not held as part of any criminal sentence. The negative impacts on human rights referred to here are therefore unnecessary and entirely avoidable.

2. What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?

- a) The Home Office must release all those held under immigration powers in prisons and close all IRCs with immediate effect. In addition, they must provide anyone who lacks an appropriate release address with safe accommodation allowing for self-isolation and access to essential services, and provide adequate financial support to all those who need it.
- b) Failing that, the Home Office should:
 - i) Immediately cease receiving new detainees into IRCs and stop all transfers between IRCs.
 - ii) Make urgent arrangements to release all detainees held under immigration powers in IRCs and prisons within the next few days.
 - iii) Provide anyone who lacks an appropriate release address with safe accommodation allowing for self-isolation and access to essential services, and provide adequate financial support to all those who need it.
 - iv) Once IRCs are closed, healthcare staff and resources at the centres should be redeployed to assist the mainstream NHS.

3. Impact on right to liberty

- a) For detention to be lawful, there must be an imminent prospect of removal. In the current circumstances prospects for removal are limited, however, as a result of covid-19 international travel restrictions. Indeed, the Home Office recently stated that it had carried out 330 removals to Europe but “very few” removals outside Europe during the pandemic.² Most people that Medical Justice has supported in detention during the pandemic have been liable for removal to countries outside Europe.

² Public Accounts Committee, *Oral evidence: Immigration Enforcement, HC 407, 13 July 2020* (House of Commons, 2020), Q86-90. Available at: <https://committees.parliament.uk/oralevidence/684/html/>. The figures quoted refer to the number of Foreign National Offenders (FNO) who have been removed. The Home Office has stated that 97% of all those currently held in immigration detention are FNOs (Home Office, *ibid*). So the number of removals of FNOs very closely equates to the total number of removals at this time.

- b) Medical Justice is aware of detainees with known Covid-19 comorbidities who have received letters advising them to self-isolate in their cells for twelve weeks. This suggests that their removal is not imminent, again calling into question the lawfulness of their detention.
- c) Bail for Immigration Detainees (BID) has reported a success rate for bail applications as high as 95% during the Covid-19 crisis.³ This demonstrates that, in many cases, the government's assertion that ongoing detention is necessary has been wrong.
- d) Medical Justice is seeing cases of people who are granted bail in principle, but remain in detention due to a lack of appropriate accommodation in the community. Clearly it is not desirable to release detainees to destitution or homelessness. However the law simply does not allow for people to be detained for their own 'protection' e.g. because they do not have accommodation.
- e) The extent to which a detainee can access legal representation and advice - and therefore effectively challenge their detention - also affects the lawfulness of their detention. Changes brought in as a result of Covid-19 have placed additional limits on this access. External visits to IRCs and prisons have been suspended since 24 March 2020, for example, meaning that legal surgeries in IRCs are suspended, while legally-focused NGOs such as BID are no longer sending representatives into IRCs. Medical Justice doctors are also unable to visit detainees for in-person medical assessments. Limitations on detainees' movement around IRCs mean that they may need to pass sensitive legal and medical documents to centre staff for faxing, raising questions of confidentiality. Poor mobile phone reception, particularly in cells where detainees may be self-isolating, creates another barrier.

4. Impact on right to health

- a) Comprehensive academic research has demonstrated that, even in ordinary circumstances, immigration detention is harmful to the health of those detained.⁴ Those with previous trauma or mental health issues are at particular risk of harm.

³ C J McKinney, 'Home Office tries to lean on judges deciding immigration bail cases', *Free Movement* (London 6 May 2020). Available at: <https://www.freemovement.org.uk/home-office-tries-to-lean-on-judges-deciding-immigration-bail-cases/>

⁴ See for example 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/49078/2/52532_Shaw_Review_Accessible.pdf

- b) Certain features of detention make it particularly dangerous during a pandemic however. These were discussed in detail in Medical Justice's recent evidence to the Home Affairs Committee⁵ and include:
- i) A large number of people in a confined area, with many shared spaces such as bathroom and eating areas
 - ii) Poor hygiene standards and cleaning regimes
 - iii) IRC staff acting as a conduit for infection to/from community, and between different wings of the centre
 - iv) Inadequate isolation facilities
 - v) Difficulty of consistently practicing self-distancing and isolation
 - vi) Health needs of detainees - for many these are ongoing and complex
 - vii) Inadequate screening and safeguards for vulnerable people
 - viii) Poor standards of healthcare
- c) People with recognised Covid-19 comorbidities are still being detained, despite the heightened risks to which this exposes them. Under guidance which came into force on 20 March 2020, individuals with Covid-19 comorbidities are automatically regarded by the Home Office as falling within level 3 of the Adults at Risk (AAR) policy.⁶ However, under the AAR policy, it is possible for these risk factors to be outweighed by 'immigration factors' and for the individuals' detention to be maintained.
- d) In such cases, people are being advised to self-isolate in their cells. However, the efficacy of this 'solution' is doubtful. Evidence taken from cruise ships, for example, has shown that Covid-19 was still able to spread despite people being confined to their rooms.⁷ The measure also potentially introduces other risks around social isolation, suicide and self-harming, and increased anxiety for many.
- e) Medical Justice has also seen cases of detainees with Covid-19 comorbidities that have not being detected by the Home Office.

⁵ *Written evidence submitted by Medical Justice (COR0013)* (Medical Justice 2020). Available at: <https://committees.parliament.uk/writtenevidence/877/html/>

⁶ Falling within Level 3 of the AAR policy means that the individual in question has professional evidence (for example from a medical practitioner) stating that they are at risk and that a period of detention would be likely to cause harm, for example, by increasing the severity of the symptoms or condition that led to them being regarded as an adult at risk. See *Adults at risk in immigration detention* (Home Office, 2016) 13. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784634/adults-at-risk-policy-v5.0ext.pdf

⁷ Professor Richard Coker, *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>

- f) The Home Office has continued to transfer detainees, both from prisons to IRCs and between IRCs, throughout the crisis. Between 23 March and 8 July 2020, a total of 938 transfers took place (710 from prisons to IRCs, and 228 between IRCs).⁸ Such transfers increase the risk of Covid-19 transmission and infection in detention. This is particularly true given the high numbers of confirmed Covid-19 cases in some prisons.
- g) There has been no routine testing or reporting of infections in IRCs during the Covid-19 crisis. There have been five confirmed Covid-19 cases in detention that we are aware of - three detainees and two staff members - since the crisis began.⁹ The lack of testing and reporting however means the actual number is likely to be much higher.
- h) By continuing to detain people, including those with known comorbidities, the government is putting the health of detainees, staff and the wider community at unnecessary additional risk.

5. Reduction in external oversight and monitoring

- a) There has been a reduction in the levels of external oversight and monitoring of immigration detention as a result of Covid-19, including by HM Chief Inspector of Prisons (HMIP) and the Independent Monitoring Boards (IMB). A detailed discussion of the changes is available in evidence submitted by Medical Justice to the Home Affairs Committee.¹⁰
- b) This reduction means that situations where detainees' human rights are being negatively affected are less likely to be picked up and addressed.

⁸ *Immigrants: Detainees: Written question - HL6636*. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-07-08/HL6636/>

⁹ There have been three confirmed cases at Yarl's Wood (one detainee, two staff), one at Harmondsworth (detainee) and one at Brook House (detainee). See: 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>; Home Affairs Committee, *Oral evidence: Home Office preparedness for Covid19 (coronavirus)*, HC 232 (House of Commons, 2020), Q385 and Q426. Available at: <https://committees.parliament.uk/oralevidence/356/default>; and May Bulman, 'Man with coronavirus placed in removal centre amid concerns hundreds of detainees and staff at risk', *Independent* (London 9 April). Available at: <https://www.independent.co.uk/news/uk/home-news/coronavirus-detention-immigration-removal-centre-brook-house-home-office-a9458206.html>

¹⁰ *Additional Written Evidence submitted by Medical Justice (COR0117)* (Medical Justice, 2020). Available at: <https://committees.parliament.uk/writtenevidence/4005/html/>

6. Groups disproportionately affected by measures

- a) A high proportion of people in immigration detention and asylum seekers are from black and minority ethnic (BAME) backgrounds. People from this group are therefore being disproportionately affected by the negative impacts identified above.
- b) This is particularly concerning given data from the Office of National Statistics which indicates that people from a BAME background are significantly more likely than white people to die a Covid-19 related death.¹¹

22/07/2020

¹¹ Office of National Statistics, *Coronavirus (COVID-19) related deaths by ethnic group, England and Wales: 2 March 2020 to 10 April 2020* (ONS, 2020). Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/coronavirusrelateddeathsbyethnicgroupenglandandwales/2march2020to10april2020>