

Submission to the Home Office in response to consultation on immigration detention of persons with mental health issues.

by HM Chief Inspector of Prisons

Introduction

1. We welcome the opportunity to submit information to the Home Office in response to the consultation on immigration detention of persons with mental health issues.
2. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (with Ofsted).
3. HMI Prisons coordinates, and is a member of, the UK's National Preventive Mechanism (NPM), the body established in compliance with the UK government's obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture (OPCAT). The NPM's primary focus is the prevention of torture and ill treatment in all places of detention. Article 19 (c) of the Protocol sets out the NPM's powers to submit proposals concerning existing or draft legislation.
4. The following response is based on evidence from our inspections. All inspections are carried out against our *Expectations* - independent criteria based on relevant international human rights standards and norms. We have a separate set of Expectations for the inspection of immigration detention facilities which are brigaded under four healthy prison tests: safety, respect, purposeful activity and preparation for removal and release¹. All our expectations are supported by a series of 'indicators' which we would expect to see in place if the expectation is met although these do not preclude an establishment demonstrating to us that the expectation is met in other ways.
5. Our response picks up on themes which are highlighted in the consultation questions as well as setting out key findings from recent inspections in relation to immigration detention.

Time held in detention

6. While the Home Office policy indicates that detention should be used sparingly and for the shortest possible period of time, our inspection evidence suggests that in practice this is not the case.

¹ *Expectations. Criteria for assessing the conditions for and treatment of immigration detainees, version 3, 2012.* London: HMIP (<http://www.justice.gov.uk/downloads/about/hmipris/immigration-expectations.pdf>)

7. In our most recent annual report² we identified that the periods under which people are detained in immigration are prolonged and go past that which we consider to be acceptable, which, in some cases, is due to the fact that casework is not progressed promptly.
8. Our recent inspection of Brook House³ found that while the average length of stay at the centre had reduced, there were a number of detainees who were held for unreasonably long periods including:
 - twenty detainees held between one and two years;
 - two detainees held between two and three years; and
 - one detainee held for three years and two months.
9. Given this we recommend that cases must be progressed more effectively to ensure that detention is for the minimum possible time and remains lawful.

Rule 35

10. Rule 35 of Detention Centre Rules should ensure that anyone suffering from a mental illness should only be detained in exceptional circumstances. It is intended to be a major safeguard and the way it is applied is crucially important to ensuring protection to the most vulnerable people being held in detention.

11. HMI Prisons Expectations⁴ state that:

- *Detainees with common mental health problems are recognised and supported by health staff and specialist services at the centre, and have unhindered access to help in pursuing recovery.*
- *Detainees' severe and enduring mental health needs are recognised and supported by health staff and specialist services at the centre, and they have unhindered access to help in pursuing recovery.*

12. In addition detainees should have access to mental health services and staff with appropriate skills, they should be encouraged to take part in their own care plan and recovery path and where it is identified that a detainee has had previous contact with mental health services in the community, a referral to mental health services is always made and information about previous history is actively sought and used. We would also expect that detainees with serious and enduring mental illnesses are transferred under the Mental Health Act to specialist secondary and tertiary care if clinically indicated and their care is not compromised if they are transferred to another place of detention.

13. Our concerns with regard to the treatment of detainees with mental health problems are set out below:

- In some cases detainees with enduring mental health problems are potentially being detained unlawfully;

At Tinsley House⁵ we found one detainee's progress reports were not an accurate reflection of his condition because they had not been updated. The detainee concerned had been examined by an independent doctor and a psychiatrist as requiring urgent psychiatric input. Both

² <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

³ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/brook-house/brook-house-2013.pdf>

⁴ *Expectations, op.cit.*

⁵ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/tinsley-house/tinsley-house-2012.pdf>

recommended immediate release with the psychiatrist also reporting that the detainee's symptoms were being made worse by detention.

During our 2014 inspection of Harmondsworth⁶ we noted the case of an 84 year-old man who had been declared unfit for detention yet was still in handcuffs at the point that he died. He had neither been resistant or posed any current specific individual risk.

- Levels of health provision offered to detainees with mental health problems is insufficient:

In our 2012-13 annual report⁷ we found that although there had been an improvement in mental health services within immigration detention they were still insufficient and in some cases the treatment towards detainees suffering from poor mental health could be described as degrading. We also found that Rule 35 reports written by medical practitioners generally did not provide clinical findings and did not help caseworkers make informed decisions on whether to release.

- The continued impact of detention on those with mental health problems is currently not measured appropriately or properly reviewed.

Our joint inspection of 'The effectiveness and impact of immigration detention casework⁸' with the Independent Chief Inspector of Borders and Immigration found that of those detainees who had indicated that they were suffering from mental health problems, those who were held for more than six months were more likely to describe such symptoms. However, the processes in place for assessing whether a detainee's mental health is being adversely affected by detention are neither consistent nor multi-disciplinary.

14. We are concerned that paragraphs 14-16 in the consultation document overemphasises the exceptional circumstances in which detention can be considered for those with mental health issues, rather than placing the presumption on the preclusion of detention. We would also like to take the opportunity to reiterate that for those detainees with *enduring* mental illnesses detention should not be used, as it is not an appropriate place to deal with such complex, enduring needs.

Equality and disproportionate impact

15. There are a significant number of equality issues which arise when detaining someone with mental health issues.
16. We recommend that:
 - staff should be appropriately trained on how to recognise mental health problems as early as possible, and work effectively with healthcare staff to treat the problems;
 - staff should be aware that mental health issues can intersect with a number of other protected characteristics;
 - staff should be trained to understand how mental illness may manifest itself in different people depending upon age, gender, etc; and
 - detainees should be fully consulted on any proposed adjustments to their routine.

⁶ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf>

⁷ <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

⁸ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/immigration-detention-casework-2012.pdf>

17. Particular attention should be paid to the detention of women with mental health problems, given their heightened level of vulnerability. In her 2007 report 'A review of women with particular vulnerabilities in the Criminal Justice system'⁹ Baroness Corston highlighted the fact that mental health problems are far more prevalent among the female prison population than the male prison population or in the general population.
18. The specific needs of female detainees were highlighted during our inspection of Yarl's Wood¹⁰, which found:
- *cases where women with severe mental health problems had been detained straight from the airport upon arrival, without clear justification of detention;*
 - *a lack of progress on immigration cases caused women most distress;*
 - *pregnant women had been detained without evidence of the exceptional circumstances required to justify this;*
 - *a number of women who had been detained for long periods of time, with one woman in particular being detained for four years; and*
 - *several obviously mentally ill women had been detained before being sectioned and released to a more appropriate medical facility, however, it was difficult to understand why they had been detained in the first place.*
19. Given the heightened vulnerability of female detainees we recommend that in any detention setting if the population is predominantly female, then there should be appropriate levels of female staff who are trained to deal with the specific needs, vulnerabilities and previous experiences of such a population. We would also reiterate that pregnant women should only be detained in the most exceptional circumstances.
20. I hope that you find this information useful and should you wish to discuss our findings further please let me know.

Nick Hardwick
HM Chief Inspector of Prisons

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⁹ <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

¹⁰ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf>