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Home Affairs Committee

Immigration detention: Government Response to the Committee's Fourteenth Report of Session 2017-19

Fifteenth Special Report of Session 2017–19

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Home Affairs Committee

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Fifteenth Special Report

On 21 March 2019 the Home Affairs Committee published its Fourteenth Report of Session 2017-19, Immigration detention (HC 913). The Government's response was received on 23 July 2019 and is appended to this report.

In the Government's Response the Committee's recommendations are shown in **bold** type, and the Government's responses are shown in italics and plain type.

Appendix 1: Letter from the Minister of State for Immigration to the Chair of the Committee, 23 July 2019

I am grateful to the Home Affairs Select Committee for your enquiry and report on immigration detention. The Government's detailed response is attached.

Although the Government is unable to agree to all of your recommendations, we have a shared commitment to a fair and humane immigration system within which detention plays a necessary but strictly limited role. I thought therefore that it would be helpful to provide some wider context to our response, not least because we continue to make good progress on the ambitious program of reform the Home Secretary set out in his statement to Parliament on immigration detention in July last year.

As my letter to the Joint Committee on Human Rights of 3 December 2018, copied to your Committee, explained, the Government's strategic priorities here are clear: to keep the use of immigration detention to a minimum; to ensure that decisions to detain—and subsequent decisions to maintain detention or release from detention—are well made, with more systematic safeguards and support for the vulnerable; to secure greater transparency around immigration detention; and to ensure that people who are detained are treated with dignity and in an estate fit for purpose.

There will always be a balance to strike between issues of vulnerability and immigration and public protection considerations. As part of a fair and humane immigration system it is essential that we deter and tackle immigration abuse, whilst protecting the public and vulnerable individuals within the system. It is an essential responsibility of government to promote compliance with our laws and individuals' conditions of entry to the UK, and secure return, enforced or voluntary, where appropriate.

At the heart of our reforms is a commitment, over time, to secure a material reduction in the number of people detained and the length of time they spend in detention, coupled with improved welfare for detainees and a culture that maintains the highest standards of professionalism. The focus is not on the vast majority of migrants, employers and others who abide by the rules. It is on the small minority in the UK unlawfully who fail to leave voluntarily, or who enter without the required leave, and for whom we are confident that no other approaches to leaving the UK will work, or where the risk of absconding, or the need for public protection, are material considerations.

The figures speak for themselves on this. Our starting point is not detention: at any one time, 95% of those who are liable for removal are managed in the community. By summer 2019, the immigration detention estate will be almost 40% smaller than it was four years ago, and of significantly higher quality. At the end of December 2018, there were 30% fewer individuals in detention than a year earlier.

We welcome independent and objective scrutiny, which shines the spotlight on areas where further work is needed as well as highlighting improvements that have been made, and good practice that can be shared. All Immigration Removal Centres (IRCs) are subject to external scrutiny by Her Majesty's Chief Inspector of Prisons and the Independent Monitoring Boards. The two independent reports we commissioned from Stephen Shaw have provided a valuable focus for and added impetus to our reforms. Furthermore, our commission to the Independent Chief Inspector of Borders and Immigration (ICIBI) to carry out regular inspections of the operation of the adults at risk policy demonstrates our ongoing commitment to understanding what works, and bringing greater transparency to these challenging responsibilities. We can expect the conclusions from the first of these inspections shortly.

Against this backdrop I wanted to highlight some key examples of progress against the strategic priorities noted above.

First, we are working hard to ensure that those at risk of detention and enforced removal understand the options available to them to leave voluntarily and are offered support to do so where appropriate. We have strengthened our Voluntary Returns Service and put it at the heart of these conversations. Local Immigration Enforcement teams are using their strong community links and established relationships with diaspora communities and other partners to encourage open discussions about options for voluntary return. Investment and reform in our reporting centres mean that the staff there are spending more, and more productive, time with those who are reporting. This includes explaining during induction interviews what is happening, considering any vulnerabilities that new reportees may have and being available at any time to discuss the possibility of voluntary return.

Working with Non-Governmental Organisations and community and faith groups we are trialling new approaches to case resolution, with the aim of finding out how we can achieve better outcomes for migrants through the faster resolution of their cases outside detention, whether that results in a grant of leave to remain or their departure from the UK. A two-year pilot scheme to provide alternative arrangements for a number of women in detention or at risk of being detained at Yarl's Wood Immigration Removal Centre is already under way in Newcastle, and we are developing further pilots to test different models of support.

These pilots will be strongly evidence-based and outcome-focused, helping us assess whether it is possible to achieve better (or equivalent) results in terms of return or other case resolution than if we had detained the individuals concerned. Over time we will test different methods of supporting different cohorts of migrants, with pilots based in different geographic locations and with a variety of partners. For Foreign National Offenders, we are discussing with Detention Action whether the existing pilot, successfully supporting male ex-offenders in and following detention, might be extended.

Second, we are strengthening our face to face engagement with those who are detained, and the quality of our decision making and other safeguards, ensuring that vulnerability considerations are always given due priority. We have increased the number of Home Office staff in Immigration Removal Centres, with the new detention engagement teams improving induction and the links between detainees and their caseworkers. This increased one-to-one interaction will also support the management of detainees' wellbeing and identify any signs of mental or physical deterioration. Individuals now have more opportunities to provide further evidence before key decisions are made about their cases, and decision makers have more advice and support available to help them to make better quality decisions.

The Detention Gatekeeper function is improving the quality and consistency of initial decisions to detain, with judgements made independently of the referring team or caseworker. The Detention Gatekeeper ensures that all relevant factors required to make lawful decisions to detain have been taken into account—including adults at risk considerations—and that alternatives to detention, including voluntary return, have been fully explored. Following a successful pilot relating to FNOs transferring to an Immigration Removal Centre from prison, the Detention Gatekeeper now also assures, through a detention review, the decision to detain in all foreign national offender cases, including those transferring from prison. Since September 2016 the Detention Gatekeeper has rejected more than 2700 detention referrals.

Strengthened Case Progression Panel arrangements ensure that case progression, vulnerability and public protection considerations are a key part of any decision to maintain or cease detention. We continue to make good headway in identifying independent panel members and considering potential models for their involvement in the existing case progression system—our thinking here is developed from other practices, including the Independent Family Returns Panels. This is an area where the Committee has also provided helpful commentary, which is further informing our considerations. In parallel, we have piloted the introduction of a new Rule 35 body, separate from casework decisions and focused solely on questions of vulnerability, into the process for responding to Rule 35 notifications, and have seen an increase in the quality of our consideration of these. We anticipate this new body being a permanent fixture from August 2019, subject to further consideration, particularly in the light of any further changes to Rule 35, following the targeted consultation on the Immigration Removal Centre Rules (to update and replace the Detention Centre Rules 2001). The consultation ran until 4 June and, in particular, was seeking views on how Rule 35 might better support the identification, reporting and caseworker consideration of people with vulnerabilities.

Building on the existing four-month reviews, we started a six-month pilot in February this year to make an automatic referral to the courts for a bail hearing after two months. The pilot provides certainty for eligible detainees that their detention is subject to further judicial oversight. Importantly, this is an additional automatic referral: detainees—including foreign national offenders—continue to be able to go to the courts at any time to apply for release on immigration bail. The detention engagement teams in the Immigration Removal Centres are on hand to explain the process to detainees and to answer any questions or concerns. As requested, I have included an update on that pilot at Appendix B, within which I have set out the success measures that we will be considering progress against.

We are continuing to work to ensure that the adults at risk in immigration detention policy makes the most effective contribution possible to identifying vulnerable individuals and making better balanced decisions about whether or not they should be detained. In particular, we have now appointed an independent medical professional with expertise in immigration detention to consider our approach to the policy and response to Stephen Shaw's recommendations. This work will be further informed by the consideration that both Committees have given to this and by the responses that we receive on the draft Immigration Removal Centre Rules consultation.

Third, we have made significant progress in increasing transparency around immigration detention. Building on the significant information already published, we are taking forward a fundamental review of the data required to provide a more complete and coherent account of immigration detention. Last November we published more data on Rule 35 and, for the first time, on pregnant women in detention and on deaths in and escapes from immigration detention. We will shortly be consulting on the information we already publish and on what additional information might be published to provide a fuller picture of immigration detention. We have agreed terms of reference with the Independent Advisory Panel on Deaths in Custody for a review of deaths in immigration detention, ensuring that lessons are learned, which is expected to report in the autumn.

Finally, we have made significant progress in the strategic management of the detention estate itself. A systematic approach to modernisation and rationalisation is improving further the quality of the provision and ensuring that we have the geographical footprint and resilience to meet future need. Better staff/detainee ratios are improving welfare and safety. We have closed Campsfield House Immigration Removal Centre, ended the practice in some IRCs of placing three detainees in rooms originally designed for two, and reviewed the standards for all rooms in the estate. We are considering carefully how helpful detainees have found Skype and other instant messaging platforms—trialled in two removal centres—in contacting their family overseas from detention. The new contract to manage the IRCs at Gatwick, and the need to replace the Immigration Removal Centres at Heathrow when the third runway is built, will set high expectations for the quality of management and staffing in key elements of the estate.

I hope that this note provides further helpful information for the Committee, and I look forward to continuing discussion on these important issues.

Rt Hon Caroline Nokes MP

Appendix 2: Government Response

1. **The initial detention decision should be made by the Home Office but reviewed within 72 hours by a judge. This would be in line with other areas of UK law, for example in the UK criminal justice system, where an upper limit for detention without charge exists.**

The Home Office's consideration of this recommendation and its response, is closely linked to the following Committee recommendation (29): The Home Office introduced case progression panels to provide internal independence to the detention decision-making process at three-monthly intervals. However, we question whether a process that remains internal can be truly independent. It is clear from the evidence we have received that this review process is not functioning as an effective independent check on decisions to maintain detention. We echo Stephen Shaw's comment in his follow up review, that "there remains a need for robust independent oversight."

Reject: These are areas that the Joint Committee of Human Rights have also commented upon, including in their recommendations (2), (11) and (14).

Recent statistics support the fact that detention is only used sparingly, and where there is a realistic prospect of removal in a reasonable timescale. In 2018, 92 per cent of those detained left detention within four months and 69 per cent in less than 29 days. Notwithstanding this, the Committee will be aware that, following a recommendation by Stephen Shaw, all detention decisions are now screened by an internally independent Detention Gatekeeper (DGK) function. We have also strengthened a number of other detention safeguards, including Case Progression Panels (CPPs), on which we have identified options for independent panellists to observe panels over the summer, with a view to informing our future approach to this. In addition, a pilot is under way to provide arrangements for further judicial oversight of detention decisions via the automatic referral of bail applications after 2 months of an individual being in detention. These developments will also improve our response to detecting, and better responding to cases of vulnerability. The Government does not believe that the case has been made for a radical redesign of the current judicial and other independent oversight arrangements. However, we will carefully review the outcome of the pilot referred to, and the steps being taken to increase the levels of CPP independence and reflect further on what these mean for the spirit of the Committee's recommendations in this regard.

More broadly, the direct comparison made in these recommendations with criminal justice cases does not stand close scrutiny. Detention by the police is to support the investigation of criminal matters, including the interviewing of suspects and witnesses and the securing of evidence, in order to allow for decisions to be made on how to proceed with those matters through the criminal justice system. By contrast, immigration detention takes place in order to support administrative decisions that have, in the vast majority of cases, already been taken and have been subject to independent judicial consideration during the appeals process, i.e. that the person concerned has no lawful basis to remain in the UK and is to be subject to enforced removal or deportation. Individuals can make use of the compliant return schemes that exist in immigration detention at any time. In addition, the Committee's position on judicial involvement in initial detention decisions would represent a fundamental change to the longstanding legal position on authorising

immigration detention, where the statutory powers to detain have been vested in the immigration officer and the Secretary of State. Any change to that long-standing position would need very careful consideration.

2. **The Government should bring forward legislation specifically to prevent the separation of a nursing mother from the child they are nursing, and the separation of a child from one or both parents where the result would be that the child is taken into care.**

Reject: Home Office published policy already makes clear that nursing mothers will not be separated from the child they are nursing; and a child must not be separated from both parents or from one parent (in the case of a single-parent family) for immigration purposes if the consequence of that decision is that the child is taken into care. Therefore, we do not consider that legislation is necessary.

3. **We recommend that the Government should have a clear policy which avoids detaining people over the age of 60 unless there are exceptional reasons to do so.**

Reject: As the Committee is aware, the Adults at Risk (AAR) in Immigration Detention policy, introduced in 2016, considers matters concerning vulnerability and harm in detention. Within this, being aged 70 or over is an explicit indicator of risk. We have not seen any evidence to support the need to lower that age. Indeed, in his most recent report, Stephen Shaw recommended that those over the age of 70 should be detained only in exceptional circumstances, without any suggestion that the age range was set too high. We do not agree that those over the age of 60 should be excluded as a group from detention and although there is a presumption of liberty in all cases, there will always be specific cases, including FNOs, where detention of an individual over 60 is considered appropriate and in the public interest to facilitate return. However, together with the other AAR recommendations made by Mr Shaw, we are looking at these matters in the round and have enlisted the support of a practising Immigration Removal Centre Doctor to advise on any further improvements to the policy.

4. **We recommend that the Government should recognise that LGBTQI+ people are vulnerable in immigration detention, thereby extending the recognition that it already affords to trans and intersex people to all LGBTQI+ individuals. Secondly, the Home Office should monitor and publish statistics on the number of LGBTQI+ people it detains.**

Reject: Transsexual and intersex individuals already fall within the scope of the adults at risk in immigration detention policy. The use of transsexual was designed to reflect the protected characteristic within the Equality Act. However, we recognise that this terminology may not accurately reflect the trans community and will review the definition in the policy. As part of this, we will also review whether it would be appropriate to broaden the policy further to cover other groups. We do not, however, accept that all individuals who identify as LGBQ+ are inherently vulnerable in detention.

The Home Office is currently reviewing all information published within Immigration Statistics and the Transparency Publication (as communicated within the November Immigration Statistics quarterly publication). We have already begun to publish information on escapes, pregnant women and deaths within detention and continue

to consider the release of further data to increase transparency around immigration detention. As part of this, we agree that we should consider publishing information about detained LGBTQI+ individuals and we are doing so as part of the review.

5. **The Home Office needs to urgently change its recording systems and ensure there is a proper process to record and publish quarterly the number of people wrongfully detained and to publish annually the level of compensation paid out.**

Reject: The Home Office already reports the number and value of unlawful detention compensation payments in the Home Office Annual Report and Accounts. As the Immigration Minister set out in her letter to the Committee of 6 November 2018, manual checks of individual records would currently be required to provide the total number of individuals wrongfully detained. We are now engaged in a programme of updating our IT systems and will consider, as part of the development, how our new system can accommodate this recommendation and complement existing financial reporting of unlawful detention cases.

6. **The Home Office must do much more to ensure that all reasonable alternatives to detention have been considered before detention is authorised. As we have seen from the Windrush scandal, wrongful Home Office decisions to detain have wrecked people's lives. The Home Office needs to be more transparent in its explanation to detainees and legal representatives of why a decision to detain has been made, and to support that decision with detailed evidence. Similarly, with regard to cases of wrongful detention and removal, the Home Office needs to change its approach to litigation, by admitting where things have gone wrong, apologising, and seeking to learn lessons. Furthermore, the Home Office must take remedial action in respect of officials responsible for cases of wrongful detention and removal, so that the same mistakes are not repeated and decision-makers understand the seriousness of getting cases wrong.**

The Home Office's consideration of this recommendation is linked to the corresponding recommendation (26), as follows: Home Office decisions to maintain detention must be clearly justified so that a person knows exactly why they are being detained, and if appropriate can challenge the Home Office decision.

Accept: This is an area that the Joint Committee of Human Rights has also commented upon – see recommendation (1) of their report.

The Detention Gatekeeper ensures that detention is used when all alternatives to detention have been fully explored. Their consideration of cases usually includes what discussion(s) have occurred around voluntary departure and / or other alternatives to detention, although in some cases this would not be considered e.g. when public protection is a factor. We continue to explore opportunities for alternatives to detention, on which a pilot is currently under way in relation to a number of women who would have otherwise been detained at Yarl's Wood, and to do more to promote voluntary departure. For Foreign National Offenders, we are discussing with Detention Action whether their existing pilot, successfully supporting male ex-offenders in and following detention, might be extended. There is also work in hand to look at the information given to detainees to ensure they are clear about the reasons for their detention and the alternatives to detention, and for further improvements to the record-keeping around this.

We are committed to learning lessons from litigation and will apologise when it is appropriate to do so. Where the department settles an unlawful detention/removal claim, details are passed back to the casework teams to ensure that lessons are learned, and at a policy level, the efficacy of the current policy is reviewed. When it is considered that policies and procedures may not have been followed fully, performance management procedures may be instigated.

7. **We recommend that immigration caseworkers involved in the decision-making process to detain an individual should meet that individual at least once, in person, prior to finalising the detention decision or/and within one week of their detention.**

Reject: Whilst we accept the broad thrust of this recommendation, the practicalities of meeting every detainee in the way described are more difficult. However, we have increased the number of Home Office staff in Immigration Removal Centres by means of the newly implemented detention engagement teams. These teams became fully operational in all IRCs during 2018 and aim to induct all individuals entering detention within 48 hours of arrival, improving the links between detainees and their caseworkers. As a result, individuals now have more opportunities to provide further evidence before key decisions are made about their cases, and decision makers have more advice and support available to help them to make better quality decisions. The engagement teams' one-to-one interactions will also support detainee wellbeing, particularly in identifying any signs of vulnerability and / or deterioration in health (mental or physical).

8. **There needs to be a thorough, face-to-face pre-detention screening process to facilitate the disclosure of vulnerability. Where there is no deemed risk of absconding, this screening should be undertaken at the point of enforcement activity, for example, as part of the reporting process where UK Visas and Immigration officials or Enforcement officers should feedback any concerns they have about a person's suitability for detention. Even a short period of detention for someone who, for example, has been a victim of torture could be extremely traumatic. Therefore, it is essential that a proper pre-screening assessment is done.**

9. **The Home Office needs to improve its performance in capturing detainee vulnerability in the early days of an individual's detention. We are concerned by reports that initial screening processes are rushed and that detainees are made insufficiently aware of their importance. Detainees arriving in detention for the first time are understandably reluctant to talk openly about traumatic past experiences but the crucial importance of reporting vulnerability to enable potential release should be made explicit. Similarly, immigration detention centre staff should explain to a newly arrived detainee that they may be automatically referred for a bail hearing after four months of detention, and at what other stages of their detention they can apply for immigration bail.**

Accept: Work has begun to scope a project that will enhance the screening of those encountered and subject to enforcement action. In addition, accepting the concerns raised by the Committee, the Home Office will improve the detainee induction pro-forma and process to include a broader approach to considering and assessing vulnerability, as well as providing information on access to services in detention and pathways to return.

As referred to above (in response to recommendation 7), we are also improving how we interact with detainees once they are detained, through our detention engagement teams.

10. **The Government should stop night moves unless exceptional criteria are met, and the length of time detainees spend in transfer should be kept to a minimum. We recommend that future contracts concerning detainee transfers should stipulate a 7pm cut-off for arrival and should require that prior approval must be sought from the Home Office for exceptional circumstances where that deadline will not be met. Requests for such approval should also be reported to the Independent Monitoring Board so that there is oversight of its use.**

Reject: Every effort is made not to schedule moves at night. However, these may be necessary to meet time-critical operational demands, such as early departures for flights, hospital appointments and court hearings. Where moves do take place during the night we try to provide individuals with as much advance notice as possible. All proposed moves are carefully considered to minimise the impact of the move on the care and welfare of the detainee. Every effort is made to ensure that transfer times are kept to a minimum and all options are considered to take rest and refreshment breaks where necessary.

The statutory functions of Independent Monitoring Boards (IMBs) are to monitor the administration of IRCs, the state of the centre and the treatment of detainees. Under the published Service Level Agreement with the IMB National Council, the Home Office provides IMBs with special notifications, relevant statistics and records that relate directly to the administration of the establishment for which they have monitoring responsibility. There is no existing mechanism for informing the IMB about the timing of detainee moves but, as part of the current review of Detention Services Order 4/2014 'Working with Independent Monitoring Boards', we will work with the IMB Secretariat to consider what further information could be provided to IMBs.

11. **We repeat the recommendation made in the Committee's report on the Windrush generation that legal aid arrangements should be restored for immigration matters in order to allow those with complex cases the access to legal advice they need.**

Reject: Legal aid has always been and will continue to be available for asylum cases and for immigration cases where someone is challenging a detention decision. Specifically, legal aid remains for: asylum applications; challenges to detention under immigration powers; accommodation claims for asylum support; Special Immigration Appeal Commission (SIAC) proceedings; victims of domestic violence; modern slavery victims; and judicial reviews in specific circumstances where there has not been an unsuccessful challenge on the same issue or substantially the same issue in the last 12 months.

For other immigration matters not formally within the scope of legal aid, funding may be available via the Exceptional Case Funding scheme (ECF) in any matter where failure to provide it would breach, or risk breaching, the European Convention on Human Rights or enforceable EU law, subject to the statutory means and merits tests. Applications for and grants of ECF have been increasing year on year since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force. The Ministry of Justice recently committed to simplifying the ECF application process and improving the

timeliness of funding determinations. This should make it easier for applicants who wish to apply for ECF for immigration matters and ensure that ECF applications and decisions are dealt with more quickly.

LASPO's reforms were designed to target the provision of public funding at those in the greatest financial need and ensure those who can afford to pay some, or all of their legal costs do so. The non-asylum immigration matters that are within the scope of legal aid were identified as priority areas due to the importance of the issues at stake, as well as the absence of other routes to fund or resolve them. The decisions as to what was a sufficient priority to remain in scope were based on factors such as the ability of the individual to self-represent, the likelihood of breach of international obligations in the area of law, and the availability of alternative sources of advice and funding.

12. **Foreign national offenders should be afforded the same legal safeguarding provisions as immigration detainees held in IRCs so that, on completion of their custodial sentence, they can be deported or have their immigration status resolved rather than entering immigration detention. This should include access in prison to the DDA scheme.**

Partially Accept: The Legal Aid Agency has entered into contractual arrangements with a number of providers for the provision of immigration/asylum advice and representation. Under the terms of this contract (2018 Standard Civil Legal Aid Contract) any provider with an immigration contract is able to provide legal advice/representation to clients detained in prisons.

The Home Office has staff based within the prison estate, deployed according to need and the Foreign National Offender (FNO) population, enabling the Home Office to manage and monitor all FNOs serving a custodial sentence. This provides a direct link between Immigration Enforcement and the FNO, enabling the provision of advice on their case status, encouraging compliance and, where appropriate, expediting removal.

Deportation decisions in cases of FNOs are issued 18 months prior to their Early Removal Scheme date in all cases where there are 18 months or more to run before the end of the sentence. FNOs are not detained automatically at the end of their sentence if their deportation status has not been resolved. The decision to detain FNOs on completion of sentence considers several factors, including how close the FNO may be to removal. It is always the Home Office's intention, where possible, to deport or resolve the status of FNOs before or on completion of their sentence.

13. **We urge the Government to abolish the three AAR levels of risk and to revert to its previous policy of a presumption not to detain vulnerable individuals except "in very exceptional circumstances".**

14. **In line with Medical Justice, we recommend a return to the previous category-based approach rather than "indicators of risk" so that an individual who belongs to a category at increased risk of harm in detention is considered suitable for detention in only very exceptional circumstances. To avoid a check list approach, the Home Office should include a catch-all category which captures those who are particularly vulnerable to detention but who also may not fall within one of the pre-set categories. For example, this might include a detainee who has recently suffered a bereavement. The Home Office should consult with a wide range of stakeholders who are affected**

by detention, including people with lived experience, to develop an agreed grouping of categories. The policy should also retain the commitment for a self-declaration of vulnerability to trigger a duty of inquiry into the asserted vulnerability.

15. **We welcome the Government's commitment to commission an ongoing annual report by the Independent Chief Inspector of Borders and Immigration to assess progress on the AAR policy. This reporting should assess the operation of the entire AAR framework, including the Detention Gatekeeper Team and the Rule 35 process to ensure that the Government's system to protect vulnerable people is effectively and robustly monitored, and so that accurate data can be published.**

16. **The Government should at the very least review the AAR policy guidance with immediate effect to ensure that it includes clear, inclusive and effective categories of vulnerability, with a presumption not to detain unless there are exceptional circumstances. This review should be completed by 1 December 2019. Any amendments to the AAR policy guidance should be reflected in Rule 35 of the Detention Centre Rules 2001…as well as the Home Office operational Enforcement Instructions and Guidance. Such a review should also revisit the definition of torture, in light of the Shaw follow-up review and concerns raised by various organisations in their evidence to us, and in line with the overall purpose of the Adults at Risk policy.**

17. **The Government should also replace the current vulnerability indicators in the AAR statutory guidance of "torture" and "victims of sexual or gender-based violence" with a more inclusive indicator based on the UNHCR detention guidelines, namely "victims of torture or other serious, physical, psychological, sexual or gender-based violence or ill-treatment". This would enable a broader category of risk to be identified and would be more easily applied by caseworkers and doctors.**

Reject 13, 14, 16 and 17, but Accept 15: In his follow-up review, Stephen Shaw said that it would be folly to give up on the AAR policy, whilst also recognising that it was a work in progress.

We believe that the current AAR policy represents a balanced and proportionate approach to making decisions on the detention of vulnerable people. It is an improvement on the previous policy, which was prone to inconsistent application and potential abuse. But as the Committee has commented, we recognise that the policy could be further improved, including in respect of Level 2 of the policy. To inform these improvements, the Home Office has enlisted the support of a practising IRC doctor in taking forward work in response to Stephen Shaw's AAR related recommendations. In addition, in March, we launched our targeted consultation on the draft Removal Centre Rules, within which the operation of Rule 35 is a key element and is closely linked to the operation of the AAR policy. The Home Secretary has also commissioned the Independent Chief Inspector for Borders and Immigration (ICIBI) to undertake an annual review of the operation of the AAR policy. We are expecting the findings of the first of those reviews shortly.

None of these individual elements can be considered in isolation, and we are looking at them closely in the round. Although we do not accept that the AAR policy or its fundamental principles should be abandoned, we are supportive of the Committee's

separate recommendation that endorses our commitment for the ICIBI to conduct an annual review of the operation of the policy. The Terms of Reference for any annual review, and any future reports, are ultimately matters for the Independent Chief Inspector.

The definition of torture employed in the context of the AAR policy has been subject to a significant amount of debate and also to legal challenge. The current position is that the Home Office agreed to amend the definition slightly in order to clarify the reference to "powerlessness". Subsequently, the Home Office carried out a targeted public consultation on revisions to the Detention Centre Rules 2001, including the definition of torture (which is set out in Rule 35 of those Rules). The Home Office is considering the responses to that consultation. While the UNHCR guidelines provide some useful input, we remain of the view that the broad indicator set out in the UNHCR guidelines suffers from a lack of specificity that would be very difficult to meaningfully translate into operational practice.

18. **The Home Office must ensure that the Rule 35 process is adequately resourced and monitored to enable medical practitioners in IRCs to carry out their functions efficiently and to deliver Rule 35 reports to the evidential threshold required. All IRC medical practitioners should continue to receive training in identifying and documenting concerns as part of the Rule 35 process. Likewise, Home Office case workers should be trained to ensure that there is fairness, accuracy and consistency in their assessments and interpretation of Rule 35 reports.**

19. **As highlighted by Stephen Shaw in his follow-up review, there is a need for an alternative, independent mechanism in the Rule 35 decision making process. Currently, decisions relating to Rule 35 reports are made by the caseworker responsible for progressing an individual's case, as well as their detention. This is not a fair or robust system. We urge the Government to explore alternatives that would ensure independent oversight as part of the Rule 35 decision making process.**

20. **We welcome the Government's commitment to review the Rule 35 process. A review of Rule 35 is urgently required to ensure that no further injustices take place on the immigration detention estate. As part of any change to the process, we urge the Government to ensure that Rule 35 effectively identifies all vulnerable groups, as reflected in the wider UNHCR detention guidelines [e.g. "victims of torture or other serious, physical, psychological, sexual or gender-based violence or ill-treatment"] and that these categories are clearly mirrored in the Adults at Risk (AAR) policy guidance. The process used to identify any individual who may be vulnerable to harm in detention must be one that is coherent, fair and easy to apply; the current Rule 35 process, as part of the Adults at Risk framework, clearly fails to achieve this.**

21. **At the time of publication, the government review of Rule 35 had not been done. We recommend that a comprehensive review of Rule 35 is completed by the end of June 2019.**

Accept: We agree to the broad thrust of these recommendations. The Government is committed to ensuring that the Rule 35 process operates effectively as a reporting system for doctors' concerns about the welfare of detainees.

During 2018 training was provided to around 650 caseworkers and many IRC healthcare staff. We are currently designing and plan to launch a further consolidated and consistent

training package focusing on the key responsibilities and policies of safeguarding in respect of those whom we detain. This will become mandatory on an annual basis for all those involved in detained casework and for those who make detention decisions.

The Home Office has piloted a dedicated central team to consider and respond to Rule 35 reports. The team is independent from the original detention decision makers and from the casework teams. The pilot evaluation found there was an improvement in the policy compliance of R35 responses, no significant change in the release or maintain rate and that it was more operationally efficient to have a central team. A decision was taken in June to move to a dedicated central R35 team and this team is expected to be established by mid August 2019. More broadly, as is set out in response to the recommendations above (13-17), in March this year we launched our targeted consultation on the draft Immigration Removal Centre Rules, within which the operation of Rule 35 is a key element and is closely linked to the operation of the AAR policy.

22. **We are deeply saddened and concerned by the recent reports of an increase in the number of self-inflicted deaths taking place in or shortly after immigration detention. We welcome the Home Office's inclusion in its statistics of deaths in immigration detention from September 2018. This action was long overdue. However, as outlined in the evidence we received, it remains very difficult to access accurate and detailed data on the causes of deaths in immigration detention. The Home Office data does not state if a death was self-inflicted, natural, or if it occurred in a prison. In line with recommendations by Stephen Shaw, and Ministry of Justice practice, the Home Office should publish a more systematic and transparent record of deaths in immigration detention with immediate effect. This should include whether the cause of death is apparently self-inflicted, from natural causes, or unknown. The data should also record deaths of detainees held under immigration powers in HM prisons.**

Accept: Any death in detention is a tragic event and is subject to investigation by the police, the coroner (or Procurator Fiscal in Scotland) and the independent Prisons and Probation Ombudsman (PPO).

We agree that we could do more to improve transparency on this important issue. On 29 November 2018 the Government published additional information on those held in immigration detention. This included data on the number of deaths of individuals held under immigration powers in IRCs and under escort in 2017, which are a subset of the 'other' reason for leaving detention in the published tables. The process for capturing and monitoring deaths in prison is different from that in the detention estate. Further work is ongoing to ensure any statistics published on deaths of those held solely under immigration powers in prisons in the Home Office release are aligned with wider statistics that are published on deaths in prisons, and deaths in the detention estate. Deaths of immigration detainees in prison are included in the Ministry of Justice Safety in Custody statistics: https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2018

Separately, the Home Office has asked the Independent Advisory Panel on Deaths in Custody to review and report on issues pertaining to deaths and incidents of serious self-harm in immigration detention. This request was made in support of three recommendations relating to deaths in detention made by Stephen Shaw in his second review. As part of this review we are working closely with the Panel to improve the availability and usefulness of

the existing data on deaths in detention and consider options for the publication of data on people who have died shortly after their release from detention. The future publication of this specific data set will be considered as part of the current review of published data.

23. **We welcome the Immigration Minister's acknowledgement that her Department needs more caseworkers and call on the Government to urgently increase the resources and staffing in the UK Visas and Immigration (UKVI) caseworking team to ensure that people's immigration cases are swiftly resolved.**

Accept: This financial year UK Visas and Immigration (UKVI) will be recruiting and training additional caseworkers to increase the capacity of caseworker teams across UKVI, including asylum.

UKVI is also improving the recruitment process to fill caseworker posts more efficiently, while at the same time carrying out a number of initiatives to improve retention of staff and skills.

In April 2019, responsibility for the management of persons who are detained for an asylum consideration transferred to Immigration Enforcement, while UKVI retain responsibility for interviewing and decisions. The new model is designed to bring together operational expertise, unifying UKVI asylum decision making expertise with Immigration Enforcement returns capabilities, to deliver improved outcomes in a more collaborative and speedy manner.

24. **The Home Office should ensure that notifications of liability for deportation are sent to foreign national offenders several months before the end of their custodial sentences. This would enable the necessary representations and legal challenges to take place and, where these were unsuccessful, provide for the timely organisation of travel documents. Importantly, this would avoid unacceptable situations of double punishment.**

Partially Accept: The Home Office always aims to ensure that liability for deportation notices are served on those FNOs who are yet to complete their sentence as early as possible to enable representations and challenges to be brought forward in a timely manner and deportation pursued where appropriate. There are cases where it is not practicable to serve a deportation decision several months before the completion of sentence, for example in the case of those FNOs serving shorter sentences. For those with longer sentences, deportation decisions are issued 18 months prior to their Early Removal Scheme date in all cases where there is 18 months or more to run before the end of the sentence. In respect of those individuals nearing the end of their sentence and not suitable for release into the community, notification of their continued detention under immigration powers is served a minimum of 30 days prior to the end of their custodial sentence.

As a result of Stephen Shaw's reviews into the welfare of detainees there has been a more rigorous assessment of the balance of the risk to the welfare of detainees with the risk to the public if they are released. This has resulted in an increase in the number of FNOs released from immigration detention whilst awaiting deportation.

25. **If there is no prospect of imminent removal, then people should not be detained.**

Accept: Published guidance on detention is already clear on the established principle that, for detention to be lawful, there must be a realistic prospect of removal within a reasonable period of time. Individuals may sometimes be detained while barriers to removal are resolved as long as this can be done in a timely manner.

The general principle is well understood by caseworkers and is further reinforced by the scrutiny placed upon detention decisions, including by the Detention Gatekeeper function, ongoing detention reviews, case progression panels and our work to include an element of independence in these.

26. **The Home Office's response to recommendation 26 is covered under recommendation (6) above.**

27. **We urge the Home Office to begin to publish its data on the rationale for decisions not to release individuals subject to Rule 35 reports by 1 July 2019. This data can be anonymised, and therefore there should be no reason why the Home Office cannot publicly share this information.**

Reject: As set out in the AAR policy, decisions on the continued detention of individuals subject to a Rule 35 report will always be down to a balance of the evidence of vulnerability and the specific immigration considerations that apply in the particular case. Therefore, publication of high level data will not provide any further insight. Publication of case specific rationales would not be appropriate and, with potentially small numbers, it would be difficult for this to be sufficiently anonymised to prevent identification of individuals.

The Home Office has piloted a dedicated central team to consider and respond to Rule 35 reports. The team is independent from the original detention decision makers and from the casework teams and will become operational in mid-August 2019.

28. **The Home Office should also provide more transparent and detailed reporting about the reasons for continued detention. Data on the barriers to release of individuals detained for more than six months should be published as part of the Home Office's next quarterly immigration statistics. We would also urge the Home Office to improve its learning from cases where people are released from detention on immigration bail to prevent people being inappropriately detained in the future. If this learning is successfully embedded in Home Office operations, we would expect the number of cases where people are held in immigration detention for over six months to decrease.**

Accept: The Home Office accepts the broad thrust of this recommendation. The Committee will be aware that, from November 2018, we began to publish data on deaths, escapes and pregnant women within immigration detention. But, in building on this, we will shortly be consulting on the information we already publish and on what additional information might be published to provide a fuller picture of immigration detention. We would welcome the Committee's further feedback as a part of this.

Notwithstanding the consultation, we are also reviewing all information published within Immigration Statistics and the Transparency Publication. As part of this review, we are looking to provide clearer information on those held within the detention estate, including the reasons for release. Capturing this information fully and accurately is not straightforward, particularly as following initial detention decisions, circumstances can and do change which is why they are subject to regular reviews. This does not mean the

initial detention decision was incorrect. But, as the Committee recommends, the provision of such data will be an important step in further improving feedback loops for those involved in all detained casework.

29. The Home Office's response to recommendation 29 is covered as part of recommendation (1) above.

30. **The Home Office should urgently review the new immigration bail provisions introduced in January 2018, which, a year on, are clearly not working—in particular to ensure that a lack of accommodation is not preventing immigration bail. The process should be made much simpler for individuals to navigate, and ultimately detainees should not be faced with a choice of destitution or remaining in immigration detention.**

31. **The Home Office must ensure that destitute asylum seekers in detention are allowed to access accommodation under Section 95 of the 1999 Act and that immigration bail is not refused solely due to a lack of such accommodation.**

Reject: Having accommodation is not a requirement of immigration bail and would not prevent release unless bail was granted with a residence requirement that an individual lived at a particular address, and the person granting bail believes that not having a residence condition would lead to the individual not complying with their bail conditions. Those granted bail who are destitute may be eligible for Home Office accommodation, either under asylum support provisions or bail provisions.

There may be a delay in releasing someone on bail subject to a residence condition where there are complex accommodation requirements, e.g. an FNO for whom the Probation Service and the police may need to approve the premises. The Home Office has implemented a Contract Change Notification with housing providers resulting in an increase in available properties. The Home Office is also working with the Probation Service to reduce the time taken to approve addresses for those FNOs under prison licence.

32. **Evidence submitted to the Committee makes it clear that the automatic bail hearing process is not functioning as it should. Reports that detainees are being asked to waive their rights in this regard are particularly troubling. Bail hearings should be scheduled to give detainees adequate time to prepare, and applicants should have access to interpretation, should they so need it, and legal representation as a matter of course.**

Reject: We do not ask or encourage detainees to waive their rights to automatic bail referrals. It is set out in statute that a detainee may opt out of the automatic bail referral process. This provision is in place to allow the detainee to choose to make an application for bail at a time of their own choosing if the timing of the automatic referral does not suit them. The detainee may opt back into the process if they change their mind.

Detainees are informed of the bail referral process and timing at the point of induction, and Detention Engagement Teams are available to explain the process to detainees and to answer any questions or concerns. The Home Office notifies detainees two weeks before their case is due to be referred to the Tribunal, giving them the opportunity to prepare and take part in the process, to formally opt out, or for the referral to be made without their co-operation. Detainees can also apply for bail themselves at any time.

The Detention Engagement Teams in all Immigration Removal Centres are aware of the right to automatic bail at four months (or two months during the pilot) and endeavour to ensure, using interpreters, that this right is understood and exercised.

Further information on the current pilot to trial automatic referrals after two months is provided at Appendix B.

33. **We support Stephen Shaw's concerns in his follow-up review about the lack of access to legal safeguards for individuals held under immigration powers in prison. It is neither just nor right to deny people detained in prisons the same access to legal safeguarding that is available to detainees held in Immigration Removal Centres. Foreign National Offenders are subject to deportation procedures and are often held in detention for very long periods of time. We support Shaw's call for the Home Office to extend the automatic immigration bail provisions. These should be extended to all FNOs, including individuals detained under immigration powers in prison who are pending or awaiting deportation.**

Partially Accept: The Legal Aid Agency's contractual arrangements for the provision of immigration/asylum advice and representation, including access for FNOs, are set out in the response to recommendation 12.

The first duty of Government is to protect the public. Any extension of the statutory auto-referral bail provisions would need careful consideration, balancing these duties with the practical implications for a number of systems on which the provision for bail relies. We do not believe that there is currently sufficient evidence to support a change in the way recommended.

34. **It is time to implement radical change. In line with the Joint Committee on Human Rights, we urge the Government to bring an end to indefinite immigration detention and to implement a maximum 28-day time limit with immediate effect. We strongly believe that 28 days would be a reasonable statutory immigration detention time limit to enforce, given that the Home Office's own Enforcement Instructions and Guidance stipulate that detention should only be maintained when removal is imminent (i.e. within 28 days (four weeks)).**

35. **The Immigration and Social Security Co-ordination (EU Withdrawal) Bill may provide a useful opportunity to put this time limit on a statutory footing. However, the Government can change its practice immediately, simply by ceasing to detain people beyond this limit. This 28-day time limit should be cumulative and accompanied by a robust series of regular checks and safeguards. An extension to the 28-day time limit should only be made in very exceptional circumstances and should only be permitted with prior judicial approval.**

36. **With such a maximum time limit, the Government should put safeguards in place to ensure that this maximum does not become a default period of detention that is routinely applied. To mitigate this risk, it is crucial to ensure that a robust and individualised review of detention occurs on a regular basis. The decision to maintain detention must be continually reviewed by the Home Office with appropriate independent oversight.**

37. **We recommend that the Government undertakes a public consultation on how detention time limit maximums could be applied to different types of detainees. For example, a lower time limit might apply to vulnerable individuals. If the Home Office assesses an individual to be an "Adult at Risk" in line with its statutory guidance, we propose that the Home Office adopts a similar policy as currently applies to families with children. That is, having in place a 72-hour detention limit, allowing for a maximum extension of 7 days in certain circumstances.**

38. **We recognise the specific challenges in relation to Foreign National Offenders (FNOs), i.e. that this broad term encompasses those convicted of any offence without British nationality including those who have committed the most serious crimes as well as victims of trafficking and modern slavery who have been coerced into crime. We therefore consider that the Home Secretary should consult on how any public protection issues can best be addressed.**

Reject: The Government believes that an immigration detention time limit of 28 days would severely constrain the ability to maintain balanced and effective immigration control, potentially incentivise significant abuse of the system, and put the public at risk. Any time limit would require a significant and costly re-engineering of a wide range of cross-government and judicial systems to mitigate these consequences. Even countries that do apply a time limit to immigration detention do not operate such a short one. There are considerable existing safeguards, and we are taking steps to strengthen these. The Government is clear that there is insufficient evidence to justify such a change. However, we keep under close review the package of detention reforms that are already in train, to understand how we can continue to have a detention system that is fair to those who may be detained, upholds our immigration policies, acts as a deterrent to those who might seek to frustrate those policies, and protects the public.

We have increased the number of Home Office staff in Immigration Removal Centres, with new detention engagement teams improving induction and the links between detainees and their caseworkers. Individuals now have more opportunities to provide further evidence before key decisions are made about their cases, and decision makers have more advice and support available to help them to make better quality decisions.

The Detention Gatekeeper function is improving the quality and consistency of initial decisions to detain, with judgements made independently of the referring team or caseworker. Strengthened Case Progression Panel arrangements ensure that case progression, vulnerability and public protection considerations are a key part of any decision to maintain or cease detention. We continue to make good headway in identifying independent panel members and considering potential models for their involvement in the existing case progression system.

Building on the existing four-month reviews, the Home Office started a six-month pilot in February this year to make an automatic referral to the courts for a bail hearing after two months. The pilot provides certainty for eligible detainees that their detention is subject to further judicial oversight. Importantly, this is an additional automatic referral: detainees —including FNOs—continue to be able to go to the courts at any time to apply for release on immigration bail.

39. **We welcome the Government's recent launch of its pilot scheme to provide alternatives to detention (ATD) for vulnerable women detained in Yarl's Wood IRC. This is a positive first step to end the harmful and unnecessary detention of vulnerable people. We also welcome its research into further ATD pilots and recommend that it expands the use of community based ATDs as recommended by Stephen Shaw. In its response to our report, we ask the Government to include a comprehensive action plan for its work on ATDs. The action plan should include a breakdown of all the ATDs it is currently considering, the key measures of success for each scheme, and an update on progress.**

Partially Accept: The first pilot is supporting vulnerable women who would otherwise have been detained at Yarl's Wood. It will operate on a voluntary basis and last for two years as participants move through to case resolution and are replaced. Subsequent pilots will be wider in scope as we want to test different methods of supporting different cohorts of migrants and will take account of international best practice where relevant in the UK context. The aim is to provide the reliable information, community support and personal stability that participants need to make informed decisions about their future as well as to ensure that participants continue to engage with the Home Office and are able to prepare for their future whether this is in the UK or not. A key measure of success will be whether, for a given cohort of migrants, it is possible to achieve the same or better outcomes in terms of case resolution in the community than if we had detained them. We are already working towards further pilots that can test different models of support with a wide range of migrants, men and women, taking account of international practice where relevant to the UK context. As we develop further ATDs we will be happy to provide the Committee with updates.

An independent evaluation, undertaken by UNHCR, will be published in due course.

40. **The Home Office must meet its obligations to those individuals it detains in immigration removal centres (IRCs). This means that people should be able to access high quality healthcare, equivalent to that in the community. From the evidence we have heard, this is not always the case.**

Accept: Healthcare services in IRCs in England are provided by NHS England. Healthcare in detention facilities in Scotland and Northern Ireland is commissioned by the contractor running those facilities. The provision of 24-hour, seven-days-a-week healthcare in all immigration removal centres ensures that individuals held there have ready access to medical professionals and levels of primary care in line with individuals in the community.

The Home Office take very seriously the quality of the healthcare provision and when necessary will raise concerns regarding the standards of the healthcare provided.

The National Partnership Agreement between NHS England, Public Health England and Immigration Enforcement sets out arrangements for governance and accountability. This includes regular IRC Partnership Assurance Board meetings where healthcare performance across all centres is reviewed. These quarterly meetings allow partners to discuss the health priorities for the estate, manage any escalations of incidents and report any concerns. The meeting includes a former detainee who has personal experience of the healthcare provided to ensure that their experiences are considered.

People in detained settings should have access to the same standard and range of services as people in the community. A suite of IRC Indicators of Performance (IRCIPS) and STHF indicators (STHFIPS) have been developed by NHS England, alongside individual IRC pressure reports which flag up any issues (including workforce) which can have a significant impact on the healthcare function in each IRC. All this information is reviewed by the IRC Assurance Group on a quarterly basis.

41. **The Home Office should consider the appointment of a clinically qualified individual to advise on the development of health policy specific to IRCs. In addition to this strategic role, the Home Office should ensure that there is a clinically qualified point of contact within the Home Office for IRC healthcare staff who may require advice relating to Rule 35 reports. Problems with recruitment and staff retention across the whole IRC workforce (including healthcare) must be urgently addressed to prevent staff shortages negatively affecting the health and wellbeing of detained individuals.**

Reject: The development of health policy is ultimately a matter for the Department of Health and Social Care and, for IRCs specifically, a matter for NHS England and Public Health England. The Home Office works closely with all of these partners, and the agreements that we have in place sets out priorities in respect of healthcare in IRCs and supports the provision of health services focused on the best interests of the detained population. The specifications for health services in IRCs are developed by NHS England with input from clinicians, including appropriate clinical leads, and other stakeholders including people with lived experience of accessing health services in an IRC and NGO representatives. In addition, NHS England has a specific Health and Justice Clinical Reference Group, which brings their work in this area to a wider clinical audience, and has a seat on the Royal College of General Practitioners Secure Environments Group. In such circumstances, it would be neither appropriate nor necessary for the Home Office to appoint its own clinical adviser on development of IRC health policy.

IRC doctors are not experts in identifying signs of torture and we do not expect them to be. In completing a Rule 35 report a doctor is only required to pass on their 'concerns' that a detainee 'may' have been the victim of torture. This is a low evidential threshold. Doctors are medically qualified professionals trained to spot a wide range of conditions and vulnerabilities. However, training on the adults at risk policy and Rule 35 was attended by representatives of IRC healthcare teams, including GPs, in 2018 and consideration is being given to providing further training later in 2019.

The information provided in a Rule 35 report is considered and balanced against all other information in line with the requirements of the AAR policy. But, as we have mentioned in response to the other Rule 35 related recommendations in this report, a consultation on the Immigration Removal Centre Rules is under way. We have also enlisted the services of a practising IRC doctor to assist with the further development of the AAR policy, in response to recommendations made by Stephen Shaw.

NHS England are working with Health Education England to develop a workforce strategy to improve the staffing pressures which currently exist across the whole of the healthcare sector.

42. **It is evident from the G4S commissioned investigation into Brook House IRC that the activities and facilities available to detainees at Brook House have drastically**

failed to meet the statutory requirements as outlined in the Detention Centre Rules 2001. The Home Office must take a more robust approach to ensure that Immigration Removal Centre (IRC) providers maintain adequate staffing levels and resources so that sufficient activities are available to detainees. Low staffing levels mean that people are locked up for longer periods of time, face to face communication is limited and IRC facilities are more likely to be closed (e.g. libraries, cafés, IT facilities) all of which compound levels of frustration and mental health issues among detainees and staff. This can lead to increased levels of self-harm as well as violence among detainees and towards IRC staff. In the event of a serious incident, a lack of staff could have detrimental consequences for everyone's safety within an IRC.

Accept: We keep staffing matters under continuous review. That is why we have expedited the roll out of Home Office Detention Engagement Teams to IRCs, to improve engagement between caseworkers and detainees. The new arrangements will also strengthen our capacity to oversee the IRC contracts effectively.

We have set clear expectations for G4S in responding to the issues highlighted by the BBC Panorama programme. G4S is implementing an agreed action plan for addressing these issues and commissioned Kate Lampard to conduct an independent inquiry into the alleged abuses. Ms Lampard's review was published in December 2018 and the recommendations from that review are being taken forward by G4S. This includes the recruitment and retention of more staff, implementation of a full programme for education and purposeful activity, and reinstatement of the cultural kitchen.

In the period ahead, new contracts will set high expectations for the quality of the management and staffing in IRCs. The current re-procurement of the contract for the Gatwick IRCs includes provision for increased staffing in key areas, including residential units, a maximum night state of 9 hours when detainees are confined to their rooms or units, improvements to welfare services and extended provision of activities.

In terms of potential serious incidents, we have robust contingency plans in place to manage any serious incident within the immigration detention estate. These plans are tested on a regular basis.

43. **The Home Office must take immediate steps to ensure that all IRCs have robust and effective whistleblowing procedures in place which IRC staff and detainees can use with complete confidence, knowing that they will be fully protected. IRC managers should ensure that both staff and detainees are regularly made aware of the whistle blowing procedures, providing clear written and verbal explanations of what the policy is for, with user friendly whistleblowing toolkits and publicity made available across the IRC. Staff and detainees should also be given explicit reassurance that they would be supported if they raised concerns about any wrongdoing or misconduct they witnessed. Failure to do so may result in further abuses across the immigration detention estate.**

Accept: In addition to the external, independent oversight systems (HMIP, IMBs and the PPO), we have implemented steps across the detention estate to enhance assurance and oversight of service provision. This includes a review of supplier whistleblowing arrangements; action to refresh and reinforce 'whistle blowing' procedures among Home Office based staff based in IRCs; improving information flows on and analysis

of complaints, incidents and use of force to better enable effective interventions when appropriate; strengthening service and contract monitoring within IRCs, as mentioned above; and enhancing supplier and Home Office engagement with detainees.

44. **IRC staff should receive comprehensive training on whistleblowing processes which should be refreshed regularly. In line with Stephen Shaw, we support the provision of a "safe space" for IRC staff to reflect on what they have done well, and less well without fear of discipline or management action. The details of how such a safe space might work should urgently be explored by the Government in consultation with IRC staff and senior managers and reported back to our Committee by 1 December 2019.**

Accept: We accept the principle behind this recommendation. We are committed to ensuring a safe environment for staff and detainees to raise any concerns they may have. All our commercial suppliers in the immigration detention estate are required to have an effective whistleblowing policy in place, and to ensure that staff and detainees know how to access it.

In the Gatwick estate G4S have refreshed and promoted their whistle-blowing procedures, with additional training provided at the centre by the Jill Dando Institute. All staff have been issued with whistleblowing cards featuring telephone numbers to enable them to raise concerns confidentially.

We will review all IRC suppliers' existing whistleblowing policies by summer 2019 to ensure that they are fit for purpose and regularly refreshed and communicated to all staff working in IRCs. The review will identify best practice, which may include the use of a 'safe space', where appropriate. We will continue to keep the Committee sighted on progress in the context of the Government's wider detention reforms, but we are happy to provide the committee with a letter updating members on the findings of the internal review into whistleblowing when available.

45. **We support Stephen Shaw's recommendation and call on the Home Office to urgently monitor more closely the policies, procedures and practices of its immigration detention contractors in order to more effectively expose inappropriate behaviour. Equally, the Home Office should review its equivalent professional standards policies and procedures with immediate effect and ensure that Home Office staff receive comprehensive training on upholding professional standards and promoting a healthy staff culture.**

Accept: The needs of detainees are safeguarded by a robust statutory and policy framework for operating the detention estate. This includes: the Detention Centre Rules 2001; the Short-term Holding Facility Rules 2018; published operating standards for IRCs, escorting and pre-departure accommodation; and published detention services orders providing detailed operational guidance to detention and escorting service providers. All immigration detention facilities are subject to statutory, independent scrutiny by HMIP, which carries out a rolling programme of unannounced inspections against its published 'Expectations' framework and publishes the reports of its inspections. At a local level, IMBs oversee the administration of IRCs, the state of their premises and the treatment of detainees. Board members, who are appointed from local communities, have unrestricted

access to the facilities to which they are appointed and to the detainees held there. They may raise any matter of concern with Home Office Ministers and publish an annual report of their findings.

We have already implemented a number of actions across the detention estate including the promotion of whistleblowing policies to staff and detainees; increased the frequency of Home Office surgeries with detainees; and increased the visibility of Home Office staff in the centres. There are well established processes for any member of staff at an IRC to raise concerns about an individual detainee's welfare and Home Office staff are expected to challenge and report any improper behaviour by their colleagues or contracted staff. We have also refreshed our internal whistleblowing processes and reminded staff of their responsibilities as set out in the Civil Service Code, Detention Centre Rules, Operating Standards and Detention Services Orders.

Home Office Compliance Teams in each IRC are responsible for ensuring that suppliers are fulfilling their contractual (or service level agreement) requirements. They monitor the services provided, the treatment of detainees, the condition of the establishment and ensure that the Home Office is receiving effective service and value for money.

The Compliance Team operates to a tiered approach which involves self-reporting by the supplier, validation and dip-sampling of that self-reporting and a pro-active programme of thematic scrutiny based on risks identified at a particular IRC. This new approach is in place at the Gatwick and Heathrow IRCs and is being rolled out to the other centres over the next few months. Second line assurance is provided by a central team of dedicated audit specialists – the Detention and Escorting Services Audit and Assurance Team.

In addition to the on-site compliance teams a dedicated security team, formed last year, provides assurance on compliance with security standards, the use of force and substance misuse strategies operated by suppliers.

Annex: Appendix B: Automatic referral for bail pilot – midway update

1. On 24 July 2018, the Home Secretary laid before Parliament the second independent review by Stephen Shaw into immigration detention. Responding to that review, the Home Secretary committed to going further and faster with the reforms to immigration detention in four priority areas: encouraging and supporting voluntary returns; improving the support available to vulnerable detainees; increasing transparency around immigration detention; and a new drive on dignity in detention.

2. As a part of this commitment, the Home Secretary, in agreement with the Lord Chancellor and Secretary of State for Justice, announced plans to pilot an additional automatic bail referral to the First-tier Tribunal of the Immigration and Asylum Chamber at the two-month point; halving the time in detention before a first bail referral. I wrote to you on 7 February to notify you about the start of the pilot on 10 February, and its six-month duration. I also committed to updating you at the midway point.

3. The main aim of the pilot is to understand whether an earlier, automatic referral to the Tribunal at the two-month point makes a difference in terms of the handling of a detainee's case during their time in detention. This will need to be carefully considered against the current, statutory four-month automatic referral provision, as well as consideration of how the process operates and its impacts, particularly for those whom the process is designed to support, and those administering it, such as Her Majesty's Courts and Tribunals Service.

4. In my letter, I provided an estimate that around 350 individuals would be within the scope of the pilot. Three months into the pilot, our early assessment of the figures show that fewer cases have remained in detention, with around 200 eligible cases remaining detained at week 8, the point at which the first week's intake became eligible for automatic referral to the Tribunal. These cases have already started to flow into the Her Majesty's Courts and Tribunals Service part of the process. It is too early to say, with any certainty, what the data is telling us. But, as I set out in my letter to you, once the pilot has concluded, and following its full evaluation, I expect to provide a more substantive update.

5. The detention journey for individuals in the two-monthly auto-referral pilot will be compared to the baseline cohort who are subject to four-monthly auto-referrals. Comparison areas will include:

- Average length of detention;
- Proportion of Tribunal bail grants;
- Proportion of those who opted in (both actively and passively) to the auto-referral process;
- Proportion of those who cooperated with the process by completing the bail application form;
- Proportion of withdrawals, and whether withdrawal occurred before or at the bail hearing;
- Cost to legal aid;

- Impact on the time taken to hear cases and number of cases per hearing centre;
- Operational impacts on administering the process for both Home Office and Her Majesty's Courts and Tribunals Service officials; and
- Understanding and views of Home Office staff and people in detention on the process.

6. I should re-emphasise that the automatic bail referral acts as an additional safeguard and does not change the fact that all detainees, including those foreign national offenders facing deportation, can apply for bail at any time. Those who are detained can apply for bail before a referral is due, or they can choose to opt out of the process, or withdraw the application once it has been submitted, if the timing of the automatic referral does not suit them.