



Rt Hon Harriet Harman QC MP
Chair, Joint Committee of Human
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Dear Harriet,

23 July 2019

I am grateful to the Joint Committee of Human Rights 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 programme of reform the Home Secretary set out in his statement to Parliament on immigration detention in July last year.

As my letter to your Committee of 3 December 2018, copied to the Home Affairs Select 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.

A handwritten signature in blue ink, reading "Caroline Nokes". The signature is written in a cursive style and is positioned above a thin horizontal line.

Rt Hon Caroline Nokes MP
Minister of State for Immigration

Joint Committee on Human Rights Immigration Detention Inquiry Report February 2019

Home Office Response to Recommendations

1. We consider that alternatives to detention should be considered in all cases and a record kept.

Accept: Before even reaching the stage where there is a risk of detention and enforced removal, we are working hard to ensure that individuals 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.

Where detention is considered appropriate, the Detention Gatekeeper ensures that it is used as a last resort, based on a consideration of whether there is a realistic prospect of removal within a reasonable timescale, and assessment of other factors, including compliance and public safety, balanced against vulnerability considerations. Their consideration of cases also includes what discussion(s) have occurred around voluntary departure and / or other alternatives to detention. We continue to explore opportunities for alternatives to detention, on which a pilot is currently underway 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 that they are clear about the reasons for their detention and the alternatives to detention, and for further improvements to the record-keeping around this.

2. We recommend that alongside the Home Office's current plans to introduce an independent element into case progression panels, in cases where detention is planned there should be properly independent decision-making. Decisions should be pre-authorised by a person or body fully independent of the Home Office. This could be implemented in the first instance as a pilot which should be reviewed after 24 months to consider whether it has indeed improved the quality of detention decisions.

The Home Office's consideration of this recommendation is linked to the following corresponding recommendations by the Committee:

(11): Immigration detainees should not have lesser protections and rights than those detained under the criminal justice system. The decision on whether to continue detention should be made by a judge and should be made promptly. However, immigration detainees need sufficient time to get advice and gather evidence before such a hearing. A period of 36 hours may be too short for this. We recommend that a judicial decision should be required for detention beyond 72 hours; and

(14): More regular and more independent review would also increase the protection available to the most vulnerable.

Reject: 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 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 identifying, and responding more effectively, to cases of vulnerability. Taken together, we do 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 decide to depart the UK at any time and make use of the return schemes that exist in immigration detention. 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.

3. The Government should also consider asking the Law Commission to look at consolidating and simplifying immigration law more widely.

Reject: Work is already under way by the Law Commission to consider and make recommendations on simplifying the Immigration Rules. They are currently undertaking a consultation and we look forward to receiving their recommendations in due course. There are no current plans to ask the Law Commission to simplify immigration law more generally, but the work referred to will be a positive step towards that endeavour.

4. We have already recommended that the Government consider whether immigration cases engaging the Article 8 right to private and family life be brought within the scope of civil legal aid, where they would be available on the means and merits test basis. We consider there is a case for similarly reinstating legal aid for all immigration cases.

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 claims; challenges to detention under immigration powers; applications 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, including cases raising Article 8 of the ECHR which do not fall within any of the above categories, 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 to ensure that 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.

5. Those in the criminal justice system have initial access to prompt legal advice; there should be similar provision for those in immigration detention. Initial legal advice appointments under the Detention Duty Advice scheme should be made automatically, unless the individual opts out. Surgeries should be long enough to ensure that there is sufficient time for the detainee to explain their case and for the adviser to collect the necessary details needed to take the case forward to representation. The new system for providing advice should be kept under review to ensure that the firms responsible for advising detainees have the necessary skills and experience to do so.

Accept: To ensure the accessibility of immigration legal advice in Immigration Removal centres, the Detained Duty Advice scheme provides 30 minutes of non-eligibility assessed legal advice for immigration detainees. Further advice and assistance are available subject to the individual's case satisfying the statutory legal aid means and merit criteria. The Legal Aid Agency regularly reviews and monitors its contracts with legal aid providers, including those who

attend IRCs. The Home Office will work with the Ministry of Justice and the Legal Aid agency to consider whether the existing provision and practical arrangements need to be changed or otherwise improved. For this reason, and pending further consideration, including with the Ministry of Justice, this recommendation is accepted in principle only.

6. If it is necessary and proportionate for an individual to be detained under immigration powers after they have finished serving a prison sentence, then detention should take place in an Immigration Removal Centre.

Reject: In view of the lower levels of security and control in the immigration detention estate compared to the prison estate, it is right that we should keep those detainees who pose more serious risk in the prison system, and also right that we should seek to keep that number as low as is consistent with the risk. This is a necessary and proportionate measure to ensure the security of the immigration detention estate and the safety of detainees, staff and the public.

The Government makes every effort to ensure that FNOs are, as far as possible, deported before the end of their custodial sentence. FNOs who need to be detained under immigration powers at the end of their custodial sentence pending deportation will be transferred to IRCs only after a careful risk assessment in line with published policy. This would involve a number of considerations.

The differences between detention in a prison or an IRC do not prevent detainees held in the former from pursuing their immigration cases or alter the outcome of their cases. As is the case for those held in IRCs, detainees held in prison can apply at any time to the First-tier Tribunal for release on bail.

7. The Home Office should make it a priority to resolve the immigration status of prisoners at the earliest opportunity. People liable to deportation should be given notice of the Home Office's intentions to deport as far before their release date as possible.

Individuals should then have prompt and automatic access to legal advice so that they can engage with the legal processes for challenging deportation appropriately. This should mean immigration status issues are resolved before custodial sentences end and offenders can either be released or removed at the end of their custodial sentence. This would also help to manage the expectations of both the detainee and their families.

Partially Accept: Deportation decisions in FNO cases 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. The exception to this position is cases subject to Prisoner Transfer Agreements. The date on which the decision is served in such cases depends on the FNO's nationality and the agreements with the individual country but will usually be at least four years before the end of the sentence. In cases where the custodial sentence is shorter than 18 months we aim to issue the deportation decision straight away.

The right time to serve a deportation decision in cases with sentences over five years is not always at the start of the custodial sentence, as circumstances will inevitably change by the end of the sentence. The Courts have considered the timing of deportation decisions and will instruct the Home Office to withdraw or remake the decision closer to the end of sentence if it is considered to have been made too early. This is particularly applicable in cases raising asylum and human rights issues and if country situations change.

As referenced in response to recommendation 4, legal aid remains available for asylum cases and for some immigration matters. Exceptional Case Funding (ECF) is available 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 legal aid means and merits tests.

The Ministry of Justice 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.

8. We recommend that where all other alternatives have been explored and considered unsuitable and detention is considered necessary, the maximum cumulative period for detention should be 28 days. The only exception to the 28-day limit should be that in exceptional circumstances — for example, when there are no barriers to removal and the detainee is seeking unreasonably to frustrate the removal process — the period of 28 days could be extended by a further period of up to 28 days on the decision of a judge. The decision on whether the 28-day period should be extended should be a judicial one, to be considered on application from the Home Office.

9. We consider these constraints should be placed on a statutory footing....Given that the Immigration and Social Security Co-ordination (EU Withdrawal) Bill is likely to be the most significant opportunity to seek legislative change in the foreseeable future, we will be seeking to amend it to ensure that restrictions on the length of immigration detention apply. It is possible that a time limit on immigration detention could be introduced by administrative action, which would be some improvement, but, in our view a second best.

10. The 28-day limit should be a maximum, not the normal time limit. There is no reason why the existing pattern in which most detention is for considerably shorter periods should change. The introduction of a maximum time limit should supplement the existing other safeguards in the immigration detention system rather than replacing them. The constraints on the state's powers to detain for immigration purposes established under the common law and ECHR will continue to apply in all detention cases, including those involving foreign national offenders.

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. . 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 vulnerable people and the public.

11. The Home Office's response to recommendation 11 is covered substantively in response to recommendation (2) above.

12. The Government should extend the current automatic bail referral provision in Schedule 10 of the Immigration Act 2016 to all categories of detainees, including FNOs, to ensure that individuals who are most likely to spend lengthy periods in detention have decisions on their detention reviewed by a judge and are given the opportunity to make

representations. This should be done whether or not our recommendation for a time limit on detention is accepted.

Reject: 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 on 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 described.

13. There should be better quality IT for immigration bail hearings for all in detention with a dedicated video suite within all IRCs to ensure that all disruptive noise is cancelled out.

Accept: We accept the principle of this recommendation and will investigate the quality of local access to court video links in the IRCs. If there are problems with the local equipment, accommodation or access to it, we will identify how best these might be addressed, taking account of practical and cost constraints.

14. The Home Office's response to recommendation 14 is covered substantively in response to recommendation (2) above.

15. The Government should make better provision for the identification of individuals who lack mental capacity in detention. There should be, at all times, an on-site suitably qualified expert at all IRCs able to make such assessments in accordance with mental capacity legislation. We also consider that there should be automatic provision of advocacy services in cases where individuals do not have full capacity to make decisions for themselves on account of their mental capacity to ensure that such individuals are able to participate in the legal processes to challenge their detention and make representations in respect of any immigration applications.

Accept: We accept the broad thrust of this recommendation. 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. We continue to make fundamental reforms to the detention system introducing a series of safeguards – including the Detention Gatekeeper, Case Progression Panels, a Rule 35 related pilot, and the Adults at Risk policy itself - that work collectively to identify and appropriately manage a wide range of

vulnerabilities, including around mental disability and incapacity, across the immigration detention system. We are also considering how our approach can be strengthened. The subject of mental capacity in immigration detention is also a matter of ongoing litigation in the Court of Appeal.

16. The Home Office should give serious consideration to improving the oversight and assurance mechanisms in IRCs and the immigration detention estate generally to ensure that any ill-treatment or abuse is found out immediately and action is taken to correct it, to take steps against those responsible and to ensure lessons are learned to put in place effective prevention mechanisms.

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 all staff working in the immigration detention estate, including the detention and escorting service providers.

All immigration detention facilities are subject to statutory, independent scrutiny by HM Inspectorate of Prisons (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, Independent Monitoring Boards (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 implemented steps across the detention estate to enhance assurance and oversight of service provision. We have strengthened our capacity to monitor performance across the estate. This includes action to refresh and reinforce 'whistle blowing'; 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; and enhancing supplier and Home Office engagement with detainees.

Home Office compliance teams 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 approach is in place at the Gatwick and Heathrow IRCs and is being rolled out to the other centres over the next few months. The 2018 annual report of the Brook House IRC Independent Monitoring Board commented that the work of the Compliance Team at that IRC made a significant contribution to improvements in the operation of the Centre. 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.

17. More needs to be done to make the detention estate less like prisons and create as open a regime as feasible on the inside, which is proportionate when dealing with those detained for administrative purposes. Detainees should not be routinely handcuffed. Under the criminal justice system, there are different prison regimes ranging from category A to D. Consideration should be given to separating individuals who have been convicted of serious offences and those who pose a risk of violence from other detainees.

Partially accept: We accept the broad thrust of this recommendation, although separating FNOs from other detainees would not be practicable given the size and location of the IRC estate. There is a careful risk assessment before any decision is taken to move individual FNOs to the IRC estate.

When individuals are detained it is important that they are treated with dignity and respect and we expect the highest standards from those employed to manage the detention estate. Immigration Removal Centres are not high security prisons, nor do they operate like them. They are required to operate a reasonably relaxed regime with as much freedom of movement and association as possible consistent with maintaining a safe and secure environment.

It is already the case that detainees are not handcuffed routinely. Published Home Office guidance makes it clear that there is a presumption against using handcuffs. Training given to detainee custody officers emphasises the use of

communication and interpersonal skills to persuade detainees to adhere to the safety and security measures in place at IRCs and under escort.

ANNEX: 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.