

Medical Justice Briefing on Amendment No. 143, Illegal Migration Bill

Amendment regarding the Brook House Inquiry

Lord German

Amendment

“Clause 66, page 65, line 29, after “subsections” insert “(2A),”

Clause 66, page 65, line 32, at end insert-

“(2A) Regulations under paragraph (1) may not be made until-

- (a) the Chairman of the Inquiry has notified the Secretary of State under section 14(1)(a) of the Inquiries Act 2005 that the Inquiry has fulfilled its terms of reference;
- (b) the report of the Inquiry has been laid before Parliament under section 26 of that Act; and
- (c) a Minister of the Crown has laid before Parliament a statement setting out how they propose to implement the recommendations of the Inquiry.”

Clause 66, page 65, line 35, leave out paragraph (a).

Clause 65, page 66, line 17, at end insert-

“(6) In this section “the Inquiry” means the inquiry announced by Priti Patel MP on 5 November 2019, pursuant to the provisions of the Inquiries Act 2005, into the decisions, actions and circumstances surrounding the mistreatment of detainees broadcast in the BBC Panorama programme ‘Undercover: Britain’s Immigration Secrets’ on 4 September 2017.””

Briefing

The Detention Provisions in the Illegal Migration Bill

The Illegal Migration Bill significantly expands the current powers and use of immigration detention. The Bill removes the current limits on the detention of children and pregnant women. It curtails judicial scrutiny and removes effective remedies to challenge unlawful or unjustified detention. At the same time, a lack of returns agreements with other countries makes removals difficult. Moreover, because immigration detention is indefinite, the Bill is likely to lead to a ballooning of the number of people languishing in detention.

It dramatically expands who can be detained; Clause 10 introduces a new power to detain if the person *is* or is *suspected* to be subject to the duty to remove. The Home Secretary’s duty to remove is set out in Clause 2 as the duty to remove those who satisfy the following four conditions:

1. Entered the UK in breach of immigration law;
2. Entered or arrived in the UK on or after 7 March 2023;
3. Entered or arrived from a safe third country;
4. Required leave to enter or remain in the UK but does not have it.

Refugee Council predicts that this Bill will result in as many as 250,000 people (including 45,000 children) being detained or left destitute in state-provided accommodation, and that, in the first

three years of this Bill's operation, between £8.7bn to £9.6bn will be spent on their detention and accommodation.¹

Clause 10 also disapplies the current 72-hour time limit² on the detention of pregnant women and the current time limits on the detention of children and families (72 hours³) and unaccompanied children (24 hours). This means that the Bill will allow pregnant women and children to be detained indefinitely.

Clause 11 reduces judicial oversight and expands the government's power of administrative detention at the discretion of a Home Office official. This clause allows the Home Secretary to detain for any period that she considers to be "*reasonably necessary*", and detention can continue "*regardless of whether there is anything that for the time being prevents the deportation order from being made or the removal from being carried out*".

Clause 12 provides that a person detained under immigration powers cannot be granted bail by the First-tier Tribunal during their first 28 days of detention.

Clause 12 further stipulates that the High Court cannot review the lawfulness of the decision to detain within the first 28 days of someone's detention.

Clause 12(4) limits the High Court's jurisdiction in judicial review proceedings, during the first 28 days of detention, to only being able to judicially review situations where the Home Office acts in bad faith or "*in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice*".

In the first 28 days, the Bill only allows for detention to be challenged through applying for a writ of *Habeas Corpus*, which specifically concerns only whether there is a power to detain. It does not concern whether the power to detain was exercised lawfully or whether the Home Office has breached their own policies.

Taken together, these provisions risk creating a situation where there is no meaningful avenue for judicial scrutiny of the exercise of the power to detain for first 28 days of detention and only extremely limited scrutiny thereafter.

Overall, this Bill is a radical and alarming development aimed at significantly expanding the power of administrative detention, denying or curtailing judicial scrutiny, and drastically reducing remedies to challenge unlawful or unjustified detention.

A large increase in detention facilities will be required, with many more people, including asylum seekers, children, pregnant women, and survivors of torture and trafficking, experiencing the devastating suffering and harm that detention is known to inflict, and which can in some cases be permanent.

¹ Refugee Council (2023) [Illegal Migration Bill - Assessment of impact of inadmissibility, removals, detention, accommodation and safe routes](#) 4.

² The limit is extendable up to 7 days with Ministerial authorisation.

³ The limit is extendable up to 7 days with Ministerial authorisation.

Brook House Inquiry

Under the Inquiries Act 2005, the Brook House Inquiry into mistreatment and abuse in breach of Article 3 ECHR at Brook House IRC exposed by undercover reporting⁴ was instituted in November 2019 following judicial review proceeding⁵.

The Brook House Inquiry heard extensive evidence over 10 weeks in 2021-2022 of continuing systemic and institutional failures within immigration detention leading to abuse of those detained there.

The Inquiry, as the first public inquiry into the mistreatment of those detained under immigration powers and the conditions of that detention, provided a unique opportunity for public scrutiny of, and accountability for, detention practices and culture.

The Inquiry heard evidence from detained persons, detention officers, healthcare providers, G4S (the private contractor responsible for Brook House at the time) employees, Home Office officials, members of the Independent Monitoring Board and HM Inspectorate of Prisons. The Inquiry also appointed and heard from three experts to address the key issues of use of force; institutional culture; and clinical care provision and safeguards. It also examined a vast amount of documentary material and video footage (both un-broadcast BBC footage, and material provided by G4S from CCTV and body worn cameras).

The evidence that emerged confirmed the longstanding serious concerns of organisations – including Medical Justice - working with detained people. This chimed with a series of under-cover reporting over the last two decades⁶, as well as from reports from detained people.

Terms of Reference of the Brook House Inquiry

The Terms of Reference of the Brook House Inquiry states:

“To investigate into and report on the decisions, actions and circumstances surrounding the mistreatment of detainees broadcast in the BBC Panorama programme ‘Undercover: Britain’s Immigration Secrets’ on 4 September 2017.

To reach conclusions with regard to the treatment of detainees where there is credible evidence of mistreatment contrary to Article 3 ECHR, namely torture, inhuman or degrading treatment, or punishment; and then make any such recommendations as may seem appropriate.”⁷

Central to the Inquiry’s Terms of Reference⁸ is to examine the extent to which any Home Office policies or practices, or clinical care issues within detention, caused or contributed to any identified mistreatment.

Whilst the temporal scope of the Inquiry was limited to the period from 1 April to 31 August 2017, in order to fulfil its task to make meaningful recommendations, it also looked at current institutional practices and culture at the IRC, within private contractors and the Home Office up to the present day.

⁴ BBC Panorama (03 September 2017) [Undercover: Britain’s Immigration Secrets](#).

⁵ *R(MA and BB) v Secretary of State for the Home Department* [2019] EWHC 1502.

⁶ This includes Oakington in 2005, and at Yarl’s Wood in 2015.

⁷ Brook House Inquiry [Terms of Reference](#).

⁸ Brook House Inquiry [Terms of Reference](#).

The Chair is due to publish her report, with findings and recommendations, in late summer 2023.

Evidence to the Brook House Inquiry

The evidence to the Brook House Inquiry has shown:

1. Misuse of force

Even in the limited period examined by the Inquiry, there was evidence of **excessive, unlawful and disproportionate use of force**, which was routine and normalised including in the context of removals, the use of segregation and to “manage” expressions of mental distress and self-harm. There was a normalisation of the infliction of pain, suffering and humiliation.

Inappropriate use of restraint and force on detained persons suffering from mental illness was common. Use of force was not properly monitored or reviewed, and officers on occasion conspired in failing to record it.

Jon Collier, the Inquiry’s Use of Force (UoF) expert, identified from the 43 UoF incidents he reviewed recurrent concerns of force not being used as last resort; lack of de-escalation attempts; inappropriate blanket use of PPE (riot gear and shields); and, most critically, the inappropriate use of force on those with mental illness.

There was clear evidence of very poor governance of the use of force, which facilitated the persistent misuse of force and abusive practices. These failings in oversight by both G4S managers and the Home Office officials contributed to a climate of impunity where the abusive use of force and excessive force persisted unchecked. There were patterns of officers not using body-worn footage cameras as required, which could be to avoid accountability.⁹

Healthcare staff were unaware of their responsibilities to monitor the welfare of detained persons during use of restraint. Use of force against naked detained persons was “unusually high” according to the Inquiry expert, and again showed prioritisation of removal over welfare.

Dr Rachel Bingham, the lead clinical practitioner at Medical Justice, gave evidence as to the “perfect storm” of conditions which give rise to the conditions for mistreatment. Evidence showing that people in immigration detention having high rates of mental illness¹⁰ and the limitations on treating mental illness in detention¹¹ is important context to highlight that certain issues are intrinsic and cannot be improved. In a context in which staff lack the therapeutic tools or resources to care for vulnerable detained persons, treating their distressed behaviour as refractory, recourse to coercive measures is inevitable.¹²

2. Systemic failures in the operation of the clinical safeguards

The clinical safeguards, that are designed to protect vulnerable detained persons from unlawful and harmful detention, are set out in a statutory instrument, the Detention Centre Rules 2001.¹³

⁹ [Jon Collier, 30 March 2022, 157/3-25 and also 158/1-2](#)

¹⁰ Royal College Psychiatrists (April 2021) [Position statement: The Detention of people with Mental Disorders in Immigration Detention](#) PS02/21.

¹¹ Royal College Psychiatrists (April 2021) [Position statement: The Detention of people with Mental Disorders in Immigration Detention](#) PS02/21.

¹² [Dr Rachel Bingham, 14 March 2022, 55/3-15](#)

¹³ [Detention Centre Rules 2001](#) SI 2001 no 238.

The Inquiry's clinical expert described this system as "dysfunctional"¹⁴ and found that there was a "deprivation of safeguards" at Brook House.¹⁵ He said it was "impossible" not to draw a causal connection between the mistreatment of detained people, the routine misuse of force and segregation and the "complete failures" of the systems safeguards.¹⁶ This led to the wrongful detention of vulnerable persons in conditions which adversely affected their physical and/or mental health.

Healthcare staff did not effectively identify or assess symptoms of trauma, nor did they have the means to provide treatment for it. This was highly alarming given that it is the accepted clinical view that detention itself is inimical to the treatment of mental disorder, particularly for those with trauma related mental illness.

Alarming, senior healthcare staff in some instances thought it was their role to recommend the use of force for the purpose of enforcing immigration control. At the end of the hearings the Home Office felt compelled to write to all IRC healthcare departments to explain their basic legal duties and functions in implementing the key safeguards in accordance with the Detention Centre Rules 2001.

3. Prisonisation and criminalisation

Central to the evidence of the Inquiry, expert Professor Bosworth termed the 'prisonisation' of immigration detention: this included the physical design of the IRC, as well as the policies, practices, and regimes that operated to embed an institutional culture of inappropriate use of force, desensitisation and dehumanisation. These conditions meant staff felt they were "actually working in an institution that was effectively a prison with people who were therefore criminal and dangerous".¹⁷

4. Institutional culture of dehumanisation and institutionalised racism

There was evidence that prisonisation informed the conditions for desensitisation to and dehumanisation of detained persons by staff at Brook House. This included evidence of pervasive derogatory and violent verbal abuse and racism to or about detained people revealing an underlying lack of any empathy even when people were at their most distressed and vulnerable- even in life-threatening situations.

As Professor Bosworth stated: "it is a lot easier to be desensitised towards people who you kind of think are not like you and you don't value".¹⁸ It is within this moral vacuum that the conditions for abuse could flourish.

A key aspect of dehumanisation was racism. Professor Bosworth was clear that this was institutional¹⁹, agreeing with Stephen Shaw's findings from his 2005 Prison and Probation Ombudsman report on Oakington IRC that the risk of racism and abusive practice was inherent in the IRC system²⁰. Evidence of pervasive racism was identified at the subsequent Inquest in 2013 amongst

¹⁴ [Dr Jake Hard, 28 March 2022, 72/17-19](#)

¹⁵ [Dr Jake Hard, 28 March 2022, 178/20-25 and 179/ 7-9](#)

¹⁶ [Dr Jake Hard 28 March 2022 117/20-25, 118/1-11, 119/1-11](#)

¹⁷ [Professor Mary Bosworth, 29 March 2022, 13/23-25, 14/1-2, 39/18-22 and 46/10-12](#)

¹⁸ [Professor Mary Bosworth, 29 March 2022, 46/10-12](#)

¹⁹ [Professor Mary Bosworth, 29 March 2022, 97/10-13](#)

²⁰ PPO (2005) [PPO Inquiry into allegations of racism and mistreatment of detainees at Oakington immigration reception centre and while under escort](#), 3-4

G4S staff using excessive force during a deportation attempt of Jimmy Mubenga who was unlawfully killed²¹ and by undercover reporting at Yarl's Wood IRC in both 2004 and 2015.²²

Professor Bosworth explained how the function of the IRC estate, namely the exercise of coercive powers over foreign nationals to effect their removal, together with the wider effects of the hostile environment, means that the risk of racism is ever-present.²³

5. Lack of learning and accountability

The Home Office sought to offload and minimise its responsibility, despite having been aware of repeated scandals over the abuse and mistreatment of those detained in IRCs²⁴, and having been the subject of repeated criticism by the Courts (including findings of mistreatment serious enough to breach the prohibition on inhuman and degrading treatment in Article 3 of the ECHR) and parliamentary committees.²⁵

The Home Office pointed to front line staff as responsible and as *"bad apples"*, despite evidence of serious failings by its contractor G4S at all levels of the organisation. It also showed itself unwilling to accept its own responsibility: to learn the lessons of how its detention policies, practices and institutional culture of indifference and hostility had resulted in the systemic failure of safeguards and the existence of a corrupted culture of impunity, dehumanisation and racism.

Relevance of the Brook House Inquiry to the Illegal Migration Bill

The increase in detention powers in the Bill is particularly concerning given the evidence that was heard at the Brook House Inquiry. There is no indication that the situation revealed by the evidence to the Brook House Inquiry has significantly improved since 2017. There has been recent evidence of failing clinical safeguards, misuse of force and profound harm that is being caused:

1. The findings of the IMB 2020 report about Brook House IRC, found that the whole detained population was subject to inhumane treatment²⁶, and identified the same continuing failures that operated in 2017 with similarly high levels of vulnerable people deteriorating in detention, evidenced by high levels of self-harm and suicidal ideation with correspondingly increased use of force and segregation. The IMB raised concerns to the Immigration Minister under section 6 of the DCR 2001 that *"a series of issues are collectively and cumulatively having an unnecessary, severe and continuing impact on detainees, particularly those facing removal on charter flights, as well as across the detainee population as a whole. We believe that the cumulative effect of these concerns amounts to inhumane treatment"*.²⁷

²¹ Report by Assistant Deputy Coroner Karon Monaghan QC under the Coroner's Rules 1984, Rule 43: Inquest into the Death of Jimmy Mubenga, 23 July 2013.

²² See Witness Statement of Emma Ginn, §14, [BHM000041_0004-5](#) and §§121-122, [BHM000041_0043-44](#)

²³ [Professor Mary Bosworth, 29 March 2022, 98/1-17](#)

²⁴ Stephen Shaw, the respected former Prison and Probation Ombudsman, conducted three previous investigations into racism and mistreatment of those detained under immigration powers: in [2004](#), [2005](#) and in respect of the death of Jimmy Mubenga in [2014](#). Mr Shaw has also undertaken two independent reviews into the Welfare of Vulnerable Adults in immigration detention in [2016](#) and [2018](#).

²⁵ Joint Committee on Human Rights (2019) [Immigration Detention: Sixteenth Report of Session 2017-19](#); Home Affairs Committee (2019) [Fourteenth Report of Session 2017-19](#).

²⁶ IMB (2021) [Annual Report of the Independent Monitoring Board at Brook House IRC for reporting year 1 January 2020 – 31 December 2020](#).

²⁷ M. Molyneux and L. Lockhart-Mummery, [Letter to Chris Philp MP, Minister for Immigration Compliance and the Courts, Home Office](#), 2 October 2020.

2. The flaws in the clinical safeguards still persist. The Independent Chief Inspector of Borders and Immigration (ICIBI) published their *“Third annual inspection of Adults at Risk Immigration Detention June to September 2022”* earlier this year.²⁸ The inspectors found that *“the majority [of stakeholders] considered that R35 was no longer achieving its aim”*.²⁹ The report highlighted issues including: *“the impact of some poor quality R35 reports by doctors not meeting the policy requirements, a lack of Home Office feedback on these reports, weak quality assurance mechanisms for Home Office R35 responses”*.³⁰ The inspectors also *“found missed opportunities, by Home Office, healthcare and contractor staff, to identify vulnerable detainees for whom the R35 mechanism might be appropriate”*.³¹
It is worth noting that the Home Secretary has since ended her commissioning of the annual inspection of the Adults at Risk policy, which reduces the previously required scrutiny by a government-appointed body to monitor a policy which has been extensively criticised.³²

Given that there is no indication of change, with conditions and ineffective safeguards remaining in place, the detention provisions in the Bill are likely to intensify the high risk of repeating the mistreatment, abuse and inhumane treatment that have been uncovered by the Brook House Inquiry.

We know that high numbers of people in detention increases the risk of harm and mistreatment, as highlighted by the IMB’s 2021 report about Brook House IRC.³³ The proposed legislation not only expands the detention powers, but also would require a massive expansion of the detention estate³⁴ - an extra 10,728 bed spaces according to Refugee Council.³⁵ This follows the Home Office’s current intention of increasing detention capacity by 1,000 places with the planned re-opening of IRCs in Haslar and Campsfield, along with the expansion into new forms of quasi detention in military barracks and other facilities.

It seems clear that the abuse of immigration detention is only going to continue rising in circumstances where vulnerable persons continue to be wrongly detained.

In delivering on the Terms of Reference, the Chair’s report will provide clear findings in concluding whether there is *“credible evidence of mistreatment contrary to Article 3 ECHR, namely torture, inhuman or degrading treatment, or punishment”*³⁶ and will provide recommendations in light of the evidence that the Inquiry heard. It is concerning that the government is proposing a drastic expansion of the powers to detain without knowing what the Inquiry will recommend.

²⁸ ICIBI (12 January 2023) [Third annual inspection of Adults at Risk Immigration Detention June to September 2022](#).

²⁹ ICIBI (12 January 2023) [Third annual inspection of Adults at Risk Immigration Detention June to September 2022](#) para 3.2.

³⁰ ICIBI (12 January 2023) [Third annual inspection of Adults at Risk Immigration Detention June to September 2022](#) para 3.2.

³¹ ICIBI (12 January 2023) [Third annual inspection of Adults at Risk Immigration Detention June to September 2022](#) para 3.4.

³² <https://www.theguardian.com/commentisfree/2023/jan/12/suella-braverman-detention-centres-manston-home-office>

³³ IMB (2021) [Annual Report of the Independent Monitoring Board at Brook House IRC for reporting year 1 January 2020 – 31 December 2020](#).

³⁴ The UK’s current immigration removal centres have a combined capacity of 2,196.

³⁵ This estimate is based on 50% to 100% of people being detained for 28 days. See: Refugee Council (2023) [‘Illegal Migration Bill - Assessment of impact of inadmissibility, removals, detention, accommodation and safe routes’](#).

³⁶ Brook House Inquiry [Terms of Reference](#).

Given the extent of the evidence, this is likely to be an unparalleled opportunity to learn, improve the detention estate, and see if improvement is at all possible.

In the absence of fundamental change and effective detention safeguards, enforcement imperatives and hostile government rhetoric will continue to sustain the key conditions in which abuse, mistreatment and racism have occurred and reoccurred in immigration detention.

Effect of the amendment

The amendment, tabled by Lord German, to page 65 lines 29, 32, 35 and page 66 line 17, would prevent the provisions of the Illegal Migration Bill from being brought into force until the following conditions have been met:

1. The Brook House Inquiry has fulfilled its [terms of reference](#);
2. The final report from the Brook House Inquiry has been laid before Parliament, as required by the Inquiries Act 2005;
3. A Minister makes a statement before Parliament regarding the government's proposed plan to implement the recommendations of the Inquiry.

This aims to halt bringing provisions into force, until the analysis of the abuse revealed, and recommendations made by the Brook House Inquiry chair's report is published, and the government outlines a plan to implement the recommendations, given that this Bill is likely to increase detention and risks increasing the abuse.

Suggested questions to ask the Minister during debate:

1. How does the government justify proposing a dramatic expansion of the power to detain, removal of key safeguards and a reduction in judicial oversight of detention, given the evidence of ongoing widespread abuse, misuse of force and systemic failure of existing ineffective clinical and other detention safeguards heard by the Brook House Inquiry, set up by the government itself?
2. Will the government commit to holding off from bringing the provisions in the Bill into force, until the Brook House Inquiry has reported and the Home Secretary has responded to its findings and recommendations?
3. Expanding the power to detain indicates a need to expand the detention estate. There is clear evidence from the Brook House Inquiry and the Independent Monitoring Board (IMB) of the high levels of self-harm that have occurred. The IMB issued a notice to the Minister in 2020 that Home Office practice resulted inhumane conditions for all those detained in Brook House for the purpose of removal on third country grounds before the Brexit deadline. What consideration has the government given to this?
4. How much has the Brook House Inquiry cost to date? What is the point of expending substantial sums of public money on Public Inquiries if Government going to completely ignore and disregard them. There are no lessons learnt and risk of abuse and mistreatment continues. This follows the example of the Home Secretary's response to the Sex Abuse Inquiry, where £250 million of public money was spent, but no effective action is to be taken just pushed of again into the long grass.

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