



POLICY PRIMER

Immigration Detention: Policy Challenges

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This primer discusses key questions and policy challenges arising from the detention of foreign nationals in the UK. It examines current practice in immigration removal centres, the links between removal centres and prison, and the particular challenges posed by families in detention.

The issue: Immigration detention and its discontents

Between 2500 – 2900 foreign nationals are detained under Immigration Act powers in the UK on any given day (Home Office 2010, 2011). Depending on their case, they are placed in detention awaiting deportation or administrative removal. Some are detained while their asylum claims and identity are established.

Most detainees are housed in one of ten Immigration Removal Centres (IRCs) with about one hundred placed in short term holding facilities at ports. Over the course of the year, the total figure of men, women and children ‘arriving in detention’ expands ten-fold (Home Office 2010a: 34). An undisclosed sum of others can be found in prisons, police cells and hospital. Though a relatively small number, particularly in relation to the tally of those living in the UK without legal immigration status, the detention of this population poses a number of ethical and legal questions that demand careful scrutiny and measured debate.

What is detention for?

In terms of government policy, immigration removal centres are a necessary part of border control, both a right and an obligation of the British state. Those living in the UK without valid visas, or foreign nationals who have finished prison sentences of twelve months or more, are not entitled to stay. If they will not go voluntarily, they may be detained to facilitate their return. For their critics, removal centres cause long-term psychological distress, are used arbitrarily and are expensive and inefficient. Some argue that removal centres should be abolished altogether. Abolitionists usually stress the proportion of those in detention who are asylum seekers while government documents emphasise the numbers of ex-foreign national prisoners and ‘bogus’ asylum seekers.

While the views of either side are understandable, they limit rather than encourage careful reflection and debate about the purpose and effect of immigration detention. Yet, given the ongoing expansion of numbers held under Immigration Act Powers – a population that has seen a steady increase since figures were first collated in 2001 (see the Migration Observatory briefing on detention) – we need more clarity about what immigration removal centres are like, what purposes they serve and how effective they are in achieving their stated aims.

What are Immigration Removal Centres like?

Immigration Removal Centres are diverse, both in terms of their populations and in terms of how they are run. Ostensibly the destination for people en route to the airport, they house a small but growing number of women and men for upwards of six months (Home Office 2010a, 2010b, 2011). Though deportation/removal and the detention that precedes it is a matter of administrative law, foreign offenders are now routinely given deportation orders by judges and magistrates as part of their criminal sentence.

There is a national immigration detention system. Yet, there is no single national service provider. Rather, the institutions are divided between a series of private security companies and HM Prison Service and are run according to terms set out in legal contracts, which are closely guarded documents protected by corporate confidentiality. The UKBA is ultimately responsible for the centres, yet on a day-to-day level, they have devolved this duty via the contract. Centre managers meet throughout the year with the UKBA Head of Detention Services, and the UKBA chairs regular committee meetings with centre staff addressing particular issues like Safer Custody. There is also a committee known as the ‘Detention Users Group’ that brings together representatives from the voluntary

sector with UKBA staff to discuss their concerns about immigration detention. Yet among these various groups there is little shared corporate culture and no cohesive statement of values or approach. The contractors are competitors with one another. They, and UKBA, often appear at odds with organizations from the voluntary sector who both assist them in service provision and are often their critics.

There is considerable variation among the removal centres in terms of their physical environment and how they are managed. Although there is a set of UKBA national operating standards, which all IRCs are required to follow, the institutions are each quite different from one another in terms of physical lay-out, population, and how they are run. Such differences can significantly affect the experience of detainees.

Material differences can be particularly significant for detainees. For instance, whereas IRC Colnbrook (at Heathrow) and IRC Brook House (Gatwick) were both built according to highly restricted Category B Prison security standards, IRC Campsfield, outside Oxford, is a much older institution that has served a number of purposes from military barracks to a Young Offenders' Institution. IRC Tinsley House, the first purpose-built establishment, opened in 1996, before the current concerns over security. It and Campsfield operate a 'free flow' regime, where detainees can walk freely around the building and access a grassy outdoor area all day from 7 – 9pm. At Colnbrook and Brook House, in contrast, movements are more circumscribed and there is far greater time spent locked on the units or in the rooms with no fresh air.

Within each centre there are different levels of responsibility and administration. While the private contractors, or HM Prison Service, are responsible for the day-to-day running of the removal centres, they are accountable to an onsite UKBA 'contract monitor' whose job is to check that the contract is followed. The UKBA contract monitor also line-manages a number of local immigration officers who mediate between the detainees and their UKBA case-workers based elsewhere. Immigration officers meet with detainees in 'legal visits', passing documents and information between them and their case-workers. They are the face of the UKBA in detention, serving removal

directions and communicating decisions about bail, temporary admission and asylum. They do not, however, make those decisions, leaving that part of the task to the off-site case-workers.

All centres contract out their cleaning, food and health care services. The health care contract is usually awarded to a local GP practice, and a doctor will be available most weekdays. In removal centres run by the prison service, the local NHS is responsible for the health care provision. Some centres employ counsellors and education staff, others do not, opting instead to use Detention Custody Officers to run art and craft and English language courses. Some – like IRC Colnbrook -- train detainees to act as 'buddies' offering advice to new arrivals and anyone feeling depressed. Others have no such organised arrangements relying instead on informal networks among the detainees and religious volunteers to offer additional support to those in need.

The daily regime in all centres is limited in the number of different activities detainees can undertake. According to the national operating standards, the contractors must offer lessons in English as a second language (ESOL), art and craft and leisure activities, including gym. They must also make available internet access and offer some level of IT training. Over the past two years most have installed televisions in all the bedrooms. There is no requirement to provide opportunities for any paid work, vocational training or higher education.

Removal centres rely heavily on voluntary organisations to supplement their daily regime. They each work with a local visitor group that is part of the national umbrella organisation, the Association for Visitors to Immigration Detention, (AVID). Members of these organisations visit detainees socially, and, on occasion provide them with small sums of money, clothes or phone cards. They also can direct them to other organisations or immigration solicitors who may be able to offer advice and assistance. 'Bail for Immigration Detainees' (BID) and the Immigration Advisory Service (IAS) operate in most centres helping detainees fill out bail applications and lodge asylum claims, while other volunteer groups are also active. Music in Detention, for example, runs workshops in many detention centres. At IRC Colnbrook they help detainees produce music CDs in a purpose-built recording studio; at Yarl's Wood they combine

their sessions with dance. Finally, representatives from the International Organisation of Migration (IOM) also hold regular workshops for detainees. They encourage individuals to return voluntarily to their country of origin by offering them financial assistance to set up businesses or to undergo training upon their return.

Despite the best efforts of those working in detention, detainees across the board – whether former prisoners or visa over-stayers -- report a number of significant concerns (Bosworth forthcoming; IMB 2010a, 2010b; HMIP 2010). Staff views are more mixed. On the one hand staff are often highly motivated, on the other hand sometimes embattled (*vis-à-vis* UKBA, senior management, the detainees, perceived public opinion) (Bosworth forthcoming). Their role is complex, part prison officer, part welfare; they spend a lot of their time sending faxes and trying to communicate across languages and cultural divides to an anxious and vulnerable population.

Although most detainees speak a little English, they find it difficult to read documentation relating to their case or the signs around the removal centres advertising courses or events. Many are confused about why they are detained and nobody knows how long they will be there. Despite the availability of mobile phones, not everyone is able to maintain contact with their families and, even though centres arrange family-day visits, few take this option. Detainees are often unable to obtain an effective immigration solicitor. Fewer and fewer are entitled to legal aid. Many are frustrated by the limited amount of paid work and education in detention, particularly if they have served a prison sentence during which they have taken advantage of a wide range of courses and programmes. Health care remains a source of great anxiety (Bosworth forthcoming, HMIP 2006).

Are Immigration Removal Centres prisons?

Since 2006 removal centres have taken on a new role as a destination for time-served foreign national prisoners (Bosworth and Guild 2008). That year, it was announced that a number of foreign nationals, some of whom had served time for serious violent offences, had not been considered for deportation at the end of their prison term. Some had re-offended after

release. In response, the government brought in new requirements of mandatory deportation for any non-EEA national sentenced to 12 months either individually or cumulatively over the past 5 years. Those from EEA member states face mandatory deportation if sentenced to more than 24 months in prison. All non-British nationals convicted of any crime may be deported (Bosworth 2008).

Due to a number of factors that include administrative backlogs, an unfamiliar relationship between the UKBA and the Prison Service and simply the complex immigration status of some of this population, it is often difficult to eject such people quickly. In a 2009 review of UKBA's management of asylum applications the National Audit Office (NAO 2009) found that half of the available bed-spaces in the immigration system was 'ring-fenced' for time-served foreign national prisoners. In addition to those placed in IRCs, around 550 foreign-national prisoners are housed, at any given time, beyond the term of their sentence in the nation's prisons, held under deportation orders issued by UKBA. Upon completion of their sentence, these individuals should be treated as "unconvicted prisoners" although they may be asked to waive this right if the prison in which they are placed is unable to meet the requirements associated with this group, such as increased time out of cell and greater access to visits. Some former prisoners may also wish to waive these rights in any case, since they would entail the loss of work and drug treatment privileges for which the unconvicted are ineligible.

According to the Prison Service Order (PSO) 4630, which governs 'Immigration and Foreign Nationals in Prison', immigration detainees should only remain in prison custody if they are judged to pose a threat to national security, if their crime was particularly serious, or if they pose a flight or other security risks, even if they have posed no threat or danger while incarcerated for their criminal sentence. IRCs should accept those who have been given the lowest security rating in prison – Category D -- though even then, some removal centres may refuse to accept them. Such individuals tend to be concentrated in IRC Colnbrook or IRC Brook House, though all IRCs hold some ex-prisoners.

The imprisonment of immigration detainees and the presence of time-served foreign national prisoners

in IRCs are not the only points of intersection or convergence between the prison system and immigration detention. Many centre managers are former prison governors, from both the public and private sectors, as are a number of the civil servants within UKBA. A number of facilities, particularly those run by HM Prison Service are former or parts of current penal institutions. It is not surprising then, that detainees often experience their detention as a form of punishment, claiming that they feel as though they are in prison. (Bosworth forthcoming).

Key policies in the detention centres are based on those from prison (Bosworth 2007). As with prisons, for instance, daily life in removal centres is increasingly directed by concerns about 'safer custody'. For those considered at risk of suicide or self-harm, detention centres operate the ACDT (Assessment, Care in Detention and Teamwork) system that draws heavily on the prison services' ACCT (Assessment, Care in Custody, and Teamwork) model. Both institutions designate 'security' staff, whose job is to monitor potential illegal or harmful activity in the centres, paying particular attention to 'high-risk' detainees labelled as 'development nominals'. Centres also encourage staff to submit 'SIRs' – security incident report forms – for any kind of behaviour or incident that strikes them as suspicious.

How long are people detained?

In principle detention is permitted only where there is a reasonable prospect of actual removal from the country. In 1998 Justice Woolf, as he was then, ruled in *R v. Governor of Durham Prison, ex p. Hardial Singh* [2004] 1 WLR 705 at p. 706 that 'Although the power which is given to the Secretary of State in paragraph 2 [of the 1971 Act] is not subject to any express limitation of time.... It is subject to limitations.' The state, Woolf claimed,

can only authorize detention if the individual is being detained in one case pending the making of a deportation order and, in the other, pending his removal. It cannot be used for any other purpose. Secondly, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being impliedly

limited to a period which is reasonably necessary for that purpose.

In practice, however, matters of deportability are often contested. It is not always clear how long is 'reasonably necessary', particularly when detainees may be refusing to provide documentation about their identity. For ex-offenders, the right to liberty is 'balanced' against their perceived dangerousness, no matter how serious their crime. All in all, there are a considerable number of individuals held for months and some even for years (see Migration Observatory briefing on detention).

However long they are held, detainees rarely know the term of their confinement. If they are awaiting documentation to travel from their country of origin, they may remain in detention for some time; certain Embassies and Consulates are particularly slow in this regard. Others file numerous judicial reviews to avoid removal, thereby extending their stay in detention. Still others may simply await processing by the UKBA, one of a number of case files being resolved (Bosworth forthcoming, Phelps 2009).

That nobody can be sure how long anyone will be detained is a unique characteristic of immigration detention and one of its key policy challenges. The uncertainty is difficult for detainees, who find it hard to bear not knowing what will happen in their case. It is also demanding for those working in detention. Without a sense of the duration of their population's stay, centre managers are unable to develop much of a regime. It seems financially illogical and practically unwieldy to create courses and paid work for a transient population. Such difficulties are compounded by the limited nature of the official justification of detention as purely a means to an end: deportation. But not everyone who leaves is deported. Each year, according to a recent meeting of the centre managers, around one third of those in detention are released into the UK on bail or temporary admission. A handful of people obtain the right to remain. Arguably, even those who are removed could benefit from a more productive time in detention. From the staff perspective, an active population would be easier to manage, while, for detainees, education, work and training would help the time to pass and might provide useful skills in their future lives.

Detention of children

The detention of children is particularly controversial. In the summer of 2010, honoring the Liberal Democrat's election manifesto, Deputy Prime Minister Nick Clegg announced that the UK would be ending its practice of child detention after years of vigorous criticism from current and former detainees, the voluntary sector, the medical profession, politicians, academics and legal professionals. In fact, child detention continued, albeit at a much slower rate, throughout 2010. It was not until 16 December 2010 that the family unit at IRC Yarls' Wood was officially closed for children under the age of 18 (continuing to operate for families with adult children and for married couples). That month, records reveal, one child was detained at Tinsley House.

On 1 March 2011, the coalition government announced new plans to deal with families. There are a number of components to the new policy. Key elements thus far include: the creation of an independent Family Returns Panel to advise the UK Border Agency on how to ensure the return of those families who not go voluntarily; the refurbishment of the family unit at IRC Tinsley House to hold families for a short time (no more than 72 hours); and the creation of new 'pre-departure' accommodation in a former children's home. This final option will have a secure perimeter, but upon application and subject to certain risk assessment procedures, families may be allowed to leave the premises. The children's charity, Barnardo's, which used to run children's homes, will deliver the key welfare, safeguarding and support services.

How effective is immigration detention?

It is difficult to judge the efficacy of immigration detention since beyond the removal of those without the right to remain, its aims are not clear. If we consider only its impact on the exclusion of those it houses, detention is broadly successful since in most cases, detainees are either removed/deported. Yet, not only do rates of removal and deportation vary across the institutions, but other outcomes do as well. According to the most recent annual reports from the Independent Monitoring Boards at IRC Brook House (IMB 2010a) and

IRC Campsfield House (IMB 2010b), significant numbers of people were either allowed to stay, or, in fact, went nowhere. In Brook House, for instance, 3500 men who passed through the centre, from April 2009 – March 2010, 57% left the country, 21% were released, and 16% were transferred to other IRCs. The remaining 6% were sent to prison or taken into police custody (IMB 2010a: 9). At Campsfield House, the IMB records its statistics slightly differently. According to them, 2827 men left the institution and there were 2822 new arrivals. Less than half (42.7%) were given Removal Directions (though rather confusingly, the same report later states that 18% of removal directions failed, so it is a little unclear how many actually left). Over a third of the population (35.7%) was transferred to other establishments and one in five (21.2%) were granted temporary admission or bail. (IMB 2010b: 58).

If such places are meant to deter undocumented arrivals, or foreign offenders, then their success is far less obvious. While the numbers of asylum seekers coming to the UK have dropped, the figures of those living in the community without immigration status remains high. The proportion of foreigners in the nation's prisons has also been growing (Ministry of Justice 2010; Bhui 2004, 2007).

In any case, it is not clear that it would be sufficient to judge immigration detention purely as a means to an end. For those running removal centres and designing policy, as well as for those whom they confine, the day-to-day experience of detention must also be taken into account. Here we have only patchy evidence. On the one hand there have been over the years, a number of disturbances, and detainees have even burned down sections of establishments. Reports from the voluntary sector, from the IMB (2010a) and HM Inspector of Prisons (2010) raise a common litany of concerns, and first hand accounts are also highly critical (Phelps 2009, Bosworth forthcoming). Such sources paint high levels of anxiety and frustration within the detained population, suggesting that more needs to be done.

Are there any alternatives to current detention practices?

For many years the prison has provided an important

model for immigration removal centres. Before there were enough IRCs to hold them, asylum seekers were detained in prison. Many senior staff of the private contractors and UKBA formerly worked in prisons; the Immigration Centre Rules are based on the Prison Rules; and a number of important daily strategies and practices are also deployed in penal institutions.

The ongoing reliance on the language and policies of the criminal justice system needs to be debated, however, since immigration removal centres are not, after all, prisons. They neither claim nor aspire to rehabilitate, nor, for those already in prison, can they act as much of a deterrent. At most, then, detention centres incapacitate, a goal that the prison service and criminal courts have rejected as sufficient on its own, other than for those deemed particularly dangerous for the public good. It is highly questionable that foreigners in detention are dangerous in this way.

Recognising that this is a difficult and very sensitive issue for policy-making it is important to think about options beyond the prison. There may be more scope for non-secure housing in the community. Families, in particular, can benefit from this arrangement. Similarly, it might be possible to work with NGOs based in countries of origin, to help prepare for resettlement; perhaps such organisations could facilitate housing or jobs upon removal. Before we could make such plans, however, we need more information about what life in immigration removal is actually like as well as more principled discussions about what these centres are meant to achieve and how effective current practices are.

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The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory's analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



COMPAS

The Migration Observatory is based at the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

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