

Friday 4th February 2022

Medical Justice and Bail for Immigration Detainees Response to the Prisons Strategy White Paper

About Bail for Immigration Detainees and Medical Justice

About Bail for Immigration Detainees (BID)

BID exists to challenge immigration detention and ensure access to justice for detained people. With the assistance of barristers acting pro bono, BID prepares and presents bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal, representing people who are unable to access legal aid representation. Our casework feeds into our policy and campaigning work providing a robust evidence base from which to challenge all forms of immigration detention. Our aim is to end immigration detention. We also have a small project representing people in appeals and in relation to Article 8 deportation matters, and assisting with making applications for legal aid Exceptional Case Funding. We have also recently begun a project supporting people housed in military barracks and other forms of Home Office accommodation.

Medical Justice

Medical Justice is the only charity in the UK to send independent volunteer clinicians to visit people in immigration detention in the UK, including Immigration Removal Centres and prisons. The doctors document scars of torture and challenge instances of medical mistreatment. We receive around 600 referrals from people in immigration detention each year and have gathered a sizeable, unique and growing medical evidence base. We help them access competent lawyers who properly harness the strength of the medical evidence we generate. Evidence from our casework is the platform for our research into systemic failures in healthcare provision, the harm caused by these shortcomings, as well as the toxic effect of immigration detention itself on the health of people in detention. Evidence from our casework guides our research, policy work and strategic litigation to secure lasting change.

1. Do you agree these are right long-term ambitions for the prison estate?

We believe there should also be a long term ambition centred on prisoner health and wellbeing. As we will argue in more detail later in this document, we have witnessed a devastating deterioration of health among people held in prisons during the pandemic as a result of very severe lockdown restrictions. The concerns that we have been raising throughout the pandemic persist. It is therefore vital that any future prison regime reflects the urgent need to prioritise prisoner health and wellbeing.

2. Do you agree these are the guiding principles around which the future regime should be designed?

Equalities considerations – race and foreign nationals

There should also be a long-term commitment to improving outcomes for BAME individuals and foreign nationals held in the prison estate. The government recognises the importance of “A tailored approach to meet diverse needs” with emphasis on the need to have purposeful activity that is accessible – to people with particular disabilities or mental health needs.

However the specific needs of foreign nationals should also be included here. It is striking that the entire consultation document fails to mention once the specific needs of foreign nationals in prisons. It also fails to refer to the need to eliminate racial discrimination in the criminal justice system.

Foreign nationals represent a considerable proportion of the prison estate and have specific needs relating to their immigration status, possible lack of English or history of traumatic experience (particularly with asylum seekers) and vulnerability to discrimination and racism. They may be less likely to have informal networks within the prison that might enable to participate more fully in prison life. Foreign nationals may be more vulnerable to discrimination within the prison. Therefore there needs to be guiding principles around eliminating discrimination and ensuring that the specific needs of foreign nationals are provided for.

Foreign nationals held in the prison estate under immigration powers only are held for administrative convenience and not under criminal punishment. Were it not for the fact that they are foreigners they would be at liberty, living within the community. This fact should be recognised and should influence all policy-making in relation to prisons, recognising that this category of prisoner should be provided with support and accommodation that approximates as closely as possible to living at liberty within the community.

Involvement of prisoners in consultation

This consultation document makes no reference to the ways in which prisoner feedback will be sought, or indeed the way that feedback will be sought from foreign nationals held in prisons under immigration powers. The consultation states that it is seeking the views of *'partners and stakeholders'*

It is fundamentally wrong to design a prison regime without the input of those who will be subject to it, not least because those individuals will be able to provide incredibly valuable input about what practices are effective in assisting rehabilitation and drug recovery both within prisons and upon release. Speaking to prisoners forms a crucial element of HM Inspectorate of Prisons' (HMIP) process for inspecting how well prisons are performing so it should also be incorporated here.

For instance, at page 22 the government sets out the intention to *"Establish an innovation taskforce with experts from the front line, health, psychology, in academia and third sector organisations to bring together innovative thinking and best practice to address the drivers of violence and self-harm in prisons, piloting new interventions to tackle violent behaviours, and other safety issues"*. However there is no reference to seeking the views of prisoners even though this is an area where such views would be particularly valuable.

A regime that supports safety

The government identifies the need to build a regime that supports safety as one of the three key themes that Governors will focus on promoting over the next two years, as set out on page 27. We appreciate the commitment to "creating the right conditions for prisoners to maintain good mental health", and the focus on achieving "lower levels of violence, self-harm and self-inflicted death" (page 27).

However, this should not come at the cost of more restrictive regimes for prisoners and those held in prisons for solely administrative reasons. Since the onset of the Covid pandemic in March 2020 people were held in their cells for 22 to 24 hours a day. We are concerned that similar conditions could persist if governors are given more autonomy to set regimes, as addressed in our answer to Question 18 below.

Such conditions are extremely damaging to individuals' health and well-being, and directly prevent the creation of the right conditions for good mental health to be maintained. We have documented the devastating impact that these conditions have had on people's mental and physical health; this is further detailed below, under our response to Question 18.

13. Where can we go further in turning prisoners away from crime?

There needs to be more of a focus on guaranteeing access to rehabilitative services for foreign nationals in prisons and removing existing barriers. Foreign nationals who have served custodial sentences often report that they were not allowed to undertake or continue courses to address offending behavior because they were held under immigration powers.

This means ensuring that the probation service provides adequate service to foreign nationals. In our experience the probation service fails to act, or delays acting, in cases involving foreign nationals, because there is an institutional assumption that individuals are going to be deported. The prison system and the probation Service should take responsibility for ensuring that people whose immigration status is subject to review are in fact treated in the same way as British nationals as they will all be released, either into the community in the UK or to a community abroad.

This means ensuring that the deportation process does not interfere with the rehabilitation of people serving a criminal sentence, such as when people are placed in immigration detention for some or all of their licence conditions. It is a matter of concern for the public good that foreign nationals are often released long after their release date, and without licence conditions or the supervision of their offender manager, which supports the rehabilitation process and helps to prevent reoffending. The government needs to ensure prompt release of foreign nationals at the end of their sentence rather than prolonging incarceration through the use of immigration detention. Such detention often takes place in a prison and reducing it would also help to reduce overcrowding in UK prisons if beds were not taken up by immigration detainees.

At page 37 the government states that it has “*committed to introducing a new statutory time limit of 28 days from referral for transfers from prison to mental health hospitals*”. While we welcome this proactive step we note with concern that there continues to be no statutory time limit on how long a person can be held post sentence under immigration powers. There should also be strict time limits to ensure prompt release from detention for immigration detainees where bail is granted or where detention is no longer considered appropriate (and has potentially become unlawful) but the only barrier to release is the lack of a release address.

18. Are there any areas where we should extend autonomy for all Governors to support the delivery of improved outcomes?

We are concerned about the prospect of giving governors more autonomy to set regimes as this may lead to more restrictive regimes being normalised. Although it is not explicitly stated in this White Paper, we understand that the Prison Governors' Association, as well as the Prison Officers' Association (POA), and Ministers, attribute the fall in violence during the pandemic to the stricter lockup regimes in prisons enforced by Covid.

We are concerned that staff in prisons may have preferred lockdown conditions. For instance, there was an improved prisoner-to-staff ratio for time out of cell – according to the Institute for Government, “Reducing the number of prisoners allowed out at any one time has lowered the prisoner-to-staff ratio to manageable levels – falling from around 1:30 before the pandemic, to 1:16 this year” and “recruitment and retention improved during the pandemic compared to the year before”. We understand that the POA has consistently endorsed the prison lockdown, arguing that it

has resulted in “increased safety, reduced violence and ‘more stable prison environments¹”. It was recently reported to us by a client that they felt that staff in their prison enjoyed having less to do as a result of the lockdown.

We are concerned therefore that providing more autonomy to prison governors to set prison regimes will lead to more restrictive lockdown conditions, and thus inflict serious harm to those subjected to it. Since the beginning of the Covid-19 pandemic in March 2020, many people have been held in their cells for 22-24 hours per day, in conditions often amounting to prolonged solitary confinement. This is prohibited by the UN Standard Minimum Rules for the Treatment of Prisoners (the ‘Mandela Rules’) and may breach individuals’ Article 3 right not to be subject to cruel, inhuman and/or degrading treatment.

We have documented the devastating impact that such conditions have on people, as published in our report *“Every day is like torture”: Solitary Confinement & Immigration Detention*. This was based on interviews with five individuals held in prison under immigration powers, six medico-legal reports, 30 bail cases and our wider casework experience.

Our evidence, and the wider medical evidence, clearly shows that prolonged cell confinement does not promote safety. The detrimental impact of confinement is staggering; yet the provisions in the White Paper could enable such practice in prisons to be normalised.

Medical assessments by doctors at Medical Justice found the distressing impact that these conditions have had on individual health and well-being. Clients have described confinement as *“psychological torture”*, feeling *“trapped”*, *“hopeless”* and *“suffocated”*.

Those with high risk mental health conditions, including diagnoses of post-traumatic stress disorder (PTSD), severe depression, and a history of self-harm and suicidal thoughts have experienced serious deterioration in confinement. The conditions were also found to trigger new mental health conditions. One client recounted: *“I didn’t enter prison with mental health problems but I’m not the same person I was. My mind is not the same. I’m not sure if what has happened to me can be repaired.”*

Clients suffered from severe symptoms, including involuntary shaking, memory loss and physical pain. Some were self-harming, attempting suicide and unable to sleep or eat.

The experiences of our clients reflect the overwhelming medical evidence of the harm that prolonged solitary confinement causes; the impacts are predictable and widely evidenced. It is well established that by depriving people of meaningful social interaction and any sense of control, confinement causes damage to individuals’ mental health, which can last beyond release. It can cause deterioration in those with pre-existing mental health conditions and precipitate the onset of new conditions. These known effects are the very reason why it is prohibited by the Mandela Rules.

We also found a lack of adequate medical support available to people confined in prisons.

The harm that it is causing to individuals’ mental and physical health undermines any argument that cell confinement may improve safety. The opposite is true; confinement undermines safety and puts the individual at risk of predictable and severe harm.

¹ Scott, David: Prison lockdown: breaking minds and destroying lives *Centre for Crime and Justice Studies*, 28 October 2020

<https://www.crimeandjustice.org.uk/resources/prison-lockdown-breaking-minds-and-destroying-lives>

We are opposed to the confinement of anyone in prisons, through drawing on the experiences of our clients and casework, our response focuses specifically on the experiences of immigration detainees. In the year ending September 2021, there were 648 people detained in prisons solely under immigration powers² - they are held for administrative convenience, rather than as part of a criminal process. They may urgently need to take proactive steps to challenge their detention; yet this is significantly impeded by being locked in a cell for over 22 hours a day.

We also note that prisons have not necessarily become safer during the pandemic. 2021 was the deadliest year on record for prisons³. The impact on people's mental health of being locked in their cells for 23 hours per day has been significant and there has been a 28% increase in self-inflicted deaths compared to the previous year (for this figure there was already a 21% increase in self-inflicted deaths from 2019 to 2020).

Related to this point, we are concerned about the suggestion that the scheme will "allow governors to reflect on learning from COVID-19 and deliver services differently, including... in-cell delivery of services" (page 69). We do not think that in-cell services are a substitute for proper purposeful activity out-of-cell. These services may be inaccessible to people who do not read and write English, or for people with low levels of literacy or special educational needs or vulnerabilities. In a survey conducted by HMIP, less than half of prisoners who had received in-cell work packs said they were helpful, due partly to the limited feedback they received from teachers.

KPI framework

We are greatly concerned that the proposed KPI framework makes no reference to prisoner health or welfare. The proposed system will provide considerable incentives (in the form of greater autonomy) to governors who perform the best in terms of the KPI metrics set out by the government. Therefore governors might be incentivised to sacrifice prisoner welfare if it will enable them to perform better on their KPIs. We envisage that governors could be tempted to introduce more restrictive regimes and disregard the impact this will have on prisoners' health and welfare.

Accommodation

We agree with the importance of "strengthening resettlement through accommodation", which has been included as a metric in the KPI framework that the government is developing. However it needs to be emphasised that the sourcing of accommodation for foreign nationals needs to be prioritised, and this should be done at the earliest possible opportunity so that foreign nationals are not held for needlessly protracted periods under immigration powers in prisons for the sole reason that there is no accommodation for them to be released to. This practice is both harmful and costly to the government. The responsibility for delays in sourcing accommodation is often the result of the Home Office and Probation Service and failures in the release planning process.

We hope that these comments are taken into consideration. Please do not hesitate to contact us if you have any questions or clarifications.

² <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-september-2021/how-many-people-are-detained-or-returned>

³ *Inquest* media release 27 January 2022 <https://www.inquest.org.uk/moj-data-jan2022>