

**Liberty's submission to the parliamentary
inquiry into the use of immigration detention in
the UK**

October 2014

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

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Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

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“The power of the Executive to cast a man into prison without formulating any charge known to the law and particularly to deny him the judgement of his peers is in the highest degree odious and is the foundation of all totalitarian government whether Nazi or Communist.”

Winston Churchill, 1942

“The Government should make clear that it can see no scenario that would ever require the use of 42 days pre-charge detention.”

The Coalition Government, January 2011¹

¹ HM Government, *Review of Counter-terrorism and Security Powers: Review and Findings*, recommendations, p. 14.

Summary of recommendations

Liberty's primary recommendation is an end to immigration detention save in the most exceptional circumstances to facilitate immediate removal.

This submission further lists a series of secondary reforms designed to tackle the worst excesses of the system:

- A statutory time-limit on detention of 28 days;
- Automatic review of detention by the judiciary after 48 hours and at 7 day intervals thereafter and removal of restrictions on bail applications;
- Abolition of the Detained Fast-Track and Non-Suspensive Appeals systems. To the extent that they continue, improved screening and access to legal representation;
- Access to legal aid provision to challenge conditions in detention and accessible recourse to judicial review;
- Removal of vulnerable groups from the detention system. Where they remain, improvements to facilities and practices including:
 - (i) improvements to the Cedars process and to enforcement action involving families and children;
 - (ii) reforms to the Rule 35 medical reporting process;
 - (iii) better healthcare provision for those in detention and dedicated mental health training for all who deliver services in detention;
 - (iv) more focus on indicators of trafficking with potential victims diverted out of detention and into the NRM;
 - (v) a policy that only female guards be used in female detention facilities;
 - (vi) a choice for female detainees as to the sex of their interviewers;
- No immigration detention in prisons;
- Greater safeguards against the misuse of force.

PRIMARY RECOMMENDATION:

No immigration detention save to facilitate immediate removal

1. The UK's immigration estate is one of the largest in Europe, with between 2000 and 3000 people detained at any one time. At the end of December 2013, 2,796 people were in detention, representing a 4% increase on 2012.² According to the latest Home Office figures, over 46% of detainees in 2013 were asylum seekers.³ Immigration detention has become such a policy mainstay, it is easy to forget what a constitutional novelty it was when powers to administratively detain were first set out in the Immigration Act 1971.⁴ In a move unprecedented in peacetime Britain, the Act reversed the principle of habeas corpus, removing the onus from the state to justify the deprivation of liberty, and introducing administrative detention for those subject to deportation.⁵ In the intervening decades, the use of detention has evolved from a mechanism designed to enforce removal or examination, to a free-standing immigration power routinely exercised for administrative convenience.

2. Policy developments of the last 15 years, such as the use of the Detained Fast Track (DFT) for processing asylum applications, have been accompanied by legislative expansion of the rules on immigration detention. Powers introduced in the *Nationality, Immigration and Asylum Act 2002* significantly fractured the nexus between enforcement action and detention by providing for detention pending a decision by the Secretary of State on removal.⁶ In a 2002 White Paper, the then Government made clear its intention that detention should enter the mainstream as '*a central plank of asylum policy*'.⁷ In 2007, the *UK Borders Act* codified an undisclosed policy, previously unlawfully operated in a manner inconsistent with published guidance, to make routine the detention of foreign national prisoners at the end of their sentences.⁸ Section 32 of the 2007 Act introduced automatic deportation for a significant number of offenders, extending the power to detain pending consideration of whether or not to deport. If more evidence is needed of the extent to which immigration detention has drifted from the original aims of facilitating removal, the Home Office's

² Home Office Immigration Statistics, 27 February 2014: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013#detention-1>.

³ Home Office Immigration Statistics, Detention, table dt01.

⁴ See *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719.

⁵ *SSHD v Pakina*, para 13.

⁶ Section 62(1)(a).

⁷ Secure Borders, Safe Haven White Paper Secure Borders, Safe Haven (2002 Cm 5387), at para 4.69. In relation to detention at Oakington.

⁸ *WL (Congo) and KM (Jamaica) v SSHD* [2010] EWCA Civ 111

statistics for the year ending June 2014 reveal that of the 29,050 people who left detention, two thirds were detained for more than a week. Of the one third of people genuinely subject to shorter detention periods of under a week, 38% were ultimately granted temporary admission. In the year to June 2014, only 21% of detainees were detained for a week or less and subsequently removed.⁹

3. Liberty believes that free-standing powers to detain for immigration purposes, divorced from the humane and lawful enforcement of removal, are offensive to our proudest traditions of liberty. The right not to be deprived of liberty without due process protections found expression in the Magna Carta and has been a mainstay of both common law and statute from the *Habeas Corpus Act* of 1679 to the *Human Rights Act* 1998 (“the HRA”). Article 5 of the HRA provides that everyone has the right to liberty and security of person and no one can be deprived of their liberty except in certain defined circumstances and in accordance with law. Any deprivation of liberty must also be necessary and proportionate. The HRA dictates that detention for the purposes of immigration can only be lawful if there are proceedings in place for removal or deportation of a person or in order to prevent an individual from affecting an unauthorised entry into the country.¹⁰

4. The trend toward unprecedented use of detention outside of the criminal justice system came to prominence during the War on Terror. The *Anti-terrorism Crime and Security Act* 2001, provided for the indefinite internment of foreign terror suspects without trial, requiring derogation from Article 5 of the Convention on Human Rights and ousting the jurisdiction of the High Court in habeas corpus or judicial review. This policy was found to be unlawful by the House of Lords¹¹ and replaced by a system of control orders entailing virtual house arrest, again without charge or trial, for both British and foreign national suspects.¹² Meanwhile in parallel developments, attempts to increase the length of pre-charge detention in terror cases came thick and fast. With the *Terrorism Act* 2000, Parliament set pre-charge detention at seven days, in 2003 the *Criminal Justice Act* extended this period to 14 days. In

⁹ Summary of Home Office Immigration Statistics, available here: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013#detention-1>.

¹⁰ European Convention on Human Rights, Article 5(1)(f).

¹¹ *A and X v Secretary of State for the Home Department* [2004] UKHL 56.

¹² The Prevention of Terrorism Act 2005 was introduced in March 2005 replacing indefinite detention with control orders which allowed for the imposition of severe restrictions on the movement and association of the controlled person. They entailed a combination of confinement at home during specified hours, curfews, electronic tagging, geographical restrictions, requirements for permission to meet others both inside and outside of the home as well as prohibition on communication by telephone, access to the Internet, banking and travel. Controls order were replaced by Terrorism Prevention and Investigation Measures in the Terrorism Prevention and Investigation Measures Act 2011.

2006, after a failed attempt to increase the period to 90 days, the *Terrorism Act 2006* increased the period to 28 days - subject to annual renewal. In 2008, attempts were made by the Government to increase the period to 42 days - a proposal which was overwhelmingly defeated in the House of Lords and later withdrawn by the Government.

5. With the Coalition Government came a recognition that these unorthodox and unprincipled deprivations of liberty came at an unacceptable cost to the protection of civil liberties in this country. Control orders were replaced by Terrorism Prevention and Investigation Measures which, despite retaining the core problematic elements of the control order, represented at least an acknowledgment that past policy had strayed along a dangerously authoritarian path.¹³ Similarly the *Protection of Freedoms Act 2012* permanently reduced the pre-charge detention period to a maximum of 14 days by amending the *Terrorism Act*.¹⁴ Whilst progress has been made on the detention of children under the Coalition, the apparent willingness of this government to reflect on aberrations from the protection of fundamental freedoms in the case of terror suspects has never emerged in the case of thousands of adult migrants, including large numbers of asylum seekers, detained indefinitely without even suspicion of criminal activity. Liberty believes the use of limitless detention – unashamedly for administrative convenience and far removed from the enforcement of removal decisions – represents one of the greatest stains on this country’s human rights record in recent decades.

6. Liberty was heartened to hear of the present Inquiry which represents a much needed concentration of parliamentary attention on an abuse of fundamental rights which has been exacerbated by successive Governments, with tragic consequences. Whilst the Labour Governments of the late 90s and early 2000s demonstrated an eagerness to expand the use of detention, the Coalition Government has been responsible for the erosion of a number of due process protections, including access to bail and legal representation.¹⁵

7. The problems with immigration detention, both in practice and in principle, are overwhelming. The following paragraphs address some of these issues, ranging from the economic implications of futile and protracted incarceration, to the lack of judicial safeguards, from abuse and neglect by contractors and staff, to failures to properly screen potential detainees and provide access to lawyers and doctors. Frequently these flaws and

¹³ Terrorism Prevention and Investigation Measures Act 2011.

¹⁴ Protection of Freedoms Act 2012, s.57.

¹⁵ See in particular reforms introduced by section 7 of the Immigration Act 2014 (discussed further at paragraphs 13-18) and attempts to introduce a residence test for access to legal aid (discussed at paragraphs 30-31 below).

failures are borne by the most vulnerable including torture survivors and those with mental health problems. The truth, however, is that immigration detention is inevitably populated by those rendered vulnerable by their past experiences and precarious status. The only satisfactory response to this reality is to end immigration detention in all but the most exceptional cases to facilitate immediate removal. Not only is this the right way forward for a society which respects universal rights and freedoms, it would also massively reduce the burden on the public purse. We understand that the Government does not publish comprehensive figures on the overall costs of immigration detention, but on the basis of its own assessment that immigration detention costs £120 per night per detainee, the Migration Observatory estimates the yearly cost of running just one detention facility – Campsfield House in Oxfordshire - at £8,497,200.¹⁶ This is not an argument for loosening immigration controls. Immigration applications can continue to be processed in the community at considerably less expense. Removal can continue to be ordered and enforced, humanely and subject to due process protections, for those with no right to remain in this country. This is the way we have traditionally done immigration control in Britain.

8. In what follows, we engage with some of the worst and most abusive elements of the current detention system, setting out what we consider to be the bare minimum of reform necessary to insert some level of human rights protection. We want to make clear, however, that Liberty is absolutely opposed to the use of immigration detention in anything save the most exceptional circumstances to effect immediate, lawful removal.

SECONDARY RECOMMENDATIONS

(i) A 28 day, statutory time limit on immigration detention

“I am waiting for such a long time and wasting my days in the centre not doing anything productive.”

Abdul, stateless immigration detainee¹⁷

9. Abdul’s was one of the cases reviewed by a coalition of national NGOs resulting in a report on the plight of unreturnable migrants published at the beginning of the year. He is a member of the Rohingya ethnic and religious minority, denationalised by citizenship laws passed in the 1980s and therefore unreturnable. Despite this he was detained for months

¹⁶ The Migration Observatory, *The financial costs of immigration detention*, available at: <http://www.migrationobservatory.ox.ac.uk/briefings/immigration-detention-uk>.

¹⁷ <http://detentionaction.org.uk/abduls-story>.

while his asylum claim was processed.¹⁸ The report further highlights the case of Jacob, a Somali asylum seeker who faced protracted detention of 10 months in the UK before being deported to Mogadishu in the heat of the bloody armed conflict. He returned to the UK with the assistance of the Kenyan High Commission and faced months of further detention notwithstanding the fact that he could not be returned due to a risk of torture and inhuman and degrading treatment in Somalia.¹⁹ Depressingly, stories like these are not hard to come by. Detainees may remain in detention for long periods for a wide range of reasons entirely beyond the control of the individual, for example because they do not have the travel documents to facilitate return, are stateless, or because the humanitarian situation in their country prevents removal. Liberty believes there is an urgent need for a statutory time limit on immigration detention.

10. Sadly, current policy stipulations which dictate that detention should be “*used sparingly and for the shortest period necessary*” have proved meaningless in practice.²⁰ In recent years the Home Office has repeatedly been found to have unlawfully detained individuals for protracted periods. In 2014, the High Court found the 11 month detention of a woman seeking to join her husband in the UK under the refugee family reunion rules to be a violation of both Article 5 (right to liberty) and Article 3 (freedom from torture, inhuman and degrading treatment) as protected by the Human Rights Act. In 2012, the Court of Appeal found that a claimant of disputed nationality, detained for an overall period of 22 months, had been unlawfully detained in circumstances where there was insufficient prospect of removing him within a reasonable period.²¹ In the same year, the Home Office were found to have falsely imprisoned a Zimbabwean man detained under immigration powers over a 13 month period between November 2007 and January 2009. The court found that from May 2008 there was no realistic prospect of removing him due to official Government policy to suspend removals because of the violence and dire humanitarian conditions in Zimbabwe in the wake of general elections held in the March 2008.²²

¹⁸ Detention Action, Flemish Refugee Action and others, *Point of no return: the futile detention of unreturnable migrants*, p 29-30.

¹⁹ *Ibid.* p 34-35.

²⁰ Home Office Enforcement Instructions and Guidance, Chapter 55.1.3.

²¹ *Bizimana, R (on the application of) v Secretary of State for the Home Department* [2012] EWCA Civ 414 (02 April 2012).

²² *AM v Secretary of State for the Home Department*, Central London County Court, 2012, judgment available at:

http://www.bhattmurphy.co.uk/media/files/AM_Zimbabwe_v_SSHD_approved_judgment.pdf.

11. The United Kingdom is one of the few countries in Europe which places no limit on the length of immigration detention.²³ The latest Home Office figures reveal that, in the year to June 2014, of the 181 individuals who were detained for over 12 months, most of these were not ultimately removed, rendering their detention a human tragedy and a futile violation of the right to liberty.²⁴ Furthermore these statistics do not include migrants detained in prison who, according to Detention Action, face the longest periods of immigration detention.²⁵ In a Report published in March this year, the Independent Chief Inspector of Borders and Immigration, John Vine, recorded that, of a sample of cases examined by inspectors, the average post-sentence period of detention was 523 days.²⁶ For those detainees unable to return because their countries are failing to facilitate return – so-called ‘country non-compliant’ detainees - the average time spent in post-sentence detention was 755 days.²⁷ One detainee was found to have been held for over three and a half years, at a running total cost of £211,032 to the tax-payer, because he did not have a passport.²⁸ In more general terms, an examination into the economic case for detention published in September 2012, Matrix Chambers found:

In the UK, over the next 5 years the benefits of timely release of detainees who would have eventually been released anyway exceed the cost of timely release by £377.4 million. Timely release will generate £344.8 million in cost savings due to reduced time spent in detention. In addition, another £37.5 million will be saved due to reduced unlawful detention costs.²⁹

The frustrating truth is that cases of protracted detention no longer even serve administrative convenience; they are simply a pointless waste of human life and public funds.

²³ Global Detention Project, *United Kingdom Detention Profile*, available at:

<http://www.globaldetentionproject.org/countries/europe/united-kingdom/introduction.html>.

²⁴ 80 (44%) were removed, 54 (30%) were bailed and 43 (24%) were granted temporary admission or release: <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2014/immigration-statistics-april-to-june-2014>.

²⁵ Detention Action, *Written evidence to the Parliamentary inquiry into the use of immigration detention*, July 2014.

²⁶ *An Inspection of the Emergency Travel Document Process May-September 2013*, Sir John Vine CBE QPM, Independent Chief Inspector of Borders and Immigration, paragraph 8.13.

²⁷ *Ibid.*, paragraph 8.14.

²⁸ *Ibid.*, paragraph 8.13.

²⁹ Matrix Evidence, *‘An economic analysis of alternatives to long-term detention: Final Report’*, September 2012, p. 9.

12. Detention without limit is an invitation to abuse. As a bare minimum, Liberty supports the calls of those organisations working routinely to support and protect vulnerable detainees in their calls for a statutory time-limit on immigration detention of 28 days.³⁰

(ii) Judicial authorisation and supervision of detention

13. Immigration detainees have no automatic right to have their detention reviewed by the courts. Instead new arrivals must wait seven days before they are permitted to apply to for bail; if no application is made, detention is not externally reviewed.³¹ The requirement that a detainee initiate a bail application is practically concerning, particularly for the significant number of detainees with poor or no literacy, who speak no English or who have mental health problems. At a more general level, concerns have been repeatedly expressed about failures to adequately explain the existence of, and the procedure for, accessing immigration bail. In a December 2012 report, HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration remarked:

During our interviews, we were surprised that of those detainees held for more than six months, nine (19%) said they had never made a bail application. This may have been because detainees were unaware of bail processes and/or had poor legal advice. A number of detainees said they did not know how to apply for bail or clearly needed help to navigate the process.³²

14. These practical problems with the accessibility of bail applications have been exacerbated by provisions of the Immigration Act 2014. The Act provides that where directions requiring removal within 14 days are in force, an individual may not be granted bail without the consent of the Secretary of State (grants of bail pending an appeal are also made subject to this restriction).³³ Section 7 of the Act further requires that provision be made in the Tribunal Procedure Rules requiring bail applications to be dismissed - without a hearing - where they are made within 28 days of a previous application unless a material change can be demonstrated on the papers.

³⁰ See the recommendations of Detention Action (*Written evidence to the Parliamentary inquiry into the use of immigration detention in the UK*, July 2014) and Women for Refugee Women (*Detained: women asylum seekers locked up in the UK*, January 2014).

³¹ Immigration Act 1971, Schedule 2, paragraph 22(1)(a) and (1B).

³² *The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration*, December 2012, para 4.9.

³³ Section 7.

15. Liberty does not believe that an expressed intention to remove within 14 days should render bail inaccessible unless the Government agrees. 14 days is the upper limit for pre-charge detention in this country for terror suspects. In order to extend detention from an initial period of 48 hours to the current limit, a police officer must apply to a designated District Judge for a warrant.³⁴ Such a warrant may only be issued where there are reasonable grounds for believing that further detention is necessary for obtaining or preserving evidence and where the investigation being carried out in connection with the person detained is being conducted “diligently and expeditiously”.³⁵ The person to whom the application relates has the opportunity to make oral or written representations to the court and is entitled to be legally represented.³⁶ It is open to a judge to authorise an extension of detention which is less than the period requested.³⁷ These safeguards represent an acknowledgment that protracted incarceration by the state, in the absence of a criminal charge, is antithetical to our best traditions of liberty and only to be countenanced on the basis of judicial authority and with provision for full input by the detainee into the process of authorisation. Inexplicably, in the case of those in immigration detention – not even suspected of a criminal offence – the possibility of review by a Tribunal without government approval is now excluded where removal is anticipated with 14 days unless the Home Secretary decides otherwise. Whilst debates on pre-charge detention for terror suspects have attracted intense scrutiny, debate and controversy, immigration bail has been quietly placed further and further beyond the reach of detainees.

16. Aside from the principled objections to these latest reforms, many particularly vulnerable migrants will lose the ability to apply for bail thanks to these provisions. It is easy to envisage situations in which 14 days detention will be particularly damaging to the individual – for example a parent with young children, or somebody suffering from psychological or physical illness. Liberty is further concerned that it will be open to the Home Office to issue rolling removal directions, effectively preventing bail applications on an indefinite basis unless the Home Secretary gives her consent.

17. Proposed new requirements prohibiting repeat applications, save where a material change in circumstances is demonstrated, are also seriously concerning.³⁸ Individuals will not be allowed to argue, at a hearing, why their circumstances have changed since a previous application was made. An application on the papers does not afford an individual

³⁴ Terrorism Act 2000, Section 41.

³⁵ Terrorism Act 2000, Schedule 8, para 32.

³⁶ Terrorism Act 2000, Schedule 8, para 33.

³⁷ Terrorism Act 2000, Schedule 8, para 29.

³⁸ Immigration Act 1971, s33A as amended by section 7(6) of the Immigration Act 2014.

the opportunity to fully argue her case and will deprive her of the opportunity to address any reservations which a judge may have about a change in circumstances. It is further far from clear whether a change in circumstances will cover situations in which the home office has simply failed to act through the kind of error and inefficiency which we know impedes decision-making in this area, leaving detainees deprived of their liberty and in a state of limbo. The assumption behind this provision appears to be that 28 days is a trivial period of detention and individuals should not expect to have multiple avenues of challenge within this time. In the case of terror suspects, the present Government has accepted that deprivation of liberty for a period of 28 days in circumstances where no criminal charge has been brought is extremely difficult to justify.³⁹ The very least immigration detainees can expect in these circumstances is a right to challenge their incarceration: additional days in detention should always be considered to represent a material change in circumstances.

18. Liberty recommends that, as a bare minimum of protection, immigration detention should be automatically reviewed by the judiciary after 48 hours and only extended in circumstances where the Home Office can demonstrate that further detention is a necessary and proportionate step, removal is genuinely imminent and steps are being taken diligently and expeditiously to effect removal. Detention should be for the period deemed necessary by the judge. Automatic review should occur at 7 day intervals, with the extension of detention subject to the backstop statutory limit of 28 days set out above. Automatic review aside, applications for bail must be possible, without restriction, at the imperative of the applicant. Liberty understands that arguments about cost are liable to be put in response to proposals for increased judicial oversight. As highlighted above the costs of detention are inexcusably high and many are detained for protracted periods only to be released. Liberty believes that this level of judicial oversight will ensure that the decision to detain is treated with the gravity it deserves and will focus the attention of the authorities on securing efficient removals in cases where an individual can be safely and lawfully returned. More fundamentally still, this reform would require a measure of the basic respect for the right to liberty - afforded in the case of those suspected of serious criminal offending - in the case of potentially vulnerable detainees not under investigation for any crime.

³⁹ HM Government, Review of Counter-terrorism and Security Powers: Review and Findings, recommendations, p. 14.

(iii) Abolition of the Detained Fast Track (DFT) and Detained Non-Suspensive Appeals (DNSA) systems

19. Tony Blair's Labour government, when it came to power in the late 90s, did so with the express intention of 'addressing' the high number of asylum applications in the system.⁴⁰ In 2000, then Home Office Minister Barbara Roche confirmed that under a procedure introduced at Oakington Reception Centre applicants were being detained where "*it appears that their application can be decided quickly, including those which may be certified as manifestly unfounded.*"⁴¹ The Oakington fast-track procedure represented the first time in our history that asylum seekers were placed in detention with administrative convenience as the clearly expressed objective.

20. In 2003, the Oakington scheme was extended to single male applicants housed at Harmondsworth. Detainees were from countries where the Home Office deemed there to be no general risk of persecution. Both initial decisions and appeal rights were compressed into short timescales.⁴² In 2005 women began to be routinely processed through the DFT regime at Yarl's Wood. Thanks to the incorporation of appeal processes in the DFT, periods of detention are now significantly longer than the original 7-10 days. In September 2013, data collected across three detention centres revealed the average time between entry onto the fast-track and exhaustion of appeal rights to be 23.5 days.⁴³ The DFT is operated in parallel with a 'Detained Non-Suspensive Appeal' (DNSA) procedure. Under the DNSA, an asylum applicant from one of a list of designated 'safe countries' is detained while their asylum claim is determined, with no in-country right of appeal.

21. Originally, the DFT was advanced as a means of handling claims susceptible to rapid resolution; it quickly became the repository of those cases deemed by Home Office decision makers to be unmeritorious. In 2013, 99% of those cases placed on the fast-track were refused, compared to 74% in the non-detained system.⁴⁴ Many commentators have been highly critical of the quality of decision making on the DFT, including, in a 2008 report, the UNHCR.⁴⁵

⁴⁰ See for example, Tony Blair's speech at the Labour Party Conference 2003, The Guardian 30 September 2003.

⁴¹ Commons Hansard: 16 Mar 2000 : Column: 263W.

⁴² Macdonald's Immigration Law and Practice, Chapter 17.37.

⁴³ Detention Action case, para 83.

⁴⁴ Detention Action case, para 73.

⁴⁵ Detention Action case, Para 181.

22. Individuals are not placed on the fast-track because they are failed asylum seekers or foreign national prisoners nor are they people believed to present a risk of absconding or offending. The DFT was designed by Government to ensure that applicants were easily accessible to facilitate the processing of their claims. Before this time, applicants had remained in the community whilst their claims were handled, with detention purely to facilitate removal if a claim was ultimately rejected. Detention for administrative convenience is an unacceptable departure from our best traditions of liberty. Those placed on the DFT are seeking sanctuary in this country. A fair decision making process will inevitably find some of their claims unfounded, but this reality does not displace our obligation to treat people with a minimum of dignity while they remain in this country. Imprisoning innocent people for the ease of officialdom is a cruelty which would not be tolerated in other areas of our national life. Liberty believes the DFT and DNSA processes should be abolished and asylum claims processed in the community.

23. If this scheme is to continue, significant reform is urgently required. In *Detention Action v Secretary of State for the Home Department* (“the Detention Act case”), a recent challenge to the operation of the DFT, the High Court found that the system entailed “*an unacceptably high risk of unfairness*” and identified a range of serious flaws.⁴⁶ Concerns over the screening process and access to legal representation must be addressed to avoid this unfairness.

(a) Improved screening procedures

24. In 2011, the Independent Chief Inspector of Borders and Immigration, Sir John Vine, questioned the suitability of the screening process as a means of determining entry onto the DFT.⁴⁷ He noted, in particular, that victims of torture were placed on the fast track as their experiences were not drawn out in screening interviews.⁴⁸ It is Home Office policy not to ask an individual whether they have been tortured during a screening interview and the Helen Bamber Foundation reports that screening officers sometimes refuse to accept photographs or offers to show scarring or other independent evidence of torture, such as medical documentation.⁴⁹ In the Detention Action case, Mr Justice Ouseley found that current screening processes, whilst addressing themselves to the suitability of a case for a fast

⁴⁶ The Detention Action case, para 197.

⁴⁷ John Vine CBE QPM, Independent Chief Inspector of the UK Border Agency, *Asylum: A thematic inspection of the Detained Fast Track* (July – September 2011).

⁴⁸ *Ibid.* See e.g. paragraph 5.21.

⁴⁹ The Detention Action case, para 117-8.

decision, did not engage adequately with the suitability of the individual for detention. He concluded: “I regard the screening process as not as focused on the issue of fairness as it should be”.⁵⁰ Whilst securing an appointment with an organization such as Helen Bamber, with a view to obtaining a medico-legal report, triggers removal of a case from the DFT, the timescales involved make this a difficult feat in practice.

25. The Government’s “Detained Fast Track Processes” policy of June 2013 lists some categories of case as unlikely to be suitable for detention, for example women in the later stages of pregnancy and those in respect of whom there is “*independent evidence of torture*”.⁵¹ Claims involving torture, FGM, rape and domestic violence are not excluded *per se* as unsuitable and, in the Detention Action case, the High Court remarked on the lack of clarity and openness which exists around the suitability criteria for immigration detention.⁵² As discussed below, serious concerns further exist around the effectiveness of Rule 35 medical reports to identify those unsuitable for detention as a result of experiences of torture or current medical conditions. With this in mind it is shocking but not surprising that, in 2013, the Home Affairs Select Committee came to the view that a third of cases were wrongly allocated to the fast track procedure.⁵³ UNHCR argues that, at a minimum, those whose claims involve rape or trafficking should not be detained and the screening process must be reformed in order to ensure that vulnerabilities are picked up.⁵⁴

26. Liberty believes that the screening process for the DFT must become more focused on the suitability of individuals for detention. Questions aimed at establishing whether an individual is a victim of torture or trafficking should be asked at the stage of screening and screening officers should receive specific guidance about the need to identify such vulnerable victims. In the case of potential trafficking victims, even where a direct claim is not made, screening officers must be trained to be alert to trafficking indicators and must ensure that individuals are directed, ⁵⁵ rather than onto the DFT

⁵⁰ The Detention Action case, para 112.

⁵¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257435/detained_fast_processes.pdf, section 2.3.

⁵² The Detention Action case, para 92.

⁵³ House of Commons Home Affairs Committee, *Asylum: Seventh Report of Session 2013–14*, paragraph 66.

⁵⁴ See e.g: <http://www.unhcr.org.uk/resources/monthly-updates/march-2012/unhcr-concerned-over-uks-use-of-detention-in-asylum-process.html>.

⁵⁵ The NRM is the process used to identify victims of trafficking, and therefore a gateway to much support and assistance. For Liberty’s concerns about the operation of the procedure, please see our latest briefing on the Modern Slavery Bill at: [https://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20Committee%20Stage%20briefing%20on%20the%20Modern%20Slavery%20Bill%20\(August%202014\).pdf](https://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20Committee%20Stage%20briefing%20on%20the%20Modern%20Slavery%20Bill%20(August%202014).pdf).

where they may have been trafficked. It is unconscionable that asylum seekers who have suffered physical or sexual abuse or exploitation, including rape, FGM, torture, domestic violence and trafficking should be incarcerated on their arrival in the UK. Individuals whose claims involve such ill-treatment should be deemed unsuitable for the fast-track.

(b) Improved access to legal assistance

27. The most severe criticism of the DFT in the Detention Action case focussed on effective access to legal assistance. In addition to the fact, noted by the Court, that the presence of a legal representative at the screening interview is not actively facilitated,⁵⁶ the evidence of a number of practitioners was to the effect that getting access to rooms for the required time to take instructions from clients was incredibly difficult. A witness from Duncan Lewis Solicitors, the largest provider of legal assistance to those in immigration detention, explained that judicial review had to be threatened on occasion in order to secure the use of facilities to take instructions.⁵⁷ Further, and most significantly, delay in the allocation of lawyers by the Home Office led to widespread unfairness. Mr Justice Ouseley concluded:

I am satisfied that all the evidence taken together shows that the need for time for proper advice with time to act on it, beyond what the DFT allows, and the need for time for the effective safeguards properly to operate, is not fully appreciated at all stages and levels, partly through a desire to keep a case on track once it is in the fast-track. The upshot is that the DFT as operated carries an unacceptably high risk of unfairness...⁵⁸

28. It takes a week on average for asylum seekers detained at Harmondsworth to be allocated a legal representative.⁵⁹ The Court was emphatic that improved access to lawyers was necessary to address this unfairness and to act as a safeguard against many of the other flaws identified in the system. Earlier allocation of lawyers would, for example:

assist in the identification and removal of torture, trafficking and other potentially

⁵⁶ The Detention Action case, para 96.

⁵⁷ The Detention Action case, para 181.

⁵⁸ The Detention Action case, para 197.

⁵⁹ Detention Action, *Written evidence to the Parliamentary inquiry into the use of immigration detention in the UK*, July 2014. Paragraph 37.

vulnerable cases, which the screening process is not well equipped to do.... And for which other safeguards do not work, as in the case of Rule 35....⁶⁰

29. Liberty urges the Inquiry to have regard to the conclusions of the High Court in the Detention Action case around the need for timely legal assistance. Like the Court, Liberty considers accessible legal assistance is not only a crucial due process protection, but also a bulwark against the other abuses rife in the system. Those in detention must be allocated solicitors as soon as they are placed on the DFT or the DNSA and facilities must be available for instructions for to be taken, without undue restrictions on the time available. These reforms should be spelled out in Home Office guidance. This recommendation should be read in conjunction with the recommendation made below as to legal aid funding and the practical availability of judicial review.

(iv) Legal aid to challenge conditions of detention and effective access to judicial review

30. Liberty has expressed concerns about the impact of contractions in the scope of legal aid and plans to reform the rules on judicial review. These arguments are particularly compelling for those in immigration detention. The *Legal Aid, Sentencing and Punishment of Offenders Act* retained provision for those seeking to challenge their detention or pursue their immigration claims whilst detained. However the residence test, recently successfully challenged through Courts, would, if ultimately implemented, have serious consequences for those in immigration detention. Whilst detainees would continue to have access to legal aid in order to challenge their on-going detention, they would not have access to legal aid to challenge aspects of their treatment in detention. If the residence test were in force, detainees facing serious ill-treatment or substandard care of the sort consistently identified in the immigration estate would have no accessible redress before the civil courts unless able to establish 12 years lawful residence in the UK.

31. Proposals for reform of judicial review, set out in the Criminal Justice and Courts Bill would exacerbate the situation by introducing a number of barriers, largely but not exclusively financial, to make it harder to test state actions, including those relating to immigration detention. If implemented in its current form, the Bill would make it financially harder for individuals to bring claims, by placing increased cost risks on claimant solicitors prior to the permission stage. The Bill would further make it more difficult for organisations

⁶⁰ The Detention Action case, para 198.

such as Mind, Medical Justice and Women for Refugee Women to intervene in ways which will assist the Courts to reach a just resolution. Liberty's full briefing in opposition to the measures put forward in Part 4 of the Criminal Justice and Courts Bill contains a detailed breakdown of our concerns.⁶¹ For the purposes of the present submission, Liberty considers it essential that all immigration detainees have access to legal aid in order to challenge aspects of their treatment in detention. Furthermore judicial review must be financially assessable to detainees as a bulwark against abuse.

(v) Removal of vulnerable groups from the detention system. Where they remain, improvements to facilities and practices

32. It is an obvious reality that the detained population is more vulnerable than the population at large, whether this is as a result of the experience of flight, a lack of social or cultural ties in this country, an inability to speak the language, a lack of formal education, experiences of humanitarian crisis, war or persecution in their home countries or a combination of these factors. Detention carries the obvious potential to exacerbate such vulnerabilities or to create problems and traumas of its own. For particularly vulnerable groups such as victims of torture, inhuman and degrading treatment, those suffering from mental and physical health conditions, pregnant women, children, the elderly and those with learning disabilities, the arguments against detention apply with even greater force. Liberty believes these groups should not be detained, save in exceptional circumstances, for the shortest time possible to facilitate removal. Detention facilities must always be adapted to accommodate the needs and vulnerabilities of these individuals.

33. For those who are detained, treatment must be dramatically improved. What follows is a series of core recommendations, not intended to be an exhaustive list, of further protections necessary to protect the most vulnerable from abuse and neglect.

(a) Improvements to the Cedars process and to enforcement action involving families and children

34. When the Coalition came to power in 2010, it pledged to end the use of immigration detention for children. In 2011 Cedars 'secure pre-departure accommodation' was opened

⁶¹ See Liberty's latest briefing on Part 4 of the Criminal Justice and Courts Bill: <https://www.liberty-human-rights.org.uk/sites/default/files/Liberty%27s%20Committee%20Stage%20Briefing%20on%20Part%204%20of%20the%20Criminal%20Justice%20and%20Courts%20Bill%20-%20House%20of%20Lords%20%28July%202014%29.pdf>.

on the proviso that it would be restricted to families that were refusing to cooperate with removal directions and would be limited to the last 72 hours before departure. In light of a report published by HM Inspector of Prisons in January 2014, Liberty retains concerns about this facility. The report noted that the legal basis for the operation of Cedars remained unclear and, in particular, that there was no equivalent to the Rule 35 procedure for the identification of torture survivors, or others with medical conditions which render them unsuitable for the Cedars process.⁶² The report notes that in 2013, 5 families were ultimately declared unfit to fly and released from the centre and 5 only removed from the country after a second period at Cedars. There were 23 releases from Cedars in 2013 due to a range of factors, including effective legal challenges. It is essential that the detention of children and families is used as an absolute last resort, when all legal avenues have been exhausted, fitness to fly has been established and independent medical advice received. Children must not be put through this process in vain. Medical advice must inform the decision on suitability for the Cedars process and be available throughout. Detention should be for the minimum time possible, with 72 hours as the absolute maximum.

35. A further and deeply concerning issue around detention arrangements at Cedars emerged in the latest HM Inspector of Prisons report which described an incident in which an arrest team failed to knock on a family's door before taking three minutes to break it down in a raid. It was noted that this *"would have been a terrifying event for children if they had been there"* further *"[t]he approach was not proportionate to identified risks and had not been approved by the Independent Family Returns panel."*⁶³ Elsewhere in the report occasions were detailed where escort staff insisted on holding the arms of fully compliant detainees during removal.⁶⁴ Liberty believes that such heavy handed tactics have no place in a proportionate removal system involving children and families. The use of restraint techniques on compliant detainees is unacceptable as are violent dawn raids. This must be made clear in Home Office guidance and additional training provided to contractors.

- (b) Reforms to the Rule 35 medical reporting process, better healthcare provision and dedicated mental health training for all who deliver services in detention

36. Under Rule 34 of the Detention Centre Rules, immigration detainees must be examined within 24 hours of their arrival in a detention centre and under Rule 35, a

⁶² HM Chief Inspector of Prisons, *Report on an unannounced inspection of Cedars pre-departure accommodation and overseas family escort* (6 – 27 January 2014), para 1.73.

⁶³ *Ibid.*, para 1.7.

⁶⁴ *Ibid.*, para 4.8.

practitioner is required to report on any medical conditions for which detention may be harmful.⁶⁵ The Rule 35 process has, however, been roundly criticised by many experts and by the Courts. A joint HMIP and Independent Chief Inspector of Borders and Immigration Report in 2012 found:

Rule 35 reports are often perfunctory and contain no objective assessment of the illness, condition or alleged torture. The replies are often cursory and dismissive and, as in this case, it is extremely rare for a Rule 35 report to lead to release.⁶⁶

37. Rule 35 Reports were further found to be frequently late and overall failed to provide an effective safeguard against the detention of vulnerable people.⁶⁷ Notwithstanding some changes to policy since the publication of this report, Rule 35 reports continue to prove ineffective in practice. Between April and September 2013, only 4 detainees were released on the basis of a Rule 35 report; this in the context of a screening process entirely ill-equipped to filter out victims of torture. This can be compared with far higher rates of release on the basis of reports by organisations such as Helen Bamber and Freedom from Torture.⁶⁸ In the Detention Action case, the Court found that Rule 35 reports:

...are not the effective safeguard they are supposed to be...I am persuaded that Rule 35(3) reports do not work as intended, either by themselves or with Rule 34 to remove from the DFT those with independent evidence of torture, or whose case is no longer suitable for fair determination on the quick DFT timetable, as a result of evidence of torture.⁶⁹

38. The judge further identified errors in the processes used by the Home Office case-owners who were responsible for considering Rule 35 Reports where provided. Mr Justice Ouseley considered that the requirement should be explicit that, where a case-owner comes to consider a report, she must turn her mind to the issue of whether the claim “*remains suitable for fair determination in detention in the DFT timetable*”.⁷⁰ Liberty concurs and we further believe that Rule 35 reports should be completed by external expert practitioners, to

⁶⁵ For more detail see Detention Service Order 17/2012.

⁶⁶ The effectiveness and impact of immigration detention casework: A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (December 2012). Para 4.30.

⁶⁷ Ibid.

⁶⁸ See evidence provided in the Detention Action case at para 133 of the judgment.

⁶⁹ The Detention Action case, para 133.

⁷⁰ The Detention Action case, para 134.

drive up standards and ensure independence. At the very least the standard of these reports must be tested by a system of external audit by independent medical practitioners.

39. There has further been significant criticism of healthcare facilities more generally in detention centres. Problems in provision have come to the fore in tragic cases such as the 84 year old Canadian detainee, who suffered from Alzheimer's and died of a heart-attack whilst in handcuffs in February 2013.⁷¹ Further, a number of medical NGOs have reported grave, systemic failures in the treatment of detainees. In the case of HIV positive detainees, Medical Justice has recorded, amongst a litany of failures: interruptions in antiretroviral therapy; failure to respect confidentiality and failure to carry out or pass on the results of tests determining resistance to medications.⁷² Reports of shocking failures in the care of detainees with serious mental health conditions have been revealed in a number of high-profile court cases. In *R(HA v SSHD (Nigeria) v SSHD*, a Nigerian man suffering from serious mental health problems was found to have experienced inhuman and degrading treatment which included being left to lie for hours on the floor of his cell, refusing all food and drinking water from the toilet.⁷³ In addition to subjecting him to inhuman and degrading treatment in violation of Article 3, his treatment violated his right to physical and mental integrity under Article 8 in violation of the HRA. According to the charity Mind, which intervened in the case, this *"is just one of many cases of shocking and systemic failings in the provision of mental healthcare to immigration detainees."*⁷⁴

40. Responses to health complaints and standards of healthcare must be dramatically improved in immigration detention centres, reflecting the standard of care received in the community. Liberty is not in a position to provide an expert break-down of the improvements to medical practice required, but as a minimum of protection, those with pre-existing mental health problems or long-term medical conditions requiring continuing treatment must not be detained; those who develop mental health problems whilst in detention should be released with appropriate provision made for their care; all detainees should have access to a comprehensive and fully funded health service while held in detention and all of those who deliver services in immigration detention centres must receive dedicated mental health training.

⁷¹The case was widely reported e.g: <http://www.bbc.co.uk/news/uk-england-london-25749685>, http://www.huffingtonpost.co.uk/2014/01/15/dementia-immigration-cent_n_4602216.html.

⁷² Medical Justice, *Detained and Denied: the clinical care of immigration detainees living with HIV*, page 6 (2011).

⁷³ [2012] EWHC 979 (Admin).

⁷⁴ Mental Health Today, *Shocking and Systemic failings in Immigration healthcare*, February 2003: http://www.mentalhealthtoday.co.uk/shocking_and_systemic_failings_in_immigration_mental_health_care.aspx.

(c) More focus on indicators of trafficking with potential victims diverted out of detention and into the NRM

41. Concerns have further been raised around the extent to which victims of trafficking find their way into the detention estate. In a 2013 Report, HM Chief Inspector of Prisons found that a woman discovered in a brothel was detained at Yarl's Wood and not referred for assessment as a potential victim of trafficking, raising concerns that trafficking indicators were not identified and acted upon.⁷⁵ In the Detention Action case, the High Court accepted that screening processes were not properly adapted to pick up on trafficking indicators and it was not clear to screening officers that such cases ought, as a rule, to be referred on to the national referral mechanism for assessment.⁷⁶ All those involved in the decision to detain must be trained to identify trafficking indicators and questions should be asked which are designed to draw out experiences of trafficking. Potential victims of trafficking should be referred to the NRM and not placed in immigration detention.

(d) Female staff in female detention facilities and a choice for female detainees as to the sex of their interviewer

42. In 2014, Women for Refugee Women published a report detailing the experiences of female asylum seekers detained in the UK. Over and above the problems of protracted detention, past experiences of torture, inadequate healthcare provision and problems with the DFT experienced more broadly, the report identified respects in which detention was particularly damaging for women.⁷⁷ 40 of a sample of 46 women interviewed by the charity said they had been guarded by male staff: 70% of these women said that this made them uncomfortable. Three women reported being physically assaulted, one reported sexual assault.⁷⁸ This report of sexual assault should be seen in the context of a series of accounts of inappropriate sexual behaviour by male guards at Yarl's Wood, including the accounts of three women last year.⁷⁹ A very high proportion of the women encountered by Women for Refugee Women during the course of their research had experienced gender based violence in the past: 72% had been raped.⁸⁰ Even without the horrific cases of abuse referenced

⁷⁵ HM Chief Inspector of Prisons, 'Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre', (17–28 June 2013, 30 Sept – 1 Oct 2013). Paragraph 1.100.

⁷⁶ The Detention Action case, para 145.

⁷⁷ Women for Refugee Women, *Detained: Women Asylum Seekers Locked Up in the UK*, Key Findings, p. 5.

⁷⁸ *Ibid.*

⁷⁹ See e.g.: <http://www.theguardian.com/uk-news/2013/sep/21/sexual-abuse-yarls-wood-immigration>.

⁸⁰ *Ibid.*, p. 4.

above, these statistics render the prevalence and role of male guards in female detention facilities entirely unacceptable. To add to these concerns, in a 2013 Report, HM Chief Inspector of Prisons reported male guards entering the rooms of female detainees without waiting for a reply after knocking and the presence of male officers during rub-down searches of women.⁸¹ Liberty supports the recommendation of Women for Refugee Women that no male guards be employed in roles where they come into contact with female detainees. In accordance with UNHCR guidelines, Liberty further recommends that women be given a choice as to the gender of their interviewer for screening and substantive asylum interviews, where accounts of past ill-treatment will fall to be discussed.⁸²

(vi) No immigration detention in prisons

43. In addition to concerns, set out above, around the extended periods individuals face in detention in prison for immigration purposes, the evidence suggests that prisons are entirely unsuited to use as immigration detention facilities for a range of reasons. A Report published by Bail for Immigration Detainees (BID) in September this year detailed the serious barriers to accessing justice experienced by those detained in prisons, which prevent individuals from advancing their cases and render legal assistance even more difficult to access than in designated removal centres.⁸³ In circumstances where bail is granted, BID noted occurrences of poor practice on the part of prison and Home Office staff which led to extended detention or recall through no fault of the detainee. Furthermore, the use of detention in prisons lies outside of the statutory framework designed to prevent the improper use of detention or unacceptable detention conditions. Liberty agrees with the conclusion of BID that prisons should no longer be used for the purposes of immigration detention.

(vii) Safeguards around the use of force

44. Cases of misuse of force by contractors working in detention centres or involved in the removal of detainees are rife. In 2012 the High Court found that Serco had subjected Liberty's client 'FGP' to inhuman and degrading treatment by shackling him in hospital for eight days including while using the toilet, showering and during medical consultations.⁸⁴

⁸¹ HM Chief Inspector of Prisons, 'Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre' (17–28 June 2013, 30 Sept – 1 Oct 2013), paras 2.19 and 1.63.

⁸² The Detention Action case, para 211.

⁸³ Bail for Immigration Detainees, *Denial of justice: the hidden use of UK prisons for immigration detention* -

Evidence from BID's outreach, legal & policy teams, September 2014.

⁸⁴ *FGP v Serco Plc & Anor* [2012] EWHC 1804 (Admin).

FGP detained pending removal from the UK, was not a criminal. He was not a risk to the public. Despite this Serco decided to restrain him at all times, 24 hours a day. As well as finding a violation of Article 3, the judge was also critical of the Secretary of State's policy on the use of restraint during medical treatment and expressed concern that handcuffing in such circumstances was "over-zealous".⁸⁵ Meanwhile a 2012 report on an announced inspection of Cedars by HM Chief Inspector of Prisons found that force had been used in one case to take an unidentified pregnant woman resisting removal to departures: "*She had been placed in a wheelchair to assist her to the departures area and when she resisted, the wheelchair was tipped-up with staff holding her feet and pushing the chair a considerable distance. This was not an approved technique. At one point she slipped down from the chair and, although she appeared to be unhurt, the risk of injury was significant. This use of force on a pregnant woman presented an unacceptable risk to the health of an unborn child.*"⁸⁶

45. In a tragic and high-profile case, in October 2010, father of five, Jimmy Mubenga died following the use of force during deportation. He was being escorted by three G4S guards on a flight from Heathrow to Luanda, Angola. Witnesses said that Jimmy complained repeatedly that he couldn't breathe before paramedics were eventually called and he was taken to Hillingdon hospital where he was pronounced dead. An inquest into his death recorded a verdict of unlawful killing.⁸⁷ Following the inquest the coroner issued a damning "rule 43" report raising concerns about –

- A system of payment that rewards guards if they can keep a detainee quiet until the aircraft takes off;
- Evidence of "pervasive racism" among G4S detention custody officers who were tasked with removing detainees;
- Fears that these racist attitudes – and "loutish, laddish behaviour ... Inappropriate language, and peer pressure" – are still common among escort guards today;
- Lack of "scenario specific" training for those tasked with trying to restrain people on aircrafts;

⁸⁵ *FGP v Serco*, para 61.

⁸⁶ HM Chief Inspector of Prisons, *Report on an announced inspection of Cedars Pre-Departure Accommodation* (30 April – 25 May 2012), para 1.52.
<http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/cedars/cedars-2012.pdf>

⁸⁷ "Jimmy Mubenga was unlawfully killed, inquest jury finds" *The Guardian*, 9 July 2013,
<http://www.theguardian.com/uk-news/2013/jul/09/jimmy-mubenga-unlawfully-killed-inquest-jury>

- Evidence of the use of dangerous restraint techniques such as "carpet karaoke" where detainees' heads are forced downwards to prevent them upsetting the passengers or causing the captain to abort the removal;
- and concern that many guards were not officially accredited to carry out removals – meaning they would have been acting illegally.⁸⁸

46. Use of force by immigration officers and contractors is frequent and widespread. During Committee consideration of the Immigration Bill in the House of Commons, former Immigration Minister, Mark Harper MP, wrote to members of the Bill Committee about the current in-country use of force by those exercising immigration powers.⁸⁹ The Minister's letter stated that in the 2012-2013 detention contractors used force 546 times and escort contractors 414 times. During this period, 56 of 73 serious complaints about detention and escorts powers were about the use of force.

47. In June this year, the Government approved a new restraint system for safely managing people being escorted during immigration removals, based on the recommendations of the Independent Advisory Panel for Non Compliance Management. As part of this new approach the Government has committed to provide training for escort staff, including practical tools to de-escalate situations and minimise the use of restraint.⁹⁰ Review of the training given to contractors, will be carried out internally. Liberty believes an effective use of force policy must, at a minimum, provide for independent oversight of use of force and proper accountability. Home Office staff and contractors, who have less opportunity than prison staff to practice the more complex and "scenario specific" use of force techniques day-to-day, should have frequent training and detainees should be treated with respect, with racist, abusive and threatening language never be tolerated. Handcuffing should only be used in exceptional circumstances where there is evidence of a risk of absconding and people with disabilities and pregnant women should not be handcuffed.

Rachel Robinson

⁸⁸ "Jimmy Mubenga coroner issues damning report on deportations" The Guardian, 4 August 2013, <http://www.theguardian.com/uk-news/2013/aug/04/jimmy-mubenga-coroner-report-deportations>

⁸⁹ Letter dated 18 November 2013.

⁹⁰ Written Ministerial Statement by James Brokenshire, 26 June 2014, available at: <https://www.gov.uk/government/speeches/new-system-of-restraint-for-managing-people-safely-during-immigration-removals>.