

LIBERTY

PROTECTING CIVIL LIBERTIES
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Liberty's briefing for the backbench business debate on immigration detention

September 2015

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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Introduction

1. Liberty believes that 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. On **Thursday 10th September** MPs will debate immigration detention following the publication of a detailed report by a cross-party Parliamentary Inquiry on the Use of Immigration Detention in the United Kingdom (“the Inquiry”) in February.¹ Liberty gave oral and written evidence to the Inquiry and agrees with many of its important recommendations.² Above all we support the conclusion that “*decisions to detain should only be taken as a genuinely last resort and to effect removal.*”³ The international and domestic alternatives to detention explored by the Inquiry - which focus on engagement rather than end-stage enforcement - demonstrate that a more humane approach would strengthen compliance as well as saving huge amounts of public money. As an absolute minimum of protection, Liberty supports the calls of the Inquiry for: a 28 day statutory limit on immigration detention; automatic bail hearings and improved access to legal assistance; an end to immigration detention in prisons; greater protections against the detention of victims of trafficking and torture; significant improvements in healthcare provision; an end to the detention of those with mental health conditions; additional protections for women in detention centres; and an end to the detention of pregnant women. Liberty further believes that the Detained Fast Track System, suspended after being ruled systematically unfair and unjust should be permanently scrapped.

A last resort to effect immediate removal

2. The UK’s immigration estate is one of the largest in Europe, with a capacity of 3,915 at the beginning of 2015, with 3,483 in detention at the end of March 2015.⁴ According to the latest Home Office figures, 45% of those entering immigration detention in 2014 were asylum seekers.⁵ 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

¹ *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 3 March 2015, available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>.

² Liberty’s written evidence is available at: [https://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20Evidence%20to%20the%20Immigration%20Detention%20Inquiry%20\(Sep%202014\).pdf](https://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20Evidence%20to%20the%20Immigration%20Detention%20Inquiry%20(Sep%202014).pdf).

³ Report, page 34.

⁴ Report, page 15.

⁵ Home Office Immigration Statistics, Detention, table dt01.

Immigration Act 1971.⁶ 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.⁷ 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.

3. 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.⁸ 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*'.⁹ The latest Home Office's statistics reveal the extent to which immigration detention has drifted from the original aim of facilitating removal. Of the 30,313 people leaving detention in the year ending March 2015, almost two thirds were detained for longer than a week, over a third were detained for more than 29 days. Of the 11,224 people genuinely subject to shorter detention periods of under a week, less were removed than were released.¹⁰

4. Alternatives to detention have been successfully implemented in other jurisdictions. The Inquiry Report explores the results of more humane models in detail, concluding that:

*"these alternatives not only result in high levels of compliance, but they are also considerably cheaper than our current system which, particularly in the case of asylum, could be characterised as low-level initial engagement and support, lengthy decision making of variable quality, and expensive ineffective end-stage enforcement."*¹¹

⁶ See *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719.

⁷ *SSHD v Pakina*, para 13.

⁸ Section 62(1)(a).

⁹ Secure Borders, Safe Haven White Paper Secure Borders, Safe Haven (2002 Cm 5387), at para 4.69. In relation to detention at Oakington.

¹⁰ Summary of Home Office Immigration Statistics, available here:

<https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015#detention>. 5,517 (49%) were removed, 5,425 (48%) were granted temporary admission or release, 98 (1%) were granted leave to enter or remain and 81 (1%) were bailed.

¹¹ Report, page 34.

5. The Swedish model incorporates a presumption against the detention of asylum seekers with only 255 detention places across the country. It operates an alternative system which engages asylum seekers from the outset, ensuring they remain well-informed and feel fairly treated at every stage of the asylum process. This approach has proved incredibly effective. 76% of unsuccessful asylum applicants who left Sweden in 2013 did so voluntarily compared to 46% in the UK: this notwithstanding the fact that Sweden received over double the number of asylum applications.¹² Community-based alternatives to detention are now the norm in Australia, with its case management programmes recording a compliance rate of 93%.¹³ Similarly strong rates of compliance have been achieved in Hong Kong and Belgium by the use of alternatives to detention.¹⁴ Liberty strongly supports the Inquiry's conclusion that there must be a shift away from end-stage enforcement and towards engagement to promote compliance. 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. In 2013/14 the cost of running the immigration estate stood at £164.4 million and between 2011 and 2014, £15 million was paid out in compensation for unlawful detention.¹⁵

6. 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"). 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.

A 28 day statutory time limit

7. Current policy stipulations which dictate that detention should be "*used sparingly and for the shortest period necessary*" have proved meaningless in practice.¹⁶ 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

¹² Report, page 28.

¹³ Report, page 29.

¹⁴ Report, page 27.

¹⁵ Report, page 21.

¹⁶ Home Office Enforcement Instructions and Guidance, Chapter 55.1.3.

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.¹⁷ 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 2008.¹⁸

8. The United Kingdom is one of the few countries in Europe which places no limit on the length of immigration detention.¹⁹ As the Inquiry's analysis shows, the longer an individual is detained, the less likely it is that that person's detention will end in removal.²⁰ Of the 178 people detained for 12 months or more and released from detention in the year ending March 2015, 38% were removed compared to the 57% ultimately released.²¹ A team leader from the Prisons Inspectorate told the Inquiry that "*a quarter of the prolonged detention cases they looked at were as a result of inefficient case-working*".²²

9. These statistics do not include migrants detained in prison who, according to Detention Action, face the longest periods of immigration detention.²³ As at 30 March 2015, 374 immigration detainees were held in prison in England and Wales.²⁴ In a Report presented to Parliament in March 2014, the former Independent Chief Inspector of Borders and Immigration, Sir John Vine, recorded that, of a sample of cases examined by inspectors,

¹⁷ *Bizimana, R (on the application of) v Secretary of State for the Home Department* [2012] EWCA Civ 414 (02 April 2012).

¹⁸ *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.

¹⁹ Global Detention Project, *United Kingdom Detention Profile*, available at:

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

²⁰ Report, page 23.

²¹ Immigration Statistics, paragraph 13.3. Available at:

<https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015>.

²² Report, pg 19.

²³ Detention Action, *Written evidence to the Parliamentary inquiry into the use of immigration detention*, July 2014.

²⁴ Immigration Statistics. Available at: Available at:

<https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2015/immigration-statistics-january-to-march-2015>.

the average post-sentence period of detention was 523 days.²⁵ 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.²⁶ 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.²⁷ 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.”²⁸

The frustrating truth is that protracted detention does not even serve administrative convenience; it is simply a pointless waste of human life and public funds.

10. In a harrowing report into the systemic failings at Yarl’s Wood IRC, HMIP added its voice to the growing consensus that limitless detention must end.²⁹ Pointing to cases of individuals detained for months – some for well over a year thanks to inexcusable administrative delays – the Chief Inspector called for a strict time limit on the length of detention. Detention without limit is an invitation to abuse. Medical evidence suggests that the mental health of detainees deteriorates significantly after around a month in detention.³⁰ 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.³¹

²⁵ *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.

²⁶ *Ibid.*, paragraph 8.14.

²⁷ *Ibid.*, paragraph 8.13.

²⁸ Matrix Evidence, ‘*An economic analysis of alternatives to long-term detention: Final Report*’, September 2012, page 9.

²⁹ *Report on an unannounced inspection of Yarl’s Wood Immigration Removal Centre*, HM Chief Inspector of Prisons, 13 April – 1 May 2015. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf>.

³⁰ Dr Katy Robjant, 1st Oral Evidence Session, 17 July 2014 told the Panel that “those who were detained for over 30 days had significantly higher mental health problems than those who were detained for under 30 days.” Report, page 19.

³¹ 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).

Automatic bail hearings and legal assistance

11. 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 reviewed by the Tribunal.³² 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.”*³³

These problems are exacerbated by the lack of availability and sometimes poor quality of legal advice available to those in detention, including practical difficulties in accessing those legal services which are provided.³⁴

12. Liberty supports the Inquiry’s calls for the introduction of a “robust system for reviewing the decision to detain early in the period of detention.”³⁵ During the passage of the Immigration Act 2014 an amendment was debated by Peers which sought to reintroduce provision for automatic bail hearings initially included in the Immigration and Asylum Act 1999, but repealed in 2002 before it could be brought into force.³⁶ Provision originally made in the 1999 Act would have provided for automatic bail hearings within the first 8 days of detention and again after the 38th day.³⁷ Instead of inserting additional protection into the bail regime, the 2014 Act ultimately made provision significantly restricting access to bail by preventing applications for bail where directions for removal within 14 days are in place,

³² Immigration Act 1971, Schedule 2, paragraph 22(1)(a) and (1B).

³³ *‘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.

³⁴ Report, page 45-46.

³⁵ Report, page 9.

³⁶ Amendment in the names of Lord Roberts of Llandudno and Lord Ramsbotham.

³⁷ Original s44 of the Immigration and Asylum Act 1999 now repealed.

unless the Secretary of State agrees.³⁸ The provision leaves it open to the Secretary of State to issue rolling removal directions, effectively preventing bail applications on an indefinite basis. 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.

13. These changes act to further frustrate an already ineffective and inaccessible bail system, increasing the extent to which protections fall short of those provided for individuals suspected of serious crime. 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.³⁹ 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”.⁴⁰ It is open to a judge to authorise an extension of detention which is less than the period requested.⁴¹ 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 is now excluded where removal is anticipated within 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.

14. In addition to the introduction of provision for automatic review, Liberty believes that the restrictions introduced in the 2014 Act must be removed. Increased judicial oversight will ensure that the decision to detain is treated with the gravity it deserves. This change must be combined with additional provision for legal advice in detention centres, with detainees made aware of advice surgeries and, as recommended by the Inquiry, a robust system of audit to drive up standards.⁴²

³⁸ Section 7.

³⁹ Terrorism Act 2000, Section 41.

⁴⁰ Terrorism Act 2000, Schedule 8, para 32.

⁴¹ Terrorism Act 2000, Schedule 8, para 29.

⁴² Report, page 47.

Immigration detention in prisons

15. 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 2014 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.⁴³ 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.

Victims of torture and trafficking

16. Under Rule 35 of the Detention Centre Rules, a GP is required to report on any medical conditions for which detention may be harmful.⁴⁴ The procedure is designed to act as a protection against the ongoing detention of vulnerable people such as victims of torture. The 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.”⁴⁵

17. Rule 35 Reports were further found to be frequently late and overall failed to provide an effective safeguard against the detention of vulnerable people.⁴⁶ 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

⁴³ 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.

⁴⁴ For more detail see Detention Service Order 17/2012.

⁴⁵ 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.

⁴⁶ Ibid.

on the basis of a Rule 35 report. 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.⁴⁷ 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.”⁴⁸

18. In evidence given to the Inquiry, HMIP expressed concern that Rule 35 Reports *“frequently become a bureaucratic exercise as the medical professionals writing them do not give a clinical opinion.”⁴⁹* Disturbingly, the evidence also demonstrates that some practitioners are not even aware that the Rule 35 procedure exists, or who should have responsibility for reporting.⁵⁰ Liberty believes that Rule 35 reports should be completed by external expert practitioners, to drive up standards and ensure independence. As a minimum of protection, Liberty supports the Inquiry’s calls for better training to be given to detention centre staff, with the standard of Reports tested by a system of external audit by independent medical practitioners.

19. Evidence given to the Inquiry by HMIP also emphasised that insufficient protections are in place to ensure victims of trafficking do not end up in detention. The Inquiry heard evidence that one individual, who was identified as a victim of trafficking, nonetheless faced a 15 month period of detention.⁵¹ Liberty supports the Inquiry’s calls for improvements in the screening process to ensure that victims of trafficking are not detained, including better training for detention centre staff on the operation of the National Referral Mechanism and the recognition of trafficking indicators.⁵²

⁴⁷ See evidence provided in the *Detention Action* case at para 133 of the judgment.

⁴⁸ The *Detention Action* case, para 133.

⁴⁹ Report, page 63.

⁵⁰ Report, page 63.

⁵¹ Report, page 60.

⁵² Report, page 61.

Healthcare

“...poor access to prescribed medication, a poor overall standard of care, a poor attitude from health care staff, a corrosive culture of disbelief, and a lack of support with emotional and mental health needs.”

HMIP Report on Yarl’s Wood IRC⁵³

20. In its recent report on Yarl’s Wood, HMIP found that healthcare standards had deteriorated markedly, with the physical and mental health needs of detainees going unmet. There has 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 2013.⁵⁴ 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.⁵⁵ The Inquiry found that access to medical treatment in detention centres *is “frequently delayed or not available, and the screening process...does not allow for health conditions to be identified.”*⁵⁶ Medical experts, including the British Medical Association, confirmed that initial assessments are inadequate, with reports that even communicable diseases such as TB were not identified.⁵⁷

21. 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.⁵⁸ 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*

⁵³ Ibid., S22.

⁵⁴ The 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.

⁵⁵ Medical Justice, *Detained and Denied: the clinical care of immigration detainees living with HIV*, page 6 (2011).

⁵⁶ Report, page 53.

⁵⁷ Report, page 54.

⁵⁸ [2012] EWHC 979 (Admin).

*detainees.*⁵⁹ A former employee of Yarl's Wood told the Inquiry that: "*there was only one dedicated mental health professional working at the centre 30 hours a week for a population of over 400 residents.*"⁶⁰

22. Liberty agrees with the Inquiry's conclusion that issues relating to mental health are exacerbated if not caused by limitless immigration detention, a strict statutory time-limit would significantly reduce these concerns. We further agree with the Inquiry - and countless medical experts - that serious mental health conditions cannot be adequately managed in detention. As a minimum of protection, those with pre-existing mental health problems must not be detained; those who develop mental health problems whilst in detention should be released with appropriate provision made for their care; all of those who deliver services in immigration detention centres must receive dedicated mental health training. More broadly 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.

Women in detention

23. 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.⁶¹ 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.⁶² 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.⁶³ 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.⁶⁴ Even without the horrific cases of abuse referenced

⁵⁹ 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.

⁶⁰ Report, page 57.

⁶¹ Women for Refugee Women, *Detained: Women Asylum Seekers Locked Up in the UK*, Key Findings, p. 5.

⁶² *Ibid.*

⁶³ See e.g.: <http://www.theguardian.com/uk-news/2013/sep/21/sexual-abuse-yarls-wood-immigration>.

⁶⁴ *Ibid.*, page 4.

above, these statistics render the prevalence and role of male guards in female detention facilities entirely unacceptable.

24. To add to these concerns, in its 2015 Report on Yarl's Wood IRC, HMIP found that the majority of staff in contact roles are men, with male staff undertaking health assessments, male custody officers entering bedrooms without knocking, men present during rub-down searches and male staff *"inappropriately used to provide constant support for women in acute crisis"*.⁶⁵ HMIP further reported that nearly a hundred pregnant women were detained during 2014, many without any evidence of exceptional circumstances in flagrant violation of Home Office guidance. Data is not being collected on the number of mothers separated from dependent children, victims of abuse and torture are not being identified and in one case rape was not considered to meet the threshold for torture.⁶⁶

25. Liberty supports the Inquiry's conclusion that Home Office guidance must make clear that women who survive sexual violence should not be detained. Pregnant women should further never be detained for immigration purposes. Liberty further supports the recommendation of Women for Refugee Women that male guards not be employed in contact roles. Female detainees must be able to see female health professionals and, in accordance with UNHCR guidelines, women should 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.⁶⁷

The Detained Fast Track (DFT) and Detained Non-Suspensive Appeals (DNSA) systems

26. In June 2015, the High Court found that the rules governing the DFT were unlawful, the system has since been suspended and a Home Office appeal against the ruling dismissed by the Court of Appeal. Lord Dyson concluded that:

"The system is...structurally unfair and unjust. The scheme does not adequately take account of the complexity and difficulty of many asylum appeals, the gravity of the issues that are raised by them and the measure of the task that faces legal representatives in taking instructions from their clients who are in detention...the

⁶⁵ Ibid., S6.

⁶⁶ Ibid., S12.

⁶⁷ The Detention Action case, para 211.

*consequences for an asylum seeker of mistakes in the process are potentially disastrous.*⁶⁸

27. This case follows on from a High Court ruling in July 2014 which identified “*serious failings*” in the system, particularly long delays in detainees obtaining access to legal advice and representation meaning that “*the DFT as operated carrie[d] an unacceptably high risk of unfairness.*”⁶⁹ In addition to flaws in access to legal assistance, in the 2014 ruling Mr Justice Ouseley found that screening processes were not sufficiently focused on fairness.⁷⁰ In 2013, the Home Affairs Select Committee came to the view that a third of cases were wrongly allocated to the fast track procedure.⁷¹ The Former 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.⁷² He noted, in particular, that victims of torture were placed on the fast track as their experiences were not drawn out in screening interviews.⁷³

28. Liberty strongly urges the Government to accept that the DFT must now be scrapped for good and asylum claims processed in the community as they were before 2000. Detention for administrative convenience is an unacceptable departure from our best traditions of liberty and an ineffective way of securing compliance with our immigration laws. Those who were placed on the DFT were seeking sanctuary in this country. We have an obligation to treat asylum seekers with a minimum of dignity. Imprisoning innocent people for the ease of officialdom is a cruelty which would not be tolerated in other areas of our national life.

Rachel Robinson

⁶⁸ [2015] EWCA Civ 840, paragraph 45.

⁶⁹ [2014] EWHC 2245 (Admin)

⁷⁰ The Detention Action case, para 112.

⁷¹ House of Commons Home Affairs Committee, *Asylum: Seventh Report of Session 2013–14*, paragraph 66.

⁷² John Vine CBE QPM, Independent Chief Inspector of the UK Border Agency, *Asylum: A thematic inspection of the Detained Fast Track* (July – September 2011).

⁷³ *Ibid.* See e.g. paragraph 5.21.