



association of visitors to
immigration detainees

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Dear Alice Reid,

Thank you for the opportunity to comment on the draft of HMIP's Immigration Expectations. We have enclosed our response to the following expectations:

- Immigration Detention Expectations
- Short Term Holding Facility Expectations

Please note that as a member of the Refugee Children's Consortium, which is submitting a collective response to the consultation on the Family Detention Expectations, AVID has not commented on these separately.

Your letter outlines that the Inspectorate is seeking to reduce the number of expectations and indicators so that the focus is on outcomes rather than process. You also mention that the inspection reports will be shortened to make them more accessible. In addition to the specific response to the revised 'Expectations', we have some general concerns with this new approach and as such will also comment on the broader changes proposed in this consultation.

1. General changes to the Inspection of IRCs

a) Produce expectations that where possible focus more on outcomes and less on process

The proposal is of concern to AVID, as it appears to place an emphasis on the end result rather than the process of detention itself. Our concern is that this would lead to a reporting process with less attention to the detail of the treatment and conditions of detention in favour of more general, and broader, end results. In our view one of the most critical functions of the HMIP Inspection reports is the attention paid to the details of day to day life in detention. The level of scrutiny accorded in the reports to the *processes* of detention is not detailed anywhere else. The length of time taken to access a particular amenity or service within detention is arguably as important as whether the amenity or service is available or not particularly for medical services or legal advice, and as such the process is as important as the outcome. It is precisely these detailed analyses of processes which are important to organisations such as AVID in assessing provision for detainees, in enabling comparisons to be made, and in being able to access credible evidence within a human rights framework.

b) Reducing the number of recommendations and shortening inspection reports to make them more accessible

AVID and other organisations working on immigration detention issues use the HMIP reports in our day to day work, as a reliable source of accurate information on the realities of detention. The reports are one of very few sources of such information on detention that is available in the public domain. From our perspective as a 'user' of the reports, it is not clear on what basis the proposal to shorten and produce in a more accessible format is being made. We use the detailed information as well as the executive summaries and any reduction to either would have a detrimental impact on our work. Accessibility of the present reports is not an issue for us as key users of the report, rather it is the level of detail, access to data, and the availability of the reports as *reference tools* which is important. Accessibility is, we feel, covered by the executive summaries. Further, the rationale for reducing the number of recommendations is not made clear in your consultation document. We would welcome explanation as to why it is felt reducing recommendations will have a greater 'outcome' or 'impact' on the conditions and treatment for detainees.

Indicators and expectations

In reducing the number of expectations, many important criteria are effectively downgraded from 'expectation' to 'indicator' in this revised approach. Further, your letter outlines that indicators are not exhaustive and are not expectations: *'if it can be demonstrated that the outcomes have been achieved in other ways, the indicators may not be relevant'*. AVID is concerned that a decision on the relevance or otherwise of different indicators is problematic, as it will impact on the consistency of approach taken in inspections. This is particularly worrying given that the Immigration Removal estate is currently sub contracted to a mix of providers; the terms of which are not in the public domain. Consistency in methodology of inspection reports becomes even more important in this scenario, given the huge inconsistencies in provision between IRCs.

We would therefore welcome more explanation on the role of indicators in the new inspection process, particularly on the process by which decisions are made on their inclusion or otherwise, given that many were previously expectations in themselves. It is our concern that many important expectations from the previous Inspection Criteria are lost or given less import in the new process. We have highlighted a few examples in our response below, but this is not exhaustive.

2. RESPONSE TO Immigration Detention Expectations:

Section 1: Safety

Early days in detention:

5. Detainees are treated with respect on arrival at the centre

Indicator: We recommend the previous wording be reinstated: “Detainees are promptly screened by health services staff in private on arrival, with interpretation if necessary and are offered an appointment with a doctor”. We would also add that this offer of an appointment should be recorded in writing and that the detainee has signed that s/he understands the offer.

Indicator: “Detainees are able to make a free telephone call in private on reception” we would reinstate the previous wording “and that this is documented”.

6. Detainees are fully supported on arrival and during their early days in detention

Indicator: we recommend that the previous wording be reinstated in full “Detainees are able to obtain assistance with pressing welfare matters or support needs within 24 hours”. It is AVID’s experience that welfare is one of the most pressing concerns of a detainee on arrival (property, contact with family, money etc) and also one of the most neglected in terms of staffing allocation. It is important this is recognised as a critical issue for detainees by including inspection criteria which reflects this.

7. Detainees understand the centre’s routines and how to access available services that will help them cope with detention

We would suggest a further indicator here:

- Induction is structured so that daily routine information (visits, meal times, etc) is communicated separately from information on rights and entitlements (health care provision, access to immigration advice)

AVID has raised this concern with UKBA Detention Services via the Detention and Escorting Forum. We believe that the wealth of information communicated to detainees in the induction process should be more structured and prioritised so that information that has a serious impact on a detainees health or immigration case is given in a sensitive and timely manner, separately to regime information.

Self harm and suicide prevention:

10. The centre provides a safe environment which reduces the risk of self harm and suicide

We would add the following (underlined) to the indicator: “A multi disciplinary committee meets at least monthly and provides effective quality assurance of safer detention policies and procedures. It is well attended by a range of staff, including detainees and external support agencies where possible and deemed necessary by the particular issues in question”.

We would also add a further indicator: that instances of self harm are routinely monitored by UKBA. In our view, these patterns are important in identifying possible underlying issues and problems and as such should be considered in decisions to detain.

11. Detainees at risk of self harm or suicide receive personal and consistent care and support to address their individual needs and have unhindered access to help.

We would add the following (underlined) to the indicator: “Detainees families, friends and external agencies such as local visitors groups are encouraged, through local arrangements, to provide

information which may help identify and support those likely to be bullied or who have a history of self harming behaviour”.

Rewards scheme

16. Any rewards scheme encourages active participation in the regime and is not punitive.

AVID has recently grown concerned about the use of rewards schemes in some IRCs which are linked to ‘compliance’ with UKBA. We have been told informally that one IRC, for example, intends to use accommodation in a less restrictive unit as a reward for good compliance with UKBA/immigration case. While the indicators you have set out here do outline rewards scheme in terms of ‘activities and running of the centre’ we recommend this is taken further and makes clear that participation in the regime is very different to compliance or otherwise with their individual legal cases, and that any rewards scheme should only relates to the former and never the latter.

We would also reinstate the previous expectations 13, 14 and 15:

- The reward scheme is applied consistently across the centre and does not disadvantage any specific group of detainees directly or indirectly
- The reward scheme is based on the behaviour of individuals rather than groups, and the details are communicated in the languages of detainees.
- Checks are made to ensure that detainees understand any down-grading of incentives/rewards they face

The use of force and single separation

18. Detainees are held safely and decently in the separation unit for the shortest possible period and for legitimate reasons only.

We would like to see inclusion of a specific indicator that sets out that separation is an inappropriate tool to manage the care of detainees who are mentally unwell. We have serious concerns about the ongoing use of separation to manage mental disorder:

(<http://www.aviddetention.org.uk/images/avid%20mental%20health%20briefing%20310311%20for%20det%20forum%20work.pdf>)

Legal Rights

19. Detainees are supported by the centre staff to freely exercise their legal rights

The first indicator: rather than ‘good quality legal advice and representation’ we would recommend reinstating the previous wording “Detainees have access to advice and representation from competent and regulated legal representatives”. There are various issues with the term ‘quality’ as relates to legal advice and this term is too subjective.

Casework

23. Detainees who may not be fit for detention are quickly identified and properly assessed. Their cases are reviewed by UKBA as a matter of priority.

The first indicator refers to ‘Initial Rule 35 reports are written by.....’. We would recommend that this is amended to reflect the fact that Rule 35 reports may be raised at any time during detention, for example by removing the word ‘initial’.

Section 2: RESPECT

Residential Units

General comments: Expectation 6 on fire safety has been omitted. We would recommend this is reinstated in this particular section. We also note that the previous recommendations on p14

relating to the physical environment for people with disabilities has been moved to the section on 'equality and diversity'.

2. Detainees feel and are safe in their residential units, both in their rooms and communal areas.

Indicator: 'unrelated male and female detainees are held in separate accommodation' we would add 'and with separate toilets, showers and washing facilities'.

Equality and diversity:

AVID has been in discussion with UKBA Detention Services for over 18 months on the need for equality impact assessments on any facility where women and men are held. This relates to short term holding facilities as well as IRCs. These equality assessments have still not been carried out. The Minister has committed that they will be carried out by summer 2012. AVID is gravely concerned that this currently leaves many women particularly vulnerable in the immigration detention estate and in particular the residential STHF where often facilities are shared between women and men. This is particularly relevant to:

16. Women detainees are treated equitably and according to their individual needs.

In the absence of equality impact assessments to specifically assess the current provision for women within detention, and in light of the conditions in which some single women are held, we believe that this section of the revised HMIP 'Expectations' does not go far enough in setting out the specific standards against which the treatment of women should be measured. In the current immigration detention estate, unlike in the criminal justice system, there are no specific stand alone policies relating to the detention of women. In the prison service, Prison Service Order PSO 4800 looks specifically at the needs of women: from their specific vulnerability to self harm, their particular needs on the first night, specific mental and physical health needs, amongst other issues. There is no such equivalent in the detention estate. This leads to huge discrepancies in the way women are treated. We would welcome HMIP playing a lead role in holding UKBA to account for these discrepancies, and in particular would propose changes to the suggested indicators as follows (additions/amendments underlined):

- 'Female staffing ratios are appropriate to the size of the female population' should be amended to reflect Prison Service order on *establishing an appropriate staff gender mix in establishments* which suggests an appropriate ratio of 60:40 female to male staff for all-women establishments.
- 'All staff have a clear understanding of the specific needs of women detainees, including those who are separated from dependents and pregnant women' should be replaced with 'All staff in facilities where women are held are trained in the specific needs of women detainees including those who are separated from dependents and pregnant women'
- 'Pregnant women should only be detained in exceptional circumstances, and there is appropriate support for pregnant women'

We would also add the following indicator:

- Policies and procedures are in place which recognise the specific needs of women detainees at various stages of the detention process including reception and first night.
- Women in shared facilities have regular and equitable access to facilities and activities such as library, gym, shop and communications.

Health Services

We note that many expectations have been removed in the draft document, and while we will not comment on each and every expectation, we would welcome comment from HMIP on the rationale behind exclusion of any expectations relating to healthcare. While we are aware that the transfer of commissioning of healthcare will pass from the UKBA to the Department of Health over the next two

years, there will still be a two year period of transition and we are concerned that the revised HMIP expectations take this into account.

Of particular concern to AVID is the removal of the expectation which previously featured on p58:

18. There is a presumption against detention of any detained person whose mental or physical well being is likely to be adversely affected by continued detention.

It is not clear to us why this expectation does not feature in the new document, given the critical implications in terms of protecting the human rights of detainees. We feel that the need for this statement to be reinstated is underpinned by the two recent cases where the detention of mentally ill men was found to constitute a breach of the UK's human rights obligations under Article 3: the prohibition on torture and 'cruel, inhuman or degrading treatment'. The Equality and Human Rights Commission also recently highlighted immigration detention as a key concern in its triennial review, particularly in terms of Article 2 and Article 5¹.

24. Detainees benefit from health services that are safe and accessible and that maintain decency, privacy, and dignity and promote their well being.

Indicator should be amended as underlined: 'Staff are trained to recognise, treat and report any signs of trauma, torture, mental ill health, gender based violence, or other health issue or vulnerability that may affect fitness to detain'.

33. Detainees are cared for by a dental health service that assesses and meets their needs and is equivalent to the standard and range found in the community.

Indicators: "Detainees have timely access to dental checks and treatment including provision for replacement of broken dentures" visitors groups have reported to us that there is no mechanism for helping detainees who have broken dentures, which can lead to serious and prolonged social and nutritional difficulties.

Services

38. Detainees have a varied, healthy and balanced diet which meets their individual needs including religious, cultural or other special dietary requirements.

Indicator: "There is at least one substantial cooked meal each day". AVID is concerned that this is insufficient to meet a variety of nutritional and health needs. It is a standard set so low that it could be interpreted as one hot full meal per day, with other meals given in the form of reheated snacks or cold items. This is clearly insufficient. We would prefer the indicator "Detainees are provided with three meals a day, at least two of which include cooked dishes".

We also have concerns that the following two indicators are insufficient:

- Mealtimes are reasonably spaced with the midday meal not served before noon and the evening meal not before 5pm
- If the gap between the last meal of the day and breakfast the next day is more than 14 hours, an additional snack and hot drink is provided in the evening.

Visitors groups have reported to us that detainees who do not have money to spend in the shop are often unable to purchase food between the evening meal and breakfast. We would therefore amend the indicator as follows:

- If the gap between the last meal of the day and breakfast the next day is more than 10 hours an additional substantial snack and hot drink is provided in the evening free of charge.

¹ Equality and Human Rights Commission (2012) available at <http://www.equalityhumanrights.com/human-rights/human-rights-review/>

40. Detainees can purchase a suitable range of goods at reasonable prices to meet their diverse needs.

We would add the following:

- Detainees are able to buy a variety of SIM cards, and mobile phone top up cards, from different companies to represent the diverse needs.

Section 4: PREPARATION FOR RELEASE AND REMOVAL
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Welfare

We recommend that the previous expectation is reinstated (p103):

Dedicated welfare services are provided to assist with practical problems caused by detention and to help detainees prepare for release, transfer or removal

This could be considered in the current expectation as follows:

1. 'Detainees are supported by dedicated welfare services to assist with.....'

We believe that current provision of welfare services in many IRCs is inadequate to meet the many varied needs of a detainee population. In some centres, there is a dedicated welfare officer, whereas in other centres this role is shared amongst various staff members. In others, there is no welfare officer at all. Our member groups work on a range of welfare issues including access to property and AVID has been calling, for many years, for an operating standard to be introduced. In the absence of any such operating standard, there is no method of ensuring consistency in welfare provision. As such, detainees in some facilities are disadvantaged. We feel that amending the wording to 'dedicated welfare services' will make this more measurable and ensure that all detainees have access to a targeted, specific service which is merited.

Visits

2. Detainees can maintain contact with the outside world through regular and easy access to visits.

We would add the following indicators:

- Promotional literature on local volunteer visitor groups and/or AVID is available throughout the centre and actively promoted to detainees including during induction

Communications

4. Detainees are able to maintain contact with the outside world through regular access to a full range of communications media

Indicator:

- 'Detainees are able to send and receive faxes without charge and without restrictions on length' (To reflect the need for fax communication with legal advisors, often with several documents)
- 'Detainees are able to access their own email and have controlled internet access, and are able to open attachments'. We would remove the 'for communications and information purposes' from this, as we believe that access to the internet can also serve as a meaningful pastime and for educational reasons, and we don't think that any restrictions on the use of the internet should be in place other than in the interests of safety or security.

We would also add:

- Detainees are able to access mobile phones, SIM cards and top up provision from a range of providers.

Removal and release

6. Detainees who are to be removed or released are treated sensitively and humanely. Formal arrangements are in place to enable detainees to retain or recover their property. The addition as underlined is a reinstatement of the expectation as previously held on p110, and we believe that these formal arrangements are crucial as personal property retrieval is a major issue for many detainees. It also has a huge impact on our volunteer visitors groups who are often asked to recover property in the absence of formal arrangements within the centre. This is not sustainable for volunteer groups.

3. RESPONSE TO: Short Term Holding Facility Expectations:

AVID believes that the treatment and conditions accorded to detainees in residential short term holding facilities should match the standard required within Immigration Removal Centres. We have grave concerns about the following issues impacting disproportionately on detainees in residential STHFs:

- Single women detained in residential short term holding facilities are often held in facilities that do not meet their specific needs. Where women are detained separately from men this can mean restricted access to the facilities of the centre such as washing or socialisation- for example when they are placed on a separate corridor. Women in these facilities are therefore often detained in isolation surrounded by men. We feel that is inappropriate in any circumstances but particularly for vulnerable migrant women who are more likely to have suffered trauma or gender based violence.
- Detainees held in residential STHFs do not have the same basic levels of access to independent legal advice as accorded those in IRCs via the Detention Duty Advice scheme. While concerns remain about the DDA scheme, AVID still believes that detainees in STHFs should have similar levels of access to independent advice on their immigration cases.

AVID would prefer that residential short term holding facilities are subject to many of the same inspection criteria as IRCs. However, our response to the inspection criteria as set out in the consultation document is detailed below.

Section 1: Safety

Escort vehicles and transfers:

1. Detainees travel in decent conditions during escort and are treated with respect.

General points: As this is the same expectation as within the IRC expectations, it is not clear why there are some different indicators; the indicators should be consistent for both sets of detention facilities. For example, the IRC expectation includes an indicator that detainees should receive an adequate meal and drink- this is not present in the STHF document. The STHF expectation includes an indicator that pregnant women should not undertake necessarily long journeys, and this is not present in the IRC document.

Indicator: we would recommend reinstating the previous wording as follows: “Detainees under escort are provided with refreshment and comfort breaks which are suitable for the length of their journey and in particular if their journey exceeds two and a half hours. Detention and transfer are properly documented.” There is a need to be specific on timing here so the indicator is measurable and consistently applied.

The following indicators should be reinstated

- Escort staff ensure that detainees receive an adequate meal and drink at meal times
- A protocol is in place for the administration of medication during escort.

Arrival:

4. Detainees are treated with respect on arrival at the facility

The following indicator should have the words underlined reinstated:

- Detainees are able to make a free telephone call in private soon after their arrival and this is documented. Those without means are able to make free calls as necessary

The following indicators, which are removed in the new document, should be reinstated:

- Detainees have access to incoming and outgoing phones and can use their own mobile phones. There are arrangements to change money for the use of the payphone.
- Detainees' property is stored securely. Managers account for property and detainees are fairly compensated for property lost while in storage.
- Any information regarding the decision to detain is communicated promptly to the detainee in a language s/he understands.

The following wording should be reinstated (underlined)

- Detainees are offered appropriate food and drinks on arrival
- Detainees have access to immediate health services if required

Bullying and personal safety

6. Detainees feel and are safe from other detainees and staff

The text at the heading on the previous expectations as at p127 should be reinstated here "The centre exercises a duty of care to protect detainees from risk of harm." We believe that the duty of care is paramount here.

We would also suggest the following indicator:

- Female detainees are able to contact a female member of staff at all times

Suicide and self harm

7. The facility provides a safe environment which reduces the risk of self harm and suicide

The following (underlined) should be reinstated:

- There are effective procedures for managing the risks of self-harm that include individual observation logs.
- All staff, including night staff if applicable, are fully trained in suicide prevention and understand contingency and intervention plans.

The following indicator should be reinstated:

- There are sufficient trained staff, of appropriate gender, on duty at night to respond to any incident of self-harm, illness, disruption or fire.

The indicator regarding ligature points has, in our view, been downgraded by the addition of the words 'as far as is practicable'. Given the vulnerabilities of a detained population, we do not think that this is sufficient. We would therefore suggest that the words 'as far as is practicable' are removed, and the previously worded indicator be reinstated as follows:

- Rooms and toilets are ligature point free and suitable levels of supervision are in place.

Legal Rights

11. Detainees are supported by the facility staff to freely exercise their legal rights.

The following indicator should be reinstated (previous expectations p124)

- Detainees have access to advice and representation from competent and regulated legal representatives.

In light of our comments above regarding legal advice in STHFs, we feel that the current indicators do not go far enough in terms of ensuring that detainees who may not already have legal representation are encouraged and assisted to get access. We would suggest the following additional indicators apply to residential short term holding facilities:

- Detainees are informed in a language they understand of their appeal and bail rights and how to access legal representation within 24 hours.
- Detainees receive information in a language they understand, informing them how to complain about poor quality legal representation
- Detainees have access to up to date legal textbooks, their personal documentation and other reports/materials necessary to help their immigration or asylum case. Bail application forms and information about procedures are available.

Casework

13. Detention is for the minimum period necessary and detainees are kept informed throughout about the progress of their cases

The following indicators should be reinstated:

- Detainees who have been detained following a custodial sentence understand their position, including conditions of any licence, and have appropriate documentation explaining their status.
- An appropriate officer coordinates casework for detainees to ensure that each individual case is progressed as a matter of priority and detainees' enquiries are responded to.
- Interpreters or a suitable translation service are always used, for detainees who require it.
- Immigration staff work with other staff in the facility to ensure that detainees are prepared for their removal and are given adequate time and facilities to consult their legal representatives.
- The burden of proof in age dispute cases is on the Border and Immigration Agency. Cases are subject to independent professional review

Section 3: Activities

1. Detainees have regular and equitable access and facilities that meet their needs

The following wording (as underlined) should be reinstated:

- Detainees have access to books, newspapers in other languages, foreign language dictionaries and TV and videos.

Section 4: Preparation for removal and release

1. Detainees can maintain contact with the outside world through easy access to visits and a full range of communications media.

We note with concern that the indicators relating to visits have been removed or downgraded in the revised expectations. In particular, we note the new addition of the words 'where practicable' in the final indicator relating to visits, and would seek that this is removed. It is in our view essential that detainees are able to access a visitor. We would urge that the following is reinstated:

- Visitors are able to have access to detainees and are subjected to minimum security checks. Visitors are able to deliver property.

Given that AVID member groups now also visit in the residential short term holding facilities, we would suggest the following additional indicator for residential STHFs:

- Information about AVID and/or local visiting groups where applicable, is available to detainees

Finally, thanks again for the opportunity to feed in our views on these proposed revised expectations.

Yours Sincerely,

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