

**Tyson Hepple CB Director**  
General  
Immigration Enforcement  
14th Floor Lunar House  
Wellesley Road  
Croydon  
CR9 2BY

16<sup>th</sup> March 2021

Dear Tyson Hepple,

Thank you for your letter of 18<sup>th</sup> January 2021. We are writing by way of follow-up to raise our concerns about the harmful impact of conditions that immigration detainees in prisons are currently subject to.

In our letter of 4<sup>th</sup> December 2020 we echoed concerns raised by HMIP that conditions in prisons may amount to solitary confinement and create a real risk of psychological decline among people in prisons. In your response to this point you cited the fact that “guidance has been issued on subjects such as in-cell fitness and worship and access to in-cell television continues” as well as video-call, exceptional social visits on compassionate grounds, and extra telephones. We do not believe that this is sufficient to address the exceptionally harmful impact of solitary confinement.

Since March 2020, time out of cell has been severely restricted in every prison. Many of BID’s clients report being held in their cells, either in isolation or with one other cellmate, for between 22 and 24 hours per day since the beginning of the pandemic. HMIP reported, after having visited more than 50 prisons since the beginning of the pandemic, that prisoners spending 23 hours a day in their cells was “normal<sup>1</sup>”.

We are concerned that these conditions amount to prolonged solitary confinement. The Istanbul Statement on the Use and Effects of Solitary Confinement states that “Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day”. The UN Standard Minimum Rules for the Treatment of Prisoners (the ‘Mandela Rules’, adopted unanimously by the UN General Assembly in 2015) adopts an equivalent definition and finds that solitary confinement is prolonged where it exceeds 15 consecutive days. Prolonged solitary confinement is prohibited by the Mandela Rules.

We frequently encounter individuals who describe conditions that appear to satisfy the definition of prolonged solitary confinement. We are concerned that the current conditions breach our clients’ Article 3 right not to be subject to cruel, inhuman and/or degrading treatment. The UN Special Rapporteur on Torture has stated that prolonged solitary confinement can amount to torture or cruel,

---

<sup>1</sup> <https://www.bbc.co.uk/news/uk-54607813>



inhuman or degrading treatment<sup>2</sup>. This view was echoed by the parliamentary Joint Committee on Human Rights:

*“In our view the restrictive lockdown regimes in prisons, YOIs and STCs have left prisoners in solitary confinement for long periods in conditions likely to engage the right to freedom from inhuman and degrading treatment (Article 3 ECHR).”*

The harm caused by solitary confinement is well-documented. Countless studies have shown the many harmful psychological and physiological effects of solitary confinement<sup>3</sup>. The Lancet reported in 2020 that increased time spent in cells due to the pandemic ‘mimic solitary confinement’, emphasising that even short periods in solitary confinement are associated with psychological consequences, including anger, depression, anxiety, paranoia, psychosis, and exacerbation of underlying mental illness, and increased mortality after release from prison<sup>4</sup>.

In *R (on the application of Bourgass and another) (Appellants) v Secretary of State for Justice (Respondent)* [2015] UKSC 54, the Supreme Court cited the following consequences of solitary confinement/ segregation:

- *“An extremely damaging effect on the mental, somatic and social health of those concerned,” which “increases the longer the measure lasts and the more indeterminate it is.”* [para 39].
- *“Serious psychological and sometimes physiological ill effect,” whereby a “long list” of symptoms includes “insomnia, confusion, hallucinations and psychosis.” Of note, such negative effects can occur after only a few days in solitary confinement and the health risks are purported to rise with each additional day spent in such conditions.* [para 38].
- The fact that the *“harmful psychological effects of isolation can become irreversible.”* [para 37].

For immigration detainees the harm caused is further aggravated by the indefinite nature of their detention and the fact that the individual may be required to take proactive steps to secure their release on bail. Indefinite solitary confinement is also prohibited under the Mandela Rules.

Our clients are reporting deterioration in their mental health as a result of the current oppressive regime in prisons. HMIP stated in a report published in February 2021<sup>5</sup> that the “most disturbing effect of the restrictions was the decline in prisoners’ emotional, psychological and physical well-being”. Prisoners described being “chronically bored and exhausted”; “drained, depleted, lacking in purpose” and “frequently comparing themselves to caged animals”. A survey of 180 prisoners by the Prison

---

<sup>2</sup> <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>

<sup>3</sup> Shalev, Sharon *A sourcebook on Solitary confinement*

<sup>4</sup> The Lancet Vol 7 July 2020

*Effects of the COVID-19 pandemic on the mental health of prisoners*

<sup>5</sup> HMIP report *What Happens to Prisoners in a Pandemic?*

<https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/what-happens-to-prisoners-in-a-pandemic/>



Reform Trust, entitled “Prisoners’ mental health suffering under conditions of “prolonged solitary confinement<sup>6</sup>” reached similar findings.

Immigration detainees are more likely to have pre-existing mental health conditions and to have experienced torture or trauma<sup>7</sup>. The use of prolonged solitary confinement in this context is particularly harmful and dangerous and likely to amount to a breach of Article 3 of the European Convention on Human Rights.

This matter is particularly urgent given the rise in immigration detainees held in prisons, from 359 at the end of 2019 to 519 at the end of 2020. We renew our recommendation to release immigration detainees held in prisons. Prisons are not an appropriate place to hold immigration detainees at any time, but this practice cannot be justified given the extraordinary lockdown conditions in prisons that give rise to immense harm and potential unlawfulness.

If this recommendation is rejected please provide an answer the following questions as a matter of urgency.

- Are there any policies in place to ensure that the particularly harmful effects of prison conditions are taken into account when assessing the proportionality of periods of immigration detention?
- What assessment has been made of the harmful impact of prolonged solitary confinement in the case of immigration detainees?
- What assessment has been made of the potential that current conditions faced by immigration detainees held in prisons may amount to a breach of Article 3 rights, particularly in cases where the individual has pre-existing mental health problems?
- The Service Level Agreement between the Home Office and HMPPS (disclosed to BID through a Freedom of Information Request) states that “*HOIE is expected to conduct weekly assessments of all immigration detainees in the prison estate for suitability for an IRC and for the outcome of these assessments to be shared with HMPPS*”. Does this review process include a consideration of the impact that conditions in prison are having on a detainee’s health?
- How many immigration detainees held in prisons have been identified as adults at risk in prisons since March 2020?
- How many immigration detainees held in prisons have been released as a result of the Adults at Risk policy since March 2020?

Given the extreme situation that our clients are currently faced by, we request that you respond as a matter of urgency. Please provide a response via email to [pierre@biduk.org](mailto:pierre@biduk.org) and [rudy@biduk.org](mailto:rudy@biduk.org).

---

6

<http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/972?SkinSrc=%5bG%5dSkins%2fPRT%2fAdmin> Published February 2021

<sup>7</sup> This is well documented. See for example, see Werthern et al, *The impact of immigration detention on mental health: a systematic review* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6282296/>



Yours sincerely,

Annie Viswanathan

Director

Bail for Immigration Detainees

