

# Independent Custody Visitors



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## Immigration Detainees

### Introduction

There appears to be a growing problem in most London custody suites of the numbers and length of time detainees held by the police on behalf of the Immigration Service remain in cells. We have asked both the Metropolitan Police Service (MPS) and the Home Office for data but so far have not received any. This is somewhat surprising as the Home Office reimburse the MPS for keeping these detainees in custody. It is also surprising in terms of efficient and effective management, as we shall see later.

Thus, the ICV Camden Panel has been collecting its own figures for both the MPS and BTP. The data collected is only for a short period and numbers are small but have revealed a worrying picture. We believe that other divisions in the MPS, the British Transport Police (BTP) and other police services across the country experience similar problems.

### Statistics

It is to be stressed that we only visit each station (Holborn, Kentish Town and Albany Street) once each week and thus our information is not complete. However, when we compared our figures for the BTP station (Tottenham Court Road) with total data provided by the BTP our figures gave an average of 36 hours as compared with the BTP figure of 33.6 hours. Thus, we believe our figures for the MPS are unlikely to be seriously in error.

Our Camden MPS figures we collected for the period 1<sup>st</sup> November 2003 to 20<sup>th</sup> March 2004 are as follows:

Time in Cell	n
10 hours or less	5
11- 20 hours	0
21 – 30 hours	4
31 – 40 hours	1
41 – 50 hours	8
51 – 60 hours	7
61 – 70 hours	2
71 – 80 hours	3
Over 80 hours	2
<b>TOTAL</b>	<b>32</b>
<b>AVERAGE</b>	<b>45.3</b>

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The longest period in custody we have come across is 117 hours. 22, or 68% were in custody for more than the 36 hours permitted under the Police and Criminal Evidence Act. The figure for BTP was 58% with the longest period in custody being 96 hours. Figures for Southwark for the period 1<sup>st</sup> August – 31<sup>st</sup> October 2003 indicate 53% (59/112) were detained for longer than 36 hours.

In terms of absolute numbers, we saw some 74 immigration detainees in custody in 2003, 40 in 2002 and 27 in 2001, suggesting a 2.75 fold increase in numbers across the period. Again, we emphasise the possible problems with our data. Figures for Tower Hamlets ICV Panel are 34 for 2002/3 as against 9 for 2001/2 as against 0 for 2000/1.

Our Camden data up until the middle of January gave an average of 43 hours and from the middle of January to 20<sup>th</sup> March the average increased to 48 hours suggesting the length of time in custody is increasing.

If Camden figures are replicated across the MPS, not only are there more immigration detainees being held in custody but they are being held for longer periods.

**Discussion:**

*The Detainees:*

Police cells are only meant to hold people for a relatively short period. Washing facilities (many Panels report lack of access to showers), food, exercise and activities are basic and related to a short holding period. It is our view that periods of detention in a cell beyond the maximum 36 hours are unacceptable and may be infringing basic rights.

We have no evidence of poor treatment of these detainees by the police and it is understood that they are in “lawful custody” as defined by the various immigration acts. Many detainees complain that they do not know how long they will have to remain in cells and appear to be uncertain what is happening to them. Some of them have been in this country for many years and are picked up after a routine visit to an immigration office. Immigration lawyers appear to be less available than criminal lawyers out of hours and particularly at weekends.

Custody staff tell us that they are not kept informed by the IS when immigration detainees will be picked up

The only facility for immigration detainees to retrieve their possessions before boarding a plane appears to be “phone a friend” to collect a key to pack a case which may well arrive after the detainee has been collected.

Our impression is that there is very little communication at the operational level between custody staff, the Immigration Service and the firm responsible

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for transportation. Indeed, there appears to be a grey area of who is exactly responsible for what. In one case, we asked that a Nepalese national be accompanied home to pick up his army papers. The Immigration Service told us they did not have the authority to do so and the police said they had no resources so to do. This person told us he had been in the country for ten years and his papers would allow him to receive a British Army pension.

#### *Impact on Custody:*

The number of immigration detainees, and more importantly their length of stay, would seem to be a major contributory factor in the increasing cell shortage across London. Following our contact with the Guardian (see *Guardian 16.4.04 "Migrants' 96 hours in police cells"*) the Deputy MPA chair was quoted as saying that some detainees were treated worse than serious criminals. "The current situation is appalling " The effect on police operations was significant. "Officers have gone as far as High Wycombe and St Albans just to get a holding cell".

Our conversations with custody staff reveal considerable concern. Whilst they are as sympathetic as possible to these detainees they have to deal with a range of other people in custody who have quite different problems.

In effect, immigration detainees are acting as "cell blockers" with each person we estimate occupying on average a cell for 10 times longer than ordinary detainees. Given a finite number of cells and, we believe a much needed programme of refurbishment which temporarily puts some cells out of use, payment by the Home Office is not the solution.

#### *The Immigration Service:*

From time to time, we have asked to see an immigration officer (they are based at Holborn Police Station) about an individual case. We also had two senior IS officers to meet with the panel. Our impression is of a service struggling to meet government targets and, so far as length of time in police custody is concerned, a lack of detention centre places, and a service at the mercy of its transportation service which seems to be a law unto itself. At this meeting with it was clear that the two senior IS officials had little knowledge or appreciation of the statutory role of ICVs. They were defensive and refused to discuss "operational matters". They did not seem to recognise that their service should be open to public scrutiny. They claimed that the reason for the increased number of immigration detainees was police investigation of immigration status of persons arrested for crimes and lack of places on planes to country of origin as well as the above.

In fact, it was their attitude as well as our failure to interest others in the topic which led us to approach the media. We also suspect that in part it is inertia, or perhaps overwork, on the part of IS staff which results in detainees remaining in police custody rather than transferring them to detention centres.

**What Can and Should be Done:**

Some of the issues derive from the implications of public policy and are not, as ICVs, our direct concern. However, we believe the problems can be addressed by the MPA as follows:

*Welfare of detainees:*

- More detailed data needs to be produced (if it exists) or collected if it is not, so the impact of detainees on custody suites can be monitored - the current review of custody by the MPS may produce some data.
- A protocol needs to be drawn up to guarantee those detained for longer, say, than 36 hours can have daily showers, reading material and exercise. We believe Southwark are shortly to open a special custody suite for immigration detainees. Some detainees are placed in custody suites (though not in Camden) which do not have shower facilities.
- Each custody suite should have a maximum permitted number of such detainees at any one time.
- Relevant senior police officers should be reminded that if, at the 24 hour review, they believe the IS is not pursuing the case quickly enough (and the relevant papers (IS91) have not been served for deportation) the detainee should be released.
- Responsibility for ensuring that the detainee facing deportation can collect his or her possessions should be assigned.

*Relationship Between Immigration Service and the MPS*

Our impression is of two separate organisations with separate cultures who rarely interact at the managerial or operational level to discuss issues. So far as police custody is concerned there needs to be:

- Increased communication at all levels to ensure that custody staff and detainees are aware of time frames in which things will happen
- Clarification on who is responsible for what in relation to immigration detainees. If this is written down, we have failed to find it.
- The Home Office have informed us that if an IS 91 has been issued and an FME decides that a detainee is unfit to be detained then it has to be referred to the IS for decision. It is not clear whether custody staff have to seek IS permission before sending a detainee to hospital. This could place police custody staff in a difficult position.
- We understand that the new Independent Police Complaints Commission have very limited responsibility for these detainees in police custody. It is unclear what rights of complaint detainees thus have.
- Clarification of the role of ICVs under the 2002 Police Reform Act in relation to the IS. This may require guidance from the Home Office, in particular ICVs need a reference text so they can check that the rights of detainees in police cells are being respected.

**Next Steps:**

The Camden ICV Panel welcomes the opportunity to raise this matter with the MPA. We believe that this is the first time a Panel has had the opportunity of raising its concerns with authority directly and hope that this will set the precedent which occurs in other police authorities.

We have been in contact with a member of the HM Prisons Inspectorate. This body now has oversight of immigration detention centres. We have also met with the appropriate London Commissioner for the Independent Police Complaints Commission. We presume that this body would investigate the death of an immigration detainee in police custody.

We hope that the MPA will now treat this matter as both serious and urgent and will take steps to address the issues we have raised and report back on them.