

**INQUEST submission to
The government's response to COVID-19: human rights implications inquiry
Joint Committee on Human Rights
July 2020**

Background

1. INQUEST is the only charity providing expertise on state related deaths and their investigation.¹
2. On 23 March, we published a briefing [COVID 19: Protecting people in places of custody and detention](#) calling on the government to put the protection of human rights at the centre of their response, especially important for detained people, who, unlike those in the community, are totally dependent on the state for their treatment and care. We are concerned that its response has in many ways failed to live up to its obligations under Article 2, 3 and 14 of the Human Rights Act.

Reducing the number of people in detention

3. There is overwhelming international consensus² that the only way to prevent the spread of COVID-19 and minimise risks to people detained, frontline staff and the wider community, is to reduce the number of people in detention. It is regrettable the government's own End of Custody Temporary Release scheme has barely been implemented.³ The Ministry of Justice has been silent on the reasons for this. The rate of releases lags behind other jurisdictions.⁴
4. There is a body of evidence about dehumanising, overcrowded, insanitary and impoverished conditions and the complex health needs of prisoners. INQUEST has documented far too many preventable deaths as a result of failing systems of mental and physical healthcare.⁵

¹ INQUEST provides expertise to bereaved people, lawyers, advice and support agencies, the media and parliamentarians. Our specialist casework includes deaths in prison and police custody, immigration detention, mental health settings and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question.

² World Health Organisation, *Preparedness, Prevention and Control of COVID-19 in prisons and other places of detention*, p 4; Council of Europe Committee for the Prevention of Torture, *Statement of Principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, point 5; United Nations High Commissioner for Human Rights, *Urgent action needed to prevent COVID-19 "rampaging through places of detention"*; UN Subcommittee on Prevention of Torture, *Advice to States parties and NPMs relating to the coronavirus disease (COVID-19) pandemic*, (II.9.b).

³ With only 209 releases (including compassionate releases) until 3 July.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899247/HMPPS_COVID19_WE_03072020_Pub_Doc.pdf

⁴ International efforts to release substantial numbers of prisoners have been made, with thousands released in France, Canada, Germany, Poland, Morocco, among other countries. Scottish Prison Service, *The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020, Interim Report – Tranche 2*; <https://www.reuters.com/article/us-health-coronavirus-prisoners-released/lock-em-up-or-let-em-out-coronavirus-prompts-wave-of-prisoner-releases-idUSKBN21C38R>; http://www.prisonobservatory.org/upload/03042020European_prisons_during_covid19.pdf; <https://www.lereporter.ma/a-la-une/grace-royale-au-profit-de-5-654-detenus-ministere-de-la-justice/>

⁵ <https://inquest.eu.rit.org.uk/Handlers/Download.ashx?IDMF=b60fe35b-0e93-40f9-89c6-3ad4718c3538>

5. The use of detention already disproportionately impacts Black, Asian and minority ethnic (BAME) people, as does COVID-19. The urgent issue of reducing the prison population is a humanitarian and racial justice issue. Prison is also differentially experienced by BAME people and women. Of particular concern is that so few women – not least pregnant women and those in Mother and Baby Units – have been released.⁶
6. Taking concerted action to address the obstacles and risks to releasing people from prison is an urgent priority, in parallel with efforts to reduce numbers in detention. This includes ensuring that there is suitable housing and access to support services. Nobody should be released into destitution or poverty or faced with a lack of health and welfare support. We are concerned about a number of cases where people released are left unsupported, including without care plans, and have gone on to take their own lives.

The situation in places of detention

7. Across the prison estate, men, women and children continue to be held in prolonged solitary confinement, a fact that has not been acknowledged by HMPPS or any of the oversight bodies. We are deeply concerned about the harmful long-term health impact of these measures on mental health and for accessing healthcare for pre-existing health concerns.
8. The introduction of a statutory instrument that allows Secure Training Centres to restrict the time detained children spend out of their cells to 1.5 hours is unacceptable.
9. We consider that some of the reported prison conditions – including men locked in their cells without showers or exercise for up to 14 days at HMP Wandsworth and HMP Portland, and the degrading sanitation system at HMP Coldingley – could amount to breaches of Article 3.⁷
10. The number of self-inflicted deaths in prisons is worryingly high, with 28 deaths between 24 March and 16 July 2020. Despite early indications of possible reduction in the incidence of self harm, HMIP reports in some instances the opposite is the case. Official data showing the true picture will not be released until the end of October. Reports that four months into the restrictions in prisons, mental health is being operated largely as a 'crisis service', is of serious concern, undermining the stated objective of the early release scheme to protect the health of people in prison.⁸

⁶ In March, INQUEST and Women in Prison, supported by 600 organisations and individuals, called on the Prime Minister to urgently reduce numbers in detention. We reiterated this call in a letter to the Prisons Minister in May:

<https://www.inquest.org.uk/release2savelives>

⁷ <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/05/Locals-SSV-web-2020.pdf>;
<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/05/Cat-C-training-prisons-web-SSV-2020.pdf>

⁸ <https://committees.parliament.uk/publications/1811/documents/17713/default/>;

<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/06/Long-term-and-high-security-web-SSV-2020.pdf>

11. The decision – with no public announcement – to roll out PAVA across the adult male closed prison estate flies in the face of assurances made to the EHRC that essential safeguards against its disproportionate use on BAME prisoners and its impact on prisoners with disabilities would be introduced.⁹
12. We are concerned about the absence of analysis of the extent to which restrictive measures – seclusion, restraint, use of medication – for people detained in mental health and learning disability settings, have increased or decreased during the COVID outbreak. Even as recently as mid-July, neither CQC, NHS England, nor the Minister have been able to provide answers to questions about these crucial indicators. It should be a source of shame that the government has so far failed to enact or even announce a commencement date for the Mental Health Units (Use of Force) Bill, known as "Seni's Law"¹⁰. This is an important safeguard, introduced as a result of concerns raised about disproportionate use of restraint and inadequate reporting and scrutiny.

COVID-19 and other deaths of people in detention

13. The publication of key information relating to people who the State is duty-bound to protect has lagged behind that of people in the wider population. The CQC only asked providers whether people had died from COVID-19 on 9 April, two and a half weeks after the UK-wide lockdown.
14. There is a longstanding failure to provide detailed information about deaths of people in mental health and learning disability and autism settings. It took until May 14, after significant public pressure, for NHS England to publish data on the number of deaths of people who had tested positive for COVID-19 in these settings. Recent information on the number of COVID and non-COVID deaths in adult social care settings of people with learning disabilities, show more than half of notified deaths in these settings are from COVID.¹¹
15. These datasets – and others produced by the LeDeR programme¹² and NHS daily deaths portal¹³ - raise more questions than they answer. Publication of data was delayed, and there is no thematic analysis.

⁹ <https://www.equalityhumanrights.com/en/our-work/news/ministry-justice-give-prisoners-greater-protection-during-rollout-pava-spray>

¹⁰ Seni's Law requires mental health units to publish data on how and when physical force is used
<https://www.legislation.gov.uk/ukpga/2018/27/contents/enacted>

¹¹ <https://www.cqc.org.uk/sites/default/files/20200615%20COVID%20IV%20Insight%20number%20%20final%20%2081%29.pdf>

¹² <https://www.england.nhs.uk/publication/covid-19-deaths-of-patients-with-a-learning-disability-notified-to-leder/>

¹³ <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2020/07/COVID-19-total-announced-deaths-13-July-2020.xlsx>

16. Our monitoring shows that between 1 March and 5 June there were over four times as many COVID-related deaths of people detained under the Mental Health Act (78)¹⁴ as COVID-related deaths in prisons (19), which hold around four times as many people as those detained under the MHA.
17. There is no explanation for the additional 105 non-COVID deaths of people detained under the MHA between 1 March and 3 July.¹⁵ This is unacceptable as is the fact that no information about self-inflicted deaths in inpatient units has been published during this period and will not be until early 2021.

Oversight

18. International human rights bodies have clearly stated the need for monitoring bodies to continue their work as an essential safeguard against ill-treatment, ensuring *“effective measures are taken to reduce the possibility of detainees suffering forms of inhuman and degrading treatment”*.¹⁶
19. The initial response of inspectorates and visiting bodies¹⁷ in response to COVID-19 was to cancel inspections and visits. Concerns remain about the limitations of these at a time when risks to people in detention are so high. HMICFRS cancelled all inspections only announcing their resumption on 10 July. CQC has not published any site-specific findings, nor the number of visits or monitoring activities it has conducted. HMIP have visited around ¼ of all prisons, with a much reduced focus. There is a dearth of information about the situation in secure mental health settings.
20. The potential for a second wave, as well as emerging risks arising from the long term impact of restrictive measures, and the increase in numbers entering prisons after courts resume hearings, make the present time crucial for learning. As none of the monitoring bodies have published any recommendations from their visits and inspections it will be impossible to track progress or hold government and detention authorities to account.

¹⁴<https://www.cqc.org.uk/sites/default/files/20200615%20COVID%20IV%20Insight%20number%202%20final%20%281%29.pdf>

¹⁵<https://www.cqc.org.uk/sites/default/files/20200715%20COVID%20IV%20Insight%20number%203%20slides%20final.pdf>

¹⁶ UN SPT, *Advice of the SPT to States Parties and NPMs*, paragraph 7; Council of Europe Committee for the Prevention of Torture, Statement of Principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, <https://rm.coe.int/16809cfa4b>

¹⁷ <https://www.cqc.org.uk/news/releases/cqc-stop-routine-inspections-focus-supporting-providers-deliver-safe-care-during-cov-0>; <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/06/PC-statement-170320.pdf>; <https://www.imb.org.uk/coronavirus-covid-19-update-from-imb-national-chair/>; <https://icva.org.uk/covid19-update-from-chief-executive/>

Policing

21. With other organisations, INQUEST has raised concern about wide ranging police emergency powers which have further entrenched longstanding racial disproportionality relating to the issuing of fines, stop and search and use of force, raising significant human rights concerns.¹⁸
22. Despite a dramatic drop in the number of people being outdoors, use of stop and search in London surged to its highest in over seven years¹⁹, with the Metropolitan police carrying out double the number of searches in May 2020 (43,000) when compared with May 2019 (21,000).²⁰
23. Furthermore, our analysis points to increased reliance on Taser by police. Metropolitan police data suggests a 35% increase in the use of Taser in the three-month period from March-May 2020 (333) when compared to the prior three months (246).

Looking ahead

24. We were dismayed by Chief Coroner guidance discouraging individual coroners from *“addressing concerns about high-level government or public policy”* in relation to the deaths of frontline workers, including the suggestion that the scope of an inquest should not include the provision of PPE to a healthcare worker who has died from COVID 19. We challenged this on the basis that if followed, his guidance would mean that inquests into the deaths of frontline workers who die from COVID-19 would neither comply with the minimum requirements nor the underlying purposes of an Article 2-compliant investigation.²¹
25. We remain concerned that inquests are not being opened into COVID-related deaths and that a public inquiry is likely to be the most effective way of ensuring that legitimate questions about whether a death could and should have been prevented are properly scrutinised.
26. The framework for investigating deaths in mental health settings is inadequate, lacking independence, in contrast to other detention settings with independent investigation bodies. We raised our concern this longstanding issue would be worsened in the current context with the Minister and her response gave no reassurance that the issue has been considered.

¹⁸ Big Brother Watch: <https://bigbrotherwatch.org.uk/2020/07/campaigners-demand-review-of-all-lockdown-fines/>; <https://bigbrotherwatch.org.uk/wp-content/uploads/2020/05/Letter-to-Martin-Hewitt-from-Big-Brother-Watch-Ors.pdf> Liberty, Open Society Justice Initiative and Stop Watch: <https://justice.org.uk/wp-content/uploads/2020/06/Joint-Letter-to-SoS-Policing-Regs-Final.pdf>

¹⁹ <https://www.thetimes.co.uk/article/sharp-increase-in-stop-and-search-as-arrest-rate-falls-xj5r6jd0t>

²⁰ <https://www.theguardian.com/law/2020/jul/08/one-in-10-of-londons-young-black-males-stopped-by-police-in-may>

²¹ <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=de257e84-e63f-47ff-be50-171c31a8e048>

27. There is a significant backlog of inquests from before the pandemic. The decision to adjourn inquest hearings was understandable, but current practice varies with some pre-inquest reviews going ahead remotely, others on hold. Inquest hearings have begun to be re-listed from September but in many cases jury inquests are further delayed, in one instance with a re-listing date in summer 2021. The coronial system needs to plan and be resourced in preparation for adjourned inquests to ensure they can progress quickly once re-listed, and ensure families can participate effectively in hearings, particularly when these are held remotely. Inquest delay exacerbates grief and frustrates the learning process.
28. COVID-19 has laid bare pre-existing flaws in the detention system and also the way the State protects those in society at greatest risk of health inequalities, racism and discrimination. As the Council of Europe Committee for the Prevention of Torture has acknowledged, the pandemic has “hit hardest” in areas where its previous recommendations have not been implemented.²² INQUEST believes this is also the case for the recommendations from inquiries, reviews, investigations and inquest into deaths in custody and detention which have not been implemented, for which we have long recommended the creation of a National Oversight Mechanism.²³
29. We urge this Committee to scrutinise closely the long term legacy of steps taken during the pandemic. This includes retrogressive steps such as the introduction of mass solitary confinement, the authorisation of the use of PAVA in prisons, the potential increased reliance on seclusion and restraint in mental health and learning disability settings, and increased and disproportionate use of stop and search, fines and use of Taser by police, all of which have been justified by the need to contain the spread of COVID-19. Government and detention authorities must be held to account to ensure such measures do not become standard practice.
30. The need to focus on COVID-19 has also meant that long overdue work on a number of crucial detention issues – all of which are entirely if not even more relevant in the context of COVID-19 – has stalled.²⁴ At a time of limited external scrutiny, inadequate levels of transparency and some deeply troubling moves by government, there is an urgent need to scrutinise the extent to which COVID-19 has led to ill treatment and abuse and a lasting legacy of physical and mental health problems among people in detention.

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²² <https://www.coe.int/en/web/cpt/-/covid-19-cpt-issues-follow-up-statement>

²³ <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=530dfb7c-dddb-4f37-946e-b9878674229e>

²⁴ This includes the commencement of Seni’s Law, the delays to CQC’s review of restraint, seclusion and segregation, and the rollout of the updated ACCT process in prisons.