

Asylum seekers win case over smoking in immigration detention centres

High court judge rules that allowing smoking and forcing Muslims to pray by cell toilets breached human rights



Diane Taylor

Thu 1 Feb 2018 19:46 GMT

...

Two asylum seekers have won a legal challenge against the government when a high court judge ruled on Thursday that it was a breach of their human rights to allow smoking in immigration detention centres.

The two men, both Muslims, also succeeded in a claim that they should have an option for prayer other than next to uncovered cell toilets, which they described as “deeply embarrassing and humiliating”.

Mr Justice Holman agreed that forcing Muslim detainees to pray next to toilets when locked in their cells overnight amounted to indirect discrimination and that allowing smoking in “enclosed or substantially enclosed areas” was unlawful.

As a result of his ruling, the home secretary, [Amber Rudd](#), must take steps to rectify both problems across all 10 immigration removal centres in the UK.

There may be concerns, however, about the potential for unrest among the smoking detainees if they are unable to smoke in their cells.

The case was brought by Mohammed Hussein, 23, from Ethiopia, and Muhammad Rahman, 35, from Bangladesh, both former detainees at Brook House immigration removal centre. They said that, despite being smokers themselves, sleeping in small and poorly ventilated three-man cells where all three detainees were smokers was intolerable.

The two men argued that observant Muslims were particularly adversely affected by such conditions. They had no choice but to pray next to a toilet while locked in their cells between 9pm and 8am.

Brook House attracted negative media attention last year when undercover filming by the BBC for its Panorama programme exposed alleged abuse of [detainees by G4S guards](#). The Home Office introduced 60 three-man cells to Brook House in April 2017 to expand the number of places from 448 to 508. Around 48% of detainees in Brook House are Muslim.

Both former detainees welcomed the judgment. Rahman said that his time in Brook House had felt like a form of “physical and mental torture”.

“It’s totally inhuman,” he said. “The room I was in was very narrow. Although I’m a smoker it was very difficult to cope with the volume of smoke in one small room with three smokers in it without proper ventilation. It’s hard to imagine what it’s like unless you’ve been locked up there and experienced it.

“Things need to change. Although I’ve been released, this experience is continuing to affect me. I’m still having nightmares. I decided to bring this case because I didn’t want others to suffer the way I suffered.”

Lewis Kett, of Duncan Lewis solicitors, said: “We welcome the findings that the home secretary has had absolutely no regard to the potential discriminatory effect of the lock-in regime at Brook House on Muslim detainees and their right to properly practise their religion. Our clients have been forced to pray next to unsanitary and unscreened toilets in cramped conditions. The home secretary must now immediately take steps to remedy this.”

The Home Office said: “We respect the rights of detainees to practise their religious faith. Immigration removal centres are equipped with mosques and multi faith rooms for detainees to use for prayer, study and reflection. Communal prayers are available in all centres as well as facilities for prayer in the detainees’ rooms such as access to prayer mats. We will consider today’s judgment carefully.”

Topics

[UK news](#)

Amber Rudd / news

Muslim detainees 'made to pray by toilet'

By Danny Shaw

Home affairs correspondent, BBC News

1 February 2018



A High Court judge has criticised the home secretary after hearing Muslim men were forced to pray next to a toilet at an immigration removal centre.

Mr Justice Holman said Amber Rudd had failed to provide any justification for the practice at the Brook House facility, near Gatwick Airport - operated by the private company, G4S.

As a result, he said the two detainees' rights had been breached.

The Home Office said it would consider the judgement "carefully."

The judge also ruled Ms Rudd had acted unlawfully in allowing smoking in rooms at the centre.

Regulations permitting exemptions to the smoking ban in public places do not extend to immigration removal centres, said Mr Justice Holman, but could be amended if the government wished to do so.

The ruling means the home secretary will either have to phase out smoking from most areas of UK immigration removal centres or get the Health Secretary Jeremy Hunt to agree to introduce new rules allowing it.

- **Inquiry call into immigration 'abuse'**
- **'Serious questions' over G4S profits**
- **Immigration detainees 'held for years'**

The case against Ms Rudd was brought by two asylum seekers - Mohammed Hussein, originally from Ethiopia, and Muhammad Rahman, from Bangladesh.

They were both detained at Brook House for several months last year before being released.

The pair, who said they were devout Muslims, argued that the conditions and regime at the centre breached their right to religious observance.

They said they were each locked in a room - measuring 4m x 3m - for 11 hours at night with two other detainees, and their evening and early morning prayers were conducted 3m from an "exposed and open lavatory pan".

One of the men described the room as "smelly and dirty", saying it distracted him from his prayers.

The other detainee called the conditions "disgusting".

'Discriminatory conditions'

Mr Justice Holman said the evidence "clearly established" that being forced to worship in such a confined space with an internal lavatory contravened the men's right to worship under Article 9 of the European Convention on Human Rights.

He said the conditions were also discriminatory because they affected Muslims more than people of other religions, due to their prayer requirements.

The court heard that the home secretary had "conceded" that she had not paid "due regard" to the need to eliminate discrimination as she was obliged to do under the Equality Act.

The judge ordered her to address the issue within a "reasonable time" and demonstrate that she had done so.

Centres 'fully equipped'

A Home Office spokeswoman said the department respected the rights of detainees to practise their religious faith.

"Immigration Removal Centres are equipped with mosques and multi faith rooms for detainees to use for prayer, study and reflection," she said.

"Communal prayers are available in all centres as well as facilities for prayer in the detainees' rooms such as access to prayer mats."

But she added: "We will consider today's judgement carefully."

REUTERS

Duncan Lewis Solicitors, who represented the detainees, said they hoped the government would take immediate steps to improve conditions.

Raza Halim, the pair's barrister, said: "Today's judgement clearly exposes discriminatory and unlawful practices of the Home Office and G4S.

"Immigration detainees continue to have their liberty curtailed, in conditions that are degrading. This litigation has helped shine light of such conditions."

The BBC has contacted G4S for a response.

Past controversies

Brook House became the subject of a BBC Panorama undercover investigation last year that revealed detainees were "mocked and abused".

The programme said it had seen "widespread self-harm and attempted suicides" in the centre, and that drug use was "rife".

According to the Home Office, the majority of those held are failed asylum seekers or illegal immigrants waiting to be deported from the UK on organised charter flights.

Brook House is one of 11 detention removal centres in England, which together took in 28,908 people last year - including 71 children.

Related Topics

Detention centres

Share this story About sharing

News > UK > Home News

Home Office 'interfering' with people's right to observe Islam in detention centres, High Court rules

High Court rules Home Office failing obligations under European law by subjecting immigration detainees to 'lock-in' regime which forces them to pray in dirty conditions

May Bulman Social Affairs Correspondent | [@maybulman](#) | 14 hours ago |

[6 comments](#)



Muslim detainees at Brook House immigration removal centre lodged a High Court challenge to the lock-in regime and living conditions at the centre, which meant they were having to pray in "unclean" conditions in "unacceptable" proximity to a toilet *PA*

The Home Office is interfering with people's right to observe Islam by subjecting immigration detainees to a "lock-in" regime which forces them to pray in dirty conditions, the High Court has ruled.

Muslim detainees at Brook House immigration removal centre **lodged a High Court challenge** to the lock-in regime and living conditions, which meant they were having to pray in "unclean" conditions in "unacceptable" proximity to a toilet.

The court heard detainees were locked in their rooms every night between 9pm until 8am, and again during two other "lock-ins" carried out during the day between 12pm and 1pm, and then again at 5pm and 6pm – amounting to a total of 13 hours.

Man with mental health issues who sewed lips closed,
'unlawfully' held

Home Office 'locking migrants up for more than 13
hours a day'

Home Office ignores medical advice to keep mentally
ill detained

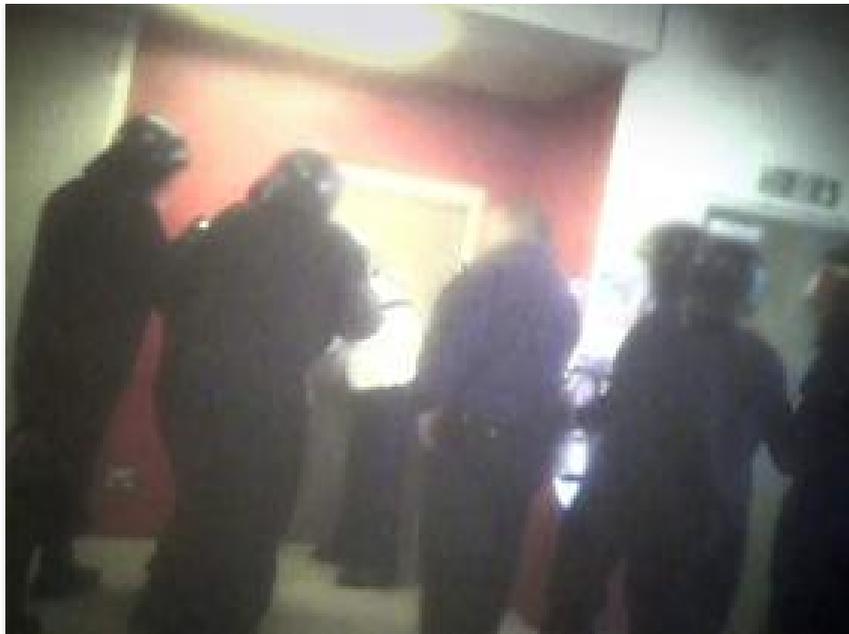
Lawyers representing the claimants argued the regime and cell conditions violated fundamental human rights enshrined in European law, leaving detainees with no choice but to undertake mandatory prayers in their cells next to an inadequately screened toilet.

Mr Justice Holman found in favour of the detainees, saying the Home Office had interfered with the rights, under the European Convention of Human Rights, of Muslim detainees to properly observe Islam.

Handing down his judgement at the Royal Courts of Justice, Mr Justice Holman said: "I accept that adherents not only of Islam but of other faiths could feel degraded at having to pray within three metres of an exposed and open lavatory pan, where there are no seats or lids, especially one which has recently been used by other people."

He accused the Home Office of "indirect indiscrimination" which was "unlawful unless justified", adding that "no justification has yet been shown".

Asylum seekers and other migrants are sent to immigration detention when the Government wishes to establish their identities or facilitate their immigration claims, not because they have committed criminal offences.



'F* off back to your country': Ex-Brook House detainee speaks out**

One of the claimants, a man who shares a room with two other detainees, said he had suffered from recurring chest pains for six months, with regular headaches. During the course of the overnight lock-ins, he allegedly requested painkillers by using a buzzer, but his requests received no response.

In evidence given in court, the man described his sense of shame at having to use the toilet in view of another detainee. He said this, along with the smell, was so intolerable that he forced himself to forgo using the toilet for as long as possible during the night.

As a practising Muslim, the conditions mean the man said he found himself praying in unclean conditions in unacceptable proximity to a toilet.

Sheroy Zaq of Duncan Lewis Solicitors, who represented the claimants, said after the ruling: "The Secretary of State is legally obliged to conduct an assessment as to how the rights of Muslim detainees are interfered with as a result of her decision to force them to pray in their cells overnight.

"Despite conceding, as early as November 2017, that she would turn her mind to these issues, she has sat on her hands until now. There are more Muslim detainees in Brook House IRC than detainees of any other religion, and, as such, she ought to have addressed these considerations much sooner.

“It is regrettable that it has taken litigation of this nature to compel her to comply with her legal obligations.”

A Home Office spokesperson said: “We respect the rights of detainees to practise their religious faith. Immigration Removal Centres are equipped with mosques and multi faith rooms for detainees to use for prayer, study and reflection.

“Communal prayers are available in all centres as well as facilities for prayer in the detainees’ rooms such as access to prayer mats.”

More about: | [Home Office](#) | [immigration detention](#) | [brook house](#)