



Detention Action submission to the Joint Committee on Human Rights inquiry into immigration detention

September 2018

About Detention Action

Detention Action is a national charity established in 1993 that seeks to defend the rights and improve the welfare of people in immigration detention by combining support for individuals with campaigning for policy change. Detention Action works in Harmondsworth and Colnbrook Immigration Removal Centres (IRCs) near Heathrow Airport in London, Morton Hall IRC in Lincolnshire, and with people held under immigration powers in London prisons.

Contact details

For further information, please contact:

Bella Sankey
Director
Detention Action
bella@detentionaction.org.uk
020 7226 3114

Key recommendations:

- 1. Indefinite immigration detention is incompatible with basic common law and human rights principles. The Government should urgently enact a statutory time limit for immigration detention, which must be no longer than 28 days.**
- 2. Immigration detention should only be used as a genuine last resort and for the shortest time possible to effect lawful removals. To ensure this standard is upheld in practice, all detention decisions must be subject to automatic, early judicial oversight.**
- 3. There should be a move away from an immigration system based on aggressive enforcement in favour of a new model centred around constructive engagement with individuals in the community.**
- 4. The Government should further explore community-based alternatives to detention, such as Detention Action's pioneering Community Support Project, with a view to entirely replacing immigration detention with this model.**

Whether immigration detention should be time limited

1. Detention Action commends the Joint Committee on Human Rights for launching its immigration detention inquiry. The UK has a proud reputation for defending liberty and standing against arbitrary detention yet the Government's policy to detain

individuals indefinitely under immigration powers entirely contradicts and undermines this tradition. There is substantial evidence that indefinite immigration detention causes significant harm, anxiety and distress to those it affects while failing meet its immigration control objectives.

2. Over the past three decades the immigration estate has ballooned, from 300 or so in 1994 to 27 331 people entering detention in 2017. Legislative and policy reform to end this practice is long overdue. A statutory time limit on the period that individuals can be detained under immigration powers would protect fundamental rights, reduce the harm caused by detention and allow a reallocation of resources towards alternatives based on constructive engagement with individuals in the community.
3. The Government-commissioned Shaw Review first reported in January 2016 and urged the Government to begin the process of reducing detention ‘boldly and without delay’.¹ The Government committed to a series of reforms intended to “*lead to a reduction in the number of those detained, and the duration of detention before removal*”.² However, since then the number of people being detained for over six months has actually increased, from 275 at the beginning of January 2016 to 305 at the end of December 2017.³ Shaw’s second review reiterated his concern that the “*time many people spend in detention remains deeply troubling*”.⁴

Whether current legal and policy frameworks are sufficient in preventing people being detained wrongfully

4. The Government claims that people are detained ‘*as a last resort, in exceptional circumstances and for as short a period of time as possible*’. In the absence of a clearer directive over appropriate lengths of detention, this approach is clearly not working. As Shaw says, “*the size of the detained population is determined more by the available bed space, rather than any in-depth analysis of need*” and that “*the current system must be regarded as happenstance*”.⁵
5. Detention Action’s clients continue to be detained in circumstances where there is no clear path to removal and wrongful detentions across the estate are routine. Fewer than half of people who leave immigration detention do so because they have been removed. The majority are either released on immigration bail or granted leave to remain/enter. In the year to March 2018, only 46% of people leaving detention

¹ Stephen Shaw, Review into the Welfare in Detention of Vulnerable Persons, January 2016, p. 9

² <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>

³ Stephen Shaw, Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons, July 2018, p. 22

⁴ *Ibid*, p. viii

⁵ *Ibid*, p. 8

left because they were removed from the UK and many of those people were detained far longer than necessary to effect removal. The latest immigration statistics show that once someone has been in detention for more than 28 days, the government is less likely to remove them from the country.

Whether current practices in the detention system protect human rights

6. The harms of immigration detention are manifold, including loss of liberty, interference with private and family life, and all too frequently inhumane and degrading treatment. Shaw commissioned Jeremy Johnson QC to examine six recent cases in which the UK had been found to be in breach of Article 3 of the European Convention on Human Rights⁶ in respect of its treatment of immigration detainees.⁷ In the case of MD, the judge concluded that detention did not exacerbate but caused the onset of her mental disorder.⁸
7. In 2016, the Shaw Review examined academic research which consistently found *“evidence of a negative impact of detention on the mental health of detainees [which] increases the longer detention persists”*.⁹ The British Medical Association has reported on the *“significant health effects indeterminate detention can have on individuals”*¹⁰ and has called for *“a clear limit on the length of time that people can be held in detention, with a presumption that they are held for the shortest possible time.”*¹¹
8. The Centre for Mental Health also found that *“[t]he longer someone spends in detention, the more negative an impact it has upon their mental health”*, with the distress experienced being *“disabling, and even life-threatening”* even in the cases which do not meet a clinical threshold. The analysis draws attention to the *“best available UK evidence”* which indicated that *“the critical point for a negative impact on mental health was at 30 days”*.¹²
9. This evidence has led to a cross-party consensus that the case for a 28 day time limit on immigration detention exists. In 2006/07, your predecessor Committee expressed its concern, in relation to the detention of asylum seekers, *“that there is currently no*

⁶ Incorporated into UK law through the *Human Rights Act 1998*.

⁷ Ibid, p. 3

⁸ R (on the application of MD) v. Secretary of State for the Home Department, [2014] EWHC 2249, 8 July 2014

⁹ Mary Bosworth PhD, in ibid, p. 305

¹⁰ British Medical Association, *Locked up, locked out: health and human rights in immigration detention*, November 2017, p. 7

¹¹ British Medical Association, *Locked up, locked out: health and human rights in immigration detention*, November 2017, p. 4

¹² The Centre for Mental Health, *Immigration Removal Centres in England A mental health needs analysis*, January 2017, p. 36

maximum time limit [on immigration detention]". The Committee recommended a time limit of 28 days.¹³

10. Since then, the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration have recommended a time limit of 28 days for all migrants, alongside "*a robust system for reviewing the decision to detain early in the period of detention*" and a "*much wider range of alternatives to detention*" in order to prevent the 28 day time limit becoming the default period of detention.¹⁴ And in 2017, Labour, the SNP and the Liberal Democrat parties all committed to ending indefinite detention in their General Election manifestos.¹⁵
11. Yet instead of accepting this evidence, the Home Secretary responded to the second Shaw review by announcing an internal Home Office review of how immigration detention time limits work in other countries.¹⁶ It is difficult to see how an internal Home Office review that is closed to external expert evidence will herald the "better informed" debate the Home Secretary claims is needed. If the Government believes that more evidence needs to be gathered it should initiate a public consultation in the usual way and receive expert evidence.

Alternatives to Detention

12. Community-based alternatives are a humane and effective alternative to immigration detention. International research has found that community-based alternatives to detention built around case management are most effective in terms of cost, compliance and wellbeing.¹⁷
13. In the UK, the Government's exploration of alternatives has previously been limited to bail, temporary admission and tagging.¹⁸ In 2016, Shaw argued that the

¹³ <https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/134/13404.htm>

¹⁴ The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom, March 2015, <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

¹⁵ See <https://labour.org.uk/manifesto>; www.snp.org/manifesto and www.libdems.org.uk/manifesto respectively.

¹⁶ Home Secretary statement on immigration detention and Shaw Report, 24th July 2018, available at - <https://www.gov.uk/government/speeches/home-secretary-statement-on-immigration-detention-and-shaw-report>

¹⁷ International Detention Coalition, There Are Alternatives, <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>. The International Detention Coalition's Community Assessment and Placement Model sets out a framework for successful alternatives. Engagement-based alternative projects are being piloted by NGOs in four European countries, including the UK, <https://www.atdnetwork.org/>

¹⁸ Shaw: establishing a tagging programme, but highlight the danger that this may be used to manage the risk of those who should be in the community anyway, as it is no longer possible to justify detention, rather than as a genuine alternative to detention. See also Without Detention p21 on the UK's previous consideration of alternatives.

Government should “*demonstrate much greater energy in its consideration of alternatives*”. He remained of that same view two years later with the publication of his second review, making clear that “*a well-managed case management approach is most likely to have positive outcomes.*”¹⁹

14. Case management approaches “*seek to safeguard the dignity of the individual and involve them as agents in their own decision making*”.²⁰ A case manager can provide a link between the individual, the authorities and the community, while addressing any particular needs or vulnerabilities. The case manager should be independent of decision-makers and support migrants throughout the duration of their case.
15. Detention Action has developed significant expertise in the implementation of alternatives to detention. Detention Action’s pilot Community Support Project began in 2014 and works with young men with previous convictions who have barriers to removal and have experienced, or are at risk of, long-term detention. It is charitably funded and built on a model of structured case management that relies on the development of a relationship of trust between the coordinator and participants.
16. Over its 4 years of operation, 93% of the Project’s participants have not reoffended and 83% have remained in touch with the Project. 59% of participants became involved in community activities and 28% enrolled on some sort of educational course.²¹
17. Shaw reported favourably on the Project in his second review and recommended “*that the Detention Action project for ex-offenders in the community be expanded...[and]...the Home Office establish an ATD project for vulnerable persons who would otherwise be at risk of being detained.*”²²
18. In response the Government announced that it would “*do more to explore alternatives to detention with faith groups, NGOs and within communities*”²³ including a pilot in which women who would otherwise be detained at Yarl’s Wood would “be managed” in the community.

¹⁹ Stephen Shaw, Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons, July 2018, p. 121

²⁰ Mary Bosworth, Annex 11: Alternatives to Immigration Detention – A Literature Review, in Shaw 2, July 2018, p236

²¹ It is worth noting that increasingly clients’ terms of release prohibit them from engaging in any form of education.

²² Stephen Shaw, Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons, July 2018, p. 122

²³ <https://www.gov.uk/government/speeches/home-secretary-statement-on-immigration-detention-and-shaw-report>



19. The Government's pilot project announced in July is a step in the right direction but it is vital that the pilot is carefully designed with input from civil society and migrants themselves. The pilot must ensure that participants' rights and dignity are respected and that their needs are properly assessed and met. The pilot should be centred around high quality case management which empowers migrants to make their own decisions. Monitoring and evaluation must play a central role from the outset and allow learning to feed into the pilot as it develops.

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