



Freed Voices response to the Joint Committee on Human Rights inquiry into immigration detention September 2018

About Freed Voices

Freed Voices is a group of experts-by-experience who have been in immigration detention in this country and are committed to speaking out about the realities of it. Between them, Freed Voices members have lost over twenty years of their lives to indefinite detention in the UK. Some Freed Voices members have been detained for a period of months, others for many years; some are asylum seekers or recognised refugees, some have previous convictions, and some are a combination of these. Members of the group came together to provide evidence and recommendations for this submission, which was then shared with the rest of the group for comments and contributions.

Contact information

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Key recommendations:

- 1. A 28 day time limit should be introduced in order to radically reduce the use of detention.**
- 2. There should be improved judicial or independent oversight of decisions to detain.**
- 3. Everyone detained under immigration powers should be able to exercise the same rights.**
- 4. People with lived experience of detention should be central to any debate about detention and should be included in the formulation of detention policy.**

Time limit

- 5. There is a culture of abuse and a crisis of harm in immigration detention in the UK.** The scale of self-harm and emotional distress in detention is well documented, and the current approach leaves the Home Office incapable and disinclined to rectify the situation. The dire situation in detention is allowed to fester in part because of: the government's attitude towards and portrayal of those that they detain; a drive for cost-saving, corner-cutting and privatisation; and, a lack of accountability for the behaviour of detention centre staff and the decisions of Home Office policy-makers. The Freed Voices submission to the Home Affairs Select Committee in April 2018 outlines these points in greater detail.¹ Indefinite immigration detention is one of the biggest human rights abuses in the UK today. The current practice cannot continue.

¹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/immigration-detention/written/82125.html>

6. **The lack of a time limit is a licence for abuse.** The indefinite nature of immigration detention in the UK intersects with all of the other problems posed. Being detained without knowing your release date is a major cause of mental health problems. Indefinite detention removes any sense of fair treatment and erodes trust between migrants and the authorities, often irrevocably. It allows the Home Office to detain people who have no realistic prospect of removal, causing unnecessary harm.
7. **The government is addicted to detention.** There is an urgent need to reduce the number of people in detention and the length of time that they are detained. As Stephen Shaw said in his second review into detention: “The time that many people spend in detention remains deeply troubling.”² Without a time limit, there is no urgency attached to the decision of whether to deprive someone of their liberty. The approach is too often to detain first and ask questions later.
8. **A 28 day time limit would reduce the use and scale of detention.** 59 per cent of people in detention on 30 June 2018 had been held for more than 28 days.³ But a 28 day time limit would not simply have an effect on those who are currently detained for longer. It would necessitate and facilitate a wholesale change in approach. With a legal restraint of 28 days, the Home Office would be encouraged only to detain those actually facing imminent removal. A 28 day time limit would support the Home Office’s stated policy of only using detention as a genuine last resort; many of the people currently detained for over 28 days would not have been detained in the first place.
9. **Resistance to a strict time limit is based on an unwillingness to meaningfully engage with alternatives to detention.** In reality, a 28 day time limit on detention should work hand-in-hand with an expansion of community-based alternatives. The resources diverted away from an unnecessary and inefficient use of indefinite detention would allow for the introduction of a more humane and more effective approach. Intensive case management systems can provide a link between the individual, the community and the authorities, and afford migrants agency in their own decisions. These alternatives would allow migrants to develop trust in the system that decides their fate.

Decisions to detain

10. **The Home Office should not have the authority to deprive people of their liberty without vastly improved judicial or independent oversight.** Decisions to detain are currently treated as purely operational; people are initially detained without having their case considered by a judge. The Immigration Act 2016 made provisions for automatic bail hearings but these are clearly insufficient, not least because they only apply to those who are in detention for the first time, have been detained for more than four months, and do not have a criminal record. This therefore applies to a small number of people and leaves many to languish in detention for weeks or months without any judicial or independent oversight.
11. **New bail provisions reduce judicial authority even further.** The Home Office has recently abolished Section 4(1) addresses, which were routinely offered to migrants applying for bail. Judges are now shown to be powerless to release people who do not have an appropriate bail address, even if it has been deemed they should not be in detention.

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/S_haw_report_2018_Final_web_accessible.pdf

³ <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018>

12. Immigration Removal Centres should be used for nothing other than imminent removal.

Depriving someone of their liberty in the name of ‘public safety’ should be a judgement made by the criminal justice system, not the immigration authorities.

13. Home Office decision-making suffers from a severe lack of accountability. Challenges to Home Office power only arise after harm has been caused. The Home Office annually pays out millions of pounds in compensation for unlawful detention, yet continues to detain people unlawfully. This lack of accountability partly explains the disconnection between the stated aims of detention policy and the realities of detention.

Equality before the law

14. Every person detained under immigration powers should have equal rights. The experiences of people detained under immigration power differs significantly; conditions vary from one detention centre to another, and for those detained in prison under immigration powers. This not only affects people’s experiences in detention but also their access to justice. People held in prison are denied access to mobile phones, legal surgeries, and safeguards relating to vulnerability. Stephen Shaw said that “it is unsatisfactory that the rights and regime of time-served foreign national offenders are so different to those held in IRCs” and that, regarding vulnerability, “this is a worrying gap and needs to be remedied”.⁴

15. Immigration detention should not be treated as an extension of the criminal justice system. Arguments made in defence of immigration detention often rest on the idea that it is necessary to maintain public safety. This places an unfair burden on people with previous convictions simply by virtue of their country of origin. People who are detained following prison sentences are effectively serving a double punishment. If a British national would be released into the community then it does not follow to make a public safety argument in regards to a foreign national. People with previous convictions are often held in prison under immigration powers, therefore being denied the rights of those detained at IRCs, and are specifically excluded from safeguards such as automatic bail hearings. They are also more likely to face complications relating to bail addresses, often extending their detention. As Stephen Shaw said: “Whatever their past crimes, they surely have an equal right to independent consideration of the detention decision.”⁵

Experts-by-experience

16. The failings of detention policy are in large part down to the exclusion from the debate of the people affected. Decisions that affect migrants are largely made in ignorance and are undermined by assumptions and misrepresentations. This context allows the government to exaggerate the risk of absconding and reoffending in order to justify a human rights scandal. In order to make an informed judgement on detention policy, there is an evident need to meaningfully engage people with lived experience of detention.

17. The JCHR should seek to hear evidence from experts-by-experience. Nobody understands the need for detention reform like people who have experienced it. Space both for personal testimony and policy recommendations would make an invaluable contribution to the committee’s inquiry.

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/S_haw_report_2018_Final_web_accessible.pdf

⁵ Ibid.