



Labour Campaign for Human Rights

**ENDING INDEFINITE DETENTION IN THE ASYLUM
SYSTEM**

July 2017

Executive Summary

This briefing investigates the policy of detaining asylum seekers indefinitely in the UK – a practice that continues and shows no signs of being terminated by the Government. It explains how the UK is an anomaly for using such a system, despite strong evidence demonstrating that it is ineffectual, costly, and injurious to the mental health of detainees, and that Home Office guidance on the matter is not being followed. Some other issues surrounding detention are also considered, including a blanket exclusion for certain classifications of people who are most at risk, as well as alternatives to detention, such as those used favourably in Australia, the USA and Canada.

Consequently, to ensure individuals are treated with dignity and more humanely, the Labour Campaign for Human Rights recommends that:

- A 28-day time limit on detention for all asylum seekers should be introduced.
- All detention centres should have 24/7 access to a mental health response team. Moreover, if required healthcare is not available inside a detention centre, inmates should be released to access the care they need.
- All those identifying as LGBTI, as well as mothers with babies, should not be detained. Furthermore, the detention of children should be ended immediately.
- Alternatives to detention, in which asylum seekers are supported in the community, should be utilised much more frequently.

Introduction

According to the Immigration Act 1971, asylum seekers and other migrants can be detained in the UK for administrative purposes. In particular, detention is typically applied in order to effect a person's removal from the country, to establish their identity or basis of claim or where there is reason to believe that the person will fail to comply with any conditions attached to a grant of temporary admission/release.¹ Moreover, the UK has one of the largest detention estates in Europe, presently operating nine so-called 'immigration removal centres' (IRCs), as well as a small number of residential short-term holding facilities.²

As a result, 28,908 individuals entered detention last year (46% of whom were asylum detainees) – a number that has not experienced any significant decline since 2009. Further, those leaving detention in 2016 was almost 14% less than the concomitant figure from the year previous.³ These statistics allude to a minimal quantity of progress and subvert a call made by former prisons and probation ombudsman Stephen Shaw in his independent review into detainee welfare (commissioned by then-Home Secretary Theresa May) to 'boldly and without delay' reduce the number of those locked up.⁴

Indefinite Detention

While still a member state, the UK is one of only a few countries in the EU not to have a limit on the time in detention after opting out of the 2008 EU Returns Directive that specified a maximum of six months (which could then be extended by an extra 12 months if a detainee fails to cooperate).⁵

¹ UK Visas and Immigration, 'Enforcement instructions and guidance, Chapter 55: detention and temporary release', 28th March 2017. <https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals>

² Global Detention Project, October 2016: <https://www.globaldetentionproject.org/countries/europe/united-kingdom>

³ Home Office, 'Immigration statistics, October to December 2016', published on 23rd February 2017. <https://www.gov.uk/government/statistics/immigration-statistics-october-to-december-2016>

⁴ Stephen Shaw, 'Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office', January 2016. <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons>

⁵ A Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, '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>

Instead, immigration enforcement guidelines state that “detention must be used sparingly, and for the shortest period necessary.”

But this principle is not being adhered to. The latest Home Office statistics show that 568 of those presently in an IRC have been locked up for more than four months – a shocking augmentation of a quarter relative to the corresponding period the year before. Moreover, an additional 78 have been held for more than a year and eight for longer than two years. Indeed, incomprehensibly, one person has been deprived of their liberty for 1,333 days. The data also reveals that the longer an individual is detained, the less likely it is that they will be returned to their country of origin, so challenging whether such persons could not have been released sooner, as well as the efficacy of the whole system.

Views of Detainees

A 2015 joint inquiry by the All Party Parliamentary Group (APPG) on Refugees and the All Party Parliamentary Group on Migration apropos immigration detention took testimonies from inmates about the lack of a time limit. One individual, Mariam Mansare, said: “No one knew when they would be released, so in that sense detention was even worse than prison. Families were broken.” Another, contributing anonymously, added: “Some lose hope, and they try to kill themselves. Some try burning themselves with whatever they can get. Some try hanging themselves in the shower. They think it's the only way out...”

Widespread criticism has met the Government's intransigent refusal to institute a time limit, with the UN Committee against Torture⁶ and the UN Human Rights Committee⁷ urging a rethink. One of the salient recommendations in the report by the APPGs on Refugees and Migration was a cap of 28 days, harmoniously echoing the same demand made by more than 30 charities and organisations, who decried the approach as 'barbaric' and 'utterly abhorrent'.⁸ Further, during the passage of what became the Immigration Act 2016, ministers suffered a defeat in the House of Lords, when peers voted in favour of a 28-day limit.⁹ It is extraordinary therefore that the Government has shown no willingness to change its stance.

Mental Health of Detainees

The APPGs' report found that indefinite detention of asylum seekers has a detrimental effect on their mental health. Dr Katy Robjant, of the Helen Bamber Foundation, presented evidence which suggested a direct correlation between escalating mental health problems and detention beyond one month. Inquiry members were also troubled by the inadequacy of mental healthcare provision in IRCs and the insufficient training afforded to healthcare professionals in recognising and responding to mental health issues.

In addition, conditions inside IRCs only serve to exacerbate the problem. Nick Hardwick, the now-former Chief Inspector of Prisons, told the APPGs that conditions tantamount to high-security prison settings were “inappropriate for immigration detainees and contribute to worse outcomes for those held there.” Moreover, a 2015 undercover documentary filmed staff at Yarl's Wood IRC uttering

⁶ Committee against Torture, 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013)', published in June 2013. <https://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

⁷ Human Rights Committee, 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', 17th August 2015. <http://www.refworld.org/docid/5645a59c4.html>

⁸ Jonathan Owen, 'Detention: the black hole at the heart of British justice', The Independent, 6th January 2015.

<http://www.independent.co.uk/news/uk/crime/detention-the-black-hole-at-the-heart-of-british-justice-9961576.html>

⁹ BBC, 'Government defeated in Lords over immigration detention time limit', 15th March 2016. <http://www.bbc.co.uk/news/uk-politics-35818169>

violent and derogatory comments about inmates.¹⁰ Allegations of sexual assault have also been made against staff at the same IRC.¹¹

Such is the horrifying severity of the overall situation that, on average, almost one detainee a day attempted suicide last year, with a further 2,582 determined to be at risk of self-harm.¹² And, this January, one man was reported to have killed himself inside Morton Hall IRC.¹³ Further, more than 200 inmates across numerous IRCs protested their ongoing detention by going on hunger strike in the space of three months in 2016, with some purportedly wishing to die from starvation.¹⁴

Responding to a recommendation postulated in the Shaw review, the Government promised that a joint action plan between the Department of Health, NHS England and the Home Office would be released in April 2016 that would aim to improve the provision of mental health services.¹⁵ Finally published eight months later than advertised, it developed proposals made by the Centre for Mental Health in a report commissioned by NHS England on mental health needs in detention centres (for example, in relation to staff training).

However, other recommendations were not addressed, including IRCs having 24/7 access to a mental health crisis response team and any detainee being offered a review of their mental wellbeing once they have been detained for more than 30 days, followed by check-ups every three months thereafter.¹⁶ Meanwhile, a separate study by Medical Justice concluded, *inter alia*, that the Home Office should operate on the assumption that indefinite detention is inherently harmful to mental health and that an inmate must be released to access necessary healthcare, if this is not forthcoming inside the IRC.¹⁷ Therefore, if it is serious about tackling this issue, the Government must go further than what it has done hitherto.

'At Risk' Detainees

Evolving what had been advanced in the APPGs' report and the Shaw review, a new 'adult at risk' concept was brought in last year, whereby if an individual is deemed to be 'at risk', they will not be detained. This would be the case if a person was suffering from a condition, or had experienced a traumatic event, that would render them being especially vulnerable to harm in detention – for example, those that have a mental health impairment, serious physical disability or have been a victim of torture/sexual-based violence.¹⁸

¹⁰ Channel 4 News, 'Yarl's Wood: undercover in the secretive immigration centre', 2nd March 2015.

<https://www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation>

¹¹ BBC, 'Yarl's Wood: Six sex assault allegations investigated', 15th July 2016. <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-36804714>

¹² No Deportations, 'Self-Harm in Immigration Detention: January-December 2016', 7th February 2017.

<http://www.no-deportations.org.uk/Resources/Self-Harm2016.html>

¹³ Diane Taylor, 'Investigation after third death in UK immigration detention centre', The Guardian, 13th January 2017. <https://www.theguardian.com/uk-news/2017/jan/13/investigation-after-third-death-in-uk-immigration-detention-centre>

¹⁴ Diane Taylor, 'UK immigration centres record 218 hunger strikers in three months', The Guardian, 25th November 2016. <https://www.theguardian.com/uk-news/2016/nov/25/immigration-centres-record-218-hunger-strikes-uk-asylum-seekers>

¹⁵ James Brokenshire (Minister of State for Immigration), 'Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons: Written statement HCWS470', 14th January 2016. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>

¹⁶ Centre for Mental Health, 'Immigration Removal Centres in England: A mental health needs analysis', January 2017. <https://www.centreformentalhealth.org.uk/Handlers/Download.ashx?IDMF=5dae67a1-03a4-4687-936e-495b14708296>

¹⁷ Medical Justice, 'Death in immigration detention: 2000-2015', September 2016.

http://www.medicaljustice.org.uk/wp-content/uploads/2016/09/MJ_death_in_immigration_detention_FINAL_WEB-1.pdf

¹⁸ Home Office, 'Immigration Act 2016: Guidance on adults at risk in immigration detention', August 2016.

<https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>

Furthermore, someone who identifies as transsexual or intersex is also now categorised as being unsuitable for detention, with Shaw himself having witnessed first-hand the previous “inability of IRCs to provide an appropriate, safe and supportive environment” to such individuals. However, the 'at risk' definition was not extended to lesbian, gay and bisexual people.

Both the APPGs and Shaw were handed evidence that LGBTI detainees have been subjected to bullying, harassment and abuse inside IRCs – something about which the former was 'extremely concerned'. But two charities have gone further, insisting on an end to the detention of all LGBTI asylum seekers.¹⁹ In a joint report, Stonewall and the UK Lesbian and Gay Immigration Group alleged that LGBTI people who had suffered rape or torture were being held, in contravention of Home Office rules, while access to HIV medication and anti-depressants was being denied. They added that many are often returned to their country of origin, even when there is a threat of persecution. Such treatment is reprehensible, and merely strengthens the case for every LGBTI person to be exempt.

Meanwhile, mothers and babies can be detained, despite pregnant women being excluded. In 2010, the Coalition Government pledged to end the detention of children by the following May, so ensuring a 'fairer and more compassionate' system.²⁰ This policy was reinforced by an investigation into the effects that detention has on children. In their work, researchers reported some form of psychological harm in around half of the child cases they examined, with three girls having attempted suicide.²¹

Yet, bewilderingly, the practice still persists. And last year, there was alarm that this vow was effectively being scrapped, following the decision to close Cedars, a pre-departure accommodation purposefully built to fulfil this commitment. Instead, families and children who would have gone there are now to be held at an 'adult' IRC that resembles a prison.²² Elsewhere, an inspection of Morton Hall IRC by HM Inspectorate of Prisons uncovered that one child had been held among adults for 151 days. Others were also locked up for elongated periods, while local authorities argued about who was responsible for determining their ages.²³ This simply beggars belief and vividly illustrates the unconscionable essence of this policy.

Alternatives

Beyond the 28-day cut-off point previously advocated, Home Office figures indicate that, of the 10,380 individuals who left detention last year after being locked up for longer, 62% remained in the UK. With the average cost to keep someone detained being £86 per day²⁴, this means that, in total, around £50 million of public money was squandered to maintain their continued confinement. Moreover, a further £18 million was paid out between 2011 and 2015 in compensation as a result of claims for unlawful detention.²⁵

Terming the current system as 'expensive, ineffective and unjust', the APPGs and Shaw exhorted the development of alternatives. Despite not explicitly concurring, the Government said in January last year that they would at least proffer their vision for the 'future shape and size of the detention estate'

¹⁹ James Smith, 'Government 'must end its detention of vulnerable LGBT asylum seekers', charities demand', The Independent, 26th October 2016. <http://www.independent.co.uk/news/uk/home-news/lgbt-asylum-seekers-amber-rudd-home-office-treatment-detention-centres-a7381756.html>

²⁰ Hélène Mulholland, Allegra Stratton and agencies, 'Nick Clegg: 'shameful' detention of children in asylum centres to end by May', The Guardian, 16th December 2010. <https://www.theguardian.com/politics/2010/dec/16/nick-clegg-shameful-detention-children-end>

²¹ Dominic Casciani, 'Child immigration detention 'harm' documented by medics', BBC, 9th September 2010. <http://www.bbc.co.uk/news/uk-11239067>

²² Jon Stone, 'Government accused of scrapping pledge to end child detention in prison-style immigration removal centres', The Independent, 22nd July 2016. <http://www.independent.co.uk/news/uk/politics/child-detention-immigration-centres-scrapped-broken-promise-tinsley-house-cedars-barnados-home-a7149981.html>

²³ Refugee Council, 'Inspectors slam 'prison like' immigration centre', 21st March 2017.

²⁴ Home Office Immigration Enforcement data: February 2017', published on 23rd February 2017. <https://www.gov.uk/government/publications/immigration-enforcement-data-february-2017>

²⁵ Catrin Nye, 'Payments to wrongly held detainees top £4m each year', BBC, 20th April 2016. <http://www.bbc.co.uk/news/uk-36054353>

in the Immigration Enforcement's Business Plan for 2016-17. However, this has still not been released, with the Home Office claiming in November that it would be published 'in due course'.²⁶

Alternatives are available in the UK, namely reporting to an immigration office or police station, electronic monitoring and bail. Yet, as chronicled in the APPGs report, such methods are underused, only applied at the end of the process after detention and not the alternatives employed successfully elsewhere, which are community-based and focus on engagement rather than enforcement.

For example, in Australia, most migrants are given a short-term Bridging Visa, enabling them to live in the community pending case resolution.⁵ A single case manager works with the migrant, providing information about the immigration process and their rights, as well as ensuring access to welfare assistance and legal advice. Organisations such as the Australian Red Cross and Salvation Army collaborate with the Australian government to deliver the programmes. A similar system has also been utilised effectively in Sweden.

Meanwhile, in the USA, the Lutheran Immigration and Refugee Service piloted a supervised release and assistance scheme in 2014, which was then rolled out nationally the following year with government funds.²⁷ Their job is to coordinate with non-governmental organisations (NGOs), who direct the migrant to vital services (including medical, housing and legal) and ensure compliance with any conditions of release. Further, Canada's Toronto Bail Program also uses NGOs to provide community support. But here, asylum seekers must sign a contract, stating that they will abide by the scheme. They also agree to participate in activities, such as education and vocational training.⁵

Written evidence to the APPGs inquiry from the International Detention Coalition suggests that such alternatives not only respect the human rights of migrants and improve their welfare, but, on average, result in a compliance rate of 90%, a cost saving of 80% compared with detention and a 65% voluntary return rate for applications that have been refused. Although the Government's existing guidance states that "wherever possible, alternatives to detention are used"¹, this is not being acted upon and ought to be henceforth.

Recommendations

In order to bring UK standards into line with comparable countries, LCHR recommends:

- A 28-day time limit on detention for all asylum seekers should be introduced.
- All detention centres should have 24/7 access to a mental health response team. Moreover, if required healthcare is not available inside a detention centre, inmates should be released to access the care they need.
- All those identifying as LGBTI, as well as mothers with babies, should not be detained. Furthermore, the detention of children should be ended immediately.
- Alternatives to detention, in which asylum seekers are supported in the community, should be utilised much more frequently.

²⁶ Robert Goodwill (Minister of State for Immigration), 'Immigration Enforcement Directorate: Written question – 53856', 24th November 2016. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-18/53856/>

²⁷ Detention Action, 'Without Detention: Opportunities for alternatives', September 2016. <http://detentionaction.org.uk/wordpress/wp-content/uploads/2016/09/Without-Detention.pdf>