

# The Detention Forum



## Briefing Paper: Lords Debate Report of the Inquiry into the Use of Immigration Detention in the United Kingdom - March 2015

### **Background and summary:**

The first ever Parliamentary Inquiry into the use of immigration detention in the UK<sup>1</sup>, which published its findings on 3<sup>rd</sup> March, has concluded that the UK detention system is in crisis and a wholesale review is needed. The Inquiry Panel was chaired by Sarah Teather MP and was jointly hosted by APPG on Refugees and APPG on Migration. The cross-party Panel highlight that the UK is exceptional in the absence of a time limit on immigration detention, and concludes that the current system is inefficient, expensive and unjust. Importantly, the Panel warns that the problems uncovered in its investigation are such that a holistic overhaul of the system is needed and stipulates that further ‘tinkering’ with the conditions and treatment in detention will not be sufficient to deal with the substantive issues raised.

The Inquiry’s report coincided with a shocking Channel 4 investigation into conditions at Yarl’s Wood and Harmondsworth detention centres. It also comes after a raft of high profile scandals including allegations of sexual abuse at Yarl’s Wood, the death of a frail 84 year old Canadian man with dementia in handcuffs, and a proliferation of human rights breaches where the detention of no less than six mentally ill detainees has been found by the High Court to constitute cruel, inhuman and degrading treatment.

The publication of the Inquiry report was followed by a spate of peaceful protests across the detention estate<sup>2</sup>, including hunger strikes in Dungavel, Harmondsworth and Colnbrook, with many detainees expressing their own outrage at a system that detains without time limit. The Inquiry’s findings and the events of recent weeks add further weight to the mounting body of evidence from statutory monitoring bodies, international human rights mechanisms, medical professionals and expert NGOs that there are endemic problems with detention and they demonstrate that the time is ripe for urgent, fundamental, reform.

The Government is yet to respond fully to the Inquiry’s findings. To date, their response has hinged on the sudden announcement of the *Review into the Welfare in Detention of Vulnerable Persons*<sup>3</sup> (the ‘Shaw Review’) to be conducted by the former Prisons and Probation Ombudsman, Stephen Shaw. Crucially the proposed Shaw Review will be unable to deal with the issues raised in the Inquiry Report, as its terms of reference do not include a consideration of the decision to detain. As such, it falls far short of being an appropriate response to the Inquiry’s findings. Similarly the investigation, to be headed by Kate Lampard CBE, into Serco’s work at Yarl’s Wood<sup>4</sup> will only address the issues of conditions at this particularly facility. **It is paramount that the Government acknowledges the importance of the Inquiry’s findings and implements its recommendations for holistic change.**

<sup>1</sup> The *Inquiry into the Use of Immigration Detention in the UK* was jointly conducted by the APPG on Refugees and the APPG on Migration. The report and its executive summary are available at <http://detentioninquiry.com/report/>

<sup>2</sup> See for example <http://www.channel4.com/news/harmondsworth-immigration-detention-centre-hunger-strike> or <http://news.stv.tv/west-central/314329-hunger-strike-at-dungavel-detention-centre-sparks-calls-for-meeting/>

<sup>3</sup> Available at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/402206/welfare\\_in\\_detention\\_review\\_tors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf)

<sup>4</sup> Available at:

[http://www.serco.com/Images/013\\_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review\)\\_tcm3-46380.pdf](http://www.serco.com/Images/013_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review)_tcm3-46380.pdf)

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## ***The Parliamentary Inquiry into the Use of Immigration Detention in the UK:***

The cross-party Panel conducting the eight month review of immigration detention have undertaken the first such review to consider, holistically, the detention system. Other investigations have chosen instead to focus on a specific aspect of detention or group of detainees and have been deemed by observers as insufficient. The findings have resounding implications for the future of immigration detention in the UK, and the government is urged to put in place a mechanism – a Working Group – to implement the panel's recommendations. The Panel concludes that a 'radical shift in thinking' is necessary, in terms of a wholesale change in culture: a move away from the current enforcement based thinking of the Home Office towards community models of engagement. It makes the following 4 key recommendations:

- There should be a time limit of 28 days on the maximum length of time anyone can be held in immigration detention.
- Detention is currently used disproportionately and too frequently. The presumption in theory and practice should be in favour of community-based resolutions and against detention.
- Decisions to detain should be very rare and detention should be for the shortest possible time and only to effect removal.
- The Government should learn from international best practice and introduce a much wider range of alternatives to detention than are currently used in the UK.

The UK is described as an 'outlier', as the only country in the European Union not to have an upper time limit on detention, and this absence of time limit has very serious costs both for the mental health of those detained and the public purse. The Inquiry Panel also recommend that there should be a presumption in favour of community-based resolutions, which focus on intensive engagement with individuals in community settings, rather than relying on enforcement and detention. This can be done by learning from best practice internationally where alternatives to detention are used, which not only allow individuals to live in the community, but which also allow the government to maintain immigration control at a much lower cost to the state.

The panel also notes the following issues and is clear that many of these problems will be drastically reduced if the key recommendations are implemented:

- it is unacceptable that individuals being held under immigration powers are increasingly being held in conditions tantamount to high security prison settings;
- female victims of rape and sexual violence should not be detained and pregnant women should never be detained for immigration purposes;
- the Panel were shocked by the personal testimony they heard of people suffering from mental health conditions who were detained for prolonged periods of time and conclude that current Home Office policy puts the health of detainees at serious risk;
- screening processes must be improved to ensure that victims of trafficking are not detained and that when GPs complete a Rule 35 report they make a clinical judgement over whether any injuries are consistent with the account of torture; and
- current arrangements for challenging continued detention are not working and that many individuals in detention are unable to access high quality legal advice.

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## ***The Review into the welfare in detention of vulnerable persons (Shaw Review):***

On 18<sup>th</sup> March, James Brokenshire stated in Parliament that there were no plans to review the ‘use of detention overall’ and referred to the Shaw Review<sup>5</sup>. Mr Brokenshire made no mention of the concluding remarks of the Inquiry report which state:

*“We welcome the review into the welfare in detention of vulnerable persons that was announced in February 2015, shortly before this report was published. However, the narrow scope of the review, particularly the restriction that it will not look at decisions to detain, means that it will not be able to deal with the issues raised by this inquiry and others”<sup>6</sup>.*

The Shaw Review, as set out in its terms of reference, is based on the premise that the principle of detention is ‘not in question’<sup>7</sup>. It is a distinct piece of work with a focus on the safeguarding issues in relation to the application, and ‘appropriateness of current policies and systems’. As such it will not address the Inquiry’s findings of a disconnect between the official guidance on detention – which states that it should be used sparingly and for the shortest period of time – and the current practice, which involves holding many thousands of people each year, with many instances of unlawful detention. While the Shaw Review will look at how the most vulnerable in detention are treated, and as such is to be welcomed, it will by definition deal with the issues arising once someone is already held. Put simply, there is a risk that the Shaw Review will divert resources to a review of existing policies, leaving the broader questions regarding the appropriateness or otherwise of our current use of detention unanswered.

## ***Independent Review of Serco’s work at Yarl’s Wood by Kate Lampard CBE:***

Similarly, the response by Serco to the findings of the Channel 4 investigation was to appoint Kate Lampard CBE to review ‘their work’<sup>8</sup> at Yarl’s Wood detention centre. Yarl’s Wood has been a media story for several months now, with legitimate reasons. There are many vulnerable women held, many of whom have experienced sexual violence, and a review of their conditions and treatment is long overdue, particularly as the Government has been reticent to allow observers, including the UN Special Rapporteur on the rights of women<sup>9</sup>, into the Centre in the past. However welcome this review is, it is unfortunate that in focusing on one aspect of the detention system it will once again become part of a piecemeal approach, bypassing the fundamental questions asked by the Inquiry report in relation to the absence of a time limit and the need to investigate community based alternatives.

## ***Looking ahead: the need for systemic change and not “tinkering”:***

Neither the Shaw Review nor the Independent Review of Serco’s work at Yarl’s Wood addresses the key recommendations made by the Detention Inquiry Panel.

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<sup>5</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-03-12/227497/>

<sup>6</sup> <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> at page 4

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/402206/welfare\\_in\\_detention\\_review\\_tors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf)

<sup>8</sup> [http://www.serco.com/Images/013\\_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review\)\\_tcm3-46380.pdf](http://www.serco.com/Images/013_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review)_tcm3-46380.pdf)

<sup>9</sup> <http://www.theguardian.com/uk-news/2015/jan/03/yarls-wood-un-special-rapporteur-censure>

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In addition, we understand that the Home Secretary has asked officials to ‘initiate a detailed piece of work on future requirements, to take account of recent and potential legislative changes’. This is stated in a letter from James Brokenshire MP to Nicola Blackwood MP dated 11<sup>th</sup> March, regarding the proposed (and now on hold) expansion of Campsfield Detention Centre. The letter mentions consideration being made to the wider ‘requirements of the detention estate including capacity purpose and location<sup>10</sup>’, yet the following questions remain:

- What is the proposed format of this review? Who will lead it?
- What is the proposed timeframe and terms of reference?
- Specifically, what steps it will take to answer the questions raised in the Parliamentary Inquiry:
  - Will the review consider how, not whether, a time limit is going to be implemented?
  - Will the review consider how new forms of community based alternatives to detention can be developed in the UK?

**A stakeholding process which engages with the substantive issues raised in the Inquiry Report and acts as a stepping stone towards a radical reform of the system would be welcomed. In fact, the Inquiry Panel states:**

*“Given the scale of the task, we recommend that the incoming Government after the General Election should form a working group to oversee the implementation of the recommendations of this inquiry. This working group should be independently chaired and contain officials from the Home Office as well as representatives from NGOs in order to widen the thinking and approach. The working group should produce a timeplan for introducing a time limit on detention and the creation of appropriate alternatives to detention, drawing on the best practice that is already in place in other countries.”*

The proposed reviews, though welcome, merely tinker with the immigration detention system that is fundamentally flawed. Though it is a huge task, there is a precedent. The Coalition Government radically transformed the way families with children are detained; as a result of a change in the process fewer families with children now go through detention, and those that do spend a much shorter period of time in detention. In fact, there is now a de facto detention time limit of 72 hours for most such cases. We urge the government to work with others to begin the process of systemic reform – a more towards an engagement focused system which fully utilises community-based alternatives to detention - so that a time limit on immigration detention and other significant changes can be introduced.

## **About the Detention Forum:**

The Detention Forum is a network of over 30 organisations who are working together to challenge the UK’s use of immigration detention. We have three objectives:

- To put a time limit on detention
- To end the detention of vulnerable people
- To improve the judicial oversight of detention

For further information, please contact Eiri Ohtani, Coordinator, The Detention Forum  
c/o Refugee Council PO Box 68614 London E15 9DQ

[detentionforum@gmail.com](mailto:detentionforum@gmail.com)

[www.detentionforum.org.uk](http://www.detentionforum.org.uk)

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<sup>10</sup> Correspondence by letter from James Brokenshire MP, to Nicola Blackwood MP, 11<sup>th</sup> March 2015