Alternatives to detention
Frequently Asked Questions

July 2018

More and more people, organisations and institutions in the UK are interested in learning about alternatives to detention as a strategy to reduce states’ use of immigration detention. There are a number of reports that offer in-depth investigation of this subject but fewer resources offering an introductory overview. Alternatives to detention is a complex concept and even those advocating have found it challenging to communicate clearly.

This document is written for those who are new to the topic of alternatives to detention and tries to answer some of the most frequently asked questions. It is not intended to replace other in-depth reports: if you are interested in the topic, we strongly recommend the following reports which should be read in full. It also incorporates quotes from the following people, among others:

→ Freed Voices, a group of male experts-by-experience at Detention Action who have lost over 20 years of their lives to immigration detention and other sources

→ Tony McMahon, Community Support Coordinator at Detention Action who is working on the Community Support Project, an alternative to detention pilot for young migrant men with previous convictions and barriers to removal.

There are three reports on alternatives to detention we recommend:

There Are Alternatives: A handbook for preventing unnecessary detention (revised edition) (2015) by the International Detention Coalition

Without Detention: Opportunities for alternatives (2016) by Detention Action

The Way Ahead: An asylum system without detention (2017) by Women for Refugee Women

Alternatives to detention is an evolving area of social policy. We might therefore amend this document in the future, in response to the latest developments.

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WHAT ARE ALTERNATIVES TO DETENTION?

Globally speaking, the term ‘alternatives to immigration detention’ does not have a universally established legal definition. However, in the context of the international human rights framework, they are an essential safeguard against arbitrary detention. Deprivation of liberty can expose individuals to a serious risk of rights violation, so there is recognition that less harmful options must be considered before the state resorts to using detention. The term ‘alternatives to immigration detention’ is not a prescriptive concept either; many interpret it differently, influenced by their national and regional contexts and practices. Reflecting this diversity and fluidity, the International Detention Coalition interprets it very broadly as “Any law, policy or practice by which persons are not detained for reasons related to their migration status”.

There can never be full agreement on what constitutes an alternative to detention, as different things can be alternatives in different countries. Consequently, it can be more useful to think of alternatives as a strategy for reducing detention. A given policy can be an invaluable tool in reducing detention in one country, whilst being a routine part of the immigration system (and not meaningfully an alternative to detention) in another country.

The problems with immigration detention are well known. It’s harmful, expensive and often ineffective. Incarceration in detention centres does not help people to go through their immigration process and work towards concluding their cases with dignity. Many advocates around the world are therefore exploring how community-based alternatives to detention can potentially take deprivation of liberty out of the immigration system.

In particular, a lively discussion on alternatives to detention has been taking place at the global level.

For example, the International Detention Coalition developed the Community Assessment and Placement (CAP) Model, a framework that brings together many of the alternatives to detention mechanisms their research identified. It is described as ‘a tool for governments, civil society and other stakeholders to build systems that ensure detention is only used as a last resort and that community options result in optimal outcomes.’ IDC’s research is often referred to by international institutions and the report Without Detention: Opportunities for alternatives explores how the CAP model can be applied to the UK context.

The Office of the United Nations High Commissioner for Refugees (UNHCR) is also working with governments across the world to promote alternatives to detention, as part of their ‘Global Strategy – Beyond Detention 2014-2019’ programme.

1 International Detention Coalition (2015), There Are Alternatives, p.V
WHAT IS WRONG WITH DETENTION AND IS THERE AN INTEREST IN ALTERNATIVES?

Currently, every year, roughly 30,000 people are warehoused in prison-like conditions for an indefinite period of time. The financial cost is huge. The human cost is immeasurable. There is a crisis of harm in detention; it has been reported that there were eleven deaths in 2017\(^2\) and the rate of suicide attempts is up to one a day.\(^3\) There is mounting evidence that indefinite detention causes as well as exacerbates mental health issues.

From within the confines of detention, inadequate healthcare, restricted access to legal support and emotional counsel can severely hamper individuals’ ability to progress their own immigration cases.

“Indefinite detention is a torture, it melts your brain. I’ve seen intelligent people forget how to write their names inside. Healthcare has everyone drugged up on sleeping pills. You forget court dates, you don’t trust anyone, even your solicitor or visiting groups. You confuse your story, you get in fights. Ultimately, your claim suffers. It is a vicious cycle.”

Gabriel, Freed Voices

“You are handcuffed inside detention when it comes to access to your legal rights. Poor quality solicitors + 10 minute consultation slots + restricted internet use + bad telephone network + no access to evidence = no case.”

William, Freed Voices

Alternatives are about supporting migrants in the community, in a non-custodial setting, providing them with individualised assessment, equipping them with better tools to resolve their cases positively, and helping them to explore all the options available to them. It is this humane and person-centred approach that is drawing people’s attention.

“‘They say I must stay inside for ‘public good’? Outside the Verne I am good. Outside the Verne I am myself. Outside the Verne I am healthy. Outside the Verne I volunteer. Outside the Verne, I know it’s not easy. But inside the Verne, everyone loses.”

Mo, Freed Voices

In addition, community-based alternatives, by virtue of the fact that they are in the community, do practically guarantee some freedoms that detention cannot. In the community, there is more freedom to access support available from families, friends and community groups and it is easier to work on their legal cases. Needless to say, individuals can also avoid the harm that arises from deprivation of liberty in prison-like detention centres.

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\(^2\) The Guardian ‘Ombudsman called in after death of 11th immigration detainee’ 12 December 2017

\(^3\) The Independent ‘At least one person a day is self-harming in UK detention centres’, 2 April 2018
https://www.independent.co.uk/news/one-person-a-day-selfharming-uk-detention-centres-a8285206.html
ARE THERE EXISTING ALTERNATIVES TO DETENTION IN THE UK? WHY AREN’T THEY ENOUGH?

The Home Office argues that alternatives to detention exist in the form of reporting, electronic monitoring, and release on bail. These are routine parts of the immigration system, and do not lead to a systemic reduction in the use of detention in the long-run for a number of reasons:

1. They do not prevent detention and they do not reduce the size of the detention estate or the scale of the government’s use of detention. Bail, for example, is a release mechanism for people already in detention and does not reduce the number of people going into detention or detention capacity.

“When I was released on bail, my cell-mate called me to tell me they’d filled my bed within the hour. The numbers didn’t go down, they went sideways.”
Kasonga, Freed Voices

2. They do not address the drivers of detention by enabling people to work towards case resolution. Regular reporting, for example, is not used to sustain a dialogue with individuals, support them through the process, or seek to resolve their case. They are effective in enabling the Home Office to maintain contact with migrants, and there is evidence that absconding rates are low. However, they do not encourage migrants to keep in touch, as individuals are not proactively supported to work on their immigration cases towards conclusion and in fact may encourage absconding if they are experienced as making compliance difficult and unpleasant.

“The most you’ll get at reporting is a dirty look. I have never ever heard from my case-worker, pre, during or post-detention.”
Fred, Freed Voices

3. They alienate rather than engage people going through the immigration process. Electronic tagging, for example, is still firmly rooted within the control and enforcement model. It still assumes a high degree of coercion is necessary and actively invites distrust between migrants and the Home Office.

“When I finished my sentence in prison I thought I’d be free. Instead, they banged me up in detention for two and half years. When they released me from detention I thought I’d be free. Instead, they put me on tag under curfew. At every stage, I’ve been treated like an animal that has to be caged.”
Michael, Freed Voices

“We need to ‘be nicer’; we need to learn how to queue. If you want to see a real queue you should come down to Beckett House in London Bridge. Every day – in rain, wind and snow – hundreds of people stand in line, waiting to report to the Home Office. Come, and you will see the fear, mistrust and fatigue in their faces.”
Ajay, Freed Voices

HAS THE GOVERNMENT ALREADY TRIED ALTERNATIVES?

In the 2000s, the Home Office conducted two alternatives to detention pilots for families in the asylum system at Millbank and Glasgow. Neither produced positive outcomes in terms of the individual’s welfare, voluntary return rates and/or the engagement of families themselves.\(^5\)

There are many reasons for this:

- the pilots only began once families’ asylum applications had been refused, and focused exclusively on returns, rather than exploring all potential options.
- the comprehensive needs of those families involved were neither sufficiently assessed nor addressed.
- families were transferred at the very end of the asylum process, away from their communities and support structures, inviting distrust and distress.
- neither pilot effectively sought to involve or engage civil society.

\(^5\) Detention Action (2016) Without Detention. See Chapter 3 for more details

**ALTERNATIVES WORK WHEN ASYLUM-SEEKERS AND OTHER MIGRANTS:**

- are treated with dignity, humanity and respect throughout the relevant immigration procedure
- are provided with information about rights and duties under the alternative to detention and consequences of non-compliance
- are referred to legal advice including on all legal avenues to stay
- can access adequate material support, accommodation and other reception conditions
- are offered individualised ‘coaching’ or case management services.

UN High Commissioner for Refugees (2015), Options Paper 2: Options for governments on open reception and alternatives to detention
HOW DO YOU MONITOR QUALITY ON AN ALTERNATIVE TO DETENTION PROJECT AND HOW DO YOU MAINTAIN IT WHEN IT IS ROLLED OUT ON A MASS SCALE?

High quality case management is central to any effective alternative to detention project. Any such project needs to ensure that it provides tailored support that meets the needs of individuals. Case managers, who deliver case management, should be independent from the decision makers and from the government departments.

Foundations of quality case-management incorporate measures that ensure individuals' well-being and dignity are protected as they engage with case managers and the programme.

They include early intervention and face-to-face contact; regular assessment and review; confidentiality and information management; consultation of key stakeholders; exploration of all available options to empower individuals to make decisions; clear roles and expectations; and trust-building.

What is case management?
Case management is a social work approach which is ‘designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs’. Many countries use this approach in their alternatives to detention programmes, including Sweden and Australia. In terms of overall approach, alternatives can broadly be divided into those that rely on reduced degrees of coercion and those that focus on engagement with migrants to promote cooperation with immigration systems. Case management models involve a case manager, who is not a decision-maker, providing a link between the individual, the authorities and the community. The case manager ensures that the individual has access to information about the immigration process and can engage fully, and that the government has up-to-date and relevant information about the person.

Detention Action (2016), Without Detention, p.26

OUTCOMES:

- Informed decision making
- Timely and fair case resolution
- Improved coping and wellbeing
- Avoid unnecessary and wrongful detention

THE CASE MANAGEMENT PROCESS:

1. Screening
2. Assessment
3. Case planning
4. Intervention
5. Case closure

Regular review

Source: International Detention Coalition (2015), There Are Alternatives, p. 49
Detention Action’s Community Support Project has shown that, when these case management principles are followed, alternatives can work for even the most complex situations, those people with previous convictions with barriers to return.

Detention Action Community Support Project
The Detention Action Community Support Project has been working since April 2014 with male migrants with previous convictions aged 18 to 30, who have barriers to removal and have experienced or are at risk of long-term detention. Participants had been detained for periods ranging from three months to four years, following completion of prison sentences and often have complex needs. After the person has been admitted to the project following a risk assessment, the project coordinator and the participant draw up a transition plan which sets out goals, actions and steps the participants can take. The project coordinator contacts the participant at least once a week, but the intensity and frequency of engagement varies depending on circumstances and needs. The project coordinator also seeks to address the issues raised by participants by advocating on their behalf to a range of statutory and non-statutory bodies.

Detention Action (2016), Without Detention, pp.51-54

“Feedback from the client on how effectively we are working with them is vital. This is built in to the structure of the support we give and the plan of action they write for themselves upon release. We also have an independent evaluator who helps draw the learning together so we can provide a better service to those people on the project, year by year.”
Tony McMahon, Community Support Co-ordinator

Because maintaining the high quality of case management is paramount, the roll-out of any alternatives to detention pilots on a larger scale should be gradual.

Having said this, community-based alternatives to detention is an evolving area of social policy and there is no set formulation as to how any larger roll-out should be done given that each programme will be context-specific.

AUSTRALIAN EXAMPLE:
Despite its notorious off-shore detention, Australia uses a very different approach on its own territory, including various community-based alternative programmes. After years of a punitive enforcement model with little assessment of individual circumstance or the need to detain, a small NGO called the Hotham Mission initiated an independent alternatives to detention pilot with support from charitable foundations. The learning generated from this project was then used to start conversations with government, of a different kind to the oppositional discourse that had previously dominated dialogue. The Australian government subsequently decided to expand and gradually implement the Hotham Mission’s community-based alternative to detention model on a national level: the programme is run by NGOs including the Australian Red Cross.

Alternatives to detention involve migrants, civil society and the government. Is it possible for migrants and civil society to trust the government when much evidence suggests that their use of detention has been harmful?

“I am fighting for alternatives because after losing two years in detention, I want to see the walls of detention fall.”
Kasonga, Freed Voices

While many understandably regard the Home Office with distrust, the government’s commitment to reduce detention and explore alternatives provides a unique opportunity for a cultural shift. The current immigration system is based on enforcement, coercion and deterrence. Detention Action’s Community Support Project pilot has demonstrated that an NGO was able to encourage the Home Office to agree to release people from detention onto alternatives, even in the most complex circumstances.

For detention to end, it is vital civil society organisations and migrants themselves are involved in shaping alternatives, utilising their profound and practical understanding of migrants’ needs and circumstances and ensuring that their interest is protected. This has to go hand in hand with other changes that will treat individuals with dignity and give them a chance to conclude their cases without fear and intimidation. Given migrant communities’ many years of experience of a punitive enforcement-based immigration system, it is likely to take many years and many processes to change the system’s approach and develop trust in the system.
“In my country I was detained before, so it really used to come up in my head, that I am going to be detained. I used to fear to go to the Home Office, because I feared to be detained. Even when I was having my interview, the only thing I was worried about was detention.”
From Women for Refugee Women’s report

“There have been many times when I’ve been in a room with decision-makers or with MPs or ‘detention policy experts’. I am always amazed about how little they actually understand about the reality of detention and its impacts. It is alarming. It’s like a group of old men making policies about abortion.”
Michael, Freed Voices

Many NGOs already use case-management models which do not carry the label of ‘alternatives to detention’ or ‘case-management’ but support and facilitate proactive case resolution in the community. These organisations have the trust of migrants, and with adequate investment of resources and structure, can support more individuals to engage more constructively with the immigration system.

Without civil society or migrant engagement, alternatives to detention are not likely to work well. Alternatives developed in a void, by governments alone, have tended to focus exclusively on returns, have created even more mistrust and have not proved successful.

“Effective alternatives to detention are only going to work with the building of trust. And you are not going to get the trust of migrants unless you involve them in shaping what alternatives look like. Speaking personally, I would not trust an alternatives to detention project that had not engaged with migrants first, full-stop.”
Michael, Freed Voices

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European Alternatives to Detention Network
The “European Alternatives to Detention (ATD) Network” is a group of European NGOs which aims to reduce and end immigration detention by building evidence and momentum on engagement-based alternatives. The Network brings together NGOs running case management-based alternative to detention pilot projects in four European countries (Bulgaria, Cyprus, Poland and the UK) with regional-level organisations. Detention Action and the International Detention Coalition (IDC) facilitate the Network and the Platform for International Cooperation on Undocumented Migrants (PICUM) leads the Network’s advocacy at the EU-level. The Network is supported by the European Programme for Integration and Migration (EPIM).

www.atdnetwork.org

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6 Women for Refugee Women (2017), The Way Ahead: An asylum system without detention, p.17
WHAT ARE THE PROSPECTS OF PROMOTING COMMUNITY-BASED ALTERNATIVES TO DETENTION IN THE CURRENT POLITICAL CLIMATE?

From whatever political position you approach immigration detention, the arguments for a move away from incarceration towards community-based alternatives are as vital now as they have ever been.

- increases in detention did not reduce asylum applications or irregular migration.
- the emphasis placed on enforcement has resulted in a failure to fully engage those going through immigration procedures, alienating migrants, undermining their dignity and creating mistrust.
- the majority of those detained pending removal are released back into the community, often with their mental health in ruins, their detention serving no purpose.
- the financial cost of indefinitely warehousing people is indefensible, and alternatives to detention are much more cost-effective.

Unsurprisingly then, both the cross-party Parliamentary Inquiry on Detention and the Home Office-commissioned Shaw Review concluded that the current UK detention estate was not only inhumane but inefficient and expensive. Both recommended the introduction of alternatives of detention as the way out.

“The Home Office should demonstrate much greater energy in its consideration of alternatives to detention. I hope that this report will act as a spur to that effect.”
Stephen Shaw, Shaw Review recommendation

In response to these recommendations, and unprecedented cross-party support for detention reform and alternatives, the government has acknowledged the need to reduce the scale and periods of detention. They have not pulled back from that pledge, they simply aren’t pursuing it with enough energy.

Pushing through alternatives to detention will not be easy. It will require a cultural and mental shift from enforcement and coercion to engagement and cooperation, where individuals’ rights and dignity are not violated by deprivation of liberty.

“In 1994, there were 400 people or so in detention. In 2016, around 30,000 were detained. The routine must become the rare. In 1994, it was exceptional to put someone in detention. In 2016, it is exceptional as a migrant in this country to not experience detention, in one way or another, directly or indirectly.”
Kasonga, Freed Voices

Community-based alternatives to detention offer a solution for the government, as it tries to respond to a growing anti-detention movement and implements practical measures to reduce its use of detention.

What is case resolution?
‘Case resolution is focused on finding a permanent or temporary migration outcome. While this responsibility ultimately sits with immigration authorities, case managers can contribute to timely case resolution by identifying legal, practical and personal barriers to likely outcomes and working on shared solutions. Case resolution can draw from a range of solutions, including various visa and departure options.’
International Detention Coalition (2015), There Are Alternatives, p.52

DO ALTERNATIVES STOP REMOVALS AND DEPORTATIONS?

Alternatives are about taking detention and deprivation of liberty out of the immigration system.

Alternatives are not going to remove the entire border control system, eliminate borders or bring an end to removals and deportations. Decisions to grant or refuse right to remain in the UK will continue to be made by the Home Office, whether there are alternatives or not.

Some oppose any alternatives to detention in principle because some of the traditional alternatives, such as reporting, impose some restrictions on liberty. Community-based alternatives to detention that use case management do not automatically require any restriction on liberty. However, case management can be used in conjunction with some restrictions on liberty, such as reporting.

WILL CIVIL SOCIETY ENGAGEMENT IN ALTERNATIVES COMPROMISE THEIR INDEPENDENCE?

This depends on how different organisations choose to be involved but in principle, engaging in the implementation of alternatives should not require NGOs to act in any way against their mandate or the interests of the people they support.

In any alternatives to detention programme, there needs to be a clear understanding about different roles and responsibilities of government and civil society actors. For example, governments are responsible for decision-making on immigration and asylum cases. Civil society organisations running alternatives should be involved in the screening and assessment of needs and risks before individuals are accepted onto alternatives and are best placed to provide case management and support migrants to engage with asylum and immigration processes.

The independence of the case-manager is crucial given that the quality of the trust relationships they develop with migrants is absolutely critical to the success of any alternatives project. Case-managers are not border guards with the power to detain and/or deport; they are there to offer support and advice.

“Really, it’s simple: when someone invests in you as human, you respect them. You respect what they say. It made me think different about running off. If you have a future, you don’t run off. I get my trust back. I haven’t done no re-offending or absconding since I was on the Community Support Project. I feel more calm now. If I have a problem or mental health issue I can get help speaking to the right people. I am better dealing with my own problems.”

Jalloh, Community Support Project
IS THERE EVIDENCE THE INTRODUCTION OF ALTERNATIVES LEADS TO A DECREASE IN THE USE OF DETENTION?

There is nothing automatic about alternatives leading to reduction in detention and that is why it is so important to stress the key objective of alternatives: to reduce detention.

As community-based alternatives to detention are developed, detention becomes less necessary. It then becomes more likely that governments reduce the use of detention and close down detention centres.

AUSTRALIAN EXAMPLE:
Australia implemented alternatives widely for in-country asylum applicants and visa over-stayers from 2006, dramatically reducing the use of detention in the process. Most such migrants with barriers to removal are released on short-term Bridging Visas, which allow migrants to live in the community pending the resolution of their cases. Here, they are supported throughout the asylum and immigration processes by case managers, employed by NGOs, who help migrants to access welfare assistance, housing, healthcare, legal advice, English classes and information on voluntary return. The service is based on a pilot with a group of migrants with high welfare needs and long residence in Australia. The pilot had a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily. Only 7% absconded. The programme cost around AUD38 per day, compared to around AUD125 per day for detention.

ARE THERE ALTERNATIVES TO DETENTION FOR MIGRANTS WHO HAVE PREVIOUS CONVICTIONS?

The detention of people who have completed their prison sentences with barriers to removal has become routine in the UK. Home Office policy allows for their continued incarceration even when deportation is not imminent.

This often results in long-term detention without time limit, a highly inefficient use of Home Office resources given that the longer detention continues, the less chance deportation will ensue: only 32% of those leaving detention after more than a year in 2017 were deported.8

The over-reliance on detention of people with previous convictions also undermines public protection and goes against the principle of rehabilitation. People with previous convictions are frequently detained throughout their period of licence, and are released with little or no notice. As a result, they miss out an opportunity to benefit from probation monitoring and preparation for release aimed at addressing their reoffending risks.

Protracted detention without time limit, with its potentially serious impact on mental health, also undermines the rehabilitative effects of prison. Instead, migrants with previous convictions are frequently released from immigration detention, having missed a chance to receive probation support, with no structured reintegration support in place. It appears likely that this manner of release can only increase the risk of reoffending.

“... I was very, very stressed when I came out of detention. It was like starting from minus-zero. I had nothing. No support at all. I even went to the probation services and begged them to help me like they do other ex-offenders. I knew that they could give me some structure, help me with housing, help me with being a better person. They said because I just come from detention they cannot work with me. I didn’t understand why because I obviously needed it. I was drinking to forget the pain of detention. I was waking up at night. When I saw security guards in Tesco, I was..."

8 Home Office Immigration Statistics October to December 2017 Table 06.
thinking they’re not Tesco, they’re Tascor [the private security company responsible for transferring people in detention]. I was so scared of being re-detained again. Detention destroyed all my trust in the system. It made me think twice about reporting just in case they handcuff me up again. I absconded. I re-offended.”
Jalloh, Community Support Project

Whilst there is no system that guarantees absolute compliance and engagement of every single individual, Detention Action’s Community Support Project is based on established methodologies for managing the risk of re-offending, whilst avoiding long-term detention. The model is based on practices in criminal justice rehabilitation, a field in which managing re-offending risks of people with previous convictions in the community is routine.

“At the end of the first 3-year phase of our Community Support Project shows the following. The rate of absconding on the project is between 0 and 20%. 20 participants (80%), out of 25 who have formally entered the project post-release, remained in contact until the end of the year of support or to date. Five lost contact before completing the year, although it is likely that some did not abscond. Two participants have been convicted of minor offences, a reconviction rate of 8%. 15 people (60%) have become involved in community activities, and seven (28%) have engaged in college courses or volunteering.”
Detention Action

“I’m struggling because I am not allowed to do anything - I’m not allowed to work and I’m surrounded by people who work. But I have to be strong because I don’t want to go back to prison…Detention Action have been very helpful. If it wasn’t for them helping me it would have been easy to slip into the wrong path…Detention Action does more than any other charity here.”
Amadou, Community Support Project:

9 Information provided by Detention Action in April 2018.

This document was jointly created by some members of the Detention Forum.

If you have questions, get in touch with us at detentionforum@gmail.com