

The Detention Forum



Opportunities for alternatives to detention¹ - January 2017

The need for alternatives

The use of detention has repeatedly been repeatedly criticized by official inquiries. The Parliamentary Inquiry into the Use of Detention, held by the All Party Parliamentary Groups on Refugees and Migration, called in 2015 for the introduction of a time limit of 28 days along with a 'wholesale change in culture, towards community models of engagement and better caseworking and decision-making.' The inquiry found that the Home Office is failing to follow its own guidance in using detention sparingly and for the shortest possible period. Instead, the 'enforcement-focused culture' of the Home Office leads it to detain 'far too many people unnecessarily and for far too long.' Crucially, the inquiry called for the development of a much wider range of community-based alternatives to detention.

In response to the Parliamentary Inquiry, the Government commissioned its own review into welfare in detention, led by Stephen Shaw. The Shaw Review reiterated the need for detention reform, urging the Government to begin the process of reducing detention 'boldly and without delay'. The review called for a range of changes, including the application of 'much greater energy' to exploring alternatives to detention, including community support.

In January 2016, the Government accepted the broad thrust of the Shaw report and hinted at a wide-ranging reform programme to reduce the scale and periods of detention,² but to date only piecemeal changes have been introduced. Under parliamentary pressure, the Government used the Immigration Act 2016 to introduce limited changes in law: a time limit of 72 hours for pregnant women, and for the first time automatic judicial oversight of detention every four months for some categories of migrants. **The Government should act urgently to reform the use of detention in line with the recommendation of the Parliamentary Inquiry and the Shaw Review.**

What are alternatives to detention?

The International Detention Coalition (IDC) describes alternatives to detention as 'any law, policy or practice by which persons are not detained for reasons relating to their migration status.' IDC has documented the ways in which States around the world have implemented alternatives to detention, finding that they are more humane, cheaper and more effective.³ The most effective alternatives involve engagement with migrants throughout the immigration process: carefully screening and assessing individuals' needs, vulnerabilities and strengths; considering a range of placement options in the community; and providing one-to-one case management to enable migrants to meet their needs and participate actively in immigration procedures.

The UK continues to make limited use of alternatives to detention. While there is wide use of traditional alternatives such as designated residence and reporting restrictions, there has been little progress in developing alternatives based on engagement with migrants, despite the much stronger evidence base that they are effective. In the context of detention reform, the Government has been silent on the development of community-based alternatives to detention.

¹ This briefing paper summarizes the key arguments contained in Detention Action. 2016. *Without Detention: Opportunities for alternatives* <http://detentionaction.org.uk/wordpress/wp-content/uploads/2016/09/Without-Detention.pdf>

² James Brokenshire (the Minister of State for Immigration), 'Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons: Written statement' - HCWS470, 14 January 2016

³ International Detention Coalition. 2105. *There Are Alternatives* <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>

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Opportunities for alternatives in the UK

The development of alternatives could support the UK to reduce its over-reliance on detention. Alternatives based on engagement, not enforcement, can address the specific drivers of detention use, meeting Home Office objectives without the need of deprivation of liberty. For example:

- 1. Case resolution for migrants in the returns process.** Refused asylum-seekers and migrants with irregular status are frequently detained for removal from the UK, often following raids; where there are barriers to removal, migrants can lose their liberty for protracted periods. Instead, alternatives based on case management could assist migrants to work towards resolving their cases in the community without unnecessary detention. Structured support from communities and NGOs can address Home Office concerns about risks of absconding, and support migrants to either regularise their status or return with dignity without passing through detention. Such an approach should allow detention for more than a few days to be only used in exceptional circumstances.
- 2. Quick processing of asylum claims.** The UK has in the past relied on detention to process asylum claims considered suitable for a quick decision. However, various aspects of the Detained Fast Track have been ruled unlawful by the courts, and the process has been suspended for 18 months, although some detention of asylum-seekers continues. By contrast, other States successfully process claims quickly and efficiently in the community while managing any risk of absconding, demonstrating that the use of detention in such procedures is unnecessary.
- 3. Managing public protection issues of ex-offenders.** Ex-offenders who have finished prison sentences are routinely detained for long periods even where there are intractable barriers to deportation. Yet community-based alternatives to detention based on good practice in criminal justice rehabilitation have proven successful in managing risks of absconding, reoffending and disengagement from the immigration procedures. Detention Action has piloted a small alternative to detention for young ex-offenders with barriers to deportation, at risk of indefinite detention. The project provides structured case management to enable individuals to reintegrate into the community, minimizing the risk of absconding and reoffending. Over 86% of participants complied with the conditions of their release without absconding, while the reoffending rate was 5%. No participants were reconvicted of serious offences.

There is scope for more such cooperation between the Home Office and civil society organisations, supporting migrants to cooperate with immigration systems. Civil society organisations already have a strong focus on engagement with migrants, and have trust relationships that can support migrants to resolve their cases in the community. Many also have specialist knowledge and expertise to meet the complex needs of individual migrants. **The Home Office should commit to working with civil society on community-based alternatives, based on engagement rather than enforcement, in order further to reduce the use of detention and build consensus around immigration policy.**

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The Detention Forum is a network of over 30 organisations who are working together to challenge the UK's use of immigration detention.

Contact: Eiri Ohtani, Project Director, The Detention Forum
detentionforum@gmail.com
c/o Refugee Council, PO Box 68614, London E15 9DQ, UK