

ADVANCE COPY

# A MATTER OF ROUTINE

The use of immigration  
detention in the UK

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*A matter of routine: the use of immigration detention in the UK*

Published by Amnesty International United Kingdom Section

December 2017

[www.amnesty.org.uk/detention](http://www.amnesty.org.uk/detention)

# EXECUTIVE SUMMARY

## A matter of routine: the use of immigration detention in the UK

In the 12 months from June 2016 to June 2017, the UK put 27,819 people into immigration detention. Few of them would have had any idea when they would leave: there is no statutory time limit on detention. For most, detention ultimately lasts up to a few weeks, but some are held for many months and some for years. Most detainees are ultimately released back into the community.

In 2015, a joint inquiry by two All Party Parliamentary Groups (APPG on Refugees and APPG on Migration) found that ‘the UK detains too many people, for too long a time, and that in far too many cases people are detained completely unnecessarily’. This was followed in 2016 by the Home Office-commissioned Shaw review into ‘the welfare in detention of vulnerable persons’. The review argued that the use of immigration detention should be reduced considerably and called for a ‘smaller, more focused, strategically planned immigration detention estate’. On delivering the report to Parliament, the Home Office announced it would institute a package of reforms.

International human rights standards require that immigration detention must only be used as a last resort, yet detention has become a matter of routine for the UK government and the Home Office immigration service. Ministers have repeatedly and knowingly acknowledged their department’s use of ‘routine detention’.<sup>1</sup> This report examines the use of immigration detention powers since the Home Office reforms were announced in 2016. It shows how the routine approach to detention is manifested in policy and practice, and explores its impact on detainees and their families.

‘They came in just before we got the kids up and obviously there’s officers, there’s loads of officers come in every room because they don’t want the person to run away. They’re thinking of their safety, so they’re going to check the whole house and go in every room. But I thought the kids weren’t awake... [later] my son says “Oh Mum, I had a dream that immigration came, Home Office came, and took Dad away.”’

Elaine, British citizen

Our research examined Home Office policy and guidance documents on the use of immigration detention; interviewed detainees, their family members and lawyers that represent them; and examined Home Office detention casework files, obtained through ex-detainees who were pursuing legal challenges for what they alleged was unlawful detention. We found that:

- i) **Detention policy has shifted from detention as a last resort towards detention as routine.** The expansion of the detention estate facilitated this; it appears that the opening and closing of detention centres is the main determinant of the numbers of people detained.
- ii) **Harm is being done to detainees’ mental and physical health.** Interviewees specifically cited the uncertainty of indefinite detention, and their vicarious exposure to the long-term detention of others, as a source of harm. Detention also affects the whole household, not only the detainee. Our research found harmful consequences for adult family members, particularly women, who are left with increased caring responsibilities, and harm to the children of parents who are detained.
- iii) **Detention is often based on flawed decision-making.** Decisions to detain were, in many cases, based on a limited search for and application of information about the person’s case-history; a lack of rigour in applying policy and law when justifying detention decisions; a failure to consider alternatives to detention; and an at-best cursory engagement with the wider context of a potential detainee’s history and circumstances, including the best interests of children affected by the decision.

1 See for example Rt Hon Theresa May, *Immigration Detention: Written Statement, April 2016*; Rt Hon James Brokenshire, *Immigration Bill, Hansard Vol 608 col 1194, April 2016*; Robert Goodwill, *Cedars Pre Departure Accommodation: Written Statement, Hansard col. 53WS, July 2016*.

iv) Once detention has commenced, it is in many cases maintained as a matter of default or convenience. The justifications offered are often based on strained reasoning and unrealistic assessments of the prospect of removing someone from the UK. Casework often seeks to justify continued detention unless release cannot be avoided – reversing the appropriate position of detention as the last resort.

‘I’m sick of telling my children, “Listen, Daddy’s gonna be with you soon. Daddy’s gonna be with you soon.” Every time, when they come and visit me, sometimes my son he doesn’t want to go. I have to say to him, “Listen, Daddy’s gonna be with you in a few hours.” I have to lie to my son. It kills me. It kills me. My children used to be really good in school, but now they have changed completely.’

John, detained for over a year

## RECOMMENDATIONS

The UK has international human rights obligations to ensure that in any given case, immigration detention is necessary, proportionate and used only as a last resort. To bring about the institutional change required to end the Home Office’s routine use of detention, concrete steps are required of the Home Office itself, of the UK government, and of parliamentarians.

### To the Home Office

**Recommendation 1:** Significantly reduce the use of immigration detention, ensuring that far fewer people are detained and that anyone who is detained is held for a far shorter time.

The Home Office has the authority to end its decision makers’ reliance on detention. The 2015 APPG inquiry and the 2016 Shaw review called for reductions in the use and duration of detention.

**Recommendation 2:** To comply with international human rights standards, ensure that the Enforcement Instructions and Guidance documents, and all other relevant detention policy and guidance documents, revert to emphasising that detention is only to be used as a last resort and focusing to a much greater extent on the use of alternatives to detention.

Home Office policy and guidance to its detention decision makers plays an important role in regulating the use of the UK’s broad statutory detention powers.

**Recommendation 3:** Take steps to fulfil the legal duty to treat the best interests of all children affected by immigration detention decisions as a primary consideration.

Decision makers must make greater efforts to take into consideration the full context of a person’s case and give it appropriate weight. This is particularly important in cases involving children, where the Home Office has pre-existing duties to treat children’s best interests as a primary consideration.

**Recommendation 4:** The Home Office should further reduce the immigration detention estate.

The sheer scale of the current detention estate (the institutions where detainees are held) facilitates the routine use of immigration detention. In recent years, the detention estate has begun to shrink, with the closure of two Immigration Removal Centres and (at the time of writing) the announcement of the intention to close a third.

### To the UK government

**Recommendation 5:** Introduce a universally applicable statutory time limit for detention, short enough to constitute an effective constraint on its use.

**Recommendation 6:** To implement universal automatic judicial oversight of detention, replace the automatic bail provisions of the Immigration Act 2016 with those passed in the Immigration and Asylum Act 1999.

Aside from the closure of detention centres, legislation is needed to compel the Home Office to radically reform its use of detention.

## To parliamentarians

**Recommendation 7: Call for a universally applicable statutory time limit and universal automatic judicial oversight to be passed into law.**

Parliamentarians from all parties can play a crucial role in pressing government for these legislative changes.

**Recommendation 8: Following the publication of Stephen Shaw's second report, instigate a new inquiry into the current use of immigration detention, modelled on the 2015 Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration.**

At the time of writing, Stephen Shaw is conducting a return review of the Home Office's response to his initial report. This review is important and welcome, but has a relatively limited focus on the welfare of detainees. Parliamentarians should take a broader perspective on the systemic issues behind the state of the UK's detention system as a whole.

# INTRODUCTION

In the year ending June 2017, the number of people placed in immigration detention in the UK was 27,819.<sup>2</sup> Of these, 23,651 were men, 4,120 were women and 48 were children. With few exceptions, there is no statutory time limit on their detention, meaning that they have no idea when they will leave. For most of them, this indefinite detention ultimately lasts at most a few weeks, but some are held for many months and even years.<sup>3</sup> Most detainees are ultimately released back into the community.<sup>4</sup>

Conditions in detention centres and the impact that indefinite detention has on the people affected by it have been subject to increasing scrutiny in recent years. Between 2011 and 2014, the UK courts found in five cases that the treatment of people in immigration detention in the UK contravened Article 3 of the European Convention on Human Rights (ECHR),<sup>5</sup> that is, the absolute prohibition against torture, inhuman and degrading treatment or punishment. Around the same period, undercover reporting and civil society research began to reveal the particular harms faced by women in detention, many of whom had already been subject to sexual and gender-based violence prior to being detained. Reports consistently found high levels of self-harm, mental health and physical health problems as well as repeated incidents of sexual harassment and abuse from detention centre staff.<sup>6</sup> In 2015, the courts ruled that the Detained Fast Track system for detaining people seeking asylum and processing their cases quickly had been operating unlawfully and the system was suspended.<sup>7</sup> In the same year, a joint parliamentary inquiry into immigration detention undertaken by the All Party Parliamentary Groups (APPG) on Refugees and on Migration found that, ‘the UK detains too many people, for too long a time, and that in far too many cases people are detained completely unnecessarily.’<sup>8</sup>

Immediately before the joint APPG reported, the Home Office commissioned the Shaw review into ‘the welfare of vulnerable persons in detention’.<sup>9</sup> In his report, published in 2016, Mr Shaw called for a ‘smaller, more focused, strategically planned immigration detention estate’<sup>10</sup> and argued that the use of immigration detention should in any event be reduced considerably.

On delivering the report to Parliament the then immigration minister, Mr James Brokenshire, stated that the government accepted ‘the broad thrust’ of the review’s findings and would be instituting a package of reform measures which it expected, ‘to lead to a reduction in the number of those detained,

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2 UK government, *Quarterly Immigration Statistics, ‘How many people are detained or returned’*, 24 August 2017. These were the most recent figures available at time of writing.

3 *Ibid.*

4 *Ibid.*

5 See *S, R (on the application of) v The Secretary of State for the Home Department* [2011] EWHC 2120 (Admin) (05 August 2011); *BA, R (on the application of) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (26 October 2011); *HA (Nigeria), R (on the application of) v Secretary of State for the Home Department (Rev 1)* [2012] EWHC 979 (Admin) (17 April 2012); *D, R (on the application of) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin) (20 August 2012); and *MD, R (On the Application Of) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin) (8 July 2014).

6 Women for Refugee Women, *Detained: Women asylum seekers locked up in the UK*, January 2014; Women for Refugee Women, *I am human: Refugee women’s experiences of detention in the UK*, January 2015; Channel 4, Despatches: *Yarl’s Wood: undercover in the secretive immigration centre*.

7 *Detention Action v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin) (09 July 2014); *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840 (29 July 2015).

8 Inquiry into the Use of Immigration Detention, *Detention Inquiry Panel Members Statement on the Immigration Act 2016 becoming law*, May 2016, [detentioninquiry.com](http://detentioninquiry.com)

9 Home Office/Stephen Shaw, *Review into the welfare in detention of vulnerable persons*, January 2016, [www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons](http://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons)

10 *Ibid.*, para 11.8, p192.

and the duration of detention before removal, in turn improving the welfare of those detained.<sup>11</sup> Mr Shaw has been commissioned to conduct a follow-up review that is under way at the time of writing.

## About this report

For this report, Amnesty International examined the use of immigration detention powers since the government reforms were announced. Detention is used as a matter of routine by the UK government and the Home Office immigration service. Ministers have repeatedly and knowingly acknowledged their department's use of 'routine detention'.<sup>12</sup> Our report shows how this is embedded in Home Office detention policies and practices. We also reveal the impact the routine use of detention has on those affected by it: the women and men who are detained and also their family members.

International human rights standards require that immigration detention must only be used as a last resort (see p7). If the use of detention in the UK is to be substantially reduced and the welfare of those detained is to be better protected, as the government has pledged, then the Home Office's approach to its detention powers must reflect this requirement.

## Methodology

There were two main strands to the empirical research that this report is based on. The first was a series of semi-structured interviews with 16 current and former detainees, all over the age of 18. All had been initially detained or continued to be held in detention after the publication of the Shaw review and the announcement of reforms to immigration detention practice by the Home Office, on 14 January 2016.

The majority of the interviews were conducted over the telephone, as visiting procedures make conducting interviews in person difficult. Potential interviewees were found through a combination of referrals from support agencies and affected individuals. Twelve interviewees were men and four were women – which broadly reflects the proportions of men and women held in detention.<sup>13</sup> The ages of the interviewees ranged from 20 to 51. Between them they had been held at six of the nine currently functioning long-term immigration detention centres, and seven had also been held under immigration powers in prisons after completing a criminal sentence. The shortest period for which an interviewee had been detained was two months and the longest was two-and-a-half years. Four interviewees had been subject to detention more than once. Not all interviewees had a copy of their Home Office records, but where possible, documentation from interviewees' Home Office files was consulted to confirm details given in their accounts.

We make no claims to this sample being statistically representative of immigration detainees as a whole. But we believe that, combined with our other sources discussed below, it illustrates the range of experiences and perspectives on the use of immigration detention since the publication of the Shaw review and the Home Office's pledge to institute reforms.

11 Rt Hon James Brokenshire, *Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons: Written statement* – HCWS470, January 2016 [www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470)

12 For example: 'The Government plan to end the routine detention of pregnant women.' – Rt Hon Theresa May, *Immigration Detention: Written Statement*, April 2016, [hansard.parliament.uk/commons/2016-04-18/debates/1604181000012/ImmigrationDetention](http://hansard.parliament.uk/commons/2016-04-18/debates/1604181000012/ImmigrationDetention); 'The Government have tabled a motion that will place a statutory time limit, broadly in line with that for families with children, which will end the routine detention of pregnant women.' – Rt Hon James Brokenshire, *Immigration Bill*, Hansard Vol 608 Col 1194, April 2016, [hansard.parliament.uk/commons/2016-04-25/debates/16042535000002/ImmigrationBill#1194](http://hansard.parliament.uk/commons/2016-04-25/debates/16042535000002/ImmigrationBill#1194); 'I am proud that the Government have introduced measures to ensure that the routine detention of children under immigration powers is used only in very, very limited circumstances.' – Rt Hon James Brokenshire, *Immigration Bill (14th Sitting)*, Hansard Col 513, 10 November 2015; [hansard.parliament.uk/commons/2015-11-10/debates/ef40657b-193a-4521-8cd3-036b0b24febb/ImmigrationBill\(FourteenthSitting\)](http://hansard.parliament.uk/commons/2015-11-10/debates/ef40657b-193a-4521-8cd3-036b0b24febb/ImmigrationBill(FourteenthSitting)); 'The Government met their commitment to end the routine detention of children for immigration purposes' – Robert Goodwill MP, *Cedars Pre Departure Accommodation: Written Statement*, Hansard Col 53WS, July 2016, [hansard.parliament.uk/commons/2016-07-21/debates/16072152000040/CedarsPre-DepartureAccommodation](http://hansard.parliament.uk/commons/2016-07-21/debates/16072152000040/CedarsPre-DepartureAccommodation)

13 The ratio of men to women entering detention in a year averages at around 7:1, see UK government, *Quarterly Immigration Statistics*, August 2017.

We interviewed six UK-resident adult family members of current or former detainees who had been held since the post-Shaw review reforms were announced. Five of these interviewees were women and one was a man. They included three partners, one brother, one daughter and one mother of current or former detainees.

We also interviewed six lawyers who represent immigration detainees in applications for release from detention and in challenging the lawfulness of their detention. To preserve the anonymity of all our interviewees, extracts from their testimony are presented using pseudonyms and with other identifying information removed.

The second strand of our research was a survey of Home Office detention decision making. Evidence of this can be found in Home Office files of written records, correspondence and internal communications about detainees. Such files are not normally available to independent third parties such as Amnesty International. However, every year detainees and former detainees bring legal cases against the Home Office for what they allege to be the unlawful use of its detention powers. With the consent of the individuals concerned, we obtained case files from their lawyers which contained the detention-related records disclosed by the Home Office for each case. This gave us evidence of the Home Office's decision making and justifications for detention in those cases. We then sought to identify trends, recurring factors and areas of particular concern.

Overall, we looked at 37 case files of immigration detainees, different to those who had been interviewed, whose detention had either begun or been maintained after the post-Shaw review reforms had been announced. The files concerned 26 male detainees and 11 female. All were detained as adults – that is, they were all treated as adults in the decisions to detain them – but two had previously been the subject of age disputes, where the detainees asserted that they were in fact aged under 18. It had been established later that both were indeed under 18 at the time of detention.

The files involved detention at all nine of the UK's long-term detention centres. In 11 cases, the person had also been held under immigration detention powers in a prison following the completion of a criminal sentence. In total, 18 of the cases concerned a person who had been convicted of a criminal offence and given a prison sentence at some stage. The shortest period in detention under immigration powers was 12 days; the longest was 1,345 days.

By definition, in all these cases a decision to detain had been made. We were unable to examine cases in which detention was considered and rejected, as it is not possible for individuals subject to immigration control or their legal representatives to know when this has occurred. Thus there are limitations to the findings we can make. We do not claim that the issues we raise in the report apply to detention casework across the board, as would be possible with a randomised controlled sample. However, we are confident that the issues we raise in this report represent significant and recurring problems in the detention system.

We compared the findings from the detention files with the experience of interviewees, who were not necessarily pursuing claims of unlawful detention, and were sampled differently. Our findings are also consistent with those of other civil society and state monitors of the UK's detention practices over many years. Most importantly, the 37 files we looked at were only a portion of those initially made available to us, as the size of the files (some several thousand pages long) forced us to limit our sample size. These in turn represent a portion of the hundreds of unlawful detention cases brought against the Home Office every year. The most recent available statistics, for the financial year 2014/15, show that the Home Office paid out compensation in 179 such cases.<sup>14</sup> This, with the consistency of findings in our sample, indicates that the files we looked at are far from unusual.

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14 See Rt Hon James Brokenshire MP, *Immigrants: Detainees: Written question* – 33789, Hansard, April 2016, [www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-04-13/33789/](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-04-13/33789/)



## Immigration detention and human rights

Amnesty International's analysis of immigration detention is based in international human rights law.

Everyone, regardless of legal status, has the right to liberty, including protection from arbitrary arrest and detention.<sup>15</sup> In the context of immigration control, this right can only be restricted in certain limited circumstances, described below. A presumption against detention should be established by law and the burden of proof to displace it in a given case must rest on the detaining authorities.<sup>16</sup> Alternative non-custodial measures should always be considered first, and given preference, before resorting to detention.

Immigration detention for the purposes of removal must only be used as a last resort.<sup>17</sup> Any restrictions on the rights to liberty or to freedom of movement for immigration control purposes should be considered only to prevent people from absconding; to verify their identity; or to ensure their compliance with a removal order.<sup>18</sup> Moreover, the principle of non-discrimination requires States to address the unique challenges that women face in detention and to take into account their gender-specific needs.<sup>19</sup> In addition, the best interests of children affected by an immigration detention decision must be treated as a primary consideration<sup>20</sup> and children should not themselves be detained for immigration purposes, as detention is never in their best interests.<sup>21</sup>

Detention is permitted only when the authorities can demonstrate, in each individual case, that alternatives will not be effective and that in such circumstances detention is both necessary and proportionate.<sup>22</sup> In all cases where detention is used it must be on grounds prescribed by law.<sup>23</sup>

Amnesty International has long-standing concerns regarding the use of detention for the purposes of immigration control. Commenting on the global picture, in 2009 we wrote that:

**Despite increasingly forceful statements from a range of international human rights bodies and experts against the routine use of detention as a form of immigration control, detention continues to be a frequent response to violations of immigration laws and regulations, such as unauthorised entry or presence of non-nationals in a host country. The routine or automatic use of detention against irregular migrants, including mandatory detention of irregular migrants, violates both the spirit and frequently the letter of states' international human rights obligations.**<sup>24</sup>

Unfortunately, these comments continue to apply to the use of immigration detention in the UK.

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15 See for example ICCPR, Art. 9(1); UDHR, Arts. 3, 7, 9; HRC General Comment 35; General Assembly Body of Principles, Principle 2; ECHR, Art. 5(1); Refugee Convention, Art. 31; Migrant Worker Convention, Art. 16(1); Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, A/RES/40/144, Art. 5(1)(a); African (Banjul) Charter on Human and Peoples' Rights OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, Art. 6; American Convention on Human Rights, art. 7(1); American Declaration on the Rights and Duties of Man, Art. 1; Arab Charter on Human Rights, Art. 14; UNHCR Detention Guidelines, Introduction.

16 See for example HRC General Comment 35, at paras 18, 19, 21, 62.

17 See for example *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante*, (25 February 2008) A/HRC/7/12 at para 50 [Special Rapporteur on Migrants 2008]; Special Rapporteur on Migrants, 2002, at paras 17, 60, 73; UNHCR Detention Guidelines, Guideline 2, para 14; many and various UN Committee against Torture, *Concluding observations* reports on state parties; many and various UN Human Rights Committee, *Concluding observations* reports on state parties.

18 See for example ECHR Art. 5 (1)(f).

19 OHCHR, *Women and Detention*, September 2014.

20 See UN Convention on the Rights of the Child Art. 3.1.

21 See for example UNHCR, 'UNHCR's Position on the Detention of Refugee and Migrant Children in the Migration Context', January 2017, [www.refworld.org/docid/5885c2434.html](http://www.refworld.org/docid/5885c2434.html)

22 See for example Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Principles 10 and 11; See also Refugee Convention, Art. 31(2).

23 See for example ECHR Art. 5(1).

24 Amnesty International, *Irregular Migrants And Asylum-Seekers: Alternatives To Immigration Detention*, April 2009, [www.amnesty.org/en/documents/pol33/001/2009/en/](http://www.amnesty.org/en/documents/pol33/001/2009/en/)

## The structure of the report

Chapter 1 of the report sets out the legal and policy framework under which immigration detention operates in the UK. We show that alongside a major increase in the UK's capacity to hold immigration detainees since the turn of the millennium, official Home Office policy changed, departing from international human rights standards. The shift was from a nominally restrictive approach that expressly used detention 'as a last resort', to one that encouraged its use as a matter of routine.

Chapter 2 demonstrates, through the words of people directly caught up in it, that routine immigration detention is deeply harmful to detainees and also has harmful ripple effects on their families. On this point, our research contributes to a growing body of research that consistently demonstrates the damage done by indefinite detention.

Chapter 3 focuses on the initial decision to detain, the consideration that goes into it and the oversight of it. It shows that powers to detain are frequently used with insufficient attention to the full facts of the case. This is compounded by flawed reasoning behind detention decisions, a lack of oversight of those decisions by gatekeepers and senior officials, and a failure to consider alternatives to detention.

Chapter 4 examines what happens to people's cases once they have been put in detention. It reveals that in many cases, detention is maintained as a matter of default or convenience, justified through strained reasoning and unrealistic assessments about the prospect of removing someone from the UK. Policies intended to protect detainees are applied restrictively and with scant regard for the best interests of children affected by detention decisions. Even after release detainees and their families often face destitution and onerous release conditions, while living with the threat of re-detention. The report ends with recommendations for the Home Office, wider UK government and parliamentarians.

# CHAPTER 1: FROM RELUCTANCE TO ROUTINE

Since the turn of the millennium, when the UK greatly expanded its immigration detention facilities, the legal and published policy framework for detention has changed. Official Home Office policy moved towards allowing greater use of detention powers and, more recently, government began to weaken the legal controls and other safeguards on that use. The result has been greater, and increasingly inefficient, use of detention. Although more and more people were detained, the majority of detainees are now simply released back into the community.

## Immigration detention in the UK

There are three types of purpose-built facility for immigration detention; detention centres, officially termed ‘Immigration Removal Centres’ (IRCs), ‘short-term holding facilities’ (STHFs) and ‘pre-departure accommodation’. Collectively, these are known as the detention estate. STHFs are divided into residential and non-residential facilities. The latter are often referred to as holding rooms, and are places at ports and reporting centres where people may be detained usually for only a few hours. People can be held in a residential short-term holding facility for a maximum of seven days.<sup>25</sup> Pre-departure accommodation, meanwhile, is defined in the Immigration Act 2014 as ‘a place used solely for the detention of detained children and their families’.<sup>26</sup> This currently exists only at a specialist unit in the grounds of Tinsley House IRC.<sup>27</sup> Detention in pre-departure accommodation is also limited to a maximum of one week.<sup>28</sup>

People may be detained under immigration powers in several other places that are not purpose-built for the task. They may be detained, for example, under escort to and from a place of detention, a court or tribunal, or a port; in police cells awaiting transfer into the custody of immigration officials; or in hospital. Most importantly, prisons have long been used as places of immigration detention.

The majority of detention centres are designated solely for holding male detainees. Women are held at three out of nine centres: Yarl’s Wood IRC, to a limited extent at Dungavel IRC and for a limited period at Colnbrook IRC in a separate unit.

## The legal framework

The powers of officials to detain people for immigration purposes stem principally from the Immigration Act 1971.<sup>29</sup> This Act has been amended and supplemented by a number of further Immigration Acts,<sup>30</sup> but still provides the basic framework under which immigration detention decisions are taken. The Act allows for the use of immigration detention for three purposes only:

- in order for officials to examine a person’s immigration status<sup>31</sup>
- in order to implement a person’s administrative removal from the UK<sup>32</sup>
- in order to implement a person’s deportation from the UK.<sup>33</sup>

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25 Para 4(1), *The Immigration (Places Of Detention) Direction 2014 (No.2)*

26 Immigration Act 2014, s.6(2)(b).

27 See Baroness Williams of Trafford, *Tinsley House Immigration Removal Centre: Written question – HL5390*, [www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-02-09/HL5390/](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-02-09/HL5390/)

28 Immigration Act 2014 Section 6 (2)(b).

29 Particularly Sections 3, 4 and 5 and Schedules 2 and 3 of the Act.

30 In terms of reforms to detention powers, these are the Immigration and Asylum Act 1999; the Nationality, Immigration and Asylum Act 2002; the UK Borders Act 2007; the Immigration Act 2014; and the Immigration Act 2016.

31 Section 4 and paras 2 and 3 of Schedule 2, Immigration Act 1971.

32 Section 4 and paras 8,9,10, 12-14 and 16 of Schedule 2, Immigration Act 1971.

33 Sections 3 and 5 and para 2 of Schedule 3, Immigration Act 1971. In UK law there is an important distinction between the administrative removal of a person without a right of abode or leave to remain in the UK, and the deportation of a person whose presence in the UK is deemed not to be conducive to the public good.

In most instances the 1971 Act does not provide a statutory time limit on the use of immigration detention powers.<sup>34</sup> Immigration detention in the UK is therefore indefinite. The UK courts have imposed their own framework for regulating detention, largely based around the notion of ‘reasonableness’. A person can be lawfully detained only for a period determined to be ‘reasonable’ in all the circumstances. Detention for removal and deportation should end when it becomes apparent that there is little prospect that this will occur within a reasonable period. Home Office immigration officials are required to act with ‘reasonable diligence and expedition’ while the person remains in detention.<sup>35</sup>

In addition, the exercise of detention powers is subject to the requirements of the Human Rights Act 1998, which incorporates into UK law the rights contained in the European Convention on Human Rights;<sup>36</sup> the Borders, Citizenship and Immigration Act 2009, Section 55 of which brings the ‘best interests’ principles of the UN Convention on the Rights of the Child into government immigration functions;<sup>37</sup> and in certain circumstances, provisions in the Immigration (European Economic Area) Regulations 2006<sup>38</sup> and the EU Dublin III Regulation 2013.<sup>39</sup>

In general, statutory immigration powers do not make distinctions between men and women. One divergence from this relates to the issue of the detention of pregnant women, where the Immigration Act 2016 introduced limitations on the use of detention powers. These limitations apply to any woman whom the Home Office ‘is satisfied’ is pregnant. Having satisfactorily proved that she is pregnant, a woman should not be detained unless officials consider that she will be removed from the UK ‘shortly’ or there are exceptional circumstances. In either case a pregnant woman cannot be held for longer than seven days.<sup>40</sup>

Aside from this, with very few exceptions, any adult whose case immigration officers reasonably believe fits the purposes listed in the Immigration Act 1971 may be detained. The issue then becomes when and why these wide powers are used. The power to detain someone for immigration purposes is discretionary, which means immigration officials can choose not to exercise that power.<sup>41</sup> Indeed, the legal framework under which detention decisions are made starts with a presumption in favour

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34 There is also a limited power to detain a person who is subject to further examination on embarking from the UK for up to 12 hours only pending the completion of an examination, under Schedule 2 para 16(1B) of the Act. More recently, detention time limits have been imported into the 1971 Act via amendments in the 2014 and 2016 Immigration Acts. The 2014 Act brought in statutory limits for the detention of unaccompanied children, which was to take place only in a short-term holding facility and only for a maximum of 24 hours (s5(4) Immigration Act 2014). It also put the ‘family returns process’ on a statutory footing, which included a maximum time limit of seven days (with ministerial approval) of children and their families (s6(2) Immigration Act 2014). The 2016 Immigration Act brought in a maximum time limits of seven days’ detention (again with ministerial approval) for pregnant women (s60 (4) Immigration Act 2016).

35 See *Lumba (WL) v Secretary of State for the Home Department* [2011] UKSC 12 (23 March 2011) para 22.

36 Particularly the Home Office’s duties as a public body under Section 6 HRA to act in a way which is compatible with Convention rights.

37 The Section 55 duty to have regard in the performance of immigration functions to the need to safeguard and promote the welfare of children in the UK has been interpreted by the UK’s Supreme Court in line with Article 3(1) of the UNCRC to mean that the best interests of the child must be a primary consideration. See *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 (1 February 2011).

38 The EEA regulations are intended to set out the circumstances under which people with immigration rights under EU law may be detained under the UK’s Immigration Acts.

39 The Dublin Regulation is a system in EU law for establishing the criteria and mechanisms for determining the EU/EEA Member State responsible for examining an application for international protection. It contains specific provisions regarding the use of immigration detention on asylum seekers whose cases are being dealt with under the regulations’ main provisions.

40 S.60, Immigration Act 2016.

41 There are two instances in which the home secretary may be mandated by Parliament to use her discretionary powers of detention, unless certain countervailing factors exist: where a person has been recommended for deportation by a judge sentencing them for criminal offences (para 2(1) Sch 3, Immigration Act 1971) and when a deportation order is made against a person under section 32(5) of the UK Borders Act 2007 (s36(2) of the UK Borders Act 2007). However, in *O v Secretary of State for the Home Department* [2016] UKSC 19 the court held that in para 2 (1) Sch 3 Immigration Act 1971 cases there is no mandate for detention but a power which is limited by the Hardial Singh principles and the requirement for the home secretary to consider whether to exercise her power of release in accordance with her policy.

of the liberty of the person. It is for the immigration authorities to justify detention notwithstanding that presumption.<sup>42</sup>

There is thus nothing inevitable about immigration detention, nor about the scale of its present-day use in the UK. Any increase in the numbers of people detained or expansion of the detention estate is the result of choices made by officials and ministers to operate the UK's detention system in a particular way.

## Home Office detention policy

The broad legal framework set out above provides the basis for the Home Office's published policy on when detention powers should and should not be used, and how to review ongoing detention. This in turn provides the basis for caseworkers to determine who among those liable to immigration control will actually be detained.<sup>43</sup>

The main body of relevant policy is currently Chapter 55 of the 'Enforcement Instructions and Guidance' (EIG). This sets out 'general grounds for detention' and protections for particular groups for whom detention is generally regarded as inappropriate (for Home Office policy on individuals regarded as 'vulnerable', see box below).

### Chapter 55.10 and the Adults at Risk policy

Home Office policy has long stated that immigration detention is inappropriate for certain people. Until recently this branch of detention policy was Chapter 55.10 of the EIG. It listed particular categories of person, such as victims of torture or trafficking, and people whose medical needs could not be satisfactorily met in detention. The policy stated that people falling under these categories were 'normally considered suitable for detention in only very exceptional circumstances'.

This policy relied on the notion that certain categories of particular 'vulnerability' could be identified effectively. However, a key principle of the *Shaw Review into the Welfare in Detention of Vulnerable Persons* was that 'vulnerability' is intrinsic to the very fact of detention: by its nature detention undermines welfare and increases vulnerability to harm. Shaw also found that the Chapter 55.10 system of categories did not sufficiently allow for 'vulnerability' to be assessed 'individually and holistically' and did not reflect the 'dynamic nature of vulnerability'.

In response to these findings, in September 2016 the Home Office revised Chapter 55.10 and introduced a new 'Adults At Risk' policy (ARP). This policy purported to address Shaw's concerns by shifting the focus from whether a person fitted within a particular group, towards an assessment of whether detention would be harmful to them. Particular groups were still listed, such as victims of sexual or gender-based violence, pregnant women and victims of torture, but these groups were taken as indicators of likely harm in detention for whom there would be a presumption against detention. They were combined with a catch-all provision for other circumstances where harm caused by detention was evidenced. The Home Office's express intention was that this policy change would result in fewer people designated as 'vulnerable' being detained. (For more on the ARP see p37.)

Chapter 55 of the EIG is regularly revised and updated. Its predecessor document, the Operational Enforcement Manual (OEM),<sup>44</sup> published in December 2000, was the last to be issued before the then Labour government embarked on its expansion of the detention estate. A comparison of the two shows how published policy has shifted in that time. It reveals two major features of change:

42 See Lord Scarman in *Khawaja* quoting Lord Atkin, "that in English law every imprisonment is prima facie unlawful and that it is for a person directing imprisonment to justify his act." *Khawaja v Secretary of State for the Home Department* [1983] UKHL 8 para 62.

43 See Denholm, G and Dunlop, R, *Detention Under the Immigration Acts: Law and Practice*, (OUP: 2015) p8.

44 Chapter 38 of the Operational Enforcement Manual (OEM). This was renamed in April 2008, when the immigration work of the Home Office underwent a series of reforms.

## i) Moving towards detention as routine

In 2000, the OEM stated that detention was used ‘with regret’, and gave a commitment that it would be used only ‘as a last resort’, ‘for the shortest possible time’ and that the Home Office aim was to use detention only ‘at the end of the [immigration] process’.<sup>45</sup> Although at the time there were doubts about the implementation of these principles,<sup>46</sup> these statements broadly accorded with international human rights standards.<sup>47</sup>

However, these principles have now been radically revised. All talk of ‘regret’ over the use of detention has been removed and replaced with an assertion that immigration detention ‘must be retained’ as a tool of immigration control.<sup>48</sup> The commitment to use detention ‘for the shortest possible time’ has been changed to ‘the shortest period necessary’, emphasising immigration control functions rather than liberty.<sup>49</sup> The aim of using detention only at the end of the immigration process has also been removed, with no substitute. Indeed, later passages of the current EIG raise the possibility of keeping people in detention even after they have won a Tribunal appeal but when the Home Office is looking to pursue the case further through the courts.<sup>50</sup>

The shift from a published policy expressing reluctance to detain to one that facilitates routine detention is further demonstrated by the relaxation of procedures for detention decision making and oversight. The OEM of 2000 stated that reviews of ongoing detention would be conducted weekly and that for continued detention to be justified, it would have to be deemed ‘essential’.<sup>51</sup> In the current version of the EIG, this is downgraded to monthly reviews and the ‘essential’ test has been replaced by a vaguer requirement that the review demonstrate ‘a robust’ consideration of the ‘removability’ of the detainee.<sup>52</sup> Likewise, the definition of long-term detention has slipped. The OEM requires that reviews of detention be conducted by someone of the seniority of Deputy Director level or above for any detainee held longer than two months.<sup>53</sup> Under the EIG, a Deputy Director would step in only after nine months.<sup>54</sup> In the OEM the detention of women was dealt with as a ‘special case’, separate from the general detention criteria, requiring the approval of senior officials due to limited detention space.<sup>55</sup> However, in the EIG this requirement has been removed. While a subsection on the detention of women still exists, it only refers to the policy on the detention of pregnant women (see p10).

Perhaps most important, the OEM’s commitment to immigration detention being used ‘as a last resort’ has been removed. Instead, the EIG requires that detention be used ‘sparingly’.<sup>56</sup> This guidance takes emphasis away from an individual’s particular circumstances and replaces it with a policy consideration about the overall use of detention. The shift from ‘last resort’ to ‘sparingly’ departs from international human rights standards and undermines the principle that detention should be used only when strictly necessary.

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45 See OEM, Chapter 38 – ‘Detention/temporary release’, 21 December 2000 para 38.1.

46 See for example Lord Avebury, Immigration and Asylum Bill House of Lords debate, 20 October 1999, Hansard vol 605 col 1247, [http://hansard.millbanksystems.com/lords/1999/oct/20/immigration-and-asylum-bill-1#S5LV0605P0\\_19991020\\_HOL\\_696](http://hansard.millbanksystems.com/lords/1999/oct/20/immigration-and-asylum-bill-1#S5LV0605P0_19991020_HOL_696)

47 See for example *Report of the Special Rapporteur on the human rights of migrants*, Jorge Bustamante, (25 February 2008) A/HRC/7/12 at para 50 [Special Rapporteur on Migrants 2008]; Special Rapporteur on Migrants, 2002, at paras 17, 60, 73.; UNHCR Detention Guidelines, Guideline 2, para. 14; many and various UN Committee against Torture, *Concluding observations* reports on state parties; many and various UN Human Rights Committee, *Concluding observations* reports on state parties.

48 Chapter 55, EIG, 55.1.1.

49 Chapter 55, EIG, 55.1.3.

50 Chapter 55, EIG, 55.12.2.

51 Chapter 38, OEM, para 38.6.

52 Chapter 55, EIG, 55.8.

53 Chapter 38, OEM, para 38.6.

54 Chapter 55, EIG, 55.8 Table 1.

55 Chapter 38 OEM, para 38.7.1

56 Chapter 55, EIG, 55.1.3.

## ii) More detention for deportation

The second broad change in detention policy has been a major increase in focus on detention of ex-offenders facing deportation. The OEM of 2000 says little about this subset of potential detainees. However, in 2006 there came what the media referred to as the ‘foreign prisoners scandal’, in which it was reported that over a thousand ex-offenders had been released from prison without being considered for deportation. This led to legislative change, in the form of the UK Borders Act 2007 which introduced ‘automatic deportation’ for ex-offenders sentenced to one year or more in prison.<sup>57</sup> It was matched by an expansion of the Chapter 55 EIG, focussing specifically on people facing deportation. By 2011 the Independent Chief Inspector of Borders and Immigration reported that:

**the sheer weight of cases resulting in detention is of concern and, in our view, there remains a culture that detention is ‘the norm’. Indeed, one member of staff said, ‘A decision to deport equals a decision to detain’<sup>58</sup>**

Official policy has been developed in a way that encourages this approach. The current Chapter 55 EIG acknowledges the legal requirement that ‘the starting point in these cases remains that the person should be released on temporary admission or release.’<sup>59</sup> It also states that:

**In assessing what is reasonably necessary and proportionate in any individual case, the caseworker must look at all relevant factors to that case and weigh them against the particular risks of re-offending and of absconding which the individual poses**

However, this is greatly outweighed by a series of blanket assertions about ‘the higher likelihood of risk of absconding and harm to the public on release’ of all ex-offenders facing deportation.<sup>60</sup> While the policy acknowledges the existence of safeguards and the possibility of release, it keeps this to a minimum. Caseworkers are instead given a line of guidance that leads strongly towards detention.

This includes the instruction that, ‘**Substantial weight** should be given to the risk of further offending or harm to the public indicated by the subject’s criminality.’ [*emphasis in original*]<sup>61</sup>

This appears to operate as a blanket assumption that having a history of criminality sufficient to meet the deportation criteria will always mean that a person presents a risk of absconding or of harm to the public. This instruction leads to such risks being used to override factors that would otherwise lead towards release, such as having children and other close family ties, or ongoing appeals to remain in the UK. Caseworkers are also told that:

**if detention is indicated, because of the higher likelihood of risk of absconding and harm to the public on release, it will normally be appropriate to detain as long as there is still a realistic prospect of removal.<sup>62</sup>**

They are also instructed that:

**an [ex-offender] will be detained until either deportation occurs, [they] win their appeal against deportation, bail is granted by the Immigration and Asylum Chamber, or it is considered that release on restrictions is appropriate because there are relevant factors which mean further detention would be unlawful.<sup>63</sup>**

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57 UK Borders Act 2007, s.32.

58 Independent Chief Inspector of Borders and Immigration, *A thematic inspection of how the UK Border Agency manages foreign national prisoners*, October 2011, p22.

59 Chapter 55, EIG, 55.1.2.

60 Chapter 55, EIG, 55.1.2 and 55.1.3.

61 Chapter 55, EIG, 55.1.3.

62 Chapter 55, EIG, 55.1.3.

63 Chapter 55.1.3.

The policy, then, calls for individual assessment of risks relating to a potential detainee, but weights that assessment with generalised assumptions about the level of risk attached to all ex-offenders facing deportation and provides no guidance for caseworkers other than that which would justify a decision to detain. The policy enables the Home Office to appear to comply with its legal duties while in practice detention caseworkers are expected to hold in detention all ex-offenders who face deportation at the end of their sentences. This is something that was confirmed to us unanimously in our interviews with lawyers representing people in detention, and reflects the findings of the Independent Chief Inspector of Borders and Immigration in 2011. In effect, people are not released unless the lawful basis for detention no longer applies. (For more on the history of the Home Office's deportation detention policy, see box below.)

### **Blanket detention policy: Secret and unlawful**

Published Home Office detention policy has almost always included reference to a 'presumption of release' or a 'presumption of liberty', even for people facing deportation. In this way the right to liberty is the default position and decision makers must justify departing from it in order to detain.

However, for a period at the height of the foreign prisoner scandal, between April 2006 and 9 September 2008, the Home Office operated a quite different unpublished policy. This was revealed in a letter from the then home secretary, Jacqui Smith, to the prime minister, Gordon Brown:

**Since April 2006, the BIA [Border and Immigration Agency] has been applying a near blanket ban on release, regardless of whether removal can be achieved and the level of risk to the public linked to the nature of the FNP's [foreign national prisoner's] original offence.**

This secret policy only came to light as a result of litigation, during which the secret policy was briefly replaced by a published policy acknowledging the presumption of detention. This was ruled unlawful in the High Court and in January 2009 detention policy reverted, at least in its official form, to a presumption of liberty. The use of a secret policy governing detention decisions that contradicted the published policy was ultimately ruled unlawful by the Supreme Court in the case of *Lumba* [2011].<sup>64</sup>

### **Removing protections and weakening safeguards**

More recently, the government has begun to weaken independent controls on detention, in particular the ability of detainees to secure their release through bail.

The UK has an international human rights obligation to provide detainees with access to an effective remedy for their detention.<sup>65</sup> In addition to bail powers given to Home Office officials of Chief Immigration Officer (CIO) rank and above, the Immigration Act 1971 gives the First Tier Tribunal (FTT) judges powers to grant detainees bail, allowing for their release from detention on fixed conditions subject to review at a set date.<sup>66</sup> FTT bail is thus the main means of securing independent adjudication on a person's ongoing detention<sup>67</sup> and plays a vital role in the UK's detention system.

While other aspects of the UK's immigration control legislation grew more restrictive, the bail system remained largely untouched for many years.<sup>68</sup> Detainees were not provided with automatic

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<sup>64</sup> See *Lumba and Mighty v SSHD*, [2011] UKSC 12 para 6.

<sup>65</sup> Chapter 55, EIG, 55.1.2.

<sup>66</sup> Immigration Act 1971, Sch 2 paras 22, 29, 34; Sch 3, paras 2(4A), 3.

<sup>67</sup> The High Court and other senior courts also retain powers to grant bail or otherwise order release, but this only arises in a small number of cases.

<sup>68</sup> Aside from technical changes to take account of developments in wider immigration law. See for example s62(3)(c) of the Nationality, Immigration and Asylum Act 2002 and s36(4) of the UK Borders Act 2007.



judicial oversight of their detention, but the Home Office justified this on the grounds that they were free to apply for bail.<sup>69</sup> The bail system changed with the Immigration Acts of 2014 and 2016. Under the 2014 Act, immigration judges were required to dismiss without a hearing any bail application made within 28 days of a previous bail refusal, unless the detainee could show that a ‘material change of circumstances’ had occurred.<sup>70</sup> The Act also required judges to obtain consent from the Home Secretary’s representatives before granting bail, if the detainee was set to be removed within 14 days of the bail decision.<sup>71</sup> These reforms diminished judicial power to oversee and regulate detention. The 2016 Act followed this trend by including a provision, not yet in force as of November 2017, that will make it compulsory for immigration judges to impose an electronic tag on a detainee they wish to grant bail to, if that detainee had been detained pending deportation.<sup>72</sup> This requirement will not apply if the Home Secretary’s representative instructs the Tribunal that imposing such a tag would be impractical or contrary to the detainee’s rights under the European Convention.<sup>73</sup>

The government has said that a further key reform in the 2016 Act is set to go into force by the end of 2017. While it appears to enable greater judicial oversight of detention decisions, it represents a lowering of aspirations compared to the Immigration and Asylum Act 1999. Without automatic judicial oversight, the bail system relies on detainees bringing applications. Following pressure from civil society and the growing criticism of the UK’s detention system, the 2016 Act included a clause requiring that a detainee receive a bail hearing after four months in detention, or four months from their last bail hearing. However, these hearings would not occur if the four-month limit fell within 14 days of a planned removal. Moreover, detainees held for deportation rather than administrative removal or examination would be entirely excluded from this process, as would those whose cases were being dealt with by the Special Immigration Appeals Commission.<sup>74</sup> In the 1999 Act, Parliament voted to introduce automatic, universally applicable bail hearings on the eighth and 36th days of detention.<sup>75</sup> These provisions were never brought into force and were later withdrawn.<sup>76</sup>

For many years, a further safeguard existed for detainees who were held in the Detained Fast Track while making an asylum claim, through the supervision of the expert therapeutic foundations Freedom from Torture<sup>77</sup> and the Helen Bamber Foundation. These specialist organisations have an established expertise in providing medical, psychiatric and psychological support to victims of torture and related human rights abuses. A concession in asylum policy called for detainees in the Fast Track who needed to be assessed or taken on as patients by the Foundations to be released in most circumstances.<sup>78</sup> However, after the Detained Fast Track was suspended in 2015 and replaced with the Detained Asylum Casework model this concession was removed. Shortly after the 2016 Act was passed, the Home Office introduced its Adults at Risk policy (see box p11). Contrary to the spirit of the ARP, an indication from one of the Foundations that they needed to assess someone is no longer generally treated as sufficient to secure an asylum seeker’s release as it is not regarded as indicating that continued detention would harm the detainee.

Thus the shift in Home Office policy towards routine detention has been followed by a reduction in safeguards and independent oversight for detainees.

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69 This justification continues to be used. See eg *JN v the United Kingdom (Application no. 37289/12)*, ECtHR, para 67.

70 Immigration Act 2014, s7(3).

71 Immigration Act 2014, s7(2).

72 Immigration Act 2016 Sch 10 para 2(3)(a).

73 Immigration Act 2016 Sch 10 para 2(7).

74 See Immigration Act 2016 Sch 10 para 11.

75 Immigration and Asylum Act 1999, s44.

76 See Nationality, Immigration and Asylum Act 2002 s68(6).

77 Formerly the Medical Foundation for the Care of Victims of Torture.

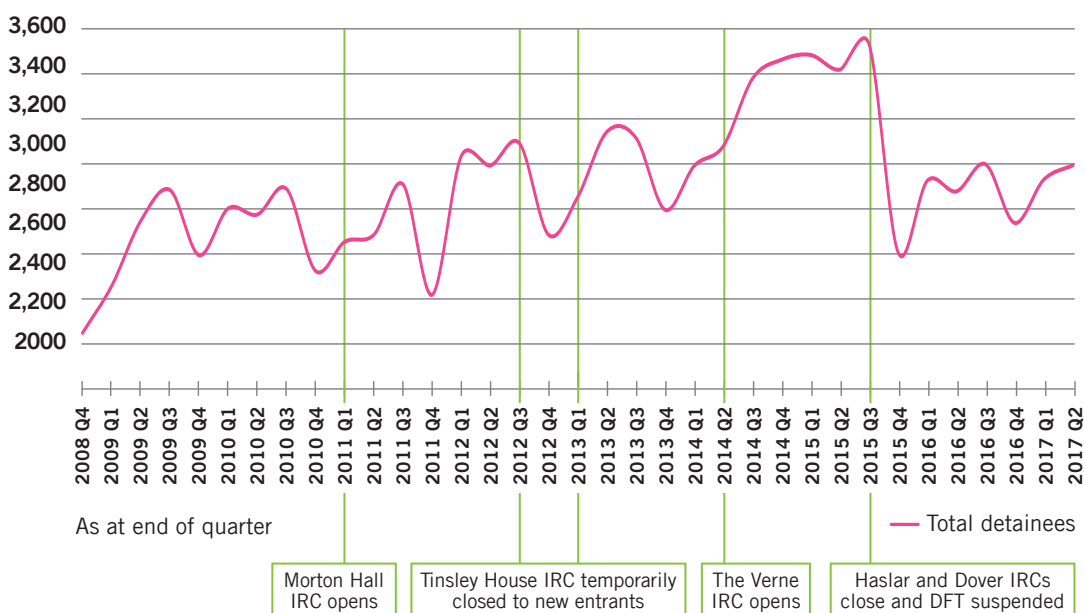
78 See *Asylum Policy Instruction, Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico Legal Report Service*, July 2015, para 2.11.

## Trends in immigration detention

In 2000 the detention estate could hold 475 people, with another 200 or so held under immigration powers in prisons.<sup>79</sup> By 2014, when the Verne IRC opened, there were 11 long-term detention centres with a capacity of over 3,800.<sup>80</sup> As of November 2017, this has now been reduced to nine centres, with a further closure due at the end of the year.<sup>81</sup> Today, the detention centres can hold 3,537 people, with additional capacity in the short-term holding facilities. In addition, prisons continue to be used for immigration detention purposes. The Home Office does not divulge the total capacity in prisons, but a recent snapshot survey found 360 people held in prison solely under immigration powers.<sup>82</sup>

The number of people held in detention grew as the detention estate grew. As one example, the first snapshot survey of numbers held in detention on a given day, published in 2001, found 170 women detained.<sup>83</sup> Following the opening of Yarl's Wood and Dungavel centres, these snapshots have averaged 311 women detained on a given day in each quarter over the last five years.<sup>84</sup> In the last five years overall numbers reached record levels, peaking in 2015. They dropped again after the closure of two detention centres and the suspension of the Detained Fast Track (DFT) asylum system, following court rulings that it was operating unlawfully.<sup>85</sup> Since then, the number of detainees has hovered around 2,900. (See Chart 1)

**Chart 1: Number of people held in immigration detention centres in the UK, 2008-2017**



As can be seen, fluctuations in the figures tend to relate to periods in which a given centre was either opened or closed or there was significant court intervention.

79 See Chapter 38, OEM, 38.11.1.

80 See for example Refugee Council, *Detention in the Asylum System*, March 2015.

81 The Verne IRC is scheduled to return to be operating as a prison. See for example Dorset Echo, *Portland Immigration Removal Centre, the Verne to revert to men's prison*, 11 October 2017

82 UK government, Quarterly Immigration Statistics, *How many people are detained or returned*, 24 August 2017.

83 Home Office, *Control of Immigration: Statistics United Kingdom* 2001.

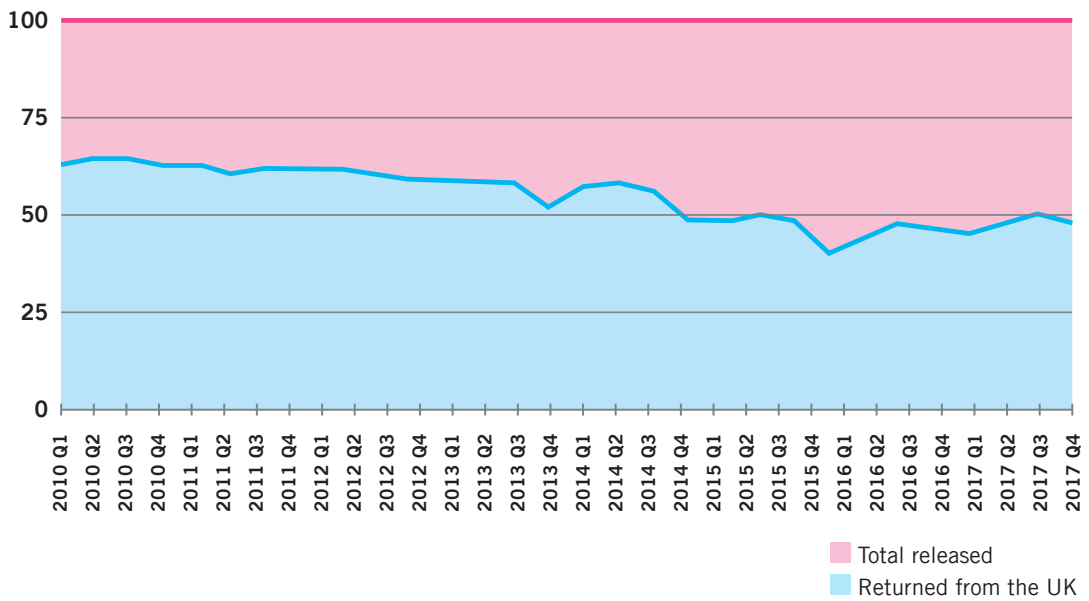
84 See *Quarterly Immigration Statistics*, 24 August 2017.

85 See UK government, *Quarterly Immigration Statistics*, 24 August 2017.

While the number of people being put into detention increased, the periods of time spent in detention have remained relatively consistent for many years. More than a third of detainees are held for longer than 28 days.<sup>86</sup> Moreover, as the Oxford Migration Observatory noted, ‘A small but consistent minority of detainees – about 2% – are held for between 6 and 12 months, and an additional 1% held for more than a year.’<sup>87</sup>

Yet, at the same time the proportion of detainees actually being removed from the country has diminished and the proportion of those released back into the community has gradually increased. Chart 2 shows the shift, from 64 per cent of detainees leaving detention being removed from the UK in 2010 to less than 50 per cent by 2015.

**Chart 2: Proportion of detainees removed from the UK on leaving detention compared with the proportion released into the community, 2010-2017**



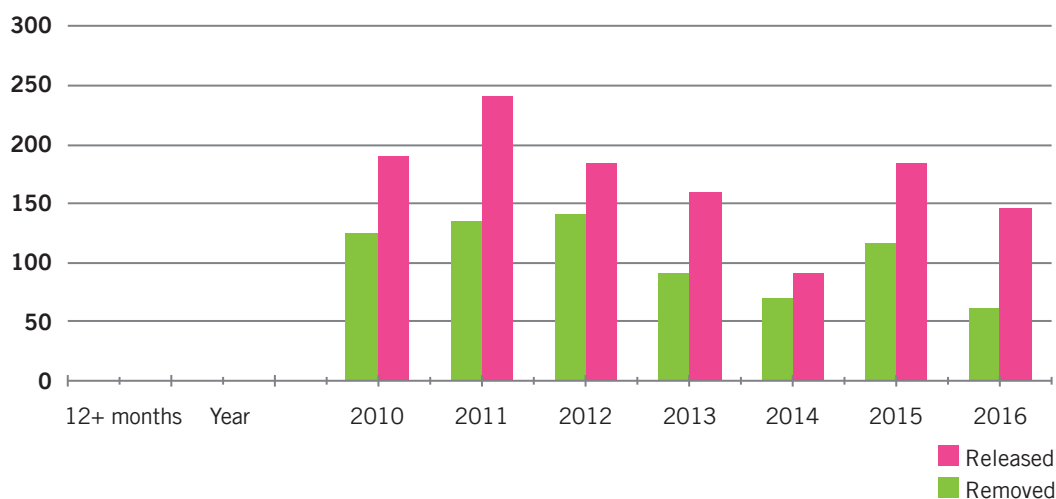
The government justified its use of detention as an important tool in enforcing the removal from the UK of people without permission to be in the country. However, even on its own terms detention was never used efficiently. At least a third of all people placed in detention since 2010 have ultimately been released back into their communities. For more than two years now, the majority of detainees have been released to continue their lives in the UK.

Two key points are notable here. First, the gradual decline in the removal rate (detainees removed as a proportion of the total number of people detained) coincides with the period of expansion of the detention estate. The proportion began to rise again only after the closure of Dover and Haslar IRCs in 2014. Second, as Charts 3 and 4 show, although long-term detainees were always more likely to be released than removed, in more recent years this has begun to be the case even for those held for less than 28 days. In 2010, 66 per cent of detainees leaving detention after less than 28 days were removed, while by 2015 that proportion had slipped to 47 per cent, rising slightly to 52 per cent by 2016. All this suggests an increasingly malfunctioning and unnecessary detention system.

86 UK government, *Quarterly Immigration Statistics, How many people are detained or returned*, 24 August 2017.

87 Oxford Migration Observatory, *Briefing: Immigration Detention in the UK*, 2 May 2017.

**Chart 3: Removal and release of detainees held for longer than 12 months, 2010-2016**



**Chart 4: Removal and release of detainees held for up to 28 days, 2010-2016**

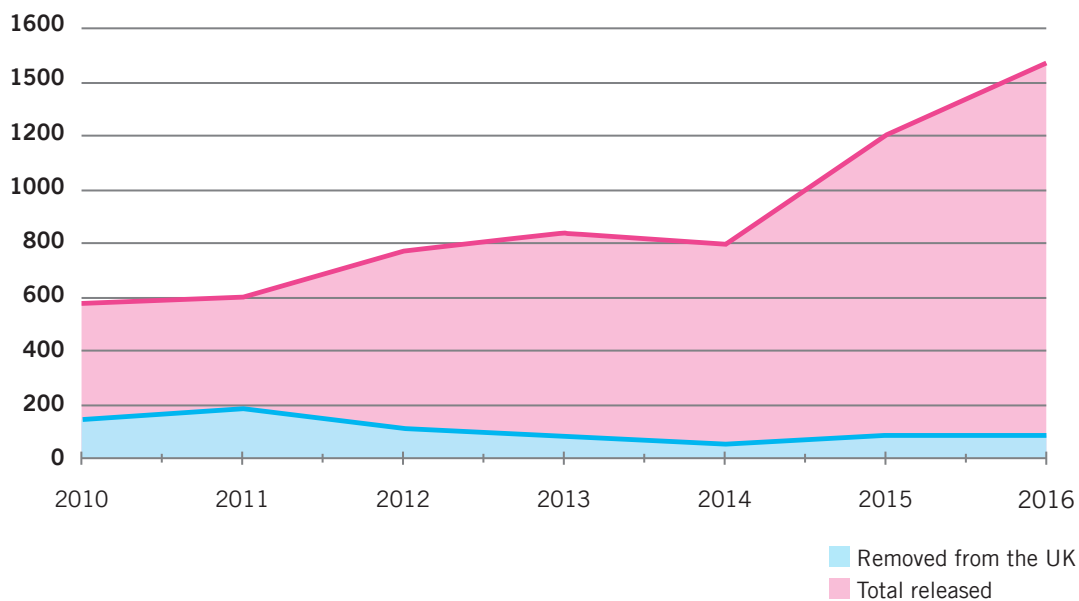


These disjunctures, between the capacity of the detention estate on the one hand and the proportions of detainees being removed or released on the other, demonstrate a flaw at the centre of detention policy and practice. Over the years, more and more people have been detained only to be released back into the community. Moreover, the proportion of people whose detention ends in this way has increased.

As one example, Home Office statistics show that since 2010, when figures began to be collated, the number of Iranian nationals detained increased every year until it had more than doubled. However, the number of these people removed from the country following detention nearly halved (see Chart 5). In 2016, a full 96 per cent of Iranian nationals put into detention were subsequently released to continue their lives in the UK.<sup>88</sup> It is hard to understand how the use of immigration detention in this way can be justified.

<sup>88</sup> UK government, *Quarterly Immigration Statistics, How many people are detained or returned*, 24 August 2017.

**Chart 5: Removal and release of Iranian detainees in the UK, 2010-2016**



### **Conclusion**

The more relaxed approach to detention powers and the weakening of protection for detainees allows detention to be used as a matter of routine: because it is there – not because it is necessary. If use of detention is increasing while removal rates of people in detention diminish, this raises the question of how such a large detention estate can be justified. On the current pattern, if more detention centres are built, more people will be found to put in them. Chapter 2 shows the impact of this routine approach to detention on the people affected by it.

# CHAPTER 2: THE CONSEQUENCES OF ROUTINE DETENTION

**'That's who you are. You're just in limbo... You're just in limbo now and you don't know what's going to come from day to day.'**<sup>89</sup>

Michael, detained for more than six months

Routine detention has serious consequences for the people affected.

We interviewed a range of people affected by detention since the publication of the Shaw review and the government's announcement of reforms. We talked to people who were still in detention when interviewed, people who had been detained and subsequently released, and people living in the UK whose close family members had been detained. Their testimonies provided recurring evidence of the damage being caused by immigration detention. While detention may be used as routine by the Home Office, it is far from routine for the people affected by it.

Four key issues occurred repeatedly in the interviews:

- damage to detainees' mental health
- damage to detainees' physical health
- harmful consequences for adults who have a family member in detention, particularly women
- harmful consequences for children who have a parent in detention.

## Detainees' mental health

The single most common consequence of indefinite immigration detention reported to us by our interviewees was harm to their mental health. When we asked about the effects that detention had on them, 10 out of 16 detainees volunteered that their mental health had been seriously damaged by detention. For five, this was so severe that they had self-harmed or attempted suicide.

For some, incarceration in a detention centre revived previous traumatic events.

**Angela** and her husband were detained after they sought asylum in the UK. As part of her asylum claim, she described being subjected to torture, including rape, by policemen in her home country. In the detention centre, an independent psychiatrist commissioned by a non-governmental organisation visited her and reported that Angela had witnessed two separate suicide attempts by fellow inmates within days of each other. One person took an overdose of pills and another cut their wrists. The sight of the blood and the violence of the action sent Angela into a state of shock that induced a severe breakdown, leaving her functionally mute, immobile, unable to eat and experiencing flashbacks of the abuse she had suffered. After a partial recovery her mood would swing towards violent outbursts, when she would scratch and wound herself and her husband. The independent psychiatrist diagnosed Angela with severe depressive disorder and post-traumatic stress disorder. They also reported that Angela was receiving 'markedly inadequate' care for her mental illness in detention. She and her husband were kept in detention for longer than six months, during which Home Office lawyers criticised her in writing for failing 'to be compliant with medical staff'. She was eventually sectioned under the Mental Health Act and transferred to a psychiatric hospital.<sup>90</sup>

For others, long-standing mental health concerns were exacerbated by detention.

**Elizabeth**, a detainee who had also been held for six months when we met her, told us: 'I was diagnosed with mental health [problems] way before I was coming here'. She described a key

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89 Interview with Michael, 20 June 2017.

90 Interview with Angela and Jagan, 9 June 2017.

consequence of being detained as follows: ‘I think I’ve ended up hating myself more than I used to hate myself when I was outside. The amount of times I now think about death is more.’

She described her experience of indefinite detention as ‘emotional torture’, stating that: ‘I don’t even know myself anymore. You don’t know what’s next and what’s not next. So, you don’t have a reason to live sometimes.’<sup>91</sup>

For some detainees, however, detention brought a serious deterioration in their mental health for the first time.

**Adrien** came to the UK at the age of six, with his family. As a teenager he engaged in petty crime, which escalated, until, at the age of 17, he was sentenced to four years in prison for armed robbery. After serving his time, he was transferred to an immigration detention centre, while the immigration service attempted to deport him. Adrien, now aged 20, told us how his mental health broke down after the transfer to detention:

**Mentally, when they brought me into detention it was OK, but now sometimes I talk to myself. Sometimes I sit there talking to myself, looking at the sky, asking, am I ever going to get released? I think about my family sometimes. I don’t like crying and sometimes tears come out my eyes when I think about my Mum.**

For Adrien and a number of other detainees, detention felt as if it was intended to damage mental health, as part of the removal process:

**I’m trying, I’m trying, but it comes to a point where they just break you down mentally and you just end up mad. You end up doing crazy things because that’s what they want people to become.**<sup>92</sup>

**Annika** claimed asylum on arrival in the UK. Nevertheless, she was detained and the Home Office sought to process her asylum claim while keeping her in a detention centre. At first, Annika told us, she did not object because she rationalised detention in the UK by comparing it to the risk of persecution she faced in her country: ‘I would say when I came it [detention] was fine, because of the danger I was in.’

However, as her detention lengthened and the indefinite nature of her confinement became apparent, her mental health deteriorated dramatically:

**Now it’s like, now it’s too much. I’m even on medication right now because ... it really, really affects me. I am harming myself and all that. So I have those thoughts several times and then I think I need to go for help.**<sup>93</sup>

Even interviewees who did not report mental health problems of their own, regularly reported encountering fellow detainees who were suffering considerably.

**Michael**, another ex-offender, noted:

**You see loads of people around me that’s mentally ill ... I’ve seen more mentally ill people in almost six months I’ve been here than what I experienced in a year and a half in prison. It’s just the *amount* of mentally ill people.**<sup>94</sup> (original emphasis)

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91 Interview with Elizabeth, 6 July 2017.

92 Interview with Adrien, 22 June 2017.

93 Interview with Annika, 7 July 2017.

94 Interview with Michael 20 June 2017.

Alex, a UK resident since 1998 and a father of six, had been held for a short time, but described how fears of indefinite detention arose from observing his fellow detainees. Many of them had been held for months and years and he felt they were clearly seriously unwell:

**One guy ... he wasn't eating. He wasn't eating. He would just lie down on his bed. He doesn't even come down... We have to go down and queue to get our breakfast or lunch or dinner. He doesn't. They have to take his to his room. He doesn't eat all the food they give him. He's there like, he's receding. He's so skinny but they still keep him there.**

Even for detainees whose mental health was not directly harmed, being surrounded by the damage that indefinite detention causes to others is deeply distressing. Detainees repeatedly told us that the uncertainty about when, if ever, they would be freed, contributed significantly to the deterioration of their mental health. As Elizabeth put it to us, 'Like, if they can put somebody here for three years, then what are they not capable of?'<sup>95</sup>

## Detainees' physical health

In addition to the damage to mental health caused by indefinite immigration detention, some interviewees told us that detention had harmed their physical health. We did not ask questions directly about a detainee's physical health unless they brought it up. Nevertheless, of the 17 detainees we interviewed, four told us that they had either developed new physical conditions that they ascribed to detention, or that longer-term conditions had been exacerbated.

In particular, some interviewees described how they believed that failings in the healthcare they were provided in detention impeded their ability to manage their illnesses or access the treatment they needed.

Edward, father of a 10-year-old son and facing deportation after serving 16 months for possession of a false passport, developed a severe case of shingles while in detention. Tests conducted because of this revealed that he was HIV positive:

**It was atrocious, the healthcare system in [detention] was one of the worst. I have better healthcare in prison. Way, way, way better in prison than in [detention] ...'**

**[If I hadn't been detained] I would've been able to better manage it ... my immune system wouldn't have given up. I would've probably been able to cope a bit better, if I was outside.**<sup>96</sup>

Esther, an asylum seeker in her forties, suffered severe epileptic seizures that increased in frequency after being detained. Nevertheless, she was kept in detention for nearly six months and suffered numerous seizures in that time:

**I fall unconscious ... The manager here has witnessed it several times ... Any time I have the seizures, she has to note it down. I have seizures, which can lead to convulsions. Every time I have it, it must be recorded. It's very dangerous; I am at risk. They always ensure officers come to check me, if I'm OK.**<sup>97</sup>

Esther also suffered from fibroids, for which she had previously had an operation and required follow-up tests and monitoring. Yet her records show she was repeatedly prevented from attending her hospital appointments. The immigration authorities either scheduled removal flights that were subsequently cancelled, or simply refused to escort her out of detention. She told us about one such occasion:

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95 Interview with Elizabeth, 6 July 2017.

96 Interview with Edward, 22 June 2017.

97 Interview with Esther, 9 June 2017.



**The immigration officer now said, OK, he said it was my caseworker who cancelled it. And I said, 'why?'. He said I don't have rights for free medical treatment, because I don't have rights to stay in the UK, he said that was the reason.<sup>98</sup>**

It is both inappropriate for detention caseworkers to be intervening in medical decisions in this way and a failure to fulfil the state's obligations to ensure that necessary medical treatment is provided to those in its custody. Esther was ultimately released from detention, after being formally recognised by the Home Office as an 'Adult at Risk'.

Another example from our examination of Home Office files is that of Mr E, who had been convicted of a serious crime of violence. After serving his sentence, he was kept in detention for longer than a year, although he had suffered a spinal injury in prison that left him needing the assistance of a wheelchair for any but short journeys. His condition deteriorated dramatically in detention. Eight months into his detention, Home Office caseworkers received an urgent letter from a doctor at the IRC, stating:

**During the past eight months there is no doubt that in my opinion his health has deteriorated dramatically. While there is no significant diagnosis of why this has happened, the physical symptoms are apparent and clinically his right leg is severely wasted to the point he has no movement in it at all now.**

The doctor stated that detention had caused the man 'dramatic harm' and was likely to cause further harm. Home Office caseworkers, who had failed to attend several 'complex case reviews', failed to respond to this letter and his detention continued.

## **Harm to women**

Other organisations have done important work in bringing greater attention to the particular harms experienced by women in detention, especially survivors of sexual or gender based violence and pregnant women.<sup>99</sup> These have shown, among other things, that detention frequently exacerbates trauma arising from previously experienced violence and reported allegations of ill-treatment and abuse of women in detention. Our research did not specifically focus on these issues, but even within our limited sample of four female detainees, three told us that they had experienced sexual violence, two of whom as children, and that detention had seriously deteriorated their mental health. Our research also shed light on the serious impacts on women of a Home Office decision to detain a partner, parent or child. This was most evident in increased burden of caring responsibilities, for children and other relatives, that disproportionately fall on women. These increased responsibilities often combined with additional consequences, such as damage to relationships with their children and wider family, and damage to their careers and income.

Cassandra's relationship with her children was harmed by the detention of their father. She told us:

**Our older son, he was showing quite a violent behaviour towards me and towards his sister, when he's getting upset and getting frustrated. You know, he can't do what he wants to do. He's used to dealing with his Dad... Our oldest was really struggling with this situation and obviously showing it in violent and aggressive behaviour ... Thankfully that rectified since [their father]'s been home.<sup>100</sup>**

For Lilly, both her career as a nurse and her ability to provide for her children were affected:

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98 Interview with Esther, 9 June 2017.

99 See for example Women for Refugee Women; *We Are Still Here: The Continued Detention of Women Seeking Asylum in Yarl's Wood*, October 2017; *The Way Ahead: An Asylum System Without Detention*, March 2017; *I am Human: Refugee Women's Experiences of Detention in the UK*, January 2015; *Detained: Women Asylum Seekers Locked Up in the UK*, January 2014.

100 Interview with Cassandra, 23 June 2017.

I had to cut my hours at work, and then money just becomes even tighter because you just haven't got nothing spare. At the moment I'm fortunate that because of the reduction in nurses, there's always shifts available. Even if I wanted to work some days a week I could, but I just wasn't able to because I didn't have that support network for the child care.<sup>101</sup>

Linda is a young woman with two teenage brothers, but also has her own career and children. Her mother was detained for longer than nine months following a conviction and sentence for fraud. The Home Office justified its refusal to release her mother by arguing that her brothers could live with Linda, but as she told us:

What do they expect me to do? They have a mother... why should I have to look after them and not my Mum? She's here. Why should I have to raise these boys? Even now, like, I can't really say much to them. It's really hard to tell them off because they're big grown men, one of them's 6 foot already. So, what am I supposed to do?<sup>102</sup>

## Harm to children

The practice of detaining children for immigration control purposes has been limited, first in Home Office published policy and later by statute. Children may be held for periods of up to a week in specialist accommodation known as 'pre-departure accommodation' (see Chapter 1) where families are detained together; and of periods up to 24 hours where children are unaccompanied.

Some children continue to be detained in immigration removal centres when they are (erroneously) assessed as being adults; indeed, this had occurred to two of the people whose cases appeared in our file survey. The detention of children for immigration purposes is contrary to international standards, particularly the best interests principle in the UN Convention on the Rights of the Child (see Introduction). As the damaging effects on children placed in immigration detention have been widely reported, our research focused on the effects of indefinite immigration detention on children who are not themselves detained, but who have a parent in detention.

Home Office detention policy recognises this to an extent. It requires caseworkers to determine whether pursuing detention would be proportionate in the circumstances, as part of their duties under the Human Rights Act and Article 8 of the European Convention on Human Rights (ECHR). The caseworker's decision should then be signed off by a senior official.<sup>103</sup> However, caseworkers receive little guidance on how to determine what would be proportionate in the circumstances, other than that they need to be 'careful' and have regard to the duty to safeguard and promote children's welfare. Research by the legal charity Bail for Immigration Detainees in 2013 highlighted both the damage done to children by the detention of their parents and failings in the Home Office's approach to the detention of parents.<sup>104</sup> The accounts given to Amnesty International by our interviewees make clear that this damage continues.

The impacts on children begin from the point when the parent is arrested and detained. When Chris and his partner Elaine spoke with us, he had already been detained on three separate occasions and then released each time. On the second occasion, immigration officers arrived at their home just after 6.30am, when the children were still asleep. Elaine told us:

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101 Interview with Lilly, 21 July 2017.

102 Interview with Linda, 9 July 2017.

103 Chapter 55, EIG, 55.3.2.3, <http://webarchive.nationalarchives.gov.uk/20170514001116/https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals>

104 Bail for Immigration Detainees, *Fractured Childhoods: The Separation of Families by Immigration Detention*, April 2013.

They came in just before we got the kids up and obviously there's officers, there's loads of officers come in every room because they don't want the person to run away. [The officers] are thinking of their safety, so they're going to check the whole house and go in every room. But I thought the kids weren't awake...[later] my son says 'Oh Mum, I had a dream that immigration came, Home Office came, and took [Dad] away.' So I was like 'no it wasn't a dream. That's what happened. You must have been half asleep' ... my daughter said 'I could hear someone in the room, some men in the room.' So I just said, 'I don't think so.' I just brushed it off because I didn't want to distress her further.<sup>105</sup>

The repeated detention of their father distressed both children deeply. Elaine explained that during this period her son was awaiting an autism-spectrum diagnosis:

He has meltdowns anyway, but he'll have them for the rest of his life. My goal is to reduce the number of meltdowns he has per day, so it was reduced and with [Chris] around he could have two or three, but without him it was becoming more and it was on the street and becoming dangerous and with no other adult here to help me.<sup>106</sup>

Her daughter, too, was seriously affected:

She got diagnosed with emotional anxiety because of being separated from her Dad which she had a close bond with. She was having nightmares, she was wetting the bed, she was becoming overly clingy, not just from me but from other adults, so that was quite hard for me; to split myself in two to support them. Especially when their Dad was gone.<sup>107</sup>

The children of people held in indefinite detention in the longer term are deprived of parental bonding and basic life opportunities. Lilly, a nurse whose partner was detained twice, the second time for seven months, before being released, said:

March came, and it was [my youngest daughter's] birthday, and [she] was like 'oh Dad never misses my birthday'. It would be more like me who would miss their birthdays because I'd probably be on duty or be at work. So that was hard, because it was a case of, 'ok, so where is he?' I was using loads of excuses, but the kids are not stupid. And then July came and it was [my middle daughter's] birthday, and once again Dad's not here, Dad's still working? They haven't saw Dad in like six months? ...

The oldest daughter, them two [the daughter and her father] have like a special bond because they're both brilliant at cooking. So they would always cook and that's their bonding time. And then when he's not there and I'm having to fill in she's just like, 'oh mum don't do it like that.' I found that that impacted on her, and I think that contributed to her behaviour deteriorating... Our middle child likes to sew, so he's the one who always takes her to sewing classes, he's that person... [she] was very very emotional and I found that I had to keep her occupied ... She became very emotional and just was always crying. My concern is that I haven't got the time to be waiting and nurturing her and telling her, 'it's gonna be OK, Dad'll be home soon'.<sup>108</sup>

Similarly, Cassandra, a British citizen with health problems whose partner was held in detention for two months, told us:

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105 Interview with Elaine, 20 June 2017.

106 Interview with Elaine, 20 June 2017.

107 Interview with Elaine, 20 June 2017.

108 Interview with Lilly, 21 July 2017.

He's always been there for the kids and he does most of the hands on with the kids than I do ... because you know I have my own health issues. I can't do a lot of activities with the kids. So he was taking that on and then I was thinking, how am I going to cope? How are the children going to cope with that? They're used to a certain way of life and this is going to be ripped from them. How can I help compensate for that? ... There's nothing that I could do that's going to make that better.<sup>109</sup>

Parents also reported that detention had resulted in their children's behaviour and performance at school deteriorating seriously in the long term. This was nearly universal among parents with school-aged children.

**Linda** told us that in the absence of their mother, her teenage brothers' behaviour had changed dramatically:

[The youngest] missed a lot of school, just because of the fact that he's down and he's depressed.... Since October he's either been in hospital, or sick, or he just doesn't want to go to school. Or if he does go to school they're calling me to say he has to come home because he's complaining that he doesn't feel well. So my Mum's being detained has affected him really badly. And my other brother as well, the 17-year-old, he's started smoking.... He spends a lot of the time outside, I don't really know where he is sometimes. I don't know, I mean obviously my Mum's detention had to make everyone grow up quite quickly but it's changing them in ways that if she was around, they wouldn't be doing that.<sup>110</sup>

**Lilly** reported that there had been similar problems for her oldest daughter:

Her work started to deteriorate at school as well. So I'm having to go into school and have conversations to find out what's happening within school, but then I still had to be mindful that I didn't expose what was going on at home. It was like a catch 22 situation, because I'm having to go in and they ask questions about why is she misbehaving, why is her work deteriorating and I couldn't have honest and open conversations with the school to say this is what's happening.<sup>111</sup>

**John**, who had been detained for 10 months when we spoke with him, is the father of six children aged between 19 and four, all born in the UK. He said that his wife was struggling to look after them all in his absence:

She can't cope any more. It's too much stress. She said 'for how long?' It's hard. And my children are not doing well at school because I am not there, all my children are not doing well ...

I'm sick of telling my children, 'listen, Daddy's gonna be with you soon. Daddy's gonna be with you soon.' Every time, when they come and visit me, sometimes my son he doesn't want to go. I have to say to him, 'listen, Daddy's gonna be with you in a few hours.' I have to lie to my son. It kills me. It kills me. My children used to be really good in school, but now they have changed completely.<sup>112</sup>

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109 Interview with Cassandra, 23 June 2017.

110 Interview with Linda, 9 July 2017.

111 Interview with Lilly, 21 July 2017.

112 Interview with John, 19 June 2017.

## Conclusion

Much of the policy around determining ‘suitability for detention’ is predicated on a detainee or potential detainee submitting documentary evidence to the Home Office of a special medical or other need. However, we repeatedly found harm being caused by detention and our findings are consistent with a long-standing, widely researched and widely acknowledged pattern.<sup>113</sup> Indefinite immigration detention, whether or not the detainee suffers from pre-existing conditions or trauma, regularly and reliably results in serious and lasting harm, both to the detainee and the people close to them.

Detention is being used as a matter of routine by officials, but is far from routine for the people affected by it. Decision makers must do their work in accordance with international standards and start treating detention with the gravity it deserves.

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<sup>113</sup> See for example Prof Mary Bosworth, ‘Appendix 5: The impact of immigration detention on mental health: A literature review’, *op cit* Shaw *Review into the Welfare in Detention of Vulnerable Persons*, January 2016; Medical Justice, *Mental Health in Immigration Detention Action Group: Initial Report 2013*; Bail for Immigration Detainees, *Fractured Childhoods: The Separation of Families by Immigration Detention*, April 2013.

# CHAPTER 3: PUTTING PEOPLE IN DETENTION

‘Originally the police were really nice ... They actually tried not to take my Mum. They actually called the main officer and they asked, “Do we really have to do it? Do we have to take” my Mum? They said the Home Office have advised that they have to take my Mum.’<sup>114</sup>

Linda, British citizen

Given the harmful consequences of detention for detainees and their families, the decision to detain is a serious one. As the Shaw review notes in relation to the harm caused to detainees’ mental health, ‘a policy resulting in such outcomes will only be ethical if everything is done to mitigate the impact, and if countervailing benefits of the policy can be shown.’<sup>115</sup>

The most important action that can be taken to ‘mitigate the impact’ of these harms is to use alternatives to detention wherever possible and only turn to detention as a last resort.

However, this chapter looks at Home Office initial decisions to detain, and finds:

- a limited search for information on which to base detention decisions
- a failure to use information that is already to hand
- a casual approach to justifying detention decisions
- a cursory engagement, at best, with the potential detainee’s history and circumstances.

## Detain first, ask questions later

When a person is put into detention for the first time, they are given written reasons why the Home Office has decided to detain them. Most of the letter is in standard form, and includes reference to the ‘presumption of liberty’ or ‘presumption of release’. This presumption is intended to protect a person’s right to liberty and requires the Home Office to justify a detention decision with strong reasons. Instead, in many instances, the files we examined demonstrated a presumption that the person would be detained.

In the case of offenders, Home Office caseworkers sometimes referred to the date the criminal sentence would end as a prisoner’s upcoming ‘detention date’, rather than their ‘release date’. This would suggest that there was never an intention to release them. More commonly, however, the files recorded consideration of a detention decision that reads like a quest for the means to detain the person. In 14 of the 28 relevant files, no acknowledgement of the presumption of liberty appeared in the decision making.<sup>116</sup> A further six case files had such formal acknowledgement but only at the end of a long consideration of the reasons to detain, in order to then be dismissed.

In other cases, people are detained in the face of potential complications known to the decision makers. The assumption is that the problems can be ironed out later, whether they are to do with the person’s health, or an asylum claim, or doubts about the possibility of removing someone from the UK. One solicitor, who said he saw this approach regularly in his practice, described it as, ‘we’re going to detain you, and if down the road there’s an issue, we’ll look at it.’<sup>117</sup> We found variations of this approach in 14 of the 28 relevant files.

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114 Interview with Linda, 9 July 2017.

115 Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons*, January 2016, para 11.4

116 In a strict sense this is an underestimate. This figure does not include three further cases where no express use of the term was used, but it was clearly implied from the caseworkers’ notes that the presumption of liberty was being considered.

117 Interview with Detention Solicitor 5, 3 August 2017.

The approach was particularly prevalent in cases of asylum seekers held in a system known as Detained Asylum Casework (DAC – the replacement for the Detained Fast Track suspended in 2015). This system is governed by the general detention criteria, which include the policy protections for individuals the Home Office accepts would be particularly harmed by detention (see chapter 1). It therefore has a screening stage intended to filter out people who, under Home Office policy, should not be detained in the first place.

The Detained Asylum Casework cases in our sample showed evidence that this screening process was sometimes ineffective in filtering out complex cases and individuals for whom detention would be likely to be particularly harmful. In one example a file note from a ‘detention gatekeeper’, an official reviewing the initial decision, read:

**The case is considered suitable for [Detained Asylum Casework]. The subject requires screening and if any further information comes to light, continued detention can be reviewed.’**

Thus in this instance, no screening interview had even taken place and the decision to detain the person had already been made.

### **Consideration of the case**

When a detention decision is being made, it is vital that decision makers take all relevant information into account and assess whether it is right and practically possible to remove the person from the UK.

Yet, as one of the lawyers interviewed for this report observed, ‘the initial decision is [often] made on the basis of incomplete information.’<sup>118</sup> Indeed, in 16 of the 28 cases in our study, the ultimate decision to detain was taken without regard to pertinent information about a person’s history, travel documentation, health or family – information that was already in the Home Office’s files. There appeared to be a range of reasons for this, including detention caseworkers having difficulties accessing information held by other sub-sections of the Home Office immigration service (such as an asylum processing team), caseworkers simply not studying the file that they had available to them and confusion being caused by changes in the caseworker assigned to a case or the movement of a detainee from one centre to another. Detainees were familiar with this latter problem in particular, from their dealings with caseworkers. One interviewee explained:

**If the old caseworker has all the documentation, the new one doesn’t. You’d think if you were transferring someone’s file, you would transfer everything... Every time I get a new caseworker the caseworker asks me for documents which I have already sent.’<sup>119</sup>**

The failure of caseworkers to take account of information already available to them can have serious consequences. In one instance, a man was detained after failing to comply with his duties to report to the Home Office and he was regarded as an absconder. However, the file reveals that the Home Office knew that the man had missed his reporting event after being found ‘by the police, hanging onto some railings near the side of the road. He was confused, disorientated and did not know where he was or how he came to be there.’

Despite this clear evidence of serious concerns regarding the man’s mental health, his failure to report was cited among the justifications for his detention.

In another case, expert evidence that detention would seriously exacerbate the person’s severe mental health problems was accepted by one Home Office department during the course of litigation. However, it was ignored by the detention decision maker, operating in another department, who proceeded to authorise detention.

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118 Interview with Detention Solicitor 1, 12 July 2017.

119 Interview with Adam, 19 June 2017.

## **‘Removability’**

The approach to assessing ‘removability’, that is, whether a person who is being considered for detention can lawfully and practically be removed from the UK to another country, is also a cause of considerable concern.

The lack of a travel document is widely recognised as one of the most common obstacles to a person’s removal.<sup>120</sup> Without a travel document of some kind, the person cannot be removed, and this should make detention inappropriate unless a document can be obtained and removal implemented within a reasonable time. Yet, the files in our sample (the issue arose in 14 out of 28 files) demonstrated an almost casual attitude on the part of detention decision makers to the lack of a travel document. The person could be detained, and the documentation could be sorted out afterwards. In only one of 14 cases was a person released of the Home Office’s own volition because of a lack of documentation. The person concerned had been held for 274 days and the country that it was proposed to remove them to had refused to re-document them.

The assumption that new travel documents can be obtained is often made in advance of detention and often without consulting the details of a person’s case file. Moreover, it was uniformly assumed that the redocumentation process would run smoothly. The case files we reviewed showed a different reality. Receiving states refused or failed to redocument particular individuals; individuals did not participate in the redocumentation process (in some instances because they feared return or their health prevented them); and in some cases people’s physical and mental health broke down to the point that redocumentation became impossible. Yet, detention decision making frequently assumed that all would be well regardless of both the person’s circumstances and the Home Office’s own past experience.

## **Asylum claims**

Other potential obstacles to removal, such as unfitness to fly or judicial review proceedings, did appear to receive more serious consideration. However, this was rarely the case with outstanding legal submissions, and particularly asylum claims.

The lodging of an asylum claim is an important obstacle to removal because in most instances it is unlawful for the Home Office to remove someone until their asylum claim has been fully determined and refused.<sup>121</sup> The existence of an asylum claim should therefore constitute a significant reason not to detain someone.<sup>122</sup> However, detention decision makers faced with an asylum seeker frequently presumed that the asylum claim was false, regarding it as merely an effort to ‘frustrate removal’ or avoid detention. They used the lodging of the asylum claim as evidence that the person would not comply with any conditions set for them to remain at liberty. Ms V, for example, claimed asylum after being arrested, having been trafficked into the UK and forced into sexual exploitation. The reasons given for recommending detention were: ‘Detention required in order to proceed to removal. Considered to be claiming asylum to frustrate the removal process.’

Thus, lodging an asylum claim becomes a reason for detaining someone, rather than a reason not to detain.

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120 See for example Independent Chief Inspector of Borders and Immigration, *Inspection of Emergency Travel Document Process*, March 2014; Independent Chief Inspector of Borders and Immigration, *An Inspection of Removals*, 2014-15, December 2015; National Audit Office, *Managing and Removing Foreign National Offenders*, October 2014.

121 Subject to certification as ‘clearly unfounded’, whereby an asylum or human rights claim can be refused with no in-country right of appeal. See Nationality, Immigration and Asylum Act 2002, s94 (1A).

122 For other important concerns about the inappropriateness of detaining asylum seekers, see for example Amnesty International UK, *Seeking Asylum is Not a Crime: The Detention of People Who Have Sought Asylum*, 2005; and Detention Action, *Fast Track to Despair: The Unnecessary Detention of Asylum Seekers*, May 2011.



## ***Health and family circumstances***

The willingness to consider factors beyond the mere possibility of removal is one of the things that distinguishes an approach that sees detention as a last resort, from one that sees it as a matter of routine.

One of the most important elements to be considered is the new Adults at Risk policy, which replaced the previous Chapter 55.10 of the EIG, ‘Persons considered unsuitable for Detention’. The Home Office also has duties under the Human Rights Act and Section 55 of the Borders, Citizenship and Immigration Act 2009 to consider the right to a private and family life of those affected by their detention decisions. This includes the rights of any children, whose best interests must be treated as a primary consideration. It also has duties to consider the health and medical needs of people it proposes to detain.

Home Office guidance requires, for example, that detention decisions that would separate a parent from a child require particular consideration and must be signed off by senior officials. In the files we saw, this procedure was usually followed.<sup>123</sup> However, while the ‘welfare’ of children affected by a potential decision to detain was usually referred to in the consideration, there was rarely any effort to make the child’s best interests a primary consideration. Of the six cases where this was an issue, four failed to acknowledge the child’s best interests as being a primary consideration. The remaining two made the acknowledgement but showed no sign of having applied it in their deliberations.

Our research found that previous instances of detention should be regarded as highly significant in considering whether to exercise detention powers, although this is not expressly required by law or policy at present. In 10 of the 28 files we looked at, the person was detained at least twice, as were four of our interviewees.<sup>124</sup> Home Office statistics show that in 2015, the last year that statistics for repeat-detention were kept, 1,102 people were put into detention at least twice, including one child.<sup>125</sup> Our interviewees described the disastrous effect that repeated detention had on them and their families. Chris, who was detained and released three times as a result of a combination of cancelled flights, legal errors in the Home Office’s removal process and successful bail applications, told us:

**I’m scared and it mess up my head. Everything. My whole life is upside down... It’s a stressful thing for [my family] more than anything... Every day when you have to go to sign in [at a Home Office centre], I’m so scared I don’t want to go sometimes. I don’t want to go because anything can happen.**<sup>126</sup>

Elaine, Chris’s partner, told us his repeated detention had been particularly upsetting for their son, who is awaiting an autism-spectrum diagnosis:

**My son has said, ‘They’ve took him again. Why have they done that? He’s not done anything wrong. He’s not done anything so why have they took him?’... Now [to visit Chris] we have to go on the train journey, it was like four hours train journey. And then it was a visit for an hour and half or something like that, and with his sensory**

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123 Although, in one instance we noted records where a decision to detain had been made before any authorisation, with the intention of obtaining authorisation after the person had been put in the detention centre. This raises serious questions about the extent to which the authorisation process acted as a meaningful safeguard.

124 In discussing repeat detention here, we have excluded cases where a person had previously been temporarily held for a short period for examination and had then been released, for example in a non-residential short-term holding facility or police cell. We include only those cases where a person had been held in a residential detention centre, either for prolonged examination, such as the determination of an asylum claim, or for the purpose of removal.

125 UK government, *Quarterly Immigration Statistics, ‘How Many People are Detained or Returned’*, 24 August 2017.

126 Interview with Chris, 13 June 2017.

**overload.... He can't cope with that and he'd start screaming. And people start staring because they don't understand, him chucking himself on the floor, because it's quite scary.**<sup>127</sup>

The files of people who were detained indicated that in most cases, detention decision makers had given little thought to the reasons why previous detentions had ended in the person being released, not removed. Such reasons are important: they may indicate that it would be inappropriate to pursue detention again, or at least that the person's removal may be less straightforward than expected. To some extent, this problem relates to the failure to take the available information on board before making a decision. Even when the decision makers undertook a more detailed examination, they gave remarkably little consideration to lessons from the person's previous detention and failed to apply them to the decision at hand. In a few cases, where account was actually taken of previous detention, fresh detention was pursued despite clear warning signs that it would be inappropriate.

The most worrying example of this was the re-detention of Mr S. Mr S was a refused asylum seeker with chronic paranoid schizophrenia and depression. He was held under immigration powers for over 18 months while various unsuccessful attempts were made to provide him with travel documents and remove him. During that period his illness grew worse. He became increasingly delusional and intermittently mute, and his personal hygiene collapsed. His file is a picture of confusion: some officials regarded him as having serious mental illness, while others regarded him as 'blatantly non-compliant' and suggested he was engaging in a 'dirty protest'. He was transferred between IRCs and psychiatric institutions. Any progress made in hospital was reversed when he returned to detention. A Home Office file review, undertaken while he was in hospital, warned that significant further deterioration was likely if he was returned to a detention centre. It noted that such a deterioration could touch on Article 3 of the ECHR, the absolute right not to be subject to inhuman or degrading treatment. Nevertheless, he was sent back to a detention centre. This final period in detention was quickly terminated after a consultant psychiatrist described his re-detention as 'reckless' and 'cavalier'.

## **Gatekeeping and oversight of decisions to detain**

Peer-review of an initial detention recommendation is a relatively long-standing function but one that was given greater emphasis as part of the Home Office's response to the Shaw review.<sup>128</sup> Known as the 'detention gatekeeper', the process is intended to filter out cases that are inappropriate for detention under Home Office policy and accept others.

Gatekeeping requires completion of a form, answering a series of questions such as 'Alternatives to detention considered?' and 'Does the detainee have any children?'. Two of the key questions relate to the assessment of absconding risk and risk of harm to the public, for both of which the official acting as gatekeeper is asked to mark a score of 'low, medium or high'. These questions go to the heart of whether detention can be considered necessary and proportionate in a given case, as international standards require.

The files we examined showed that people with criminal records were ordinarily recorded as posing either a medium or high risk. Those with no criminal record and a history of compliance with Home Office requirements should be recorded as having a low risk. However, in several such instances the gatekeeper effectively dodged the question entirely. Rather than recording the person as posing a low risk of absconding or doing harm, other terms were inserted that do not appear as options on the form. These included 'untested', 'unknown', or even 'n/a' – not applicable.

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<sup>127</sup> Interview with Elaine, 20 June 2017.

<sup>128</sup> See Robert Goodwill MP, *Immigrants: Detainees: Written question – 71612*, 26 April 2017, [www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-04-21/71612/](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-04-21/71612/)

For example, Ms N was a resident of the UK for over 10 years. She had extended her visa several times and always complied with any requirements placed on her. However, her final application for leave to remain was rejected. Despite her decade of compliance, the gatekeeper recorded her absconding risk as ‘untested’. She was detained for two weeks before leaving the UK voluntarily.

Such an assessment of risk is both nonsensical and an evasion of the gatekeeping function. The risk of someone absconding or causing harm to the public cannot be either ‘untested’ or ‘unknown’ if they have resided in the UK for several years and their record is known to the Home Office; ‘n/a’ is even less appropriate. The use of these terms appears to indicate an unwillingness to recognise that someone poses a low risk and to accept the consequences of that assessment: that there may be no need to detain. The gatekeeping function, when performed in this way, appears to facilitate the routine use of detention rather than ensure its use only as a last resort.

### **Alternatives to detention**

If detention is used as a last resort, then alternatives to detention would have been either exhausted or ruled clearly inappropriate. However, in 14 cases out of 28 we could not identify any consideration of alternatives to detention at all. Usually, detention was authorised simply because the person was considered ‘removable’ or ‘suitable for the DAC’. In the remaining cases the consideration of alternatives to detention was cursory and formulaic, mentioned and then immediately dismissed. Most often, this took the form of doubting that someone would comply with reporting conditions if they were released, or reducing the range of alternatives to one: ‘voluntary’ departure. In some instances, ‘offers’ of voluntary departure were made only in the form of generic wording in a refusal letter several years before the proposed detention would take place. In others, the notion was raised at interview but without any context, support or access to legal advice. A person would simply be asked if they were willing to return home voluntarily and failure to agree would be interpreted as exhausting the alternatives.

One case from the files demonstrates the Home Office approach particularly well.

Ms K was brought to the UK by her husband on a temporary visitor’s visa. He was physically violent and controlling, to the extent that he eventually prohibited her from leaving the house without him and forced her to have sex with men that he brought to the house for money. Their visit visas expired. Her husband eventually abandoned her. She was encountered by immigration officers who gave her a reporting requirement as an overstayer, meaning that she would have to sign in to the Home Office every month. This she did for the next three years without missing an appointment. During this time she was asked, and agreed, to complete an Emergency Travel Document application. However, she also explained that she did not want to return to her home country because she had no family there to support her. Despite her long history of compliance, a decision was made to detain her. The detention gatekeeper assessment noted that ‘voluntary departure’ was offered as an alternative to detention but that she had rejected it. The ‘reasons for recommending detention’ were given simply as ‘no barriers to removal’.

‘No barriers to removal’ is no answer, if the question is whether the proposed detention is strictly necessary as a last resort. When used as the reason for detention, this constitutes a stark example of detention as a matter of routine.

Ms K was eventually held for 28 days, during which time she was able to access legal advice. She lodged an asylum claim and was referred to the National Referral Mechanism as a potential victim of trafficking. She remains in the UK, pursuing her asylum and trafficking claims.

## Conclusion

What we found from looking at official decision making was a widespread complacency about the use of detention powers, resulting in unjustifiable decisions based on routine responses. In many cases, particularly those of ex-offenders, detention was simply assumed to be inevitable. In others, officials gave little serious thought to whether the person's removal from the country, the underlying purpose of detention, could actually be achieved. They paid scant attention, too, to the wider information the Home Office already held about the person concerned – information that might help decide whether detaining that person would be appropriate. The oversight function failed to challenge flaws in the initial decisions to detain and little thought was given to alternative solutions. Given all this, it is hard to argue that a genuine presumption of liberty is being applied, or that immigration detention is being authorised only as a last resort.

# CHAPTER 4: KEEPING PEOPLE IN DETENTION

**'It makes me wonder what's gonna happen with me. Am I gonna stay here for 10 years then? ... It's just a sentence you never know when you're coming out.'**

Elizabeth, detained more than six months<sup>129</sup>

Once a person has been detained, the Home Office is under a duty to regularly review their detention and rigorously test whether it remains justified. In effect, each review requires a new authorisation of detention in the face of the presumption of liberty.<sup>130</sup> Our research has found consistent evidence of detention being maintained as a matter of default and convenience.<sup>131</sup>

## Indefinite detention, travel documents and communication

For the vast majority of those affected, detention is indefinite. Some detainees are held for months and years. A recurring problem raised by monitors of the UK's immigration detention is that indefinite detention leads to people being locked up and forgotten about. Previous inspection reports by HM Inspectorate of Prisons,<sup>132</sup> the Independent Chief Inspector of Borders and Immigration<sup>133</sup> and the Shaw review itself<sup>134</sup> have all called for a greater focus on casework, so that detainees' cases can be resolved swiftly.

It is understandable why detainees may feel forgotten. The evidence from the files and what we were told in our interviews made clear that communication with detainees is consistently poor and careless errors are commonplace. In the 37 case files we examined, 22 contained errors about the detainee's history and characteristics. The errors ranged from incorrectly stating that they had accepted or rejected voluntary return, to recording criminal convictions and a history of absconding that the person did not possess. For example, one person was incorrectly recorded as a murderer. The lack of attention to detail in case files and communication with detainees was another facet of detention being used as a matter of routine.

Our interviewees reported that these errors regularly found their way into the written communication they received from the Home Office. Moreover, once an error was in place, it tended to stick. Reviews and written communication in general relied on a copy-and-paste technique with each monthly review looking almost exactly the same as the last.

Solicitors told us that inaccuracies were a common problem: the review either got the facts about the detainee wrong or misrepresented the issues in the case:

**I've had a number of people say that they think it's just written by a machine....**

**It's the same thing every month. And also a lot of the information in them is false.**<sup>135</sup>

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129 Interview with Elizabeth, 6 July 2017.

130 See Denholm, G and Dunlop, R, *Detention Under the Immigration Acts: Law and Practice* (OUP:2015) 10.43 p133.

131 Only one case examined in this study was subject to a 'Case Progression Panel'. Case Progression Panels were introduced in April 2017 as part of the Home Office's response to the Shaw review, published over a year earlier. The immigration minister has said that they are intended 'to review all cases within immigration detention by a peer-led panel. These panels focus on ensuring that there is progression toward return for all individuals detained, and that detention remains lawful.' See [www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-04-21/71612/](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-04-21/71612/)

132 HMIP, *Report on an unannounced inspection of Morton Hall Immigration Removal Centre 21–25 November 2016*

133 ICIBI, *Report on removal of those with no right to remain, December 2015*

134 Home Office/Stephen Shaw, *Shaw Review into the Welfare in Detention of Vulnerable Persons, January 2016*

135 Interview with Detention Solicitor 1, 12 July 2017.

This repetition of errors led to detainees losing faith in the rigour of the system and to a belief that caseworkers were careless and uninterested in the person's case. They also felt forgotten because of the lack of meaningful communication with the Home Office, particularly with anyone who had any influence over their case. The result was that detainees felt that they did not know what was going on, and then, when they were given information, they did not believe it.

For some, like **Wasim, Sani and Shelly**, the repetitive nature of reviews was the central issue:

**My monthly reports they never changed from day one. From February 2015 to 2017 they stayed always the same.**<sup>136</sup>

**They tell me, 'OK, we're going to release you, but we don't have an address. We have to get an address.' ... It's been 13 months the same story they give to me in the monthly report.**<sup>137</sup>

**They keep repeating the same thing over and over like a scratched record'**<sup>138</sup>

For other detainees, the problem was the lack of any communication at all. **Adrien** complained to us:

**I've been given a caseworker and I'm telling you now. ... for four months, five months I've never spoken to this lady. Every time I ring up to speak to this lady about my case she's not in... It's like she's hiding; like she don't want to talk to me.**<sup>139</sup>

To many people in indefinite detention, and their families waiting outside, it feels as if they have been locked up and forgotten.

The majority of files we examined demonstrated at least some kind of removal or release casework being attempted. Yet, long-term detention continued due to unrealistic and ultimately fruitless quests for detainees to be issued with emergency travel documents so that they could be removed from the country. Although the lack of travel documents often emerged at the point when the person was detained, it was rarely seen as a reason not to detain someone (see Chapter 3). Time after time, both the files and our interviews demonstrated an unwillingness to recognise when it would be impossible to obtain such a travel document, or that the process was likely to take so long that detention would last an unreasonable time.

**Mr L**, for example, came to the UK as the child of a refugee. Over the years he was subjected to parental abuse and developed serious mental health problems. He was ultimately sent to prison for robbery and was then targeted for deportation. He was held in an immigration detention centre for nearly two years while repeated attempts were made to obtain new travel documents. However, the severity of his mental illness, which at times manifested itself in grandiose and paranoid delusions and serious self-harm requiring hospitalisation, meant that he was unable to participate in the process. Immigration officials repeatedly made appointments with embassy officials for him that were then either broken or cancelled as a result of his illness. Forms were either half-completed or rejected. He was eventually transferred to an acute inpatient psychiatric unit.

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136 Interview with Wasim, 21 June 2017.

137 Interview with Sani, 20 June 2017.

138 Interview with Shelly, 6 July 2017.

139 Interview with Adrien, 22 June 2017.

Some of our interviewees described circumstances in which it was clear that no travel document was ever likely to become available. **Sani** faced deportation after repeatedly committing petty offences to fund a drug addiction. He had lived in the UK for 31 years and had been born in a refugee camp in Jordan before being taken as a young child by his family to live in Italy. Although he did not have Jordanian citizenship, the Home Office held him for 15 months while it fruitlessly attempted to find a way to deport him to Jordan. Sani told us that his caseworker:

**used to ask me ‘please, thank you for your patience... I appreciate your waiting for us and being detained.’ He used to tell me all the time, ‘Thank you for being patient with us.’<sup>140</sup>**

## **Adults at Risk**

The ARP was intended to be a new approach to cases where immigration detention would harm ‘vulnerable’ detainees. Before it was introduced, the detainee was assessed against a list of specific characteristics (set out in Chapter 55.10 – see p11), such as being a victim of torture, or survivors of sexual or gender based violence. If the prospective detainee met any of these characteristics, a more rigorous test of ‘exceptional circumstances’ would be required to justify detention. In place of this system, the ARP lists a broader range of criteria that might indicate heightened vulnerability to harm, but in principle a person does not have to fit the criteria to be regarded as ‘at risk’. Instead, the policy focuses on the nature of the evidence of potential vulnerability and harm that is presented. This makes application of the policy largely retrospective: it relies on evidence being presented to the Home Office after detention has already commenced.

The ARP was introduced in August/September 2016. Our sample spans a period both before and after the policy was introduced, and covers cases that would not necessarily fall in either the old or the new policy. In total, 16 of the 37 files we examined were potential ARP cases. Of those 16 files, seven showed either no sign of substantive consideration of the policy, or showed inadequate or partial application, such as referring to categories of risk within the policy but then not applying the safeguards that the policy calls for.

Lawyers repeatedly told us that in their experience, Home Office decision makers now seem to be more willing to accept that people are ‘adults at risk’, but are not necessarily releasing them. One lawyer explained:

**Previously I found that the Home Office were very unlikely to accept that a Rule 35<sup>141</sup> report did constitute independent evidence of torture; they’ve kind of always said that the report isn’t independent evidence of torture. Whereas now, the response is ‘we accept that you’re an adult at risk but for these reasons we think you should stay in detention.’ Reasons like, your case will be resolved soon; you’ll be removed soon, the doctor hasn’t said that detention is causing you harm; that kind of thing. So that’s a little difference, but not a material one in the sense that there are still people in detention who shouldn’t be.<sup>142</sup>**

This pattern was repeatedly borne out in our sample. In one of the more extreme cases, a detainee was acknowledged to be at Level 3 risk of harm, the highest in the policy, but his detention was maintained. The mix of reasons given for this were that he had a criminal record, he had been rude to Home Office staff, he had refused to apply for an emergency travel document (when he was pursuing a legal claim to remain in the UK) and that if he was released:

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140 Interview with Sani, 20 June 2017.

141 Rule 35 of the Detention Centre Rules 2001, requires that detention centre medical staff report ‘any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention’ including, but not exclusively, if there are indications that the person is a torture survivor.

142 Interview with Detention Solicitor 3, 21 July 2017.

**this action can lead to a negative view of the Home Office by the general public who may see the department as failing in its duty to protect them [from] violent criminals and therefore there is a high risk of harm to the public.**

This reasoning equated potential controversy and embarrassment for the Home Office with a risk of harm to the public.<sup>143</sup>

Under the policy, Level 3 indicates that detention itself is harming, or is likely to harm, the detainee. The above case was relatively unusual in our sample, which tended to demonstrate, and our interviewees told us, that in most instances where the Home Office accepted the risk as Level 3 it was possible to secure the detainee's release. For example, Mr V, a torture survivor from Sri Lanka with mental illness, was released from detention shortly after the introduction of the ARP: he was recognised as being at serious risk of self-harm if his detention continued.

However, where professional evidence that the detainee was at risk existed (Level 2 in the policy), for example because they were a victim of torture, detention was routinely maintained.

Recent research into the workings of the adults at risk policy has found that survivors of sexual and gender-based violence continued to be detained, some for lengthy periods of time.<sup>144</sup> Due to the timing of when the adults at risk policy was introduced, our sample only included a small number of files of women potentially subject to it, but this included three cases in which women were accepted as having been subject to rape and other gender-based violence but detention was maintained under the policy.

A similar approach was taken in men's cases.

In the case of Mr J, Home Office officials conceded that he was a victim of torture: he had been trafficked to the UK to work in a cannabis factory, and had been beaten, stabbed, slashed with a knife, locked up and deprived of food by his traffickers. However, caseworkers decided that he should remain in detention. The mix of reasons given was that he had failed to report to the Home Office when required; he had been arrested by the police for the cannabis offence (at the cannabis factory where, the Home Office accepted, there was evidence he was tortured); and that:

**whilst it is noted that you have stated that you have encountered physical torture, the doctor has diagnosed no serious physical or mental health conditions that are likely to inhibit your ability to cope within the detained environment.**

Thus although the ARP was intended to reduce the number of vulnerable adults detained, it is in practice being used to find new ways to justify continued detention.

## **Other reasons for opposing or delaying release**

Our research found other ways in which the routine approach resulted in detentions being continued, rather than in the recognition that they should end unless strictly necessary.

In some instances detention continues through a simple lack of urgency in proceeding with a person's release. From the case files and the experience of our interviewees, it appears that delays are common in the processing and allocation of 'Section 4' bail addresses. Section 4 of the Immigration and Asylum Act 1999 allows for the Home Office to provide accommodation to act as a bail address for people who are seeking release from detention but have nowhere to go. Without an address, neither Chief Immigration Officers nor First Tier Tribunal judges will release them on bail.

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<sup>143</sup> This is not the first case where this phrasing regarding embarrassment for the Home Office as a justification for detention was used. Justifications for detention often come in template form and are passed from case to case. See *Mohammed, R (On the Application of) v Secretary of State for the Home Department* [2016] EWHC 447 (Admin) (03 March 2016) para 3.

<sup>144</sup> Women for Refugee Women; *We Are Still Here: The Continued Detention of Women Seeking Asylum in Yarl's Wood* (October 2017).



Serious delays and related problems with Section 4 bail applications have been reported by various organisations in recent years<sup>145</sup> and our research indicates that these problems continue. In six out of 15 cases where detainees had applied for a Section 4 bail address, delays in allocating a place impeded the person's attempts to secure release.

Of potentially greater concern than these practical delays, was the regular reliance on strained reasoning to justify ongoing detention. Much of this went unchallenged by reviewing officials.

A common manifestation of this was to overstate the imminence of a detainee's removal from the country. On 11 occasions, in the files we examined, continued detention was authorised on the basis of an unjustifiable assertion that the person would soon be removed. Sometimes this was based on unsupported speculation that a person's outstanding applications for leave to remain could be certified as 'clearly unfounded'. Sometimes it disregarded the existence of a test case that would inevitably delay the person's removal. And sometimes the estimate of how soon a person could be removed ignored the fact that they had claimed asylum. This was also something that our interviewees experienced. **Elaine**, whose partner was held for months, told us of her frustration at being repeatedly told by his caseworker that his removal was imminent:

**She kept saying it's imminent, imminent, imminent. But to me seven months isn't imminent. Imminent to me would be a few days, maximum two weeks, less than a month.**<sup>146</sup>

A recurring argument for ongoing detention was that, having been detained, 'the subject is fully aware of our intention to remove him' and that there was therefore a serious risk that they would abscond if released. This argument was used to justify detention in 12 of the cases in our sample. This in effect makes detention self-justifying and self-perpetuating. Once a person is detained, the argument goes, it must continue because the person has already been detained and is therefore likely to abscond if they are let out. It is not at all clear how a detainee could overcome such reasoning.

Most worrying of all was the reasoning used in determining the best interests of children affected by detention. Once detention is authorised, the Home Office is under a continuing duty to consider the best interests of the children affected by it whenever it reviews that detention. However, in practice officials' conduct and reasoning indicated that little regard was paid to this duty.

Under EU law, a parent has rights to lawful residence in the UK if they can prove that they are the primary carer of a British citizen child who would have to leave with them if they were removed from the EU (a so-called Zambrano carer, after the lead European Court of Justice case that determined the issue<sup>147</sup>). However, our sample included cases where a mother was detained and the child was put into social services care. Home Office caseworkers then justified continued detention of the mother on the grounds that she was not the primary carer of the child and was therefore not entitled to lawful residence. Again, in such instances detention becomes self-justifying. The person is detained because they have no lawful residence and the Home Office believes they can be removed from the country. However, if they were released from detention they would be entitled to lawful residence. Similar arguments were made in relation to both men and women making family life cases arising from Article 8 of the European Convention on Human Rights.

In other cases, the Home Office attempted to oppose bail by arguing that reuniting a parent with their child was unnecessary. One detainee told us of a tribunal bail hearing where the Home Office opposed the person's release and the detainee's elderly mother was standing surety:

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145 See for example *Bail for Immigration Detainees, No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation*, September 2014.

146 Interview with Elaine, 20 June 2017.

147 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)*, C-34/09, 8 March 2011.

**They also asked my mother, if it was OK for her – my mother is 72 by the way – if it was OK for her to take over the care of my son. And she said it was going to be quite difficult because she’s quite old. My son’s really young.<sup>148</sup>**

Our file sample also contained two cases in which the notion of a child’s best interests was used to justify continued detention. In these cases, both involving the detention of mothers separated from their children, the detention reviewer cast doubt on the mother’s capacity to care for or provide an appropriate environment for her child. The suggestion was that continued detention was justified because it would not be in the best interests of the child to live with their mother. In one case, this argument was deployed to rebut a claim that the best interests of the child required the mother’s release. In the other, it was used to claim that immigration detention was necessary to prevent the mother from having contact with her child.

Such assertions are extremely serious. In other contexts, the UK operates a rigorous social work and legal process to safeguard the right to family life. The state rightly has a high evidential bar to clear before it can justify separating a mother from her children. Yet in these two cases, where claims about the mother’s suitability as a primary carer for her child were used to justify ongoing detention, there was no considered and informed assessment of the issues and the child’s best interests.

In one of the cases, a Home Office caseworker had recommended the woman’s release after the local Social Services department had requested it in the interests of the children. But detention continued, partly on the basis of a Home Office lawyer’s doubts about ‘the suitability and ability’ of the woman to be the primary carer to her children. In the other case, proceedings in the Family Court (the proper forum to decide whether the mother really was unsuitable as a primary carer) were impeded and delayed by the Home Office decision to keep her in detention.<sup>149</sup>

The casual use of such accusations gives the impression that Home Office decision makers are committed to finding reasons to keep people detained rather than making a fair assessment of whether to release or maintain detention.

### **Living in the shadow of detention**

Despite the difficulties discussed in this chapter, detainees do eventually leave detention one way or another. Only a small number of the cases we studied and interviewees we spoke with were still detained when this report was written. Almost all of those who have left detention continue to live in the UK. However, as our interviewees made clear, people’s experience of detention does not necessarily end on release.

In many instances, particularly those involving people with criminal convictions, onerous release and bail restrictions are imposed. Official Home Office policy in such cases places heavy emphasis on the use of restrictive conditions, including

- electronic tagging
- curfews
- physically reporting to a Home Office centre twice a week.<sup>150</sup>

Even where policy does not make these restrictions mandatory, caseworkers are strongly encouraged to impose them.<sup>151</sup> Often, such conditions appear to be imposed with scant regard for the individual circumstances of the case, the best interests of children affected or the right to liberty of the individual concerned.

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148 Interview with Edward, 22 June 2017.

149 It was later decided that she was in fact fit to be reunited with her child.

150 See for example EIG Chapter 55.20.5.2.

151 See for example EIG Chapter 57 Annex A(2).

Chris, who was first held in immigration detention following time on remand on charges of affray, accepted a plea-deal intended to secure his release. He told us that at his bail hearing Home Office representatives initially tried to impose an electronic tag and curfew that would have prevented him from collecting his children from school while his partner was at work. His representative successfully argued against that proposal, but an alternative curfew was still imposed:

**I'm on a tag from nine o'clock to six in the morning and I'm there, but it's stressful. I'm a prisoner. I can't, if anything happens with the kids, what am I supposed to do?**<sup>152</sup>

For those who have no family and for whom Section 4 support is not arranged, release simply results in destitution and street homelessness.<sup>153</sup> Lawyers told us of clients who had been released directly on to the streets, sometimes being handed a sleeping bag on their way out.<sup>154</sup> Others told us of the need to pursue injunctions from the courts to ensure their clients would have somewhere to stay on release. We were told that while this was a long-standing issue, it had become an increasing problem in 2017:

**We've had to go out-of-hours [to a judge] for an order to provide accommodation. We don't want an order to re-detain, that would be bizarre, but it's almost like that because we don't want our client to be released to homelessness.**<sup>155</sup>

These impositions on released detainees' daily lives, and the lives of their loved ones, are accompanied by an ever-present fear of being re-detained. On reporting days, partners go to work not knowing whether the former detainee will be at home when they return. Children, who may not understand why their parent was taken from them, apparently out of the blue, the first time, live with the anxiety that it may happen again. As Cassandra told us:

**It's still stressing us. It's still stressing me, it's still stressing [Alex]. [The kids] don't let him out of their sight. You know it's hard for him to leave the house without one of them wanting to go with him, you know. Because they don't know what's going to happen.**<sup>156</sup>

While published Home Office policy discusses re-detention almost exclusively in relation to the circumstance of a person 'becoming removable', it can arise for many reasons. It may be a consequence of the excessively onerous release conditions and destitution that some ex-detainees are exposed to. The chaotic reality of homeless life makes regular attendance at Home Office reporting centres extremely difficult, while onerous curfew and reporting requirements are likely eventually to be violated, either unavoidably or inadvertently. Missed appointments or breaches of conditions potentially lead to being recalled to detention. One lawyer told us: 'they're in this cycle that they can't really get out of. They're just going to be re-detained.'<sup>157</sup>

Home Office caseworkers themselves recognised the risk of this kind of cycle, particularly the risk of destitution leading to criminality. On several occasions they used it to justify keeping people in detention.

Onerous release conditions or destitution are not alternatives to detention that safeguard the right to liberty, or the security and stability of family life. Their imposition is another aspect of the ingrained reliance on coercive detention powers inherent in the UK's routine use of immigration detention.

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152 Interview with Chris, 13 June 2017.

153 Concerns about detainees being released into street homelessness have been raised by other detention monitoring organisations. See for example Detention Action, *What the Immigration Bill 2015 means for immigration detention*, October 2015.

154 Interview with Detention Solicitor 4, 13 July 2017.

155 Interview with Detention Solicitor 5, 3 August 2017.

156 Interview with Cassandra, 23 June 2017.

157 Interview with Detention Solicitor 6, 26 July 2017.

## Conclusion

In response to the Shaw review, the UK government pledged to reduce the number of people detained and the length of time they are detained. If the Home Office is serious in this ambition, caseworkers and more senior officials must be willing, and be encouraged, to exercise their powers to release people from detention. Some of the steps taken to implement this – particularly ‘Case Progression Panels’ (see note 131 on p35) – were brought in too late to be examined in this study. Others, such as the Adults at Risk policy, were found to be failing to provide the protective function they were intended for. In particular, detainees were being accepted as having been subject to torture and sexual and gender-based violence but their detentions were being maintained. More broadly, however, in the cases we examined, all too often detainees were kept in detention when it was evident that their removal from the country would not occur any time soon. In other cases, particularly those of ex-offenders, caseworkers used increasingly untenable means to justify ongoing detention that would otherwise be clearly unreasonable. Most worrying of all were the various means used to justify separating a parent from their children. Detention had in these cases become an end in itself, maintained as a matter of default and convenience.

# CONCLUSION AND RECOMMENDATIONS

## Our findings

Official policy on immigration detention has been allowed to shift, from detention as a last resort towards detention as routine. The expansion of the detention estate facilitated this: as more spaces became available in detention, the Home Office found more people to fill them. The modern reality of immigration detention in the UK is that tens of thousands of people are detained each year and that the majority of them are later released back into the community.

If it is routine in policy, detention is far from a matter of routine to the people affected by it. Our research matches the findings of many other studies that have revealed serious long-term harm to detainees' mental and physical health, as well as harm to immediate family members who are not themselves detained, including children. While detention is inherently invasive and distressing, indefinite detention is even more so. Interviewees regularly cited the uncertainty of indefinite detention, and their vicarious exposure to the prolonged detention of others, as a major source of the harm they experienced.

Decisions to detain are in many cases based on:

- a limited search for information about the person's case-history
- limited application of the case information
- a lack of rigour in applying the terms of policy and law when justifying detention decisions
- a cursory engagement, at best, with a prospective detainee's history and circumstances, including the best interests of children affected by the decision.

These factors combine to produce an approach to decision making that sees detention as a standard response, not a last resort.

Once incarcerated, detainees experience their indefinite detention as confusing and isolating. They rarely have a meaningful sense of what is happening to them. The regular errors and constant repetition of what little information they are given often causes them to lose belief in what they are being told. The casework we saw often sought to justify continued detention unless release absolutely could not be avoided: a reversal of the appropriate position of detention as the last resort. This was done through:

- over-optimistic assessments of the likelihood of successfully removing a person from the country
- the use of nominally protective policies to justify holding people with recognised heightened vulnerabilities
- deployment of untenable arguments that seek to justify continued detention.

The effects of exposure to routine indefinite detention stay with ex-detainees and their families for a long time after they are released. Onerous bail conditions or lack of support undermine the full enjoyment of liberty that a detainee's release is meant to secure. Meanwhile, anxiety – often justified – about being taken back into detention undermines detainees' family life, with damaging ripple effects on the lives of their loved ones.

## RECOMMENDATIONS

The UK has international human rights obligations to ensure that in any given case, immigration detention is necessary, proportionate and used only as a last resort. As Amnesty International wrote in 2009, globally, ‘The routine or automatic use of detention... violates both the spirit and frequently the letter of states’ international human rights obligations.’<sup>158</sup> The routine use of detention in the UK does exactly this.

Both the joint APPG report and the Shaw review included several recommendations necessary to safeguard the welfare of detained people. However, as both recognised, changes to the process or specific conditions of detention are not enough: wider reform is needed. To bring about the institutional change required to end the Home Office’s routine use of detention, concrete steps are required of the Home Office itself, of the UK government, and of parliamentarians.

### To the Home Office

**Recommendation 1: Significantly reduce the use of immigration detention, ensuring that far fewer people are detained and that anyone who is detained, is held for a far shorter time.**

Given the discretionary nature of its detention powers, the Home Office has the authority to reverse its decision makers’ routine reliance on detention. The 2015 APPG Inquiry and the 2016 Shaw review both called for significant reductions in the use and duration of detentions. Much more needs to be done in this direction.

**Recommendation 2: To comply with international human rights standards, ensure that the Enforcement Instructions and Guidance documents, and all other relevant detention policy and guidance documents, revert to emphasising that detention is only to be used as a last resort and focusing to a much greater extent on the use of alternatives to detention.**

Home Office policy and guidance to its detention decision makers plays an important role in regulating the use of the UK’s broad statutory detention powers. Over the years these policies have become more permissive of the routine use of detention.

**Recommendation 3: Take steps to fulfil the legal duty to treat the best interests of all children affected by immigration detention decisions as a primary consideration.**

Decision makers must make greater efforts to take into consideration the full context of a person’s case and give it appropriate weight. This is particularly important in cases involving children, where the Home Office has pre-existing duties, under the UN Convention on the Rights of the Child and domestic law, to treat children’s best interests as a primary consideration.

**Recommendation 4: The Home Office should further reduce the immigration detention estate.**

Further changes to Home Office published policy are insufficient. The sheer scale of the current detention estate facilitates the use of immigration detention as a matter of routine. Detention is used to the extent that capacity allows. In recent years, the detention estate has begun to reduce in size, with the closure of two IRCs and (at the time of writing) the announcement of the intention to close a third.

### To the UK government

**Recommendation 5: Introduce a universally applicable statutory time limit for detention, short enough to constitute an effective constraint on its use.**

**Recommendation 6: To implement universal automatic judicial oversight of detention, replace the automatic bail provisions of the Immigration Act 2016 with those passed in the Immigration and Asylum Act 1999.**

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<sup>158</sup> Amnesty International, *Irregular Migrants And Asylum-Seekers: Alternatives To Immigration Detention*, April 2009, [www.amnesty.org/en/documents/pol33/001/2009/en/](http://www.amnesty.org/en/documents/pol33/001/2009/en/)

Aside from the closure of detention centres, legal restraints on the Home Office's powers to detain act as significant impediments to routine detention. The suspension of the Detained Fast Track, for example, contributed to a significant reduction in the number of detainees. Legislation is needed to compel the Home Office to radically reform its use of detention.

### **To parliamentarians**

**Recommendation 7: Call for a universally applicable statutory time limit and universal automatic judicial oversight to be passed into law.**

Parliamentarians from all parties can play a crucial role in pressing government for these legislative changes.

**Recommendation 8: Following the publication of Stephen Shaw's second report, instigate a new inquiry into the current use of immigration detention, modelled on the 2015 Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration.**

It is vital that parliamentarians continue to monitor and investigate the Home Office's use of detention. At the time of writing, Stephen Shaw is conducting a return review of the Home Office's response to his initial report. This review is important and welcome, but has a relatively limited focus on the welfare of detainees. Parliamentarians should take a broader perspective on the systemic issues behind the state of the UK's detention system as a whole.

# APPENDIX: THE PROCESS OF DETENTION AND RELEASE

Immigration detention can be used for three purposes:

- in order for officials to examine a person's immigration status
- in order to implement a person's administrative removal from the UK
- in order to implement a person's deportation from the UK.

Removal is the process of ensuring that a person subject to immigration control but without permission to be in the UK, for example because their visa has expired, leaves the country. Deportation is the process of expelling from the country an individual whose presence in the UK is deemed to be 'not conducive to the public good'. This most commonly, although not exclusively, arises following a conviction for a criminal offence. (For more, see Glossary p49).

Detention can occur in a wide range of circumstances. Some of the most common are:

- when a person is found at a port and is suspected of not having permission to enter the UK;
- when immigration officers, either spontaneously or as a result of immigration enforcement action, come across a person they suspect does not have permission to be in the UK;
- when police come across a person without permission to be in the UK, as a victim of crime or as a suspect;
- when the Home Office considers that a person should be deported because their presence in the UK is not conducive to the public good, usually following the person's conviction for a criminal offence;
- when a person makes an asylum claim to the Home Office.

What happens next depends mainly on the circumstances of the initial detention. Sometimes people are detained by prior Home Office arrangement, for example when they have completed a prison sentence or they are already reporting regularly to a Home Office centre. In these cases, a proposal to detain is made by caseworkers and authorised by gatekeeping and more senior officials. Unplanned detentions, for example those following an enforcement raid or someone's arrival at a port of entry to the UK, require review and authorisation by gatekeeping and senior officials to justify ongoing detention. Thus, some detainees are temporarily placed in a short-term holding facility (for example, at a port) before either being removed from the country or being transferred to an IRC. Others are taken straight to an IRC, while others are held in prison and may or may not be transferred to an IRC.

If a detainee is granted permission to be in the UK while in detention, for example after being recognised as a refugee, then they should be released in line with the terms of their leave to remain. Detainees who do not have leave to remain are entitled to apply for release from detention, subject to certain limitations. Changes were made to this process in the Immigration Act 2016, but are not yet in force as of 1 November 2017. At present, detainees without leave to remain can be released on either 'temporary admission/release' or bail. Home Office officials, acting on behalf of the home secretary, have the power to grant temporary admission/release and officials of the rank of Chief Immigration Officer or above have the power to grant 'Chief Immigration Officer Bail' (CIO Bail). A detainee can request temporary admission/release at any time. If granted, it ordinarily comes with a prohibition on seeking employment and a requirement to report regularly to a Home Office centre. Often it comes with a requirement to reside at a given address. In some cases it comes with a requirement to submit to electronic monitoring.

CIO Bail is available to detainees who have been held for at least seven days. In contrast to temporary admission/release, which is effectively indefinite, release on bail requires that the detainee attend at a given time and place to 'answer bail' and to abide by certain conditions, known as a recognizance. When bail is answered it can be renewed for a further term. An address is always required and



reporting conditions are normally imposed. Sureties, electronic monitoring and curfews may also be required. A person can be arrested and re-detained for breaching the terms of their bail or failing to answer bail.

The First-tier Tribunal (FTT) is also empowered to grant bail, with broadly the same terms as CIO bail. A detainee can be granted FTT bail only if they have been detained for at least seven days and at least 28 days have passed since any previous refusal of bail. The FTT is the main independent body that has the power to release a detainee. The High Court, and the other senior courts, also have power to order the release of detainees, but this only arises in a relatively small number of cases.

As of 1 November 2017, there is no automatic judicial oversight of detention. To be released on bail a detainee must apply for it themselves. However, in principle the Home Office is not required to wait for a detainee to apply. Temporary admission/release does not require an application from a detainee at all. The Secretary of State is empowered to release a detainee on temporary admission/release at any time, and should do so if it becomes clear to her officials that continued detention is no longer reasonable. Home Office policy calls for detention to be formally reviewed on days 1, 7 and 14 of detention and monthly thereafter, and for *ad hoc* reviews to take place if circumstances change or if new information becomes available. Moreover, where temporary admission/release is not considered appropriate, the Secretary of State's officials can invite a detainee to apply for bail.

# GLOSSARY OF TERMS

## ARP

Adults at Risk Policy. This is intended to provide officials with a framework for determining when detention would be inappropriate, owing to the harm it may cause to individuals identified as ‘vulnerable’ or ‘at risk’. It is part of the Home Office’s published policy and guidance to its officials about how to exercise its statutory immigration detention powers (see EIG: Enforcement Instructions and Guidance).

## Independent Chief Inspector of Borders and Immigration

An official appointed by the home secretary, tasked with monitoring and reporting on the efficiency and effectiveness of immigration, asylum, nationality and customs functions carried out by the Home Office and by other organisations contracted to work on its behalf. The Independent Chief Inspector regularly publishes reports and makes recommendations for reform that are submitted to the Home Secretary and laid before Parliament.

## Deportation

Sometimes referred to as ‘expulsion’. A deportation order can be made when the Home Secretary deems that a person’s presence in the UK is ‘not conducive to the public good’. An order can be made against anyone who is not a citizen, whether or not they have permission to be in the UK. In some instances, immediate family members (such as spouse and minor children) of a person subject to a deportation order can also be deported. A deportation order remains in place, preventing a person from lawfully returning to the UK unless a decision is made to revoke it. In UK law, deportation is distinguished from ‘administrative removal’ (see ‘removal’).

## Detention estate

A collective term for institutions and facilities dedicated to use for immigration detention: Immigration Removal Centres, short-term holding facilities and pre-departure accommodation. Places in prisons are also used to hold some people long term under immigration powers.

## Detention gatekeeper

Home Office officials tasked with reviewing a proposed detention before it is implemented, or immediately reviewing an unplanned detention to determine whether it should continue. The detention gatekeeper should review the person’s suitability for detention in accordance with the general detention criteria, including the Adults at Risk policy. Following the Shaw review the government announced an expansion of the role of detention gatekeeper.

## EIG

Enforcement Instructions and Guidance. A large body of published policy and guidance to Home Office officials about how to enforce immigration controls. It covers a wide range of issues including use of coercive powers, inspection of premises, removals and deportations, and the use of immigration detention powers.

## First-tier Tribunal

First-tier Tribunal (Immigration and Asylum Chamber) – an independent tribunal empowered by statute to hear and decide appeals against immigration decisions taken by Home Office officials. It is also empowered to hear and grant bail applications by immigration detainees. The First-tier Tribunal is supervised by an Upper Tribunal, which is empowered to hear appeals on points of law from decisions of the First tier.

## **OEM**

Operational Enforcement Manual. The precursor to the Enforcement Instructions and Guidance (see EIG). The OEM performed largely the same function as the EIG, but its content and style were reformed and re-named in 2008.

## **Permission to be in the UK**

People subject to immigration control need permission to enter or stay in the UK. Permission is known as leave to enter, or leave to remain, and may be granted for a temporary or indefinite period and on certain conditions. Nationals of countries in the European Economic Area and of Switzerland – and their family members – have free movement rights in European Union law to enter and stay in the UK. They do not require leave to enter or remain, although in certain circumstances they may be removed or deported.

## **Presumption of liberty**

Sometimes referred to as the presumption of release or the presumption against detention. This is the legal starting point for any consideration of a proposed detention or any review of an ongoing detention. Liberty – meaning, in this case, not being detained – is the default position, or presumption, and the Home Office has to provide sufficient reasons to deviate from it. The presumption means that the burden is on the Home Office to justify detaining someone, not on the person to show why they should not be detained.

## **Redocumentation**

The process by which a person the Home Office is trying to remove from the country is provided with the travel documentation necessary for their removal to be implemented. Many people facing removal or deportation do not hold a valid passport for entry to the country where the Home Office intends to send them. Redocumentation can involve obtaining a new passport, or some other form of travel documentation, such as a single-use laissez-passer or ‘EU Letter’. Redocumentation often requires both the cooperation of the person being removed and the state to which they are being removed.

## **Removability**

A judgment of whether a person can lawfully and practically be removed or deported, including how safely and quickly that may or may not be done. Many factors affect someone’s removability, but they are likely to include travel documentation, legal barriers to removal (such as an ongoing asylum claim) and the person’s health. A person’s ‘removability’ is relevant to detention decisions because detention is only lawful if it is reasonable, and if a person is unlikely to be removed within a reasonable time then they should not be detained. Home Office officials therefore make estimates of a person’s removability, but these are often contested by detainees and their legal representatives. Bail judges at the First-tier Tribunal, or High Court judges determining the legality of a person’s detention, often disagree with the Home Office estimates.

## **Removal**

More properly referred to as ‘administrative removal’, to distinguish it from deportation. The enforced or supposedly voluntary removal of a person who does not have leave to remain in the UK, either because they never had it or because their leave to remain expired or was curtailed.

## **Street homelessness**

The plight of people who routinely find themselves on the streets during the day with nowhere to go at night. Some may end up sleeping outdoors, or in a building not designed for human habitation, perhaps for long periods. Others may spend nights at a friend’s home for a brief time, or in a hostel, night-shelter or squat, or in prison or hospital.

The UK detains more than 27,500 people a year under immigration powers. Most of these people are held for a few weeks, but some are held for months or even years: there is no time limit. The majority are released back into the community to pick up the pieces of their disrupted lives.

Today, immigration detention has become a matter of routine, causing serious, long-term damage to the mental and physical health of detainees.

This report is based on interviews with detainees, their families and solicitors, and an examination of Home Office casefiles. It shows detention being used routinely; through decisions to detain that are often ill-considered and then maintained as a matter of default or convenience with devastating repercussions for detainees and their families.

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