



Written evidence to the Parliamentary inquiry into the use of immigration detention in the UK, hosted by the APPG on Refugees and the APPG on Migration

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Submission by Detention Action

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About Detention Action

1. Detention Action is a national charity established in 1993 that aims to change the way that migrants are treated by immigration detention policy in the UK. Detention Action defends the rights and improves the welfare of people in detention by combining support for individuals with campaigning for policy change. Detention Action works primarily in Harmondsworth and Colnbrook Immigration Removal Centres, near Heathrow Airport in London and HMP the Verne in Dorset.

There is currently no time limit on immigration detention – in your view what are the impacts (if any) of this?

2. The vast majority of developed countries limit the maximum period of detention. The UK is unique in Europe in having no time limit and routinely detaining migrants for years. It has opted out of the EU Returns Directive, which sets a maximum time limit of 18 months.
3. France limits detention to a maximum of 45 days, yet nevertheless enforces 31% more removals of irregular migrants and asylum-seekers than the UK. In 2012, 19,249 migrants were removed from France,¹ compared to 14,647 from the UK.² The difference in emphasis is shown by the fact that in France, only 28% of returns took place from detention, compared to 39% in the UK.
4. According to the latest Home Office statistics, 237 people had been detained for over six months at 31 March 2014.³ However, migrants detained in prisons are usually held for the longest periods, yet are arbitrarily excluded from the statistics. 790 migrants were detained in prisons at 3 June 2014.
5. Many migrants are detained unnecessarily when they cannot return. Recent research by Detention Action and partner organisations has found that unreturnable migrants are detained across Europe.⁴ The research identifies several factors⁴ that cause migrants to be unreturnable, including the refusal of their countries to issue travel documentation, or legal barriers to return to certain countries.
6. Detention without time limit damages the UK's international reputation for defending human rights. In May 2013, the UN Committee against Torture urged the UK to "(i)ntroduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention."⁵

¹ Ministre de l'Intérieur, in ASSFAM et al, *Centres et Locaux de Retention Administrative - Rapport 2012*, p8

² Home Office, *Immigration Statistics October to December 2013*, table rv_01

³ Home Office, *Immigration Statistics January to March 2014*, table dt_11

⁴ Flemish Refugee Action et al, *Point of No Return*, January 2014

⁵ Committee against Torture, *Fifth periodic report of the United Kingdom*, (6-31 May 2013)



7. The Home Office has repeatedly been found to have caused inhuman or degrading treatment to the most vulnerable migrants in long-term detention. Over the last three years, the High Court has on six occasions found that the prolonged detention of mentally disordered detainees amounted to breaches of Article 3 of the European Convention on Human Rights. In the case of BA, the High Court described “callous indifference” on the part of the Home Office, alongside “a deplorable failure... to recognise the nature and extent of BA’s illness.”⁶
8. In July 2014, the Home Office was found to have unlawfully detained for eleven months in Yarl’s Wood the wife of a UK resident refugee in conditions that amounted to inhuman and degrading treatment.⁷
9. In the case of Sino, the High Court found that an Algerian asylum-seeker with a psychological disorder and a history of minor offending had been detained unlawfully for the entirety of his 4 years and 11 months in immigration detention.⁸ This is thought to be the longest ever period of unlawful immigration detention in the UK. The court found that there was at no point any prospect of his deportation becoming possible in a reasonable period.
10. The longer a person is detained, the less likely they are to be removed. According to Home Office statistics, of migrants leaving detention after more than a year inside in 2013, only 37% were removed or deported; the majority were released back into the UK, their protracted detention having served no purpose. By contrast, 57% of migrants detained for under 28 days left the UK.⁹
11. The dramatic increase in the scale of detention has led to no increase in the numbers or removals. Since 2008, the numbers of migrants in detention have increased by 35%, yet numbers of enforced removals have actually declined by 24% (from 17,239 in 2008 to 13,051 in 2013).¹⁰ This suggests that increasing the numbers detained and the length of detention simply allows greater inefficiency on the part of the Home Office.
12. Independent scrutiny has indeed found such inefficiency and poor quality of decision-making in Home Office use of detention. HM Inspectorate of Prisons and the Independent Chief Inspector found in a joint report in 2012 that the “detention of ex-prisoners appeared to have become the norm rather than... a rigorously governed last resort.”¹¹

⁶ BA, [2011] EWHC 2748 (Admin), 26 October 2011

⁷ MD, R (on the application of) v Secretary of State for the Home Department [2014] EWHC 2249 (Admin) (8 July 2014). See http://www.bhattmurphy.co.uk/bhatt-murphy-111.html#.U7_K4JRdWAZ

⁸ Sino, R (on the application of) v Secretary of State for the Home Department [2011] EWHC 2249 (Admin) (25 August 2011)

⁹ Home Office, Immigration Statistics October to December 2013, Detention, table dt_06

¹⁰ Home Office, Immigration Statistics October to December 2013, Detention, table rv_01

¹¹ Independent Chief Inspector of Borders and Immigration and HM Inspectorate of Prisons, *The effectiveness and impact of immigration detention casework*, December 2012



13. Independent research by Matrix Evidence has found that £76 million per year is wasted on the long-term detention of migrants who are ultimately released. If the Home Office could identify these unreturnable migrants earlier, the equivalent of three detention centres could be closed without reducing the number of migrants returned.
14. The Home Office paid out £12 million in 2009-10 in compensation and legal costs arising from unlawful detention actions.
15. Recommendation: The Government should introduce a time limit of 28 days on immigration detention, in line with recent best practice in the EU.

How effective are the current UK alternatives to detention (e.g. bail, reporting requirements)? Are viable alternatives to immigration detention in operation in other countries?

16. Alternatives to detention based on engagement, not enforcement, have proved successful around the world in meeting the objectives of states without the expense and harm of detention.
17. The International Detention Coalition has documented a range of “alternatives to detention” that prevent unnecessary detention by keeping individuals engaged in immigration procedures whilst living in the community. The Coalition found that migrants were more likely to accept and comply with negative immigration decisions if the decision-making process was seen as fair, they were informed and supported throughout the process, and they were given the option to explore all options to remain in the country legally. They were also better able to comply with immigration requirements if they could meet their basic needs in the community.¹²
18. Sweden has achieved high rates of voluntary return, at a fraction of the cost, through emphasis on dialogue with refused asylum seekers. In Sweden a case worker works with each asylum-seeker from the start of the process to prepare them for either a positive or negative outcome of their case. Refused asylum-seekers have approximately two months where they are supported by the case worker to leave voluntarily. Detention is used only as a last resort.¹³ 82% of returned asylum seekers in Sweden left voluntarily in 2008,¹⁴ and 80% between 2011-13.¹⁵ Sweden secures the return of around 80% of refused asylum seekers, far higher than the British rate.¹⁶
19. Australia introduced case management-based alternatives to detention in 2006, enabling it to move away from the mandatory indefinite detention of in-country

¹² International Detention Coalition, *There are alternatives*, 2011, p7

¹³ International Detention Coalition, *op. cit.*, p35

¹⁴ Centre for Social Justice, *Asylum Matters: Restoring Trust in the UK Asylum System*, December 2008

¹⁵ Swedish Migration Board, unpublished statistics

¹⁶ Centre for Social Justice, *op cit*



asylum-seekers and irregular migrants not arriving by not boat. These programmes provide early intervention and support to migrants, seeking to better understand their circumstances and work with them to resolve their immigration cases. Case managers ensure that migrants have suitable access to welfare assistance, legal advice and advice on voluntary return. The programmes had a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily, despite often long periods in Australia and significant barriers to return. The programme cost around \$AU38 per day, compared to around \$AU125 per day for detention.¹⁷

20. The Family Returns Process demonstrates that, with sufficient political will, returns processes can be developed that do not rely on detention. The evaluation found no statistically significant difference in return rates between the new process and the previous approach based on detention at Yarl's Wood.¹⁸
21. Detention Action has launched an innovative new alternative to detention for ex-offender migrants aged 18-30 at risk of long-term immigration detention. The project aims to demonstrate that, with reintegration support, ex-offender migrants rarely abscond or reoffend, and therefore that the long-term detention of ex-offenders with barriers to removal is unnecessary. Through one-to-one case management and training, participants will develop skills and confidence that will enable them to participate in the community and meet the conditions of their release from detention.
22. **Recommendations:** The Home Office should develop alternatives to detention based on engagement with migrants, learning from good practice in the UK and internationally.

How far does the current detention system support the needs of vulnerable detainees, including pregnant women, detainees with a disability and young adults?

23. Vulnerable asylum-seekers are detained for the administrative convenience of the Home Office on the Detained Fast Track (DFT). Since its introduction in 2000, the DFT has grown vastly in scope and in size. Many more asylum-seekers are now detained, for longer periods, in worse conditions, with tighter timescales, than was ever initially intended.
24. On the 9th July 2014, the High Court ruled in a challenge brought by Detention Action that "the DFT as operated carries an unacceptably high risk of unfairness", thus crossing the threshold of unlawfulness.¹⁹
25. Beyond the question of the immediate steps that the High Court will require in order for the DFT to avoid operating unlawfully, it is clear that the detention of asylum-

¹⁷ International Detention Coalition, op.cit., p40

¹⁸ Home Office, Evaluation of the new family returns process, December 2013, p17 and 21

¹⁹ *Detention Action vs Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), 197.

- seekers is at the very edge of breaching the UK's international obligations to people fleeing persecution. The DFT is in urgent need of abolition or root and branch reform, in order to protect the UK's reputation as a place of protection for refugees.
26. The DFT is a process for deciding asylum claims whilst the asylum-seeker is in detention, to accelerated time-scales. The Home Office began detaining asylum-seekers for fast-tracking in 2000, in response to a dramatic increase in numbers of asylum applications. In 2000 there were 84,132 asylum applications in the UK; by 2012 the number had fallen to 21,875.
 27. Nevertheless, the Home Office expanded the use of the DFT last year, increasing its allocation in Harmondsworth to around 400 beds. 2,288 asylum-seekers were detained on the Fast Track in the middle six months of 2013.
 28. Around half of the 1,300 migrants in detention we support every year are on the DFT. Many tell us of their distress at being locked up in what they experience as a prison. Our 2011 report *Fast Track to Despair* documented the experiences of asylum-seekers on the DFT. The majority of the asylum-seekers were confused and disorientated, due to limited or late information, lack of interpreters or translated materials, lack of literacy, the stress of detention and isolation from support from their communities.²⁰
 29. The UN High Commissioner for Refugees has monitored the DFT since 2007, but its repeated criticisms, including of "unreasonable expectations of evidence provision"²¹, have not been addressed.
 30. The DFT is designed for asylum claims that are considered to be suitable for a quick decision. However, the decision to fast-track an asylum case is made when very little is known about the person's situation. As a result, vulnerable people with complex cases, including victims of torture, trafficking, gender-based violence and homophobic persecution, are regularly detained on the DFT.
 31. Asylum-seekers may be detained on the DFT when there is no suggestion that they would abscond, and when they meet none of the general detention criteria.
 32. The criteria for suitability for the DFT have gradually widened: there is no longer a nationality list of suitable countries, for example. The screening process simply does not ensure that unsuitable cases are excluded from the DFT, because the questions asked do not address the details of the person's case and are unlikely to elicit information that would demonstrate unsuitability, such as experience of torture, trafficking or mental ill health. The High Court in *Detention Action* found "deficiencies" in the screening process and noted that "the process inherently cannot identify all the claims which are in fact unsuitable for detention or a quick

²⁰ Detention Action, *Fast Track to Despair*, 2011, p18

²¹ UNHCR, *Quality Integration Project: Key Observations and Recommendations*, 2010, p2



decision”.²² Mr Justice Ouseley expressed “real unease about the cases which go through the DFT system when they should not have done so.”²³

33. Wrongly entering the DFT can have devastating effects on a vulnerable person’s chances of asylum. The Home Office refuses 99% of asylum claims which they have placed on the DFT.
34. The safeguards that should ensure that unsuitable cases are taken out of the DFT are ineffective. Rule 35 of the Detention Centre Rules requires detention centre medical staff to report on any person for whom detention is harmful or who may have been a victim of torture. However, the Independent Chief Inspector of Borders and Immigration and the HM Inspectorate of Prisons have criticized the poor quality of the reports and of the responses from Home Office case owners.²⁴ The High Court concluded that Rule 35 reports “are not the effective safeguard they are supposed to be” and do not work as intended to remove unsuitable cases from the DFT.²⁵
35. When their case is refused, asylum-seekers have just two days in which to appeal. There is no new consideration of whether their appeal is suitable for the DFT, although far more information about their case is available at this stage than was the case at the screening stage when they entered the DFT. Many asylum-seekers find themselves unrepresented at appeal, and must navigate a complex and fast-paced appeals process in a language they often do not understand. In 2012, 59% asylum-seekers in Harmondsworth were unrepresented at the first appeal. Only 1% of them won their appeals, compared to 20% of those with a representative.²⁶
36. The High Court criticized many deficiencies of the DFT, but found that they did not in themselves make the operation of the process inherently unlawful. However, the judge concluded that these shortcomings put a premium on the availability of early legal advice, in order to identify and challenge unfairness in individual cases.
37. However, in practice asylum-seekers wait an average of a week in Harmondsworth to be allocated a lawyer by the Home Office. The lawyer is usually allocated shortly before the substantive interview, with the result that the asylum-seeker often has only half an hour with their lawyer immediately before their interview, allowing very little time to build trust, explain their case and to receive advice. The High Court found that the “seemingly indefensible period of inactivity”, when the person was detained but could do nothing to work on their case, created an “unacceptably high risk of unfairness” in the process as a whole.²⁷ The system, Mr Justice Ouseley

²² *Detention Action vs SSHD*, op cit, 112.

²³ *ibid*, 194.

²⁴ HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, *The effectiveness and impact of immigration detention casework*, December 2012

²⁵ *Detention Action vs SSHD*, op cit., 133.

²⁶ January-September 2012, statistics from FOI requests by Detention Action, FOI/76942 and FOI/80225

²⁷ *Detention Action vs SSHD*, op cit, 200.



concluded, “does not permit the SSHD to run it quickly only when it suits, and slowly when it does not.”²⁸

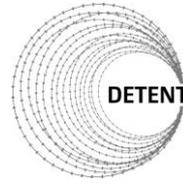
38. **Recommendations:** The Home Office should abolish the DFT and revert to routinely processing asylum claims in the community, unless there are exceptional circumstances that mean that the person meets the general detention criteria.
39. If the DFT is to continue, there should be a fundamental reform of the process:
40. The screening process and safeguards should be reformed to effectively identify and exclude unsuitable cases.
41. Asylum seekers should be guaranteed adequate time with their legal representatives to prepare their cases.
42. There should be thorough consideration of whether appeals are suitable for the DFT process.

What are your views on the current conditions within UK immigration detention centres, including detainees’ access to advice and services?

43. The UK’s detention estate is ill suited to holding people under immigration powers for long periods. In Brook House, Colnbrook and Harmondsworth Immigration Removal Centres, three of the largest centres in the UK, asylum-seekers are detained in conditions with the same security as high security prisons. In all three centres, wings have been built to “Category B” prison standards. Although migrants are not serving sentences for crimes, they are held in secure conditions equivalent to those used for serious offenders in prison. The Harmondsworth Independent Monitoring Board in 2011 found it “shocking that brand new facilities have been built that are ill-suited to their intended purpose and that offer lower standards of decency than the facilities they replace.”²⁹
44. HMP The Verne reopened in March 2014 as a prison exclusively for immigration detainees. Up to 580 migrants will be detained under the Prison Rules, which give less rights than the Detention Centre Rules. Migrants held in The Verne cannot receive telephone calls or have mobile telephones. The Rule 35 procedure, the principle safeguard against vulnerable people and torture survivors being damaged by being wrongly detained, does not apply in prisons.
45. **Recommendations:** The Home Office should cease detaining migrants in inappropriate prison conditions. Steps should be taken to ensure that the physical environments of existing IRCs are appropriate for migrants serving no criminal offence.

²⁸ *ibid*, 196.

²⁹ Independent Monitoring Board for Harmondsworth Immigration Removal Centre, *2009 Annual Report*, 2010, pp6-9



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