



**Supplementary 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**

**Alternatives to detention: international and UK good practice**

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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.

## 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?

### Definitions of alternatives to detention

2. Alternatives to detention are projects or procedures that allow migrants “to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.”<sup>1</sup>
3. Alternatives to detention aim to meet state immigration control objectives without the restrictions on liberty and the cost to taxpayers of detention. They often aim to promote voluntary return and minimise absconding.
4. There are two broad categories of alternatives to detention:
  - Enforcement-based alternatives based on restrictions on liberty in the community.
  - Engagement-based alternatives, which promote the active cooperation of migrants in working towards resolving their immigration cases. These alternatives may include conditions, such as compliance with monitoring requirements. However, such conditions operate alongside processes that enable migrants to understand and actively engage in the processes in which they find themselves. Engagement-based alternatives tend to involve a reduction in the overall use of detention.
5. There is considerable international momentum behind alternatives to detention. UNHCR has prioritised the development and implementation of alternatives as one of the three key goals of its new Global Detention Strategy.<sup>2</sup> The European Commission is supporting work to develop alternatives around Europe, following the adoption of a requirement for alternatives in policy and practice in the EU Returns Directive (which is not in force in the UK).

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<sup>1</sup> International Detention Coalition, *There are alternatives*, 2011

<sup>2</sup> UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees*, 2014

### **Enforcement-based alternatives to detention**

6. Enforcement-based alternatives to detention rely on the use of lesser degrees of coercion than detention. There is a quantitative but no qualitative change in the model of interaction with migrants; lesser restrictions on liberty are used, but there is little focus on encouraging cooperation with the immigration or asylum process.
7. Enforcement-based alternatives are typically applied at the end of the process, once the migrant has been refused leave to remain, and after they have been detained or identified as liable for detention. They operate at the individual level, as a way for the individual migrant to be released or not detained.
8. In the UK, bail and reporting requirements are well-established parts of the detention and migration systems. Migrants in detention can be released on bail by the administrative courts or the Home Office. In some but not all cases, a surety provides a financial guarantee that the migrant will not abscond. 1,707 people were released from detention on bail in the UK in 2013. A large proportion<sup>3</sup> of refused migrants and asylum-seekers are obliged to report on a regular basis to Home Office reporting centres or police stations.
9. A minority of migrants are obliged to wear an electronic monitoring device fixed to their ankles, which requires that they observe a curfew. However, the extent of this restriction on liberty means that it is often not considered a true alternative to detention.
10. There has been little published evaluation of these measures in the UK. The limited available data suggests that bail is largely effective in terms of low absconding rates: Home Office research in 2004-05 found an absconding rate of only 8% of migrants considered to be at high risk of absconding and given electronic monitoring restrictions; there was a statistically similar absconding rate of around 10% of 'low risk' migrants without monitoring restrictions.<sup>4</sup>
11. However, no studies have looked at overall compliance with the immigration process or take-up of voluntary return of migrants on bail, nor has any more recent data on absconding rates been published. There has been no evaluation of the effectiveness of reporting requirements, or indeed of electronic monitoring, which is surprising given the considerable cost and impact on civil liberties.
12. However, the UK has evaluated experiments with a different form of enforcement-based alternatives. Between 2007 and 2009, the Home Office piloted two residential alternatives to detention for families, at Millbank and in Glasgow. Both involved transferring families who would otherwise be detained to open accommodation, in order to prepare them for return. Outcomes were poor, from the point of view both of individual welfare and voluntary return and absconding rates. Evaluations have suggested that the coercive and end-of-process nature of the alternatives led to a lack of trust between families and the project staff.<sup>5</sup>

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<sup>3</sup> No statistics are published so the scale of the use of reporting restrictions is not known.

<sup>4</sup> Home Office, cited in *Bail for Immigration Detainees, The Liberty Deficit: long-term detention and bail decision-making*, November 2012, p38

<sup>5</sup> The Children's Society, *Bail for Immigration Detainees, The Diana, Princess of Wales Memorial Fund, An evaluative report on the Millbank Alternative to Detention Pilot*, 2009; Scottish Refugee Council, *We respond to evaluation of the Glasgow Family Returns Pilot*, 2011

### **Principles of engagement-based alternatives**

13. By contrast, engagement-based alternatives have consistently been shown to lead to high rates of cooperation with immigration processes, improvement welfare of migrants, and overall reductions in the use of detention.
14. The International Detention Coalition has found that migrants are more likely to accept and comply with negative immigration decisions if the decision-making process is 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.<sup>6</sup>
15. Research by UNHCR has found that “detention impedes access to the sorts of advice and support that create trust in, and understanding of the [asylum] process, and accordingly alternatives ‘work’ better in this sense both for individuals and the system as a whole.” Depending on their design, alternatives to detention can either reinforce or negate asylum-seekers’ predisposition to cooperate. The UNHCR found that effective alternatives “entail suitable reception conditions; fair... legal processes [including access to legal advice]; and holistic support to navigate legal processes and life in the host country.”<sup>7</sup>
16. Similarly, research by the Jesuit Refugee Service – Europe has found that successful alternatives require the provision of housing, support or case management, information and legal assistance. Case management should explore all possible immigration outcomes, and should be end-to-end, from the start to the finish of the immigration process.
17. The IDC has developed the Community Assessment and Placement model decision-making process,<sup>8</sup> which involves the following steps:
  - a. Presume detention is not necessary
  - b. Screen and assess the individual case
  - c. Assess the community setting
  - d. Apply conditions in the community if necessary
  - e. Detain only as a last resort in exceptional cases.
18. Engagement-based alternatives do usually involve elements of enforcement and monitoring. However, they are used only to the extent necessary, following structured and thorough assessment. The least coercive available measures should always be used.

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<sup>6</sup> IDC, *op. cit.*, p7

<sup>7</sup> Costello C. and Kaytaz E., *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-seekers and Refugees in Toronto and Geneva*, June 2013

<sup>8</sup> IDC, *op. cit.*, p8

**Case management: a key element of engagement-based alternatives to detention**

19. The most effective alternatives to detention use community-based case management to prevent unnecessary detention by keeping individuals engaged in immigration procedures.
20. Case management as an alternative to detention was developed in Sweden and Australia. It involves a case manager, who is not a decision-maker, working with the migrant to provide a link between the individual, the authorities and the community. The case manager ensures that the individual has access to information about the process and can engage with their case, and that the government has up-to-date and relevant information about the person. The IDC has found that case management can achieve “faster and more sustainable immigration decisions, building confidence in the determination process and reducing unmeritorious appeals.”<sup>9</sup>
21. The case manager also facilitates access to support and services in the community, enabling the migrant to integrate and participate and addressing any particular vulnerability. Migrants are screened and assessed as early as possible in the process, and the level of case management support required is adjusted according to the level of vulnerability. The case manager uses information gathered in the assessment process to work with the migrant on case planning, setting goals and developing action plans to address needs. The case manager supports the migrant to explore all immigration outcomes, including the possibility of return. As a result, migrants are in a better position to integrate into the community if they are granted status, or to return to their country of origin if refused.<sup>10</sup>
22. While case management involves some costs, it is vastly cheaper than detention. Independent research has found that £76 million per year could be saved through avoiding the long-term detention of migrants who are released anyway; case-management would save around 56% of these costs.<sup>11</sup> Savings of alternatives to detention have been calculated at 93% in Canada<sup>12</sup> and 69% in Australia.<sup>13</sup>

**Engagement-based alternatives to detention in Australia**

23. Australia introduced case management-based alternatives to detention in 2006, enabling it to move away from detaining all in-country asylum-seekers and irregular migrants (i.e. not boat arrivals). Australia still maintains a policy of indefinite mandatory detention for all non-citizens who do not have a valid visa, yet in practice many asylum-seekers and irregular migrants are supported to resolve their immigration cases in the community.
24. Australian alternatives programmes work with migrants to better understand their circumstances and resolve their immigration cases. A single dedicated case manager ensures that each migrant has appropriate access to welfare assistance, legal advice and advice on voluntary return.

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<sup>9</sup> IDC, *op.cit.*, p 30

<sup>10</sup> *ibid*

<sup>11</sup> Matrix Evidence, *An economic analysis of alternatives to long-term detention*, January 2012, p5

<sup>12</sup> IDC, *op.cit.*, p 44

<sup>13</sup> IDC, *op.cit.*, p 40

25. 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.
26. Community-based alternatives to detention have since become established as a routine part of Australian immigration control. The majority of irregular migrants in Australia (24,273 as at 30/04/14) have been released on short-term Bridging Visas, which allow them to live in the community pending the resolution of their cases.<sup>14</sup>
27. Some Bridging Visa holders with more complex needs receive intensive case management. For example, the Community Assistance Support Programme provides transitional support to vulnerable people who would otherwise be unable to engage with the resolution of their immigration cases, due to mental or physical health problems, age or other vulnerability.<sup>15</sup>
28. Vulnerable migrants not eligible for release on a bridging visa are released into “community detention,” based on individualised assessment. The use of community detention for vulnerable men was expanded following a mental health crisis in detention. Migrants are legally detained, but in practice live freely in the community and are provided with housing, health and welfare services as well as intensive case management. As of 30 June 2014, 3,007 migrants were living in community detention, compared to 3,624 in immigration detention.<sup>16</sup>
29. The Australian government now works closely with a large number of civil society organisations, including the Australian Red Cross and the Salvation Army, to deliver these programmes.

#### **The US: partnership between government and civil society**

30. The US government is working with two Catholic networks on alternatives to detention projects. The Lutheran Immigration and Refugee Service (LIRS) has developed a supervised release and assistance programme based on individualised assessments of community ties, risks and previous compliance. LIRS coordinates a network of 20 local NGOs in seven communities around the US. Immigration identifies detainees as suitable for release, and LIRS coordinates referrals to local partner organisations. The local NGOs provide community support to enable compliance with conditions of release, in particular appearance at removal hearings. Case management enables migrants to access services including legal, medical, mental health, housing and education.
31. The United States Conference of Catholic Bishops conducts assessments of migrants in detention who may be suitable for release.<sup>17</sup> In most cases, Immigration agrees to use discretion to release. Released migrants, of whom around a third are ex-offenders, receive support and information, including on voluntary return, from partner organisations in the community.
32. These projects build on the enforcement-based Alternative to Detention programme that has been run by the Department of Homeland Security since 2002. This

<sup>14</sup> Refugee Council of Australia, *What is going on in Australia? An overview of recent refugee policy changes*, June 2014

<sup>15</sup> Australian Government Department of Immigration and Border Protection, *Fact Sheet 64: Community Assistance Support Programme*

<sup>16</sup> Australian Government Department of Immigration and Border Protection, *Immigration Detention and Community Statistics Summary*, 30 June 2014

<sup>17</sup> United States Conference of Catholic Bishops, *Alternatives to detention / Community-Supported Release Program*, 2014

programme has expanded quickly, with funding allocated by Congress growing from \$5 million in 2005 to \$72 million in 2011.<sup>18</sup> This programme places migrants considered to be at lower risk of absconding under intensive supervision and / or electronic monitoring in the community. Around 17,000 migrants are under supervision on the programme at any one time. The US government considers it “a cost-effective way to ensure individuals’ appearances for immigration hearings and for removal”;<sup>19</sup> 93.8% of migrants attended their hearings in 2010, against a target rate of 58%.<sup>20</sup> However, the programme has been criticised for its reliance on enforcement and electronic tagging, an unnecessary restriction on migrants’ liberty given that they have been assessed as being at low risk of absconding.<sup>21</sup>

### **Alternatives to detention in Sweden**

33. Sweden has achieved high rates of voluntary return, at a fraction of the cost of detention, 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.<sup>22</sup> 76% of returned asylum seekers in Sweden left voluntarily in 2013.<sup>23</sup> Sweden secures the return of around 80% of refused asylum seekers, far higher than the British rate.<sup>24</sup>

### **An alternative to detention pilot in Japan**

34. In Japan, an alternative to detention was developed in partnership by the government and NGOs, following riots and a crisis of self-harm in detention. The Ministry of Justice, Forum for Refugees Japan and Japan Federation of Bar Associations are implementing an Alternatives to Detention pilot project, based on a Memorandum of Understanding agreed in early 2012.<sup>25</sup> The pilot project enables asylum-seekers identified as suitable by the government to be released. The NGOs running the project enable asylum-seekers to access accommodation, legal advice, medical treatment, financial support from the government, Japanese language classes and whatever other support they need. Asylum-seekers could also receive counselling, and developed close relationships with the project staff. None of the 16 asylum seekers on the project have absconded.<sup>26</sup>

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<sup>18</sup> Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, p28

<sup>19</sup> Department of Homeland Security, *Congressional Budget Justification FY 2015*, <http://www.dhs.gov/sites/default/files/publications/DHS-Congressional-Budget-Justification-FY2015.pdf>

<sup>20</sup> Department of Homeland Security, *Congressional Budget Justification FY 2012*, <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>

<sup>21</sup> Lutheran Immigration and Refugee Service, *op. cit.*, p33

<sup>22</sup> International Detention Coalition, *op. cit.*, p35

<sup>23</sup> Swedish Migration Board, *EMN Policy Report 2013: Sweden*, 2014, p35

<sup>24</sup> Centre for Social Justice, *Asylum Matters: Restoring Trust in the UK Asylum System*, December 2008

<sup>25</sup> UNHCR Japan, *Fact Sheet*, March 2014 <http://www.unhcr.org/5000196c13.pdf>

<sup>26</sup> In total 12 asylum-seekers were involved in the formal pilot project, which ended in March 2014, but the project is continuing.

**Detention Action’s model of an alternative to detention in the UK**

35. Detention Action has launched an innovative new alternative to detention for ex-offender migrants aged 18-29 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 develop skills and confidence that enable them to participate in the community and meet the conditions of their release from detention.
36. The project addresses the twin problems of lack of evidence of reintegration outcomes for ex-offender migrants leaving detention, and the lack of structured reintegration support available for these migrants. Research has found that there is a lack of evidence to inform assessments of risk by the Home Office,<sup>27</sup> leading to refusals of release and long-term detention. Many are unreturnable due to barriers to removal such as the unavailability of travel documents.<sup>28</sup>
37. The Community Support Project is the first alternative to detention specifically to address the needs of migrant ex-offenders, who frequently experience the longest periods of immigration detention. Ex-offenders in immigration detention usually receive no preparation for release, and often miss out on probation support because their period of licence has expired while they are in immigration detention.
38. The project is also the first alternative to detention to focus on migrants’ active community participation. The learning from Detention Action’s small pilot project, which provided campaigns and communication training to ten former detainees between 2011 and 2013, was that the opportunity to participate in a shared project in the community was invaluable in enabling people to rebuild their lives after detention. None of the project participants absconded or re-offended. Their feedback highlighted the importance of the sense of purpose that came from participating in the campaign, sharing their testimony and perspectives from a position of authority as someone with direct experience of detention. The group developed a strong dynamic of mutual support, which also assisted participants to cope with life after detention and observe the conditions of their release.
39. The Community Support Project will provide intensive case management support to 30 young migrants per year. The project will use the model of community-based case management developed in alternatives to detention in Sweden and Australia. It will involve:
  - Transition planning;
  - Referrals to local services to meet their individual needs;
  - One-to-one support with practical and emotional problems;
  - Facilitating access to advice and information about the immigration process;
  - Training on communication skills to enable participants to reintegrate and participate in campaigning.
40. Participants will also receive training and support to participate in community activities and public awareness raising events. They will receive training on

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<sup>27</sup> Bail for Immigration Detainees, *The Liberty Deficit: long-term detention and bail decision making*, November 2012

<sup>28</sup> Flemish Refugee Action et al, *Point of No Return*, January 2014, <http://pointofnoreturn.eu/>



communicating their stories of their migration experiences, and will be supported to participate in the debate on detention as experts by experience. This active participation will increase their sense of self-esteem and purpose, contributing to improving their reintegration outcomes.

**Recommendations:**

41. The Home Office should develop alternatives to detention based on engagement with migrants, learning from good practice in the UK and internationally.
42. The Home Office should commission an evaluation of new and existing alternatives to detention to assess their effectiveness in promoting cooperation with immigration processes, their impact on migrants' welfare, and their value for money.