

# Written evidence to the Parliamentary inquiry into the use of immigration detention in the UK

Submission by Gatwick Detainees Welfare Group

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## **About Gatwick Detainees Welfare Group (GDWG)**

1. GDWG are a charity that works to improve the welfare and wellbeing of people held in detention by offering friendship and support and advocating for fair treatment, primarily at Tinsley House IRC, Brook House IRC and Pease Pottage Pre Departure Accommodation, all in the Gatwick area. The evidence we are submitting is based upon our experience of visiting detainees at Gatwick over the last nineteen years, and reflects the problems that we believe are inherent in the system. It is based on views that we have captured from the many thousands of detainees we have visited and supported over the years, as well as our 80 volunteer visitors.

## **Executive Summary**

2. It is GDWG's belief, based on our many years of visiting detainees at Gatwick, that there are numerous wide-ranging systemic problems inherent in the system of immigration detention in the UK. Primary among these are the lack of a time limit, which in many cases leads to prolonged periods of detention for many, and the detention of vulnerable people, which is highly damaging to the individuals concerned.
3. Our overall view is that detention is frequently used excessively and unnecessarily, with little effective oversight, allowing the Home Office to act almost with impunity. The results of this are that many people are held seemingly arbitrarily, and for no clear purpose. The fact that more than 40% of those who are detained are subsequently released back into UK society suggests to us that decision making is poor.
4. We believe that it is possible to have an effective immigration system without the need for the widespread and increasing use of detention, as we are currently seeing here in the UK. This would not only save huge sums of money, but would also limit the enormous damage inflicted on the individuals who are subject to being detained.

## **GDWG submission**

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

5. In our view, the current conditions within the UK's IRCs are generally inadequate to meet the needs of those they hold, particularly those detainees who are held for long periods. Brook House IRC at Gatwick, which opened in 2009, was designed to hold detainees for periods of just a few days, whereas from the start it has always been used to hold a significant number of detainees for long periods. Brook House is built to the standards of a category B prison, despite not holding anyone serving a prison sentence. It is a generally

bleak place, with limited areas for recreational activities, small and poorly-ventilated cells and very limited outdoor areas. A recent HMIP report described the centre as an 'imposing prison-like structure'<sup>1</sup>, and criticised the practice of locking detainees up for long periods at night.

6. Two major areas of concern for GDWG are the provision of both legal advice and of appropriate, high quality healthcare. In regards to the former, our experience suggests strongly that the system of exclusive contracts whereby a limited number of law firms have contracts to provide legal advice and representation to detainees at each IRC has led to real difficulties for many detainees. Long waits for appointments, sometimes for people who have removal directions set, are problematic, but there are also question marks over the quality of the advice given, as the system of tendering for contracts appears to lead to firms taking on too much work and often being unable to maintain decent standards of advice. Added to the legal aid cuts that have removed all immigration work from the scope of legal aid aside from asylum applications, this has led to a situation where it is extremely difficult for detainees who are unable to pay for advice to access justice effectively. The system of Exceptional Funding which is supposed to provide some kind of safety net for those who don't immediately qualify for legal aid is already clearly ineffective<sup>2</sup>.
7. Regarding healthcare in detention, we hear frequent complaints about the quality of care detainees receive. Most complaints revolve around either not receiving appropriate initial assistance within the centre, or not being taken to external appointments at local hospitals where their conditions have required it. In 2013 we were visiting a man who was convinced that he had broken his leg during an accident while in the centre, but was told by the healthcare staff that this was not the case. It was not until six weeks later, and a number of complaints, that he was taken for an x-ray at a local hospital and the diagnosis of broken leg was confirmed. Equally worrying are external appointments that appear to be regularly missed due to transportation not being provided. This can be particularly serious for those with serious complex health issue such as HIV, where breaks in medication or the wrong medication can have serious long-term negative implications.
8. GDWG believe that while conditions within centres generally are inadequate and in need of improvement, no amount of improvements can ever help justify the widespread and largely arbitrary use of detention, as it is currently used.

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<sup>1</sup> Her Majesty's Inspector of Prisons, 'Report on an unannounced inspection of Brook House IRC' July 2013, at Page 5

<sup>2</sup> 235 exceptional case funding applications were made in immigration cases in 2013/14; only four were granted funding - Ministry of Justice 24/4/2014 'Ad hoc Statistical Release: Legal Aid Exceptional Case Funding Application and Determination Statistics 1 April 2013 to 31 March 2014.' On 13th June 2014, the High Court found that the Legal Aid Agency had made unlawful decisions to refuse exceptional case funding in six test cases - see *Gudanaviciene & Ors v Director of Legal Aid Casework & Anor* [2014] EWHC 1840 (Admin).

9. **RECOMMENDATIONS: IRCs should not be prison-like in structure, or operated on high-security regimes. Those centres which are operated on those models should no longer be used to house detainees.**
10. **Legal Aid for immigration cases should be brought back into scope. In the meantime, the exceptional case funding provisions should be revised so that it provides a meaningful safety net.**
11. **Healthcare provision in IRCs should be better monitored, and complaints dealt with more effectively. Transportation to external healthcare appointments should be prioritised.**

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

12. The detention of vulnerable people is widespread, despite being in contravention of the Home Office's own policy<sup>3</sup>. Our experience has shown us that many people in detention suffer from mental health problems, most usually PTSD, depression and anxiety, some of which were present prior to their detention, others which either first appear or are exacerbated by their detention. The Rule 35 mechanism, which is supposed to protect these people, is woefully ineffective and poorly understood and administered by both detention centre healthcare staff and Home Office caseowners. The result of this is that many people are detained for whom detention is extremely damaging, and often completely unnecessary, as those who are particularly vulnerable are in our experience often released back into the UK community with their detention having served no real purpose.
13. Over the last three years the government have been found by the courts to have breached the Article 3 rights of six detainees who have all suffered from acute mental health conditions, in treatment that has been judged to have been inhuman or degrading<sup>4</sup>. In our view it is very likely that this is just the tip of the iceberg, as many of those we have worked with who have been most seriously mentally unwell have been unable or unwilling to engage with any legal processes, and to all extents and purposes been invisible to the outside world. That there have been so many breaches suggests that rather than extremely unfortunate isolated incidents there is a systemic problem in the way that the government deals with vulnerable people in detention.
14. GDWG believe that vulnerability is something that changes over time in detention, yet there is no adequate mechanism for monitoring this, or ensuring that those who are most at risk of detention are either not detained in the first place or are released as soon as it is apparent that they are being harmed.

15. **RECOMMENDATIONS: Vulnerable people should never be detained.**

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<sup>3</sup> Home Office, 'Enforcement Instructions and Guidance', at 55.10

<sup>4</sup> R (BA) v SSHD [2011] EWHC 2748 (Admin), R (HA (Nigeria)) v SSHD [2012] EWHC 979 (Admin), R(S) v SSHD [2012] EWHC 1939 (Admin), R (D) v SSHD [2012] EWHC 2501 (Admin), R (Das) V SSHD (2014) EWCA Civ 45, R(S) v SSHD [2014] EWHC 50 (Admin)

- 16. We advocate the development of a vulnerability tool that can be used to measure and monitor vulnerability throughout each detainee's detention, and a more robust system to ensure that vulnerable people are identified easily and not held in detention.**

*What are the impacts of immigration detention on individuals, family and social networks, and wider communities?*

17. It is clear to us that detention can be hugely damaging not only to the individual, but also to the detainee's families and on migrant communities more widely. Many people we have worked with have lived in the UK for years before their detention, with children and partners here. We have known people who have been primary carers for sick or disabled family members being detained, thereby removing support from those who depend on them. We have had experience of the damage that can be done to children who suddenly have their fathers taken away from them and locked up far away from where they live. We have also spoken to many people whose detention and subsequent treatment has instilled an anger and resentment towards a society that they had previously thought they were a part of. When those who have been damaged by detention are released into UK society, as around one third of all detainees are, it is often with little or no support, particularly for those who are forced to live in Home Office Section 4 accommodation which could be anywhere in the country.
18. GDWG believe that an approach that is based on enforcement rather than engagement with migrants will only serve to alienate those who the Home Office wish to stay in contact with. The fear of being detained by a system they don't understand and often view as unfair and punitive is far more likely to result in non-compliance and unwillingness to accept the decisions that the Home Office makes.

- 19. RECOMMENDATIONS: Families should not be separated by immigration detention.**

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

20. The UK stands alone in Europe, and indeed in most of the developed world, in having a power to detain without time limit. The result of this power is that we have seen hundreds of people who have been detained for very long periods. The longest serving detainee that we have worked with was detained for over five year, despite being from Zimbabwe at a time when enforced removals to Zimbabwe were not being made. GDWG believe the UK should be embarrassed by this fact, and by the stain this leaves on our record as a country that purports to stand for human rights. It appears that successive governments have been allowed to get away with this due to the relative lack of scrutiny, and general public support of a policy of being tough on migrants, but this cannot mask the truth of what is happening inside IRCs across the country. Criticism of the lack of time limit has been widespread, from national and international monitoring bodies, other governments, members of the judiciary, the UN as well as other national and international NGOs.

21. The impact of indefinite detention on the individual really cannot be understated. Our experience has shown us that not knowing how long the period of detention will be causes huge distress. Numerous detainees have described this to us as 'mental torture', and have told us the hugely negative effects this has on them.
22. GDWG produced a report in 2012 called 'A Prison in the Mind', which documented the effects of long-term detention on people held in Brook House for periods of a year or more, and we found that while detention has a negative effect on detainees' mental state, it may be inappropriate to label these symptoms as mental health problems, and instead can largely be seen as a normal reaction to the circumstances that long-term detainees find themselves in. Among the recommendations we made we propose that those people with diagnosed mental illnesses should never be detained<sup>5</sup>.
23. **RECOMMENDATIONS: A time limit of 28 days should be introduced for all immigration detainees.**
24. **Detention should always be used as a last resort, and for the shortest time possible, both in practice and theory. Community-based alternatives should always be considered first, and the presumption must be that people are allowed to live in the community while their immigration matters are resolved, rather than being detained.**

*Are the current arrangements for authorizing detention appropriate?*

25. Decisions to detain, in our experience, are often poorly made, based on incomplete or inaccurate information, and are not made fairly or with proper consideration of alternative non-detention arrangements. Furthermore, the bail system appears inherently flawed, with mounting evidence that hearings are unfair and those who make the decisions almost completely unaccountable<sup>6</sup>. Certainly the feeling amongst almost all detainees we work with is that the system is set against them, particularly for those who do not speak English or understand the legal system that holds them in detention.
26. **RECOMMENDATIONS: Decisions to detain should be reasonable and appropriate, and only made as a last resort once community alternatives have been explored.**
27. **There should be a transparent, accountable and accessible system of judicial oversight of detention. The current bail system is not working properly, and is resulting in inconsistent and seemingly arbitrary decisions over whether to release or not.**

*What are the wider consequences of the current immigration detention system, including any financial and/or social implications?*

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<sup>5</sup> Gatwick Detainees Welfare Group, 'A prison in the mind' (2012)

<sup>6</sup> See Bail for Immigration Detainees, 'The Liberty Deficit: Long-term detention and bail decision making' (2012), Campaign to Close Campsfield's Bail Observation Project, 'Immigration Bail Hearings: A Travesty of Justice?' (2011) and 'Still a Travesty: Justice in Immigration Bail Hearings' (2013)

28. Detention costs around £110 per person per day<sup>7</sup>. We believe this is money that is largely wasted by our government, as detention has been shown to be a largely inefficient way of enforcing immigration control compared to community-based alternatives<sup>8</sup>.
29. Our experience has also shown us that the wider social damage, and indeed financial costs, are also considerable. Family breakdown is a common occurrence when a family member is detained, and we have dealt with a number of people where this has directly led to interventions from other statutory bodies such as social services, where, for example, the detained person is the primary carer for a sick relative, or where their children need to be taken into care. The damage to the individuals involved is clear, but the wider damage to the minority communities who experience detention either directly or indirectly is also potentially significant. Many migrants feel the UK government are hostile towards them as individuals and to their communities as a whole, which makes the prospect of integration and community cohesion much less likely.
- 30. RECOMMENDATIONS: The use of detention is significantly decreased, and the government look to reduce the number of bed spaces in the detention estate.**

*How effective are the current UK alternatives to detention? Are realistic alternatives to immigration detention in operation in other countries?*

31. In our experience, the current alternatives to detention are inadequate, seemingly punitive and lead many ex-detainees into destitution. Many ex-detainees are tagged and given reporting conditions that mean they have to travel sometimes long distances to report to the Home Office sometimes twice a week or more. Almost all ex-detainees who are released back into UK society do so without any rights to work or claim benefits, and unless they successfully apply for Section 4 accommodation, they are given no financial support whatsoever. This effective state of limbo can continue for years while their immigration matters are considered by either the Home Office or the Courts, and many people end up hungry and sometimes homeless, far from any support networks they may have previously had.
32. Many ex-detainees have told us that they feel as though they are not really part of society, and that to be tagged implies criminality and incurs great feelings of shame. Others have told us that the despair they feel when nothing seems to happen at all with the progression of their case after the initial elation of being released is crushing, and leaves some feeling lower and less supported than they did while in detention.
33. There are a few international examples of successful community-based case management immigration/asylum systems in countries such as Sweden, Belgium and Australia, where the asylum seeker is supported and advised from the very start of the process about what is happening at each stage, and what their options are. The outcomes of these programmes

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<sup>7</sup> Hansard, 2011

<sup>8</sup> Matrix Evidence, 'An economic analysis of alternatives to long-term detention' (2012)

have seen high rates of compliance throughout the process, and high rates of voluntary return for those refused, and in doing so avoided the high expense and damaging effects of detention<sup>9</sup>.

**34. RECOMMENDATIONS: The UK government should implement a community-based case management alternative to detention system, which works with the migrant rather than trying to enforce decisions on them in a process that many feel is unfair and biased against the individual.**

**35. The current system of bail, tagging and reporting should be immediately reviewed and reformed, so that people are not simply released from detention to virtual destitution and punitive reporting measures for extremely long periods.**

#### **36. GENERAL RECOMMENDATIONS**

**37. We recommend the establishment of an APPG on Immigration Detention or other effective Parliamentary mechanism to oversee the implementation of any recommendations that come out of this inquiry.**

**38. We recommend the inquiry panel conduct further oral hearing sessions over the next few months to take further evidence, particularly that from current and former detainees.**

**39. We believe it is time that a formal government inquiry into detention is convened as a follow up to this inquiry.**

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<sup>9</sup> See International Detention Coalition, 'There are Alternatives: A handbook for preventing unnecessary immigration detention' (2011)