



## Liberal Democrats for Seekers of Sanctuary

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### **LIBERAL DEMOCRATS FOR SEEKERS OF SANCTUARY**

#### **Response to the All-party Parliamentary Group Inquiry on Detention.**

1 Liberal Democrats for Seekers of Sanctuary welcome this timely inquiry and hope that our response below will help the APPGs and the Home Office as they work to improve the current immigration/asylum system.

#### **Who are Liberal Democrats for Seekers of Sanctuary (LD4SOS)?**

2 LD4SOS is an Associated Organisation of the Liberal Democrat Party in the UK It campaigns on and influences party policy on migration and asylum issues, informs the wider membership and the general public and works with ministers, MPs and NGOs to improve the present asylum system. Our chair sat on the policy working group which successfully guided our “Making Migration Work for Britain” Immigration, Asylum and Cohesion paper 116 into party policy in 2014. **We are proud that the ending of indefinite detention for immigration purposes is Liberal Democrat party policy.** We are also represented on the indefinite detention working group of the Detention Forum. Many of our members work with individual asylum seekers and other migrants on a daily basis.

#### **3 Summary of our Calls for Action**

**3.1 The introduction of a time limit for detention for immigration purposes**

**3.2 Detention to be exceptional rather than routine**

**3.3 The use of Detained Fast Track (DFT) to be suspended whilst a review of its operation is carried out**

**3.4 Home Office decision making regarding detention to be improved**

**3.5 Home Office decisions should always follow UNHCR, ECHR and their own HO guidelines**

**3.6 The initial decision to detain must be brought before an appropriate judicial authority within 72 hrs (a similar judicial authority to that used in bail applications).**

**3.7 As long as detention remains, vulnerable people should no longer be detained**

**3.8 Permission to apply for bail should be automatic and well publicised**



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### **3.9 The Home Office to provide easily available figures for the number of detainees in prison as well as those in IRCs**

**3.10 Conditions in IRCs should be improved in response to complaints and suggestions from detainees and constantly monitored.**

**3.11 Alternatives to detention should be used much more widely than at present**

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

### **Indefinite Detention**

5 Everyone has the right to claim asylum (UNHCR Detention Guideline 1) and the imprisonment of the innocent contradicts Liberal Democrat values. We question whether detention should be used at all in immigration cases except when there is a proven risk to national security or public health.

6 In the words of an LD4SOS Council member, who works with asylum seekers in the north of England,:

*‘I find it difficult to think about an upper limit on detention when we really shouldn’t be detaining people seeking asylum but being practical I’ll go with up to 14 days. After all the Police can hold someone for up to 24 hours before they have to charge them with a crime or release them. They can apply to hold someone for up to 36 or 96 hours if they are suspected of a serious crime, eg murder. If they are arrested under the Terrorism Act, they can be held without charge for up to 14 days’.*

### **Why indefinite detention should be ended**

***7 It contravenes UN High Commission and ECHR guidelines.***

**7.1** ‘Indefinite detention is arbitrary and maximum limits on detention should be established in law’ UNHCR Detention Guideline 6

7.2 The UK is unique in Europe in routinely detaining migrants for periods of years without time limit, having opted out of the EU Returns Directive, which set a time limit of 18 months detention. The UK's immigration removal centres can now hold approximately 4,000 people but 5,000 - the highest in Europe - if prison spaces are included. Incredibly the detention estate is due to increase with the proposed enlargement of Campsfield IRC.



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7.3. Best practice in the EU for a detention time limit is 28 days, the limit which is currently being proposed by the Detention Forum and supported by LD4SOS.

7.4 The March 2014 report by the Independent Chief Inspector of Borders and Immigration, John Vine, found that

*"Among the 52% of foreign ex-offenders classified as individually non-compliant who were detained under immigration powers when we conducted our sampling, the average detention time was 523 days; for those where the embassy was categorised by the Home Office as 'non-compliant', the average detention time was 755 days. In many of these cases, we assessed that there was little prospect of a travel document being obtained within a reasonable timescale." Ref 1*

In another study an ex-offender was found to have been in detention in Lincoln Prison for 10 years.

**8 It is inhumane.** Unlike imprisonment in the criminal justice system, detention for immigration purposes has no time limit. As one detainee (Soulimane) remarked at the APPG inquiry in July 2014 *'In prison you count the days down, in detention you count them up'*. Not having a release date to detention (often in IRCs many miles from the home community and difficult to access by public transport eg The Verne) leads to despair and deterioration in mental health, sometimes resulting in self harm or suicide. There have been over 20 untimely deaths in detention since 1996.

8.1 The method of taking migrants into detention has been much criticised, involving raids on their homes, unannounced arrest at business premises (on the increase as HMG clamps down on employers to 'save immigrants from exploitation') ref. 2 and reporting centres with no time to make any preparations. The use of handcuffs was also criticised. Detainees are treated like criminals and describe their terror at suddenly losing their liberty. Some believe that they will never be released. The reality is that over half of detainees are held for less than two months which suggests that a time limit would be easy to introduce (possibly with exceptions). It might even result in a more efficient determination system.

8.2 The longer the detention period, the more severe the deterioration in mental health (Detention Action). UNHCR Guideline 9.1 states that 'appropriate treatment needs to be provided to such persons and medical reports presented at periodic reviews of their detention.' Where no suitable treatment can be provided within the detention estate, it is the view of LD4SOS that such detainees should be released. This is particularly important for victims of rape, torture or other trauma, who we believe should not be in detention at



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all. The evidence provided to this inquiry by Medical Foundation suggests that the only possible way to improve this situation is to release such migrants into the community.

**9 It is ineffective** Home Office figures show that the longer the period of detention the less likelihood will there be of eventual removal. In 2011, 62% of detainees held for more than one year were released with nothing having been gained by their distressing imprisonment (Matrix Evidence)

9.1 When France increased its time limit from 28 to 42 days (and then 45 days) there was no increase in removals. Both Sweden and Australia, which have successful policies of status determination within the community rather than in detention, report high levels of voluntary returns ie 67% in Australia and 80% in Sweden. By comparison the UK has a much higher detention rate and a lower rate of voluntary removals.

There is one other way in which the detention system is counter-productive. Knowing how inconsistent Home Office decisions are and how migrants are frequently taken into detention during a reporting office visit, some migrants are too afraid to continue their claim or even to claim at all thus remaining under the radar and unable to regularise their status. Without the fear of detention it is likely that more migrants would comply with the Home Office.

**10 It is expensive.** It costs £47,000 to detain one person for one year in the UK. Thousands of people are detained for more than three months and then released (1,103 people in 2011) Matrix Evidence shows that at least £75m per year would be saved just by releasing these migrants in a timely manner. This is equivalent to the running costs of over three IRCs. How much more could be saved if the 72 hours' or even 14 or 28 days' detention time limits were achieved. The closure of Campsfield IRC would save nearly £10 m pa or it could provide much needed prison beds for criminal purposes. It is therefore alarming that this IRC is due to have the number of its beds doubled and a former prison, The Verne, has recently been converted from a prison to an IRC. It costs a tiny fraction of the cost of detention to determine a claim whilst the migrant is living in the community.

**11 It harms the UK's reputation as a country which upholds human rights.** For those who believe they might gain by damaging the UK's reputation on human rights issues, the



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arbitrary detention of innocent migrants provides a very easy example of a system widely held to be inhumane.

**12 *There are alternatives, some already being used in the UK.*** A discussion of the alternatives may be found at the end of this briefing paper.

**13 DFT (Detained Fast Track) Listed as 3.3 in our summary of calls for action, this policy is urgently in need of change or abolition.**

13.1 Introduced in an attempt to speed up the asylum system, the DFT system has been widely condemned as first resort detention rather than the UNHCR recommended last resort measure. The UNHCR Guidelines specifically state that detention should be an exceptional measure which can only be justified in particular circumstances eg public order, public health or national security. DFT is used largely for administrative purposes and fails to comply with these guidelines.

**13.2 A recent High Court judgment (Detention Action v Home Office) found that the way DFT works in the UK was not legal in that it did not allow detainees sufficient time to access legal representation.**

**13.3 LD4SOS would like to see DFT suspended whilst a review is conducted of the way it is working.**

**14 Home Office decision making: THE DECISION TO DETAIN. ( LD4SOS calls for action 3.4 – 3.8).**

The experiences of asylum seekers known to members of LD4SOS suggest that Home Office decision making is inconsistent and at times contravenes HO guidelines. This can result in vulnerable people entering the detention system, which can only harm them. It is inexcusable that HO decision makers are able to contravene their own department's guidelines with impunity and suggests that better training and/or selection of decision makers is needed urgently. If remuneration were improved it should not be impossible to attract better applicants and if the system were fair it could attract applicants with experience in NGOs specialising in migrant welfare.

14.1 There is an inconsistency between decision making to detain and the decision to grant bail/release, the former being made at a non-judicial level and the latter needing judicial authority. If the two decisions were made by the same judicial authority the initial decision



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to detain would be seen as being as important as that to grant bail. We therefore call on the Home Office to require decisions to detain to be taken before a judicial authority within 72 hours of detention. Any costs incurred by this measure can easily be defrayed by the large savings made by the reduction in detention places (see Alternatives to Detention below).

14.2 Bail applications are made far less frequently than one would expect in the detention system possibly due to lack of awareness, publicity or encouragement by Home Office staff. LD4SOS supports the view that there should be an automatic right to apply for bail and that all detainees should be made aware of this during their first days in detention.

### 15 Use of prisons for immigration detention.

Migrant status is not per se criminal and it thus follows that no detention for immigration purposes should take place in the prison estate. Some former prisons have been converted to IRCs eg Morton Hall and this year The Verne, a Napoleonic fortress entered through a subterranean tunnel (surely a little like going to Hell for all but the most insensitive). Just before it assumed its new status a young detainee was found dead in his cell there and we still await the coroner's verdict. Foreign ex-offenders have spent their sentences and ought to be released.

### 16 Conditions in the detention estate (call for action 3.10)

16.1 Evidence concerning conditions in the immigration detention estate are best described by those who have experienced them personally and many wish to give evidence. Some conditions can easily be improved without legislation by taking seriously the complaints of detainees and trying to understand the demands of their various cultures eg where women prefer women officers in some circumstances.

16.2 The 2014 report of the **European Committee for the Prevention of Torture (ref. 2)** documented its seventh visit to the UK, which took place in September 2012 and dealt with complaints against staff. The CPT delegation received "three allegations of excessive use of force" at the two immigration detention centres they visited, Colnbrook and Brook House.

*"In Colnbrook, one detainee claimed that, approximately three months before the delegation's visit, he had been grabbed by five or six custody officers following a verbal dispute over the quantity of food served and that he was thrown to the ground, and one*



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*custody officer had stamped on his right foot. Another detainee alleged that on 23 July of 2012, following a 'dirty protest' in his segregation cell, four custody officers entered the cell and violently twisted his arms to handcuff him behind his back.*

*"Further, in the Induction and Reception Unit at Colnbrook, the atmosphere was noticeably tense and many detainees complained about rude behaviour and verbal abuse by some staff members."*

16.3 The CPT report contains numerous recommendations: that no more force than is strictly necessary be employed by staff; that activities available to long-term detainees be increased; that information be provided in languages that detainees understand; that detained people be permitted a minimum of one hour outdoor exercise per day; that the presence of psychiatrists and doctors be increased; and that the use of handcuffs on people escorted out of detention centres be based on individual risk assessments, amongst other things.

**16.4 One key recommendation is "that the United Kingdom authorities reconsider their policy of indefinite immigration detention." The government's response (ref 4) dismisses this: "We disagree with this recommendation, and there are no plans to introduce a fixed maximum time limit for immigration detention."**

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### **17 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?**

17.1 The Home Office already uses alternatives to detention frequently. The majority of status determination cases in the UK are dealt with without any need for detention. Nevertheless in 2013 30,418 people entered detention in the UK. The question is how necessary is it to use detention in these cases.

17.2 The usual reason given for detention is the fear of absconding and this may be a risk pre-departure when the end of the legal road has been reached. This type of detention would be very easy to time limit, all legal and H.O. paperwork having been done before detention, and in an efficient system 72 hrs would suffice.



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17.3 Many detainees are not detained for a short pre-departure stay, however, and their cases would be better dealt with whilst they remain in the community. Members of LD4SOS are puzzled by the inconsistency of Home Office decisions to detain and unable to find any rationale behind them. People, who are not at any risk of absconding, may be detained, released and subsequently re-detained and finally released and given leave to remain (at huge cost both personally and financially) when it is obvious that their claims could have been dealt with more efficiently outside detention.

17.4 The changes to the family returns procedure which time limit child detention to 72 hours (exceptionally one week) show that this works.

17.5 **Bail applications** are made far less frequently than one would expect in the detention system possibly due to lack of awareness, publicity or encouragement by Home Office staff. LD4SOS supports the view that there should be an automatic right to apply for bail and that all detainees should be made aware of this during their first days in detention (call for action 3.9 above).

17.6 **Case management** Sweden is often cited as having a successful asylum/migration system. Here claimants remain in the community and have their own case worker, who is trained to give support and guidance throughout the application process. This has resulted in an 80% voluntary returns rate. A similar policy is in place in Australia.

17.7 Other alternatives to detention include tagging, which is already used in the UK, which we consider a last resort and overly restrictive. It should therefore be used sparingly if at all.

17.8 Innovative ideas worth discussing include evidence of attendance at ESOL classes to be used instead of attendance at reporting centres (with no arrest at college)

17.9 The Home Office, NGOs and charities could work together to find guarantors and accommodation providers for asylum seekers if they trusted each other. We see the use of commercial companies eg Serco, G4S, Reliance and Mitie in the detention estate however as a barrier to real progress in introducing viable alternatives.

## **CONCLUSION**

18.1 The UK migration system relies too heavily on detention and this problem must be addressed. The APPG detention inquiry and the UNHCR Beyond Detention project, give real hope that we are seeing the beginning of a process, which will lead to a reduction in the detention estate. We would welcome this outcome.



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Total word count: 2,966.

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