

Samphire's Detention Support Project

1. Samphire was founded in Dover in 2002, the year in which Dover Immigration Removal Centre (Dover IRC) was established and it was registered as a charity in November 2004. It provides emotional and practical support to detainees in Dover IRC and those released from detention nationwide. Samphire runs the following projects, all based in its offices in Dover:
 - Detention Support Project
 - Ex-Detainee Project
 - Legal Project
 - Awareness Raising Project
2. Samphire's Detention Support Project started as a group of volunteer visitors to Dover IRC and we have since developed our services to incorporate casework assistance to detainees as well as providing basic welfare services. Our casework involves assisting detainees to communicate with legal providers, the detention centre and the Home Office and referring to other support services. Meanwhile, by visiting detainees both our staff and volunteer visitors continue to provide emotional support to detainees through what is a deeply upsetting period of their lives.

Summary of our Submission

3. This submission highlights the conditions in detention and the damaging effect it has on detainees before examining the particular problems of detention without a time limit. It then looks at the continued detention of vulnerable groups and then how detention is authorised and reviewed. It finally looks at the impact of immigration detention on families and society as a whole.

Samphire's Detention Support Project recommendations

1. If immigration detention is to continue, a strict upper limit should be introduced. Such a time limit should be cumulative, factoring in periods of redetention.
2. If used, detention should only ever be deployed as a last resort and for the shortest period possible.
3. Given the seriousness of depriving a person who has committed no crime of their liberty, any detention should be automatically reviewed by a judge frequently and at regular intervals.

4. Vulnerable individuals such as torture survivors and those suffering mental illness should never be detained. Any detainees should be regularly assessed for vulnerability during detention.
5. Decision making on assessing vulnerability, mental illness and torture and the decision of whether to continue to detain someone alleged to be vulnerable should be made by an independent body.
6. It is for the criminal justice system to set the length of detention for crimes, balancing considerations of public safety. Such rules should be applied regardless of nationality and should not be applied through the detention without time limit of migrants. Criminal justice and immigration should be kept separate.
7. An All Party Parliamentary Group on Immigration Detention should be established to monitor the implementation of any recommendations made in this inquiry.

Current conditions in detention

4. It is impossible to work with immigration detainees without noticing the toll that detention has on them. Despite widespread use of sleeping pills and anti-depressants in the detention centre most detainees describe sadness and depression and many describe feelings of hopelessness and thoughts of suicide. Those with mental health problems or survivors of torture and other ill treatment have particular difficulty coping with detention, an experience which can echo their previous treatment. Those with wealth, good mental health, a family that can visit them and good English skills start detention with fewer problems. But as the days turn to weeks, months and years everyone is affected.
5. Since February 2012 Samphire has used feedback cards to ask detainees how detention makes them feel. 53 percent of detainees said they feel depressed while 36 percent feel hopeless. This echoes the Europe-wide research of the Jesuit Refugee Service which found that detention is a key cause of mental and physical health problems:

“The prison-like environments existing in many detention centres, the isolation from the ‘outside world’, the unreliable flow of information and the disruption of a life plan lead to mental health impacts such as depression, self-uncertainty and psychological stress, as well as physical health impacts such as decreased appetite and varying degrees of insomnia.”¹

6. The report by Her Majesty’s Inspectorate of Prisons after an inspection of Dover IRC in March 2014 states:

¹ Jesuit Refugee Service, Europe, *Becoming Vulnerable in Detention*, June 2011 www.unhcr.org/refworld/docid/4ec269f62.html, accessed 30 September 2014

“A recurring theme of our inspection was that Dover looked and felt like a prison and was too often run like one, even though it held low-risk detainees who were not serving sentences for criminal offences.”²

While we do not disagree with the inspector’s efforts to improve conditions in detention, their statement highlights a contradiction within the detention system. Removal of razor wire and an improved décor will not change this detention centre from what it is: a place of imprisonment. We must not forget that the detention these migrants face is the same deprivation of liberty that prisoners go through. However, the decision to detain has not been made by a criminal trial but by Home Office administrators.

Access to legal services in detention

7. Access to legal advice is a pressing concern for everyone working with immigration detainees. Given the poor quality of Home Office decision making³ and often grave consequences of return it is important that detainees are given access to good quality legal advice. This is necessary not only to prevent the UK returning detainees to death or serious harm but also to improve Home Office decision making by challenging bad decisions. However, we have serious doubts about the provision of legal advice in detention centres.
8. A Duty Advice Scheme operates in Dover IRC through which law firms contracted by the Legal Aid Agency attend several times a week to provide immigration advice in 30 minute appointments. This is almost exclusively provided by two law firms.
9. On occasion detainees are left weeks to receive legal advice after requesting it and some have had appointments scheduled for after removal directions. This has often been caused by the non-attendance of solicitors or by problems with the Legal Aid Agency contracting, which has not been proactive in its management of this legal provision. The Legal Aid Agency has poor communication with Dover IRC and there is no monitoring of the delay between a detainee’s request for advice and their legal appointment.
10. Even once they get a legal appointment, the advice is limited by legal aid rules. In particular, there is no legal aid for cases based on the family life of detainees. As a result detention is frequently splitting families who do not have the money to effectively pursue their immigration claims. Many such detainees we meet have a wife and children outside who are often living far from the detention centre - making visits difficult and expensive.

² Her Majesty’s Chief Inspector of Prisons, *Report on an unannounced inspection of Dover Immigration Removal Centre*, 3-14 March 2014 <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/Dover-2014-Web.pdf>, accessed 23 September 2014

³ Home Affairs Select Committee, *Seventh Report – Asylum*, paragraphs 14-20, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/7102.htm>, accessed 30 September 2014

11. Many detainees are vulnerable and lengthy detention may make them vulnerable⁴. This, together with the fact that the costs of poor decision making can literally be a matter of life and death means that access to legal advice is of critical importance to detainees. The difficulty detainees face getting advice is therefore particularly worrying.

The impact of detention without time limit

12. The lack of a time limit has a devastating impact on detainees. Detention without conviction for a crime causes confusion, anger and depression and without a time limit detainees are left without the solace of a foreseeable end point. This is reflected in the words below of some detainees when we asked them how the lack of a time limit made them feel.

“[You] feel bad. If you don’t know when it’s over. Limbo, like you’re forgotten. I am human but the Home Office don’t care about you.”

- Dover IRC detainee, August 2014

“Very sad. Very bored. You think your life is finished here.”

- Dover IRC detainee, August 2014

“I have been waiting for my removal four weeks and I want to return. This is too long.”

- Dover IRC detainee, August 2014

13. Those who face the greatest cost of indefinite detention are those who are *de facto* stateless as their country of origin will not accept their identity or nationality or will not provide them with a travel document allowing them to return. Such detainees quite regularly face months and often years hoping for a travel document or for an immigration judge to finally take pity on them and allow their release.
14. As described above, immigration detention damages the mental and physical health of detainees despite the fact that no judicial process is required to detain. That such detention has no time limit does not accord with the country’s history of respect for human rights nor basic human compassion.
15. Given the damage done to the lives of migrants, their families and to social cohesion by the instability of redetention it is important that any time limit on detention is measured cumulatively. Without these measures a comparable damage could be done to the mental health and family lives of migrants by repeated short periods of detention.

Recommendation

- If immigration detention is to continue, a strict upper limit should be introduced. Such a time limit should be cumulative, factoring in periods of redetention.

⁴ Jesuit Refugee Service, Europe, *Becoming Vulnerable in Detention*, June 2011 www.unhcr.org/refworld/docid/4ec269f62.html, accessed 30 September 2014

Vulnerable detainees

16. Given the effects of detention described in paragraphs 4 to 6 above, those identified as vulnerable should never be detained. In addition, given that detainees can develop mental and physical health problems as a result of detention it is important that this is regularly assessed during detention.

Torture survivors

17. Because many detainees are asylum seekers, it is common to encounter detained survivors of torture. Immigration detention can be a particularly damaging experience for those who have been tortured and such detainees tend to have greater support needs.
18. For this reason Rule 35 of the Detention Centre Rules 2001 provides a mechanism for medical practitioners to report where “any detained person who he is concerned may have been the victim of torture.” This details the physical and mental indicators giving rise to this concern and the report is then passed to the Home Office to assess whether continued detention is appropriate.
19. While there have been past problems, at the time of writing the medical staff at Dover IRC seem to be completing ‘Rule 35’ reports on detention without significant problems. However, the Home Office assessment of such reports is deeply flawed with nearly all Rule 35 reports rejected. Nearly all Home Office responses state that the report does not constitute independent evidence of torture and this is even the case where there is extensive scarring. In general, the level of proof required is that of a full medico-legal report using the language of the Istanbul Protocol to get release under this provision. Given that such reports are time consuming to prepare and are expensive, this high threshold used by Home Office decision makers has rendered this safeguard meaningless.

Mental illness

20. As described above, from Samphire’s experience there is a high rate of mental health problems among detainees. This is a mix of those with pre-existing conditions, those suffering from the effect of past experiences and those whose conditions have developed while in detention. Dover IRC has systems in place to minimise the risk of detainees committing suicide, in particular through the Assessment Care in Detention and Teamwork (ACDT) plans and at any one time three or four of the detainees we support are on such plans. However, we have not seen any mechanism for proactively assessing whether the mentally ill *should* be detained, even in the case of those with severe mental illness such as schizophrenia. This problem is exacerbated by the difficulty such detainees can have accessing services and communicating with lawyers to challenge their detention.

Recommendations

- Vulnerable individuals such as torture survivors and those suffering mental illness should never be detained. Any detainees should be regularly assessed for vulnerability during detention.
- Decision making on assessing vulnerability, mental illness and torture and the decision of whether to continue to detain someone alleged to be vulnerable should be made by an independent body.

Authorising detention

Decision to detain

21. The Home Office guidance on deciding whether to detain is contained in Chapter 55 of the Enforcement Instructions and Guidance at paragraph 55.3:

“1. There is a presumption in favour of temporary admission or temporary release - there must be strong grounds for believing that a person will not comply with conditions of temporary admission or temporary release for detention to be justified.

2. All reasonable alternatives to detention must be considered before detention is authorised.”⁵

22. This guidance diverges greatly from Home Office practice. As an example, we have met many asylum seekers who are detained on arrival and then spend months in detention while they go through the Dublin III process in order to determine whether they should be returned to another European country. With no immigration history in the UK the Home Office has no grounds at all to believe they will not comply with any conditions set.

23. The reason for this difference between principle and practice is found in paragraph 55.3.1 of the Enforcement Instructions and Guidance which lists “Factors influencing a decision to detain”. These are drawn so broadly that in practice they can be read to authorise detention of any migrant who has ever been without leave to enter or remain while in the UK. Given that there is no ‘refugee visa’ the asylum seekers referred to at paragraph 22 above find their undocumented entry used repeatedly to justify indefinite detention.

Review of decision to detain

24. The Enforcement Instructions and Guidance specify at paragraph 55.8 for regular reviews of the decision to detain. However, in our experience these reviews merely repeat the original decisions to detain. They make sweeping statements without evidence about the detainee’s character and about the likelihood of breaching release

⁵ Home Office, *Enforcement Instructions and Guidance*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307995/Chapter55.pdf,
accessed 29 September 2014

conditions and every month say that removal is imminent so that continued detention is authorised. These ineffective reviews are consistent with the well-publicised ‘culture of disbelief’ in the Home Office⁶. This process provides no safeguard against lengthy and unjustified detention.

25. In our experience, once a detainee has spent a week in detention, it is likely they will require a bail hearing for a judge to demand release. It is important that a member of the judiciary authorise continued detention at frequent intervals.

Recommendation

- If used, detention should only ever be deployed as a last resort and for the shortest period possible
- Given the seriousness of depriving a person who has committed no crime of their liberty, any detention should be automatically reviewed by a judge frequently and at regular intervals

Ex-offenders

26. There are separate rules for assessing whether to continue detention of those who have previously committed crimes⁷ with strict rules on release on public safety grounds. However, it should be emphasised that the vast majority of ex-offenders we meet have been in prison for months rather than years. Some have been convicted of document offences in relation to their entry or stay in the UK while some came to the UK when children and got caught up in the wrong crowd and lost their long term leave to remain as a result.

27. In practice, foreign nationals can serve double or triple the sentences of British nationals as a result of the Home Office policy on ex-offenders. Only these extra sentences have not been decided in a court and without a time limit there is no end point. One detainee convicted of possessing a false passport highlights this situation:

“In prison you get five months and after that you’re free. In detention you don’t know. When I first came I thought I would be here one month but it’s now been nine months.”
– Dover IRC detainee, August 2014

28. If detention is required for criminal justice purposes or public safety then this should be dealt with by the Ministry of Justice and the British judiciary, not the Home Office. If indeed those with another nationality pose a risk to public safety it is concerning that their British counterparts are released.

⁶ Home Affairs Select Committee, *Seventh Report – Asylum*, paragraphs 12-13, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/7102.htm>, accessed 30 September 2014

⁷ See Home Office, *Enforcement Instructions and Guidance*, Chapter 55

Recommendation

- It is for the criminal justice system to set the length of detention for crimes, balancing considerations of public safety. Such rules should be applied regardless of nationality and should not be applied through the detention without time limit of migrants. Criminal justice and immigration should be kept separate.

Impacts of immigration detention on families and communities

29. In practice immigration detention is conducted without concern for the family of those detained. Families can be split and children can lose their fathers for months or years as the detention centre can be halfway across the country. Expectant fathers can be left in detention when their partners are due to give birth. One detainee said:

"I feel isolated because I can not see my son. He is asking every time when I phone him if I am going to see him. I am depressed and it is only because I can not see my son... He always tells me that he misses me. I don't see him for 8 months now. It is so depressing."

- Dover IRC detainee, June 2013

30. It should not be forgotten that it was not so long ago that governments talked of social cohesion and the integration of migrant communities. The injustice of our system of immigration detention runs directly counter to those principles. Before we ask migrant communities to make more effort to integrate we should show we are capable of doing so.

Samphire, Detention Support Project

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