

# The Detention Forum



## Briefing Paper: Immigration Bill, Second Reading in the House of Lords – 22 December 2015

The Detention Forum ([www.detentionforum.org.uk](http://www.detentionforum.org.uk)) is a network of over 30 organisations who are working together to challenge the UK's use of immigration detention.

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During 2015, the issue of immigration detention has been of concern both to parliamentarians and the wider public. In March of this year, the APPG on Refugees and the APPG on Migration published a report on the use of immigration detention in the UK.<sup>1</sup> The cross-party panel of parliamentarians behind the report called for substantial reform to the way the UK uses detention, concluding that detention is used disproportionately and inappropriately.<sup>2</sup> The recommendations made by the inquiry have been endorsed by the House of Commons when, following a backbench business debate on 10 September, Members of Parliament unanimously passed a motion calling on the Government to respond positively to the panel's recommendations.<sup>3</sup>

It is, therefore, extremely disappointing that the Immigration Bill does not take the opportunity to implement one of the key recommendations of the parliamentary inquiry – the introduction of a 28 day limit on the length of time anyone can be detained in a detention centre.

### Indefinite detention in the United Kingdom

Currently there is no statutory maximum time limit on how long an individual can be held in immigration detention. This makes the UK an outlier amongst EU member states, most of whom are signatories to the EU Returns Directive, which specifies a six month time limit. Many member states operate a shorter time limit. For example, in France the time limit is 45 days, Spain and Portugal 60 days and in Belgium it is two months. In Ireland, which along with the UK is the only EU member state not signed up to the Returns Directive, the maximum time limit is 21 days.

The Parliamentary Inquiry panel concluded that the lack of a time limit has “several negative consequences, including, in far too many cases, protracted detention.”<sup>4</sup> The panel highlighted the medical evidence that showed the detrimental impact on mental health of prolonged detention and the lack of a time limit, says that without a time limit “[d]etainees are left counting the days they have been in detention, not knowing if tomorrow their detention will continue, if they will be deported, or if they will be released.”

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<sup>1</sup> The *Inquiry into the Use of Immigration Detention in the UK*. The report and its executive summary are available at <http://detentioninquiry.com/report/>

<sup>2</sup> The inquiry panel consisted of parliamentarians from the Conservatives, Labour and the Liberal Democrats, as well as two crossbench members of the House of Lords. After examining nearly 200 written submissions of evidence from individuals affected by detention, lawyers, clinicians, international experts and NGOs over eight months and a study visit to Sweden, the panel concluded that the UK currently detains far too many people and for far too long.

<sup>3</sup> HC Deb 10 Sep 2015, c559

<sup>4</sup> APPGs on Refugees and Migration, *Inquiry into the Use of Immigration Detention in the UK*, p.33

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There is also evidence that the lack of a time limit is an incentive for inefficient case-working on behalf of Home Office officials. Hindpal Singh Bhui, a member of the Chief Inspector of Prison's inspection team, told the inquiry that a quarter of cases of prolonged detention examined by the inspection team were a result of inefficient case-working.<sup>5</sup> Given the lack of automatic bail hearings for individuals who have been detained, and without the initial decision to detain being sanctioned by any kind of legal proceeding, the lack of effective case-working has serious and damaging consequences.

Both the UK's capacity to detain and its use of detention has expanded rapidly in the last twenty years. In 1993, there were just 250 places available, rising to 2,665 in 2009. Now, in 2015, the capacity of the immigration detention estate is over 3,500 and the UK is home to some of the largest detention centres in Europe. The last twelve months have also seen the UK detain more people than at any other time for which records exist. In the year ending September 2015, 32,741 people were detained, an 11% increase on the preceding twelve months.<sup>6</sup>

The inquiry panel highlighted the financial cost of such extensive use of detention. According to the House of Commons Library, the cost of running the immigration detention estate in 2013/14 was £164.4million, with a cost of detaining one person for one year of £36,026.<sup>7</sup> In addition, between 2011 and 2014 the UK Government paid out nearly £15million in compensation following claims for unlawful detention.<sup>8</sup>

The Home Office's own immigrations statistics show that radical reform of immigration detention is drastically needed. Despite being called Immigration Removal Centres, in the last quarter for which statistics are available, only 40% of people who left detention did so because they were removed from the UK. For the majority of people, their detention ends with them being released back to their communities, having potentially spent months, if not years, needlessly being locked up indefinitely. For those detained for longer than four months, the percentage drops considerably. Between June and September this year, only a quarter of those people who left detention after being held for more than four months were removed from the country.<sup>9</sup>

The statistics also show that a 28 day limit, which would reflect best practice internationally, is achievable by the Home Office. As the parliamentary panel highlighted, the majority of people spend less than 28 days in detention currently. Between June and September, two thirds of those peopled detained were released within 28 days, and eight in ten were held for less than two months.<sup>10</sup>

Since the report was published, there has been further support for a time limit on detention. The UN Human Rights Committee, a body of 18 international experts who monitor the implementation of the international covenant on civil and political rights, issued a recommendation to the UK to introduce a time limit on immigration detention, echoing the

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<sup>5</sup> See page 19 of the report.

<sup>6</sup> Home Office, Immigration Statistics July to September 2015, table dt\_01\_q

<sup>7</sup> House of Commons Library, 'Immigration Detention in the UK: an overview', Briefing Paper Number 7294, 7 September 2015

<sup>8</sup> House of Commons Written Question 214974, 1 December 2014

<sup>9</sup> Home Office, Immigration Statistics July to September 2015, table dt\_06\_q

<sup>10</sup> Home Office, Immigration Statistics July to September 2015, table dt\_06\_q

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inquiry panel's key recommendation.<sup>11</sup> In August, the then Chief Inspector of Prisons added his voice to those calling for a time limit in a report on an inspection of Yarl's Wood Immigration Removal Centre. In the report, the Chief Inspector, Nick Hardwick, said "Some periods of detention were prolonged as a result of unreasonable delays in decision-making and women reported considerable stress as a result of open-ended detention", adding that "there should be a strict time limit on the length of detention".<sup>12</sup>

**Introducing a time limit on immigration detention would be the first step in implementing the reform of the UK's use of detention recommended by the parliamentary panel and endorsed by the House of Commons.**

## **The Review into the welfare in detention of vulnerable persons (Shaw Review)**

In February 2015, the Government asked Stephen Shaw to carry out a review into the welfare in detention of vulnerable persons (the Shaw Review). The Shaw Review, as set out in its terms of reference, is based on the premise that the principle of detention is 'not in question'<sup>13</sup>. It is a distinct piece of work with a focus on the safeguarding issues in relation to the application, and 'appropriateness of current policies and systems'. As such it will not address the Inquiry's findings of a disconnect between the official guidance on detention – which states that it should be used sparingly and for the shortest period of time – and the current practice, which involves holding many thousands of people each year, with many instances of unlawful detention.

While the Shaw Review will look at how the most vulnerable in detention are treated, and as such is to be welcomed, it will by definition deal with the issues arising once someone is already held. Put simply, there is a risk that the Shaw Review will divert resources to a review of existing policies, leaving the broader questions regarding the appropriateness or otherwise of our current use of detention unanswered. The Government have announced that they have received Stephen Shaw's report and are considering their response. During the Report Stage of the Immigration Bill in the House of Commons, the Immigration Minister James Brokenshire told Members of Parliament that the Shaw Review would be published before the bill starts its Committee Stage in the House of Lords.<sup>14</sup> **Peers are encouraged to seek assurances that the Shaw Review is published at the earliest possible date so as to inform amendments and debate during Committee.**

## **Independent Review of Serco's work at Yarl's Wood by Kate Lampard CBE**

Similarly, the response by Serco to the findings of the Channel 4 News investigation was to appoint Kate Lampard CBE to review 'their work'<sup>15</sup> at Yarl's Wood detention centre. Yarl's Wood has been a media story for some time now, with legitimate reasons. There are many

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<sup>11</sup> <http://detentioninquiry.com/2015/07/30/un-committee-back-british-parliamentarians-call-for-a-time-limit-on-immigration-detention/>

<sup>12</sup> Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre (13 April – 1 May 2015), <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/yarls-wood-immigration-removal-centre/>

<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/402206/welfare\\_in\\_detention\\_review\\_tors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf)

<sup>14</sup> HC Deb 1 December 2015, c207

<sup>15</sup> [http://www.serco.com/images/013\\_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review\)\\_tcm3-46380.pdf](http://www.serco.com/images/013_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review)_tcm3-46380.pdf)

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vulnerable women held, many of whom have experienced sexual violence, and a review of their conditions and treatment is long overdue, particularly as the Government has been reticent to allow observers, including the UN Special Rapporteur on the rights of women<sup>16</sup>, into the Centre in the past. However welcome this review is, it is unfortunate that in focusing on one aspect of the detention system it will once again become part of a piecemeal approach, bypassing the fundamental questions asked by the Inquiry report in relation to the absence of a time limit and the need to investigate community based alternatives.

## Conclusion

The immigration detention system is fundamentally flawed. The Detention Forum endorses the parliamentary inquiry's call for radical reform. Though it is a huge task, there is a precedent. The Coalition Government radically transformed the way families with children are detained; as a result of a change in the process fewer families with children now go through detention, and those that do spend a much shorter period of time in detention. In fact, there is now a de facto detention time limit of 72 hours for most such cases. We urge the government to work with others to begin the process of systemic reform - a more towards an engagement focused system which fully utilises community-based alternatives to detention - so that a time limit on immigration detention and other significant changes can be introduced.

## Case study

**Jacques** was detained for the purposes of removal to Denmark where he had previously claimed asylum. He had a traumatic history as a child soldier and was severely impacted by PTSD. Despite being visibly unwell, and despite anecdotal evidence of staff feeling unable to manage the situation, he was detained for over two months before being removed to Denmark.

During detention, Jacques suffered periodic blackouts and dizziness, which at least once led to injury. He was unable to communicate with staff or other detainees and exhibited erratic behaviour, at times running naked out of his room or speaking in what was understood by staff as gibberish. In response, Jacques was regularly placed in isolation, which appeared to exacerbate his confusion and paranoia.

The local visitors' group made efforts to raise concerns with the detention centre staff, but got no response from the healthcare centre. Attempts to support Jacques were made by a fellow detainee who spoke the same language as well as a solicitor who was willing to represent him for a temporary admission application and for unlawful detention. Jacques' paranoia made him unwilling to enter the room with the solicitor, and so it was impossible to represent him. Communication was so difficult that his fellow detainee was unable to do much to support him either.

(Taken from *Rethinking 'Vulnerability' in Detention; a Crisis of Harm*<sup>17</sup> by the Detention Forum)

<sup>16</sup> <http://www.theguardian.com/uk-news/2015/jan/03/yarls-wood-un-special-rapporteur-censure>

<sup>17</sup> <http://detentionforum.org.uk/rethinking-vulnerability-in-detention-a-crisis-of-harm/>