

The Detention Forum



Briefing Paper: Parliamentary Debate Report of the Inquiry into the Use of Immigration Detention in the United Kingdom – 10 September 2015

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

This paper covers the following. If pressed for time, please read 1.

1. Background to the debate and the government response so far
2. The Parliamentary Inquiry into the Use of Immigration Detention in the UK
3. Latest detention statistics – record high number of people detained
4. The Review into the Welfare in Detention of Vulnerable Persons (Shaw Review)
5. Independent Review of Serco's work at Yarl's Wood by Kate Lampard CBE
6. Proposed abolishment of bail addresses
7. Looking ahead: the need for systemic change and not "tinkering"
8. Case study

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1. Background to the debate and the government response so far

On the 10th September, MPs will debate the findings of an All Party Parliamentary Group inquiry into immigration detention. Since the Parliamentary Inquiry into the UK's use of immigration detention¹ – the first of its kind – published its findings on 3rd March 2015, a momentum for detention reform has significantly grown across the political spectrum, civil society and faith groups.

The debate was granted by the Backbench Business Committee following an application by Richard Fuller MP (Conservative), Paul Blomfield MP (Labour) and David Burrowes MP (Conservative), who were all members of the inquiry panel. Kirsten Oswald MP (SNP) also spoke in support of the debate at the Backbench Business Committee meeting.

The Inquiry was jointly hosted by the APPG on Refugees and the APPG on Migration. 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, its cross-party Panel concluded the following;

- **the UK detains far too many people for far too long and its detention system is inefficient, expensive and unjust;**
- **the UK should introduce a time limit on immigration detention in law, bringing it in line with all other countries in Europe. The time limit should be set at 28 days;**

¹ The *Inquiry into the Use of Immigration Detention in the UK* was jointly conducted by the APPG on Refugees and the APPG on Migration. The report and its executive summary are available at <http://detentioninquiry.com/report/>

The Detention Forum



- a wholesale reform the detention system is necessary, as further ‘tinkering’ with the conditions and treatment of certain categories of individuals in detention will not be sufficient to resolve gross failings that have been uncovered;
- the incoming government should form a working group to implement the inquiry panel’s key recommendations, including the development of community-based alternatives to detention

The publication of the Inquiry’s report received widespread media attention, both nationally and locally, across the UK² and coincided with a Channel 4 News investigation into conditions at Yarl’s Wood and Harmondsworth detention centres.

Growing support for the inquiry panel’s recommendations led to both the Labour party and the Liberal Democrats including commitments to ending indefinite detention in their General Election manifestos.

Most recently, 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 inquiry panel’s key recommendation³. Additionally, the Detained Fast Track, which is used to detain asylum seekers while their case is being decided, has been suspended since 2nd July 2015 following a number of successful legal challenges⁴. The suspension of the DFT indicates that the UK must address its overuse of detention for the purpose of immigration control.

The Government’s response to the Inquiry’s findings has been unsatisfactory. To date, their response has hinged on the sudden announcement of the *Review into the Welfare in Detention of Vulnerable Persons*⁵ (the ‘Shaw Review’) to be conducted by the former Prisons and Probation Ombudsman, Stephen Shaw. However, the Shaw Review will be unable to deal with the issues raised in the Inquiry Report, as its terms of reference do not include a consideration of the decision to detain. As such, it falls far short of being an appropriate response to the Inquiry’s findings.

Similarly the investigation into Serco’s work at Yarl’s Wood⁶, which was initiated by Serco themselves, will only address the issues of conditions at this particularly facility. It is paramount that the Government acknowledges the importance of the Inquiry’s findings and implements its recommendations for holistic change.

² The list of media coverage of the inquiry report is available at <http://detentionforum.org.uk/detention-inquiry-2/detention-inquiry-report-media-coverage-and-responses/>

³ <http://detentioninquiry.com/2015/07/30/un-committee-back-british-parliamentarians-call-for-a-time-limit-on-immigration-detention/>

⁴ The suspension was announced by the Immigration Minister, James Brokenshire MP, in a Written Statement: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-07-02/HCWS83/>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf

⁶ [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)

The Detention Forum



There is, therefore, a serious danger that the fundamental changes the detention system proposed by the inquiry panel are obscured by these superficial tinkering exercises.

The forthcoming Immigration Bill might provide an opportunity to realise some of the recommendations by the inquiry panel, particularly the 28-day time limit. However, the Home Office's recently announced 'consultation reforming support for failed asylum seekers and 'illegal migrants''⁷ indicates that the government is intending to remove accommodation provision for those non-asylum seeking migrants requiring release from immigration detention through bail; without such address, many will end up detained longer when the Home Office has no legitimate reason to deprive their liberty.

2. The Parliamentary Inquiry into the Use of Immigration Detention in the UK

The cross-party Inquiry panel consisted of members of both the House of Commons and the House of Lords, and included a former Cabinet Minister, a retired law lord, and a previous Independent Inspector of Prisons⁸. In recent years, the UK's detention practice has been mired with a raft of high profile scandals including allegations of sexual abuse at Yarl's Wood, the death of a frail 84 year old Canadian man with dementia in handcuffs, and a proliferation of human rights breaches where the detention of no less than six mentally ill detainees has been found by the High Court to constitute cruel, inhuman and degrading treatment.

The cross-party inquiry was the first such parliamentary review to consider, holistically, the entire detention system. Other past investigations have chosen instead to focus on a specific aspect of detention or group of detainees and have been deemed by observers as insufficient. All information about the inquiry is available at www.detentioninquiry.com, including transcripts of the oral evidence sessions and the submitted evidence.

The findings have resounding implications for the future of immigration detention in the UK, and the government is urged to put in place a mechanism – a Working Group – to implement the panel's recommendations. The Panel concludes that a 'radical shift in thinking' is necessary, in terms of a wholesale change in culture: a move away from the current enforcement based thinking of the Home Office towards community models of engagement. It makes the following four key recommendations:

- **There should be a time limit of 28 days on the maximum length of time anyone can be held in immigration detention.**
- **Detention is currently used disproportionately and too frequently. The presumption in theory and practice should be in favour of community-based resolutions and against detention.**
- **Decisions to detain should be very rare and detention should be for the shortest possible time and only to effect removal.**

⁷https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/451088/Reforming_support_for_failed_asylum_seekers_and_other_illegal_migrants_-_Consultation_Document.pdf

⁸ The full panel was: Sarah Teather MP (Chair), Paul Blomfield (vice-Chair), David Burrowes MP, Richard Fuller MP, Caroline Spelman MP, Jon Cruddas MP, Julian Huppert MP, Baroness Hamwee, Baroness Lister, Lord Lloyd and Lord Ramsbotham.

The Detention Forum



- **The Government should learn from international best practice and introduce a much wider range of alternatives to detention than are currently used in the UK.**

In their report, the panel described the UK as an ‘outlier’, being the only country in the EU not to have a maximum time limit on the length of time an individual can be detained in immigration detention. According to the report, Ireland has a time limit of 21 days and France 45 days, while both Portugal and Spain have a time limit of 60 days.

The panel also highlighted the number of people detained in the UK compared to other European countries. During 2013, while the UK detained 30,418 people, Germany detained 4,309 people, Belgium 6,285, Sweden 2,893 and Hungary 6,496. *Germany detained three people for every 20 that the UK detained, despite receiving over four times as many asylum applications.*

The Inquiry Panel also recommend that there should be a presumption in favour of community-based resolutions, which focus on intensive engagement with individuals in community settings, rather than relying on enforcement and detention. This can be done by learning from best practice internationally where alternatives to detention are used, which not only allow individuals to live in the community, but which also allow the government to maintain immigration control at a much lower cost to the state.

In 2013/14, the cost of running the immigration detention estate was £164.4m, with the cost of detaining one person for one year being £36,026. The evidence the panel received showed that community-based alternatives are far less expensive.

The panel also notes the following issues and is clear that many of these problems will be drastically reduced if the key recommendations are implemented:

- it is unacceptable that individuals being held under immigration powers are increasingly being held in conditions tantamount to high security prison settings;
- female victims of rape and sexual violence should not be detained and pregnant women should never be detained for immigration purposes;
- the Panel were shocked by the personal testimony they heard of people suffering from mental health conditions who were detained for prolonged periods of time and conclude that current Home Office policy puts the health of detainees at serious risk;
- screening processes must be improved to ensure that victims of trafficking are not detained and that when GPs complete a Rule 35 report⁹ they make a clinical judgement over whether any injuries are consistent with the account of torture; and
- current arrangements for challenging continued detention are not working and that many individuals in detention are unable to access high quality legal advice.

3. Latest detention statistics – record high number of people detained

The latest official quarterly immigration statistics¹⁰ (National Statistics), published on 21 May 2015, continue to show a disturbing trend in the increasing use of detention, in both volume

⁹ A Rule 35 report should be completed by a GP if they are concerned someone held in detention is a victim of torture, has suicidal intentions, or whose health is likely to be harmed by continued detention.

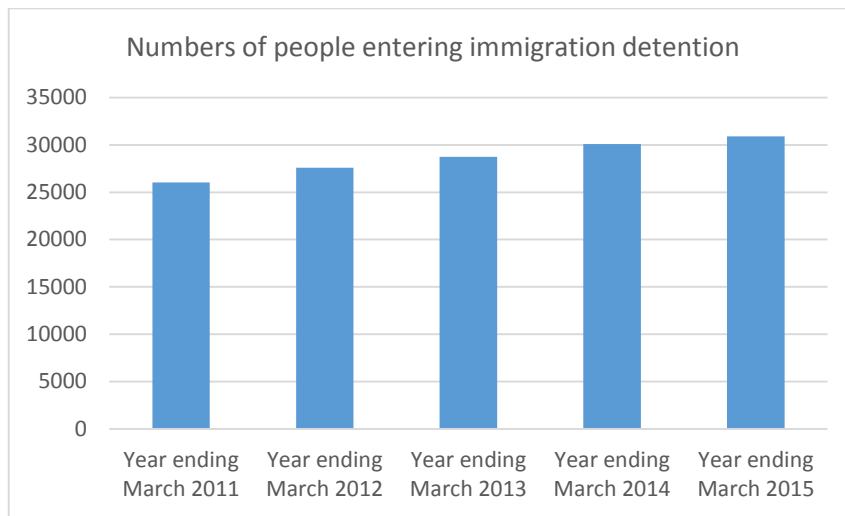
¹⁰ <https://www.gov.uk/government/statistics/immigration-statistics-january-to-march-2015>

The Detention Forum



and length. At the end of the first quarter of 2015, the UK is detaining more people than ever. (Please note that a new set of statistical information will be published on 28 August 2015.)

A total of 3,483 people found themselves in immigration detention as of 31 March 2015, an increase of 16% (492 people) since 31 March 2014 and the highest number of the last five years. In addition, a total of 153 people were detained longer than a year as of 31 March 2015. A total number of people entering detention last year (30,902) was also the highest of the last five years. It is important to note that an additional 368 people were held under immigration act powers in mainstream prisons, an additional 10% who are not included in the official statistics¹¹.



The statistical release also shows the growing ineffectiveness of increased detention facilitating the Government agenda of increasing removal. It states: *“There was a continuing decline in the proportion of detainees being removed on leaving detention from the peak in the year ending March 2011 of 64% to 51% in the year ending March 2015. Conversely, there was an increase in the proportion of detainees granted temporary admission or release, from 28% to 39% over the same period.”*

4. The Review into the welfare in detention of vulnerable persons (Shaw Review)

On 18th March, James Brokenshire stated in Parliament that there were no plans to review the ‘use of detention overall’ and referred to the Shaw Review¹². Mr Brokenshire made no mention of the concluding remarks of the Inquiry report which state:

“We welcome the review into the welfare in detention of vulnerable persons that was announced in February 2015, shortly before this report was published. However, the narrow scope of the review, particularly the restriction that it will not look at decisions to detain, means that it will not be able to deal with the issues raised by this inquiry and others”¹³.

¹¹ Figures released under FOI to AVID, July 2015, available at <http://www.aviddetention.org.uk/immigration-detention/detention-prison/prison-statistics>

¹² <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-03-12/227497/>

¹³ <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> at page 4

The Detention Forum



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'¹⁴. 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.

5. 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'¹⁵ at Yarl's Wood detention centre. Yarl's Wood has been a media story for some time now, with legitimate reasons. There are many 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 women¹⁶, 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.

6. Proposed abolishment of bail addresses

In August 2015, the Home Office opened a consultation 'reforming support for failed asylum seekers and 'illegal migrants''¹⁷. In addition to changes to the way asylum seeking families are supported, the consultation paper proposed to abolish bail addresses. Currently, anyone in detention (except EEA nationals) automatically has the right to apply for a bail address from the Home Office, which they can use to apply for bail if they do not have an address with a friend or family member. This means that the majority of people can access a court to review their detention.

Under the proposal, they will only be entitled to support if they have claimed asylum, and if there is a barrier to removal or they have made some kind of further application (e.g. fresh claim or judicial review). Non-asylum-seekers without a private address will have no opportunity to apply for bail.

This is likely to increase long-term detention, as detainees will be kept longer in detention, at much greater expense than if they were released earlier to bail accommodation. It will also

¹⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf

¹⁵http://www.serco.com/Images/013_Yarl%27s%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review_tcm3-46380.pdf

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

¹⁷https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/451088/Reforming_support_for_failed_asylum_seekers_and_other_illegal_migrants_-_Consultation_Document.pdf

The Detention Forum



promote crime and exploitation. Making people street homeless with no right to work would make extensive offending likely, including working illegally in an exploitative environment. It will also undermine the government's attempt to promote voluntary return; there is no evidence that making people destitute promotes return, rather than chaotic lifestyles, mental disorder and offending. International evidence indicates the opposite, that stabilising people enables them to make decisions about their futures. The proposals would inevitably lead to people being released without addresses, as many detainees will have no way to get an address. This would make it far less likely that people will comply with conditions of release e.g. reporting, as they are more likely to have an unstable lifestyle of sleeping rough and sofa-surfing.

As such, the government is advised to keep the current provisions for providing bail addresses and focus instead on detention reduction to save costs.

7. Looking ahead: the need for systemic change and not “tinkering”

Neither the Shaw Review nor the Independent Review of Serco's work at Yarl's Wood addresses the key recommendations made by the Detention Inquiry Panel.

In addition, we understand that the Home Secretary has asked officials to 'initiate a detailed piece of work on future requirements, to take account of recent and potential legislative changes'. This is stated in a letter from James Brokenshire MP to Nicola Blackwood MP dated 11th March, regarding the proposed (and now on hold) expansion of Campsfield Detention Centre. The letter mentions consideration being made to the wider 'requirements of the detention estate including capacity purpose and location'¹⁸, yet the following questions remain:

- What is the proposed format of this review? Who will lead it?
- What is the proposed timeframe and terms of reference?
- Specifically, what steps it will take to answer the questions raised in the Parliamentary Inquiry:
 - Will the review consider how, not whether, a time limit is going to be implemented?
 - Will the review consider how new forms of community based alternatives to detention can be developed in the UK?

A stakeholding process which engages with the substantive issues raised in the Inquiry Report and acts as a stepping stone towards a radical reform of the system would be welcomed. In fact, the Inquiry Panel states:

“Given the scale of the task, we recommend that the incoming Government after the General Election should form a working group to oversee the implementation of the recommendations of this inquiry. This working group should be independently chaired and contain officials from the Home Office as well as representatives from NGOs in order to widen the thinking and approach. The working group should produce a timeplan for introducing a time limit on detention and the creation of appropriate alternatives to detention, drawing on the best practice that is already in place in other countries.”

¹⁸ Correspondence by letter from James Brokenshire MP, to Nicola Blackwood MP, 11th March 2015

The Detention Forum



The proposed reviews, though welcome, merely tinker with the immigration detention system that is fundamentally flawed. 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.

8. 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*¹⁹ by the Detention Forum)

About the Detention Forum:

The Detention Forum (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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¹⁹ <https://www.gov.uk/government/statistics/immigration-statistics-january-to-march-2015>