

The Detention Forum



Policy Paper: Government response to the Shaw reports – December 2020

The Detention Forum is a network of over 40 organisations challenging the use of immigration detention in the UK.

Following on from Stephen Shaw's reviews of the welfare in detention of vulnerable persons in 2016 and 2018, this paper looks at two elements of the

Government's response to this review: **the Detention Gatekeeper (DGK)** and **Case Progression Panels (CPP)**.

1. Detention Gatekeeper

In September 2016, the Home Office created the Detention Gatekeeper (DGK) function, in their own words, to:

- decide whether to authorise detention based on Immigration Enforcement strategic priorities;
- optimise use of detention bed space;
- identify barriers to removal not identified by ICE teams or Reporting Centres, e.g. difficulty of obtaining travel documents, or complex medical issues;
- ensure the correct paperwork had been served on detained persons; and
- ensure that detention was lawful.

As at November 2018, the DGK comprised 50.2 full-time equivalent (FTE) staff. According to the DGK draft Operating Manual, the role of the DGK is to:

- ensure that the decision to detain is both lawful and appropriate at the time it is taken
- make more efficient use of the detention estate
- protect potentially vulnerable individuals from being detained when it is not appropriate to do so
- support the Home Office strategies to reduce the illegal population and the harm it causes
- introduce an element of independence into the detention decision-making process

- contribute to a process by which the most appropriate method of return is pursued for each individual
- provide a mechanism for delivering elements of the Immigration Act 2016 that relate to detention

On 21 March 2019, **the Home Office** published a blog 'Fact sheet: Detention'. This included the statements:

"There are also a number of safeguards underpinning detention decisions: an internally independent a [sic] Detention Gatekeeper who reviews decisions to detain someone"

and

"Any decision to detain someone is reviewed by a Detention Gatekeeper who acts independently from referring and case working teams to ensure an individual's suitability for detention has been fully assessed, and any vulnerabilities have been considered."

In March 2019, the **Home Affairs Select Committee** report stated that:

"The introduction of the Detention Gatekeeper function is a welcome step forward, but the current approach still fails to provide sufficient safeguards to prevent inappropriate detention or the detention of vulnerable adults. As the latest Shaw report noted, large numbers of vulnerable people are still being detained. This indicates that vulnerable people are being wrongly routed into detention due to the Gatekeepers' incorrect validations or misplaced challenges of Home Office caseworkers' decisions. There needs to be a thorough, face-to-face pre-detention screening process to facilitate the disclosure of vulnerability. Where there is no deemed risk of absconding, this screening should be undertaken at the point of enforcement activity, for example, as part of the reporting process where UK Visas and Immigration officials or Enforcement officers should feedback any concerns they have about a person's suitability for detention. Even a short period of detention for someone who, for example, has been a victim of torture could be extremely traumatic. Therefore, it is essential that a proper pre-screening assessment is done."

In his review of the Adults at Risk policy published in April 2020, the **Chief Inspector of Borders and Immigration** recommended that the Detention Gatekeeper (DGK) should be provided with real-time access to professional medical advice. He recalled one incident of a DGK having to resort to a Google search to develop a better understanding of a medical condition before reaching a decision on a case.

He also recommended that during the admission process, – the process should be rationalised, with the aim that the detainee is seen by all parties (IRC supplier, healthcare and GP, and embedded DET) within 24 hours of arrival, and that the staff who have had contact with the detainee meet and agree a joint report that includes an assessment of whether the person is suitable to be detained and which forms the basis for the 24-hour DGK review (which would also serve as a quality assurance check on the DGK).

Concerns about this role:

- lack of real independence from the Home Office
- no ability to speak directly with the individual concerned in each case
- lack of access to professional medical advice
- lack of access to advice from NGOs
- multiplicity of referral forms

2. Case Progression Panels

In response to the Shaw reports, as well as creating the Detention Gatekeeper (DGK), the Home Office introduced Case Progression Panels (CPPs). According to the **Immigration Minister**, responding to a Parliamentary Question in October 2017, the CPPs were introduced “to provide an internally independent review of the suitability for continued detention and the progression of case actions”.

A case is first reviewed by a CPP when detention reaches the three-month point (84 days) and then at three-monthly intervals, although cases may be referred to a CPP by other units involved in the detention process, at any time, if they believe a CPP review might be useful. Also, a CPP can recommend that a case is brought back to another CPP within a shorter timeframe if an action is planned, for example, obtaining an Emergency Travel Document, the outcome of which could affect whether continued detention is justified.

In his second report, Stephen Shaw recommended that “The Home Office should review the case for an independent element in case progression panels considering those detained for more than six months.” (Recommendation 32)

The **Chief Inspector of Borders and Immigration** in his review of the Adults at Risk policy published in April 2020 recommended that (without waiting to see if an independent party will agree to participate) the staffing, functioning and minuting of the Case Progression Panels (CPPs) should be re-visited, to ensure that they are

operating firstly as effective meetings, before determining whether they are a robust and reliable review mechanism, with sufficient authority.

Concerns about Case Progression Panels

- Lack of independence
- Decisions are routinely over-ruled
- Poor monitoring processes

3. Recommendations:

3.1 Detention Gatekeeper:

- Greater operational independence from the Home Office
- DGK should have direct access to the individual person involved in each case
- DGK should have access to independent medical advice
- DGK should have access to advice from NGOs working with the individual
- The admission process should be streamlined with one common referral form being used
- There should be greater transparency over decision making

3.2 Case Progression Panels:

- There should be greater independent involvement in the CPPs and transparency in the nature of their recruitment
- There should be more transparency to explain why decisions are over-ruled by the Home Office
- There should be improved monitoring of the process with regular reports of the work from the CPPs

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