

# The Detention Forum



## A Supportive Environment (or Alternatives to Detention)

A policy paper

April 2021

We want to live in a **supportive environment** for everyone. We want to live in a society where migrants are supported within our community, by our local government, and by our national government, and where fair law is applied fairly.

We live in a reality where there are immigration and border controls and that there is not access to this country for all. While we know we have to work within this reality (and many of us wish that we do not have to), it does not mean that we have to support the current adversarial implementation of those systems. We want to move to a reality where there are safe and legal routes to the UK and there is a supportive environment in our society. We want to see people treated clearly and fairly while they explore whether or not they will be able to stay with us.

We want to see all people in this country being treated with dignity and respect as individual human beings including: undocumented migrants, time-served prisoners, people seeking asylum and people who have been refused asylum. To achieve this, we want to see a new system of **community based case resolution** to be implemented so that people can be supported whilst exploring whether they can regularise their immigration status. Pilot studies show that people engage much better with an immigration system if they feel that they understand it, are listened to and have an opportunity to explore their options fairly. We would like to see a more transparent process which is much more 'user friendly' with more guidance in different languages and non-text formats about what the system entails.

This supportive environment must include working with people with lived experience in a meaningful way to ensure that their voices are heard and that they are fully involved in both the leadership of this campaign and the design of this new supportive environment.

Instead, we have had and continue to have governments which actively promote a 'hostile environment' which isn't just or humane. From vans touring migrant neighbourhoods telling people to go home, to sub-standard and insecure accommodation, to a legal bar on being able to work, to being locked up indefinitely, to suggestions of off-shore detention. We don't want to live in such a hostile society.

We stand in opposition to such a hostile environment and all the communication promoting this policy; it is not done in our name. We want a supportive environment in our society for people that have a right to stay in the UK as well as for those who are required to leave.

The hostile environment includes a sprawling web of immigration controls embedded in the heart of our public services and communities. The Government requires employers, landlords, private sector workers, NHS staff and other public servants to check a person's immigration status before they can offer them a job, housing, healthcare or other support. Alongside these measures, ministers have drawn up a swathe of shadowy data-sharing arrangements<sup>1</sup>. These policies were started under the last Labour Government, and have been developed by both the Coalition and Conservative Governments. We also know that these policies have come with a huge and unnecessary cost.<sup>2</sup>

We want to see a national inclusion strategy to end the hostile environment, where there are cross-government and cross-sector initiatives to ensure that people are welcomed and supported in our society. Such a strategy should include access to accommodation (which meets at least the basic standards in our society), enough means to be able to live, with dignity, comprehensive access to English language teaching, access to education and a right to work and training. As a country we should start with the initial idea that we want to support people – our fellow human beings.

We also know from the experience of international resettlement in this country that a personalised and tailored approach to each person is so much more effective and sustainable. Why can't we use that learning to help us to build this supportive environment?

Successive governments have treated migrants, not as individual human beings but as groups of people. In particular it has used the practice of arbitrary immigration detention, not as a last resort, but to penalise and deter. We know that there is no evidence to show that these so-called deterrents have any effect.

And, despite this hard line, the majority of people who are detained will be released into the community (c. 60% - *add latest figure*). Why do we keep up this charade, which causes so much human suffering and wasted human and financial cost?

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<sup>1</sup> <https://www.libertyhumanrights.org.uk/issue/report-a-guide-to-the-hostile-environment/>

<sup>2</sup> For more information see:

<https://www.equalityhumanrights.com/sites/default/files/public-sector-equality-duty-assessment-of-hostile-environment-policies.pdf> and <https://www.ippr.org/files/2020-09/access-denied-hostile-environment-sept20.pdf>

We know that, in theory, immigration detention should only be used as the last resort in this country. This principle, established in the Hardial Singh case in 1983, makes it clear that people should only be detained if there is a reasonable chance of them then leaving the country. In practice this happens only in a minority of detention cases. There is a massive gulf between the theory and the practice of immigration detention in this country.

We want to see a new system of **community based case resolution** for each individual going through the immigration system for a concerted period of time. The unique status of each individual would be assessed by a trained person with the time necessary to help them to get the best result for them in accordance with the law.

Under this model each person would be provided with a case support worker<sup>3</sup>, entirely independent of the Home Office, to provide practical and emotional support, and each person would also have fully legally aided advice and representation to explore all possible avenues for regularising their status. Such resolution could include a visa application, an article 8 application, an asylum application, or a referral to the NRM for the victims of trafficking, and hence allow them to stay in the UK. We also want to see an end of the over-reliance on the appeals system and better quality decisions earlier on in the process.<sup>4</sup>

Such an independent process might conclude that there is no viable legal route for the individual to stay in the UK. In this instance, the individual would be supported to develop a plan for their return in a way that meets their individual needs. The evidence suggests that it is vital in such cases that people feel that they are being respected and listened to.

There may be a number of people who do not gain the right to remain in the country through this process. The government may reserve the right to require them to leave the country. If the government sees a need for some high quality short-term facility for those it wishes to remove, then it should operate transparently with judicial oversight, independent inspection and tight timelines consistent with our policy on a time limit for immigration detention<sup>5</sup>. However, we know that international evidence suggests that a case management approach greatly improves compliance with

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<sup>3</sup> Comment from Nick Gill - It puts me in mind of cultural mediators in Italy (mediatrice culturale). These figures provide interpretation services but also various orientation, educational and network related services, and are (or used to be) financed by local governments. I think you have in mind more of a 'legal mediator' than a 'cultural' one, although there may be some mileage in discussing this. I can put you in touch with a great former mediatrice culturale living and studying in the UK at the moment if you want to learn more about this specific role. I also interviewed her and asked quite a bit about it, so could potentially answer a few questions. There may be other similar models in other European countries. Let me know if you would like me to consult my network of colleagues in various European countries about this.

<sup>4</sup> For more information on our thinking do look at our policy papers on asylum policy (coming soon) and on time-served prisoners.

<sup>5</sup> For more information on our thinking do look at our policy paper on short-term holding facilities (coming soon).

negative immigration decisions, limiting any perceived requirement to retain the power to detain people.

We think that there is another way – a way of creating a truly supportive environment. This is the country that we want to live in, and we are committed to building support across our society to make this vital change.

### Comparing detention to community-based support to resolve immigration status

	<b>Detention</b>	<b>Community-based support to resolve immigration status</b>
<b>Purpose</b>	<b>Deterrent</b> – but ineffective/counter-productive because people are afraid to engage with immigration system	People are welcomed to engage voluntarily.
	<b>Removal</b> – but many people released into community	People more willing to engage in exploring voluntary return
<b>Cost</b>	£30k/person/year	Liberty report
<b>Humanity</b>	Harmful	Supportive. People live in the community like citizens do
<b>Legal advice</b>	Restricted provision	Better (continuous) provision to help people identify their best options
<b>Approach</b>	Enforcement – punitive and with 60% eventually being released.	Supportive
	People are treated as numbers/cases and decision-makers don't meet the individual	Personalised approach with individual assessments and regular contact with a caseworker who provides a tailored package
<b>Outcome</b>	People removed who had right to stay in UK; People forcibly removed against their will; Suicide attempts; long-term damage to mental health.	Best personal outcome for the individual achieved working together
<b>What happens in the country they are returned to?</b>	There is very little evidence apart from some research by INGOs such as Amnesty.	Support put in place in advance.
<b>If people don't comply...</b>	What happens if someone absconds after being released from detention?	Ongoing community support and possible short-term holding facility with judicial oversight and tight timescales.