

# A MATTER OF ROUTINE

## The use of immigration detention in the UK

### EXECUTIVE SUMMARY

In the 12 months from June 2016 to June 2017, the UK put 27,819 people into immigration detention. Few of them would have had any idea when they would leave: there is no statutory time limit on detention. For most, detention ultimately lasts up to a few weeks, but some are held for many months and some for years. Most detainees are ultimately released back into the community.

In 2015, a joint inquiry by two All Party Parliamentary Groups (APPG on Refugees and APPG on Migration) found that ‘the UK detains too many people, for too long a time, and that in far too many cases people are detained completely unnecessarily’. This was followed in 2016 by the Home Office-commissioned Shaw review into ‘the welfare in detention of vulnerable persons’. The review argued that the use of immigration detention should be reduced considerably and called for a ‘smaller, more focused, strategically planned immigration detention estate’. On delivering the report to Parliament, the Home Office announced it would institute a package of reforms.

International human rights standards require that immigration detention must only be used as a last resort, yet detention has become a matter of routine for the UK government and the Home Office immigration service. Ministers have repeatedly and knowingly acknowledged their department’s use of ‘routine detention’.<sup>1</sup> This report examines the use of immigration detention powers since the Home Office reforms were announced in 2016. It shows how the routine approach to detention is manifested in policy and practice, and explores its impact on detainees and their families.



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Our research examined Home Office policy and guidance documents on the use of immigration detention; interviewed detainees, their family members and lawyers that represent them; and examined Home Office detention casework files, obtained through ex-detainees who were pursuing legal challenges for what they alleged was unlawful detention. We found that:

- i) **Detention policy has shifted from detention as a last resort towards detention as routine.** The expansion of the detention estate facilitated this; it appears that the opening and closing of detention centres is the main determinant of the numbers of people detained.
- ii) **Harm is being done to detainees’ mental and physical health.** Interviewees specifically cited the uncertainty of indefinite detention, and their vicarious exposure to the long-term detention of others, as a source of harm. Detention also affects the whole household, not only the detainee. Our research found harmful consequences for adult family members, particularly women, who are left with increased caring responsibilities, and harm to the children of parents who are detained.
- iii) **Detention is often based on flawed decision-making.** Decisions to detain were, in many cases, based on a limited search for and application of information about the person’s case-history; a lack of rigour in applying policy and law when justifying detention decisions; a failure to consider alternatives to detention; and an at-best cursory engagement with the wider context of a potential detainee’s history and circumstances, including the best interests of children affected by the decision.
- iv) **Once detention has commenced, it is in many cases maintained as a matter of default or convenience.** The justifications offered are often based on strained reasoning and unrealistic assessments of the prospect of removing someone from the UK. Casework often seeks to justify continued detention unless release cannot be avoided – reversing the appropriate position of detention as the last resort.

■ At the time of writing, Stephen Shaw is conducting a return review of the Home Office’s response to his initial report. This review is important and welcome, but has a relatively limited focus on the welfare of detainees. Parliamentarians should take a broader perspective on the systemic issues behind the state of the UK’s detention system as a whole. *See recommendation 8.*

**‘I’m sick of telling my children, “Listen, Daddy’s gonna be with you soon. Daddy’s gonna be with you soon.” Every time, when they come and visit me, sometimes my son he doesn’t want to go. I have to say to him, “Listen, Daddy’s gonna be with you in a few hours.” I have to lie to my son. It kills me. It kills me. My children used to be really good in school, but now they have changed completely.’**

John, detained for over a year

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1 See for example Rt Hon Theresa May, *Immigration Detention: Written Statement, April 2016*; Rt Hon James Brokenshire, *Immigration Bill, Hansard Vol 608 col 1194, April 2016*; Robert Goodwill, *Cedars Pre Departure Accommodation: Written Statement, Hansard col. 53 WS, July 2016.*

## RECOMMENDATIONS



The UK has international human rights obligations to ensure that in any given case, immigration detention is necessary, proportionate and used only as a last resort. To bring about the institutional change required to end the Home Office's routine use of detention, concrete steps are required of the Home Office itself, of the UK government, and of parliamentarians.

### To the Home Office

**RECOMMENDATION 1: Significantly reduce the use of immigration detention, ensuring that far fewer people are detained and that anyone who is detained is held for a far shorter time.**

The Home Office has the authority to end its decision makers' reliance on detention. The 2015 APPG inquiry and the 2016 Shaw review called for reductions in the use and duration of detention.

**RECOMMENDATION 2: To comply with international human rights standards, ensure that the Enforcement Instructions and Guidance documents, and all other relevant detention policy and guidance documents, revert to emphasising that detention is only to be used as a last resort and focusing to a much greater extent on the use of alternatives to detention.**

Home Office policy and guidance to its detention decision makers plays an important role in regulating the use of the UK's broad statutory detention powers.

**RECOMMENDATION 3: Take steps to fulfil the legal duty to treat the best interests of all children affected by immigration detention decisions as a primary consideration.**

Decision makers must make greater efforts to take into consideration the full context of a person's case and give it appropriate weight. This is particularly important in cases involving children, where the Home Office has pre-existing duties to treat children's best interests as a primary consideration.

**RECOMMENDATION 4: The Home Office should further reduce the immigration detention estate.**

The sheer scale of the current detention estate (the institutions where detainees are held) facilitates the routine use of immigration detention. In recent years, the detention estate has begun to shrink, with the closure of two Immigration Removal Centres and (at the time of writing) the announcement of the intention to close a third.

### To the UK government

**RECOMMENDATION 5: Introduce a universally applicable statutory time limit for detention, short enough to constitute an effective constraint on its use.**

**RECOMMENDATION 6: To implement universal automatic judicial oversight of detention, replace the automatic bail provisions of the Immigration Act 2016 with those passed in the Immigration and Asylum Act 1999.**

Aside from the closure of detention centres, legislation is needed to compel the Home Office to radically reform its use of detention.

### To parliamentarians

**RECOMMENDATION 7: Call for a universally applicable statutory time limit and universal automatic judicial oversight to be passed into law.**

Parliamentarians from all parties can play a crucial role in pressing government for these legislative changes.

**RECOMMENDATION 8: Following the publication of Stephen Shaw's second report, instigate a new inquiry into the current use of immigration detention, modelled on the 2015 Joint Inquiry by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration.**

'They came in just before we got the kids up and obviously there's officers, there's loads of officers come in every room because they don't want the person to run away. They're thinking of their safety, so they're going to check the whole house and go in every room. But I thought the kids weren't awake... [later] my son says "Oh Mum, I had a dream that immigration came, Home Office came, and took Dad away.'"

Elaine, British citizen

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## **About this report**

The UK detains more than 27,500 people a year under immigration powers. Most of these people are held for a few weeks, but some are held for months or even years: there is no time limit. The majority are released back into the community to pick up the pieces of their disrupted lives.

Today, immigration detention has become a matter of routine, causing serious, long-term damage to the mental and physical health of detainees.

This report is based on interviews with detainees, their families and solicitors, and an examination of Home Office casefiles. It shows detention being used routinely; through decisions to detain that are often ill-considered and then maintained as a matter of default or convenience with devastating repercussions for detainees and their families.

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