

# Immigration Detention Reform in the UK: 2009-2019

Jerome Phelps, July 2020



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## 1. Executive Summary

Until recently, the UK held more migrants in detention at any one time, for longer periods, than almost any other European State. At the end of June 2013, over 4,000 migrants were detained in detention centres or held in prisons under immigration powers. 4,386 asylum-seekers were detained in 2013 for the asylum process on the Detained Fast Track. Five new detention centres had opened since 2001. The Home Office had announced plans to expand the detention estate to hold around 5,000 migrants at any one time.

Six years on, the situation has drastically altered. Despite intense political concern around migration, culminating in the vote to leave the European Union, the UK has dramatically reduced its detention estate. At the end of December 2019, a total of 1,637 migrants were detained in detention centres and prisons,<sup>1</sup> a drop of around 60%. The Detained Fast Track has been suspended since 2015, and there seems no prospect of the routine large-scale detention of asylum-seekers restarting. In July 2019, the Immigration Minister Caroline Nokes announced that the reduction in detention places 'is a key aspect of the series of reforms the government is making across the detention system', including working with civil society on a series of pilot alternatives to detention.<sup>2</sup>

These changes appear to be the result of sustained political pressure for change. Despite the domination of UK politics by Brexit, and the associated political demand that the UK 'take back control' of its borders, immigration detention increasingly became politically problematic in the period, as a result of frequent and highly critical

parliamentary and media attention. Detention moved from being a technical policy issue and a minority concern of the political Left, to become a mainstream political issue across the political spectrum.

This political pressure for reform was initiated and framed by civil society. The narrative of detention in Parliament and the media largely reflects the framing developed by NGOs and disseminated through partners and supporters around the UK. Civil society has been largely successful in both putting detention on the agenda and setting the narrative for all other actors. For the first time, there is now almost universal recognition that detention is problematic, with the Government 'committed to going further and faster in reforming immigration detention.'<sup>3</sup> It is largely accepted that detention is harmful to mental health, and the Home Office has taken steps to address the detention of vulnerable people, although without resolving the issues. There has been sustained cross-party parliamentary and media focus on detention, on terms largely set by civil society. The Detention Forum's asks of a time limit of 28 days and the development of alternatives are promoted by a wide range of key stakeholders, from Parliamentary selected committees to the HM Inspector of Prisons and Conservative MPs.

These developments follow sustained and coordinated work of civil society to engage and harmonise a wide range of voices against detention around clear shared asks. This coordinated strategic advocacy was based on the strengths of UK civil society and context, including a strong evidence base derived from NGO casework, a

1 Home Office, 'National Statistics: How many people are detained or returned?', 27 February 2020 <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/how-many-people-are-detained-or-returned>

2 Caroline Nokes, Immigration Minister, 'Immigration detention reform', 23 July 2019 <https://www.gov.uk/government/news/immigration-detention-reform>

3 Ibid

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strong and transparent statutory monitoring regime and extensive data provision by the Home Office. In this context, the collaborative strategizing of NGOs and community groups in the Detention Forum network was effective in catalysing change. The development of campaign and advocacy strategy with clear demands, widely shared across large numbers of organisations, groups and individuals, instigated growing momentum for change. This meant that a wide range of activities, including parliamentary lobbying, grassroots mobilising, communications, strategic litigation and constructive engagement with officials, were mutually reinforcing and further increased pressure for reform. As more authoritative and mainstream voices began to call for detention reform, including faith leaders, doctors, Conservative backbenchers and Government-commissioned inspectors, the issue became increasingly safe for others to speak out.

The role of people with direct experience of detention was also crucial. Indefinite detention could be normalised when the people and communities affected were invisible and unheard. Pressure for change grew as 'experts-by-experience' began to organise and speak out, both in detention and after release, using the authority of their personal experience to call for policy change. NGOs were able to create space for experts-by-experience to be heard, while experts-by-experience could personalise the issue to engage audiences who were resistant to professional NGO lobbyists.

Paradoxically, this progress has been achieved without the campaign achieving any of its key asks. The Government continues to refuse to implement a time limit, and reforms to the legal and policy framework have been limited. The Home Office has recognised the need to address the impact of detention on vulnerable people, yet new policies and processes have been problematic. The call to end indefinite detention through a time limit was not unproblematic as a policy proposal, but was effective as a wedge issue that could mobilise

a large number of voices and stakeholders around detention reform, and channel a wide range of campaign issues to towards a plausible set of demands at the parliamentary level. The Government's refusal to implement a time limit enabled that pressure to continue and grow. The dramatic reduction of numbers in detention is both a major step in itself, and indicates a sustained shift in Home Office culture and decision-making. The long-term potential of these changes could potentially be greater than if the Home Office had been forced to accept a time limit.

This paper aims to capture some of the key learning from the successes of UK anti-detention advocacy. This learning from success is particularly vital at a time when there has been pressure to expand detention across Europe, and a hugely challenging environment for campaigning against increased detention and enforcement. The COVID-19 pandemic has led several European governments to move towards emptying their detention estates based on the impossibility of returns, as well as the health risks of detention. The coming months and years will be critical in deciding whether the post-pandemic world returns to ever-expanding detention, or whether community-based alternatives can finally become the norm.

The UK detention reform process is a work in progress: far too many migrants continue to be detained indefinitely, for too long and at huge cost. Alternatives to detention pilots are still being tested and have not yet been mainstreamed in a formal system to support a genuine minimisation of the use of detention. Yet considerable progress has been made, in extremely difficult political conditions, with potential for a much greater long-term transformation. The learning from this process could be valuable to inform strategizing for change in other States and on comparable issues.

## 2. Key learning points

### For advocacy NGOs

#### **Have a clear ask.**

Campaigning benefits from a clear and memorable public-facing slogan ('end indefinite detention') and ask (the 28-day time limit) that is easy for audiences to remember, understand and make their own.

#### **Understand the context.**

Conduct a robust context analysis to understand why the desired change is not happening and address identified barriers to change.

#### **Use the right tactic at the right time and place.**

An effective strategy needs to deploy a range of proactive and reactive tactics, at appropriate times and places, including both 'insider' and 'outsider' strategies. For example, strategic litigation can make dramatic breakthroughs where no other tactics are effective; but it is not the only tactic and needs to be used selectively.

#### **Have a plan - then be agile.**

Advocacy is a constant process, not a series of isolated interventions, and always takes place in an unpredictable environment requiring flexibility and agility. A theory of change can enable proactive and collaborative forward-planning, but it should not be a straitjacket - unexpected developments are inevitable and reactive work is crucial.

#### **Understand the different roles and spaces.**

Different spheres of action, including parliamentary, policy, communications and campaigning, influence each other and can build momentum. Different actors will have strengths in different spheres; coordination can be more effective than each actor trying to be everywhere.

#### **Research reports are advocacy tools.**

Research reports can articulate a narrative of the issue which can frame subsequent campaigning and advocacy. They can be effective in putting an issue on the agenda, and giving authority to research evidence and testimony of people affected. Their effectiveness depends on how they are used.

#### **Mobilise authoritative voices.**

NGOs have the expertise to identify and frame the issue but are rarely the most authoritative spokespeople for change. Faith leaders, doctors and politicians on the political Right often have more influence over policy-makers. Experts-by-experience of detention can make the issue about people, not abstractions.

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## **Propose solutions.**

Advocacy needs to go beyond asserting problems, in order to make the change plausible, and influence the shape of the change when it happens. Allow for time to seek buy-in to the solutions developed.

## **Let go of control.**

As campaigns grow, new actors will want to play a role. Allow them to do it in their own way, that works for them and their audiences.

## **Enjoy it!**

Advocacy and campaigning can be exciting and rewarding. Partners and targets are more likely to invest time and energy if the collaboration feels meaningful and pleasurable. Smiling and humour (at appropriate moments) are even more valuable when the issue is difficult and painful.

## **For networks**

### **Collaboration takes patience.**

Building effective coalitions takes time and considerable investment in trust-building. But it is possible if different actors agree to pool their unique strengths in order to pursue a common goal.

### **Build trust.**

Trust relationships within a coalition can encourage NGOs to prioritise impact over ownership, creating an enabling and relaxed environment where non-members can also feel able to be active as and when it suits them. Goodwill and mutual support in a coalition can enable a range of voices to be harmonised and aligned without being homogeneous.

## **Ensure that necessary people are at the table.**

Experts-by-experience need to be structurally involved in the development and leadership of campaigns, because their experiences give them authority to demand change. Ultimately, migration policy should be accountable to them.

## **Don't try to bring everyone to the table.**

No one strategy will be right for every actor. Coalitions need to be broad enough to have the range of skills and sufficient capacity, but limited enough to build trust and be agile.

## **Mobilise unusual allies.**

Identify who is best placed to influence the key targets. Diverse coalitions have a better chance of reaching unusual allies.

## **Share.**

The coordinating role of a coalition can enable 'open source' campaigning where a wide range of actors can use shared materials in their own diverse way, putting aside organisational competition, reaching a wider range of audience.

## **Gather and deploy evidence.**

Service delivery NGOs can identify human rights issues in their casework, generate evidence of these issues, develop potential solutions, and position themselves as constructive partners to Government.



## For funders

### **Be in it for the long haul.**

Collaborative strategic advocacy is unpredictable and takes time and patience. It requires stable funding for key organisations, as was provided by UK foundations.

### **Promote cooperation, not competition.**

Building trust between partners is complicated if competition for funding becomes a dominant dynamic.

### **Share learning.**

Encourage NGOs to share and reflect on experiences of success (and failure) in social change.

### **There is no single change model.**

The UK change process was shaped by key participants responding to their own interpretations of the context. A different issue in a different context with different participants will require a different model of change. Valuable learning can be obtained, but a change model cannot be simply transplanted to another context.

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## 3. Timeline

<b>2009</b>	<b>January</b>	Launch of campaign against indefinite detention
<b>2009</b>		Creation of Detention Forum
<b>2012</b>		First Detention Forum theory of change developed and agreed by all member organisations
<b>2014</b>		Start of Detention Action pilot alternative to detention for young men with past convictions at risk of indefinite detention
<b>2014</b>	<b>June</b>	High Court partially upholds Detention Action legal challenge to the Detained Fast Track asylum process
<b>2015</b>	<b>February</b>	Tavistock Institute publishes a Home Office-commissioned review of mental health issues in detention <sup>4</sup>
<b>2015</b>	<b>February</b>	Parliamentary Inquiry calls for 28-day time limit and alternatives <sup>5</sup>
<b>2015</b>	<b>February</b>	The Government announces an investigation into the welfare of vulnerable individuals in detention, the Shaw Review
<b>2015</b>	<b>May</b>	Election: All parties except the governing Conservatives support a time limit
<b>2015</b>	<b>June</b>	Immigration Minister suspends Detained Fast Track, following High Court suspension of the appeals process
<b>2015</b>	<b>Summer</b>	Conservative MPs increasingly taking leadership of parliamentary process, initiating ongoing dialogue and pressure on Ministers
<b>2015</b>	<b>September</b>	Backbench Business debate in Parliament on the Parliamentary Inquiry report; MPs present unanimously support the recommendations of the inquiry <sup>6</sup>
<b>2015</b>		Closure of Dover and Haslar Immigration Removal Centres (IRCs)
<b>2016</b>	<b>January</b>	Shaw Review calls on the Home Office to move to a smaller, more focused, strategically planned immigration detention estate, subject to the many reforms; for 'much greater energy' in the use of alternatives to detention; and for strengthened safeguards against excessive length of detention. <sup>7</sup>
<b>2016</b>	<b>January</b>	The Government accepts the 'broad thrust' of Shaw's recommendations, and commits to reducing the scale and length of detention, alongside changes to process <sup>8</sup>

4 Dr David Lawlor, Dr Mannie Sher and Dr Milena Stateva, 'Review of Mental Health Issues in Immigration Removal Centres', February 2015 <https://www.tavinstitute.org/news/review-mental-health-issues-immigration-return-centres/>

5 All Party Parliamentary Group on Refugees and All Party Parliamentary Group on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 3 March 2015, p9 <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

6 <https://publications.parliament.uk/pa/cm201516/cmhansrd/cm150910/debtext/150910-0001.htm#15091022000001>

7 Stephen Shaw, 'Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw', January 2016 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/490782/52532\\_Shaw\\_Review\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf)

8 James Brokenshire, Immigration Minister, 'Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons:Written statement - HCWS470' <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>

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<b>2016</b>	<b>September</b>	Detention Action publishes <i>Without Detention</i> , setting out options and theory of change for alternatives to detention <sup>9</sup>
<b>2017</b>	<b>June</b>	At the General Election, all major parties except the governing Conservatives again make manifesto commitments to a time limit; some include explicit references to alternatives
<b>2017</b>	<b>October</b>	Second Detention Forum theory of change
<b>2017</b>	<b>September</b>	BBC Panorama documentary on abuse at Brook House IRC
<b>2017</b>	<b>December</b>	British Medical Association report 'Locked up, locked out: health and human rights in immigration detention' <sup>10</sup>
<b>2018</b>	<b>May</b>	Closure of The Verne IRC
<b>2018</b>	<b>April</b>	Home Secretary Amber Rudd resigns over the Windrush scandal, after apologising and promising compensation to people affected
<b>2018</b>	<b>July</b>	Follow-up Shaw Review repeats findings, with much greater focus on alternatives and a recommendation that the Home Office expand Detention Action's pilot <sup>11</sup>
<b>2018</b>	<b>July</b>	Home Secretary responds to the second Shaw Review by announcing a commitment to work with and fund NGO pilot alternatives, and an internal review of the operation of time limits in other countries
<b>2018</b>	<b>December</b>	Closure of Campsfield IRC
<b>2019</b>	<b>January</b>	Report on immigration detention of the parliamentary Joint Committee on Human Rights calls for a time limit of 28 days <sup>12</sup>
<b>2019</b>	<b>January</b>	Start of Home Office-funded Action Foundation alternatives pilot for vulnerable women
<b>2019</b>	<b>March</b>	Report on immigration detention of the House of Commons Home Affairs Committee <sup>13</sup>
<b>2019</b>	<b>March</b>	Liberty-commissioned report on the 'Economic impacts of immigration detention reform' <sup>14</sup>
<b>2019</b>	<b>December</b>	General Election: All major parties, except the governing Conservatives, again make manifesto commitments to a time limit; some include explicit references to alternatives
<b>2020</b>	<b>January</b>	Scottish Government paper on migration states that it wants to see the closure of Dungavel IRC, the sole Scottish detention centre, a time limit of 28 days and an increased use of community-based solutions <sup>15</sup>

9 Detention Action, *Without Detention: Opportunities for alternatives*, September 2016 <https://detentionaction.org.uk/wp/wp-content/uploads/2018/08/Without-Detention.pdf>

10 British Medical Association, *Locked up, Locked out: health and human rights in immigration detention*, December 2017 <https://www.libertyhumanrights.org.uk/sites/default/files/Locked-up-locked-out-Immigration-Detention-Report-BMA-2017.pdf>

11 Stephen Shaw, 'Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons - A follow-up report to the Home Office by Stephen Shaw', July 2018, p126 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728376/Shaw\\_report\\_2018\\_Final\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf)

12 Joint Committee on Human Rights, *Immigration detention - Sixteenth Report of Session 2017-19*, January 2019 <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf>

13 Home Affairs Committee, *Immigration detention - Fourteenth Report of Session 2017-19*, March 2019 <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

14 Cambridge Econometrics, *Economic impacts of immigration detention reform*, March 2019, [https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform\\_Final-report.pdf](https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform_Final-report.pdf)

15 Scottish Government, 'Migration: helping Scotland prosper', 27 January 2020 <https://www.gov.scot/publications/migration-helping-scotland-prosper/pages/4/>

## 4. Methodology and limitations

This paper is not a definitive account, but merely provides one possible narrative of the process of change in the UK detention system between 2009 and 2019, based primarily on the experiences of the collaborative advocacy strategy of Detention Forum and its key partner organisations including Detention Action. It aims to provide an accessible summary of some of the key elements in the change process, which may be of use to NGOs, UN agencies, funders and others working in similar fields in the UK or internationally. It is based on eleven interviews with key NGO and UN actors and the contemporaneous notes of the author, who was an active participant in the process as Director of Detention Action between 2004 and 2018 and member of the Detention Forum Coordination Group. It does not attempt to capture the full range of important and ongoing civil society campaigning, advocacy and litigation on detention, but rather highlights a limited number of interventions that can plausibly be connected to the specific changes in this period. It focuses on advocacy and political change, and does not attempt to summarise the often highly complex policy work that underlay the growing political momentum. It is not an independent evaluation, and inevitably reflects the subjective viewpoint and biases of the author, who was an active participant, as well as being the partner of the Detention Forum Project Director. Other equally valid narratives would bring different emphases. It is to be hoped that this paper encourages further analysis and reflection, since there is much of valuable learning to be gained from this example of multi-stakeholder collaborative campaigning and advocacy process, on one of the most urgent and challenging social justice issues of our time.

## 5. Background: Indefinite detention in 2009

In the UK in 2009, indefinite immigration detention had become normalised. Detention was expanding, with the New Labour Government opening new detention centres throughout the 2000s, usually under operating contracts to private security firms. Having had a few hundred bed-spaces in detention in the 1990s, the UK had by 2009 reached around 2,500 detention places, and additionally kept around 500 migrants detained in prisons at any one time. By June 2013, the detention estate had expanded to the point of holding 3,142 migrants in detention centres,<sup>16</sup> with around a thousand migrants detained in prisons.<sup>17</sup> The Home Office announced in 2014 plans to expand the detention estate to 5,000 places.<sup>18</sup>

The UK had never had a time limit, in common with six other EU States; unlike them, the UK had opted out of the EU Returns Directive, which required the rest of the EU to introduce time limits of up to 18 months. In practice, people with past convictions who had completed prison sentences were routinely detained for periods of years. The ‘foreign national prisoners scandal’ of 2006, in which the Home Office failure to consider some people with past convictions for deportation effectively ended the then Home Secretary Charles Clarke’s career,<sup>19</sup> had led to a blanket policy of automatic detention of migrants finishing sentences, regardless of whether there was any prospect of deporting them, leading people to be detained for years until the courts ordered their release.<sup>20</sup> One individual was identified by the HM Inspector of Prisons as having been detained for nine years.<sup>21</sup>

16 Home Office, ‘Immigration Statistics year ending June 2019, Detention’, table dt\_11 <https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2019/list-of-tables>

17 Until 2017, the UK did not publish statistics for the total numbers of migrants detained under immigration powers in detention centres and prisons. <http://www.aviddetention.org.uk/immigration-detention/detention-prison>

18 <https://detentionforum.org.uk/2015/01/06/ask-the-planning-committee-to-stop-the-detention-expansion/>

19 [http://news.bbc.co.uk/1/hi/uk\\_politics/4945922.stm](http://news.bbc.co.uk/1/hi/uk_politics/4945922.stm)

20 See The Queen on the application of WL (Congo) 1 and 2 and KM(Jamaica), [2010] EWCA Civ 111, High Court of Justice Court of Appeal, 19 February 2010

21 <https://www.justiceinspectorates.gov.uk/hmiprisoners/media/press-releases/2012/12/hmp-lincoln-serious-concerns/>

Despite a High Court ruling that a 'secret' Home Office policy of presumption of detention of people with past convictions was unlawful,<sup>22</sup> there was almost no public discussion of the indefinite detention of migrants with past convictions for periods of years. Civil society had largely ignored the issue, apart from some calls for asylum-seekers not to be held alongside 'criminals'. The dominant narrative in civil society was of 'good migrant' asylum-seekers not deserving to be detained because they were virtuous and/or victims; this left little space for discussion of irregular migrants, let alone people with past convictions. A parliamentary committee, the Joint Committee on Human Rights, had called for a time limit of 28 days, as part of an inquiry into the treatment of asylum seekers,<sup>23</sup> but had found little echo.

Immigration detention of adults was intermittently in the news, usually when there was a death or a disturbance, but even sympathetic coverage largely focused on detention conditions. NGOs had published hard-hitting reports on aspects of detention policy throughout the 2000s, but had generated limited political impact. The extensive NGO research and policy work documented the flaws and injustices of detention policy, but the work was dispersed and technical, without an overall narrative or wider mobilisation.

There was little strategic coordination amongst NGOs. The only space for regular discussions with the Home Office, the Detention User Group, enabled dialogue between NGOs and the Home Office department responsible for overseeing the running of the detention centres. This meant that issues around detention conditions could be raised (although rarely resolved, since the detention centres were

operated by private contractors or the Prison Service), but there was no space to discuss detention policy or decision-making. As a result, the monthly meeting of NGOs working on detention would focus reactively on emerging issues of conditions, without a long-term strategy for challenging the use of detention. There was no focus on proposing alternatives to detention; the only work on alternatives had been conducted by the Home Office, which attempted twice to pilot alternatives to detention for families; both pilots were outright failures and discredited the concept of alternatives amongst many NGOs.<sup>24</sup>

By contrast, highly effective and coordinated campaigning against the immigration detention of children culminated in 2010, when the incoming coalition Government pledged to end the practice. Although several detention organisations worked alongside children's organisations on the campaign, the argument was presented and won as a children's issue, which was effectively ring-fenced from the wider detention of adults. The Coalition Government would fail to end child detention altogether (although it would dramatically reduce it); civil society would have little influence on the development and implementation of the Family Returns Process.

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22 *Abdi and Others vs Secretary of State for the Home Department*, [2008] EWHC 3166 (Admin)

23 Joint Committee on Human Rights, *The Treatment of Asylum Seekers Tenth Report of Session 2006-07*, .276, p83. <https://publications.parliament.uk/pa/it200607/itselect/jtrights/81/81i.pdf>

24 ODS Consulting, *Evaluation of the Family Return Project*, May 2010; Scottish Refugee Council, 'We respond to evaluation of the Glasgow Family Returns Pilot', 2011; Tribal, *Review of the Alternative to Detention (A2D) Project*, May 2009; The Children's Society, *Bail for Immigration Detainees and the Diana, Princess of Wales Memorial Fund, An evaluative report on the Millbank Alternative to Detention Pilot*, May 2009

## 6. The campaign against indefinite detention

### 6.1 Launching and framing the campaign

Detention Action<sup>25</sup> initiated campaigning against indefinite detention in 2009 for a variety of reasons. Long-term detention was causing a new and growing sense of anger, despair and desire to be heard amongst people in detention. However, the decision to campaign was risky. Detention Action was dependent on the goodwill of the detention centre management to hold advice workshops, and a ban from visiting could have ended the organisation's existence. The organisation took care to present the campaign to centre management as helping address migrants' frustration by enabling them to be heard, reducing rather than encouraging protests in the centre. Detention centre staff commented, off the record, that they recognised the validity of Detention Action's description of the situation.

The campaign against indefinite detention was risky for a second reason, in that it required talking about people with past convictions. The prevailing civil society narrative until then had been that most people in detention were innocent asylum-seekers; recognising that some people had committed crimes would contradict that narrative. Since the scandal of 2006, 'foreign criminals' had been incessantly demonised in the political debate. There were significant risks to them of speaking in public, both to them as individuals, and in losing public support for detention campaigning in general.

The *Detained Lives* report, which launched the campaign in 2009, consisted of two elements, both of which would characterise

subsequent campaigning.<sup>26</sup> Firstly, it foregrounded the voices of people affected. The people interviewed gave powerful testimony, with the urgency of being heard for the first time. The humanity and individuality of the voices in itself refuted the dehumanisation of the term 'foreign criminal'. Most of the interviewees insisted on using their own names. Within a year, the vast majority of the interviewees had been released.

"I'm a human being, I'm not an animal, I'm not an alien come from planet, I'm also a human being who wants to have a girlfriend one day, settle down, get married, have couple of children, pay his taxes, be free, work and live, that's all what we want. I'm not asking for them to crown me as the king of this country or anything like that. I'm a plumber from my own country."

- Karim from Algeria and London, detained 8 years<sup>27</sup>

Secondly, the report presented evidence and arguments that addressed the Home Office rationale for indefinite detention. The testimony was accompanied by desk research of Detention Action's client base, showing that only 18% of 188 people detained for over a year had been deported. The report argued that, in addition to the human cost, indefinite detention was inefficient and ineffective as a tool of immigration control. These arguments, over many years of advocacy, would ultimately have an impact.

25 London Detainee Support Group rebranded as Detention Action in 2011. For clarity, it is referred to as 'Detention Action' throughout.

26 London Detainee Support Group, *Detained Lives*, 2009 <https://detentionaction.org.uk/publications/detained-lives/>

27 Ibid, p16

## 6.2 Collective coordination

Around the same time as the launch of the campaign, the Detention Forum was born as a space for civil society coordination and strategizing. The Forum emerged from conversations in the Detention User Group of the Asylum Rights Campaign, around the need for a more strategic and proactive approach, stimulated by a Jewish human rights group, Rene Cassin, getting involved and proposing a collective campaign. The Detention Forum was initially a space to develop shared collective strategy amongst a range of NGOs, policy organisations and faith and community groups working on detention. Over the years, it evolved into the coordination point for collaborative campaigning and a significant collective public voice.

The Forum became the space for coordination of the campaign to end indefinite detention, alongside delegitimising detention through working on the detention of vulnerable people and promoting greater judicial oversight. The Forum's initial mapping exercise identified parliamentary lobbying as a major gap in work on immigration detention, so its first few years were dedicated to building parliamentary support for detention reform. The campaign to end indefinite detention quickly ceased to be a branded NGO campaign by Detention Action, and took on an 'open source' character, with other actors and organisations using shared materials and campaigning in their own way. The campaign had no central ownership or branding, beyond the Forum and other organisations' own websites and logos, and there was no central control over messaging. The Forum members discussed and agreed messaging and demands, and also collaborated widely with other partners without requiring them to join the Forum or sign up to the demands. In practice, the working relationships developed with individuals and groups within and outside the Forum meant that there was a remarkable degree of

consistency in messaging and demands. This was the result of a few key individuals providing discreet support and guidance to important actors, while creating a narrative and framework around the less-coordinated actions of many others.

As a result, the campaign would be perceived by (primarily parliamentary) targets as a broad public movement, rather than a campaign by London-based NGOs, although the reality was that it had elements of both. Public mobilisation was largely of already supportive individuals and groups interested in asylum and migration issues or on the political left. Important spokespeople and supporters were recruited who could influence key targets – yet the campaign as a whole probably had little traction beyond its base support. It is unlikely that public attitudes to detention as a whole shifted, yet the small minority who were passionate about migrants' rights were far more likely to be moved to action. In the event, this proved sufficient to achieve change.

The Forum's aim was to delegitimise detention as a whole, rather than simply achieve a time limit. The indefinite detention ask functioned as a wedge issue which had particular traction with supporters and parliamentarians, and was the focus of public campaigning. However, it was only one of three Forum demands agreed by the members, alongside ending the detention of vulnerable people and improving judicial oversight of detention. These demands were identified in the process of forming working groups: if an ask commanded enough interest from members to create a working group, it was put for approval to the full membership. In this way, priorities were determined based on degree of willingness of the membership to work on them, and competition between members to promote their own sub-issues was avoided. A further ask around alternatives to detention



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was not initially the focus of a working group, but was agreed as a longer-term area for exploration. The adoption of these asks enabled a wide range of organisations to get involved, including groups delivering services in detention centres which had extensive evidence on vulnerability in detention but felt constrained not to campaign actively on indefinite detention. The three asks also went to every aspect of the legitimacy of detention, avoiding the risk of focusing on a single policy fix.

The Forum operated to a large extent through goodwill and individual trust relationships. The Coordination Group involved designated individuals from the most committed organisations, including the Refugee Council, Red Cross, Detention Action, Association of Visitors to Immigration Detainees, Gatwick Detainees Welfare Group, René Cassin, UK Lesbian and Gay Immigration Group, the Campaign to Close Campsfield, Right to Remain and, in the later stages, Liberty. Notwithstanding this diversity, strong working relationships evolved between key individuals, who would sometimes communicate more regularly and intensively than with their own organisational colleagues. The Coordination Group largely enjoyed working together, meaning that individuals were motivated to collaborate without dedicated funding or any line-management structure within Forum, setting aside organisational competition.

Crucially, the Coordination Group and Project Director were able to achieve a balance between accountability to members and agility. As the Forum evolved from being simply a space for coordination to an advocacy actor, the Project Director was trusted with significant freedom of action and was not constrained to seek approval for each advocacy activity. The Project Director had a strong working relationship with the Chief Executive of Refugee Council, the entity that hosts and is legally responsible for the Forum, which enabled a fluid and trust-based way of working. Similarly, the Coordination Group membership was not fully open to all: members were initially

self-appointed, and although subsequently membership was linked to coordinating a working group, the Coordination Group retained significant autonomy in recruiting its own members and setting the strategic direction. The strong investment of the Coordination Group and Project Director in making the quarterly meetings inclusive and accessible appears to have largely avoided conflict over the limited nature of democracy in the Forum as network. Indeed, focus increasingly shifted towards the more fundamental question of how to make the Forum more accountable to people and communities affected by detention.

The Forum faced considerable challenges and limitations. It had very limited resources, until 2018 operating with only a single part-time consultant. Most member organisations likewise had limited resources and capacity: many were unfunded volunteer or faith groups, or larger organisations with limited focus on detention, or detention service delivery organisations with limited capacity for campaigning. None of the member organisations received dedicated funding to work with the Forum.

Paradoxically, these weaknesses may have aided the Forum. The lack of funding and resources encouraged a flexible and 'home-made' approach that was welcoming to both new members and advocacy targets, while reducing the risk of competition for new funding. While there were no great funding rewards at stake, Forum membership was in the organisational interest of most or all member organisations, even before it became successful: collaboration enabled small, grassroots or service delivery organisations to participate in a limited way in collective projects that they could not undertake alone; being part of a detention network enabled broader refugee or migration NGOs to include detention as a strand of their work without having to invest in developing their own autonomous expertise; and core members could mobilise far wider support around their campaigning without themselves having to invest in developing individual supporter bases.



Nevertheless, several important and influential NGOs, such as Bail for Immigration Detainees and Medical Justice, did not participate in the Forum, either never joining or withdrawing over strategic differences at the point at which the theory of change was agreed. These organisations had established strategies and approaches, based on using legal and medical casework as a basis for advocacy and litigation. Their non-participation proved to be the right decision on both sides. Seeking compromise solutions to strategic differences that could have accommodated all relevant NGOs would have significantly slowed the Forum's strategizing, and would have risked ongoing internal conflict and tension; whereas the established work of gathering evidence and presenting policy critiques was complementary to the Forum strategy, which was premised on the assumption that this work would continue. Likewise, the changing political environment and growing momentum for reform enabled evidence and policy analysis to have more political traction.

## 6.3 Clear asks

The campaign had a clear and memorable ask: ending indefinite immigration detention. These four words meant that campaigners and campaign targets could immediately explain and understand the problem, without any detailed knowledge of the issue. This was a major shift in discourse, as debate on detention had previously been led by specialist policy and legal analysis, which tended to frame detention as a complex and technical issue.

The campaign introduced the phrase 'indefinite detention', which had not previously been used in the context of UK immigration detention. 'Indefinite detention', and the associated messaging

developed by the Forum, brought helpful and immediate associations with Guantánamo Bay and civil liberties, associations explicitly made by several of the migrants interviewed for *Detained Lives*. These associations were helpful in framing the issue at a distance from the debate on immigration, which became more toxic throughout the period of the campaign. The ask proved effective with the specific audiences of the campaigning: parliamentarians, and the already supportive activists, journalists, members of the public who could be mobilised to lobby MPs. A civil liberties framing meant that the issue could be attractive to the libertarian right, in particular independent-minded Conservative backbenchers. It also separated the issue from opposition to deportations and borders in general, which was largely limited to the radical left.

These strengths were reinforced by the key demand of a 28-day time limit. It was remarkable how far this demand became mainstreamed during the course of the campaign, with the majority of campaigners, parliamentary committees and party manifestos gradually converging around 28 days. The choice of 28 days was a delicate balancing act. Campaigners needed to specify a time limit, in order to propose a solution and not simply criticise. It was necessary that such a proposed time limit be short enough for most civil society groups to unite around, whilst being long enough to seem plausible to policy-makers. Twenty-eight days was chosen partly on the basis of a recommendation of the parliamentary Joint Committee on Human Rights, almost the only significant body at the time to have considered the issue,<sup>28</sup> and as the recent best practice in the European Union. Twenty-eight days was also the limit on pre-trial detention of terror suspects, which the Labour Government had failed to extend in the face of parliamentary opposition, including from the now-governing Conservatives.

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28 Joint Committee on Human Rights, *The Treatment of Asylum Seekers Tenth Report of Session 2006-07*, .276, p83.

However, the indefinite detention language and time limit ask were not universally popular within civil society. There were concerns that focusing on a specific aspect of detention, and making a demand short of abolition, would concede the legitimacy of detention as a whole. Some campaign groups and organisations working for abolition and/or no borders saw a time limit as an essential first step to the change they were seeking, but others believed that it amounted to accepting that some form of detention would continue. There were also concerns that a time limit would in practice have unintended consequences, justifying detention up to the time limit or causing increasing numbers of migrants to be detained for shorter periods. There is some evidence that the momentum associated with campaigning for a detention time limit opened up space for more radical discussion of abolition: for example, the 2019 Labour Conference approved a motion to make the closure of all detention centres into party policy,<sup>29</sup> while in the Labour leadership campaign in early 2020 Jess Phillips, widely seen as the candidate of the right of the party, called for ‘the abolition of immigration detention, not “just a time limit” on it’.<sup>30</sup> However, another NGO leader reported a senior politician, in a meeting with activists, dismissing calls for abolition on the grounds that the NGOs were merely calling for a time limit.

The time limit demand was also problematic in terms of Home Office advocacy. Until a relatively late stage, neither the indefinite detention language nor the time limit ask were prominent in government-facing advocacy, including by the organisations campaigning on them, given the hostility of the Home Office to the ask (the Home Office continues to deny that detention without time limit amounts to indefinite detention, although since 2018 a time limit has been recognised as a policy option). Securing a Government commitment to a time limit would itself have generated substantial challenges,

since the Home Office would likely only agree to a time limit too long to satisfy campaigners, and any compromise could have split the campaign coalition. In particular, it was likely that a time limit would have excluded people with past convictions, the group most exposed to long-term detention. There would have been a real risk that an inadequate time limit would have made little difference on the ground, whilst killing the momentum for change by allowing politicians to claim that they had already ended indefinite detention.

In practice, the time limit may have been most effective as an unmet demand. It is not possible to judge the hypothetical effect of its implementation, but it was rhetorically effective in assembling a coalition for an achievable change, in a deeply hostile political context. However, it should be remembered that, between 2015 and 2019, a Labour government of the radical left under Jeremy Corbyn was a real possibility, and was committed to implementing a 28-day time limit as a first step towards abolition.

## 6.4 Addressing government priorities

It was necessary to develop evidence and arguments that addressed the priorities of government, in order to engage and influence it. Extensive research had generated a powerful evidence base of the harm caused by detention but, for many years, detention continued to expand regardless. There was a need for evidence of the harm of detention to be complemented by evidence of its ineffectiveness as a tool of government policy.

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<sup>29</sup> <https://labourlist.org/2019/09/labour-conference-approves-motion-to-extend-free-movement/>

<sup>30</sup> <https://www.independent.co.uk/news/uk/politics/labour-leadership-jess-phillips-immigration-farage-michael-gove-detention-a9292876.html>

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In the context of the austerity policy of the Coalition Government from 2010, arguments around costs would clearly be significant. The Home Office faced several waves of cuts to its budget, which cost many jobs without reducing spending on detention. Nevertheless, the high political priority of maintaining a visible detention estate, following the ‘foreign national prisoners scandal’, meant that financial arguments alone would not be effective – however expensive, detention was seen by successive governments as worth it.

In this context, when Detention Action commissioned independent analysis on the financial costs of indefinite detention in 2012,<sup>31</sup> it was not enough to show that it was expensive; rather, it was necessary to demonstrate that long-term detention was wasteful in terms of its own policy goals of deporting migrants. The Government published per person per day figures for the costs of running the detention estate, which had been used in campaigning but attracted relatively little political interest. In order that the research be perceived as independent and authoritative, Detention Action commissioned Matrix Evidence, independent economic consultants with a track record of work for the Home Office. Although Detention Action was heavily involved in the design of the research, the independence of the contractors gave it much greater authority, and its credibility was never challenged in subsequent parliamentary or public debate.

Matrix analysed the financial waste of long-term detention of migrants who were ultimately released, whose detention could not be justified on the grounds that it led to deportation. The analysis considered both the costs of detention, and the costs of unlawful detention payouts. As a result, it addressed the key political weak

point of current practice: its inefficiency. Further, it was framed to compare current practice against a proposed solution of improved screening and assessment enabling community-based alternatives to detention to be used for migrants who could not be deported within a lawful and reasonable period of detention. The analysis found that this solution would save £76 million per year.

Evidence on costs has remained salient to campaigning. In 2019, Liberty commissioned Cambridge Econometrics to conduct further economic analysis of the savings that could be made from a 28-day time limit. The report calculated savings against likely costs of alternatives, based on the costs of Detention Action’s Community Support Project, finding that ‘a more humane detention system comprising a 28-day time limit supported by alternative provision could yield long-term net savings of £25-35m or more each year.’<sup>32</sup>

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31 Matrix Evidence, *An economic analysis of alternatives to long-term detention*, January 2012 <https://detentionaction.org.uk/publications/an-economic-analysis-of-alternatives-to-long-term-detention/>

32 Cambridge Econometrics, *Economic impacts of immigration detention reform*, March 2019, [https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform\\_Final-report.pdf](https://www.libertyhumanrights.org.uk/sites/default/files/Immigration-detention-reform_Final-report.pdf)

## 6.5 Collective strategising

The Detention Forum invested heavily from an early stage in strategic planning and collective reflection and learning. In 2012, after some years of joint activities and parliamentary lobbying, the decision was taken to develop an overall strategy, by establishing thematic working groups on three key issues (indefinite detention, judicial oversight and the detention of vulnerable people), along with a fourth group on communications. Indefinite detention was initially not prioritised over other issues, reflecting the diverse priorities of member organisations. The working groups spent most of 2012 working with an advocacy and campaigning consultant, Jonathan Ellis, to develop theories of change and strategic plans. Such collaborative strategising was an unfamiliar experience for most, and required intensive coordination and extensive time and patience from all participants.

A power/influence mapping exercise by the indefinite detention working group identified that only the Minister could end indefinite detention, as officials correctly viewed it as a political decision. The Home Office had considerable leeway to reduce the scale of long-term detention, including through improving the quality of guidance for decision-makers, but would require political direction from the Minister even for such incremental changes. However, Home Office support would be necessary in the event of a political breakthrough, in order to implement any change – organisations had learnt from the experience of the Coalition Government pledge to end child detention, where Home Office resistance to a complete ban had been decisive. Both Minister and Home Office were influenced by a heavily politicised public debate, with hostile media coverage generating a risk-averse approach where detention was seen as the safe option.

The power/influence mapping was a sobering exercise, as it revealed that the members of the indefinite detention working group had none of the contacts and connections necessary to change policy.

Despite a certain demoralisation, the working group arrived at a theory of change and a strategy to use the contacts held by group members to reach other more influential partners and build a broad civil society alliance around the need for a time limit. This civil society alliance could mobilise parliamentarians, Parliament being the sole available route to influencing the Minister (and indirectly the Home Office). Alongside parliamentary pressure, it would be necessary to change the public debate by mobilising support for reform without triggering a backlash from the majority who support migration control.

The development of a theory of change was crucial, not because it was particularly sophisticated, but because it enabled organisations to think about their work in terms of steps towards the long-term change. It also enabled organisations to review whether continuing their established activities would be effective in leading to change. This enabled a shift away from routine familiar activities to thinking hard about what needed to happen in order for the next step to be taken towards the overall goal.

The main thinking took place within the coordination group, but quarterly meetings and annual strategy days enabled all members to be involved in the strategizing. These meetings were extremely well attended throughout, and consistently generated enthusiasm and collegiality. The shared strategizing enabled the range of voices to be harmonised and aligned without being homogeneous.

The process of collectively developing a shared strategy also enabled Forum members to think through the different roles that would be necessary, particularly in the event of a time limit being achieved. The need was recognised for insiders negotiating incrementally behind closed doors, and outsiders taking principled positions for radical change.

## 6.6 Mobilising and organising

A critical aspect of the change process was the development of what one stakeholder called 'an atmosphere of detention reform'. This involved a widely shared sense both of the detention system as 'rotten', and of detention as a 'familiar' issue on which non-experts could and should make demands. Further, detention was seen as requiring systemic change rather than occasional outrage over particular incidents. In other words, detention as an issue came to be seen as:

- Important ('I should take action')
- Accessible ('I can take action'), and
- Changeable ('my action can have an impact').

A wide range of groups, with a wide range of voices and perspectives, came to campaign on detention reform. Some were directly supported and encouraged by Forum member organisations, others responded relatively spontaneously to the growing interest in detention in mainstream and social media. These included campaigners focusing on the rights of specific groups, faith networks and civil liberties organisations, as well as service delivery organisations working in detention. Several organisations undertook influential campaigns on particular groups affected by detention, which were effective in mobilising different audiences whilst avoiding the risk of being seen to legitimise or downgrade the detention of other groups. Women for Refugee Women led campaigning against the detention of asylum-seeking women, bringing high-profile and authoritative feminist voices to the issue. UK Lesbian and Gay Immigration Group led on the detention of LGBTQI people, without presenting detention as legitimate for other groups. The 'Refugee Tales' project of Gatwick Detainees Welfare Group and Kent University School of English likewise brought leading writers to write on the issue, without limiting it to a refugees frame.<sup>33</sup> Cities of Sanctuary adopted the time limit demand in the 2014 Birmingham Declaration of the Sanctuary Summit,<sup>34</sup> without limiting it to asylum-seekers, a radical step for an explicitly asylum-focused movement, which was to bring large numbers of mobilised grassroots activists to the detention issue.

While core actors in the Forum shared strategy and message discipline, the wider mobilisation was much more anarchic, yet to a large extent fed the momentum for the clear and specific demands of the Forum. The wider mobilisation was also self-feeding, in that the awareness of a wide range of groups campaigning on the issue lowered the perceived entry bar to other new groups by generalising the sense that many groups were speaking out.

<sup>33</sup> <https://www.kent.ac.uk/community/refugee-tales.html>

<sup>34</sup> Sanctuary Summit Communiqué - the Birmingham Declaration, 2014 [https://www.cityofsanctuary.org/files/the\\_birmingham\\_declaration\\_-\\_nov-15th1\\_0.pdf](https://www.cityofsanctuary.org/files/the_birmingham_declaration_-_nov-15th1_0.pdf)

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This growth of diverse activism around the UK interacted dynamically with parliamentary and media interest to create a sense of momentum that was largely independent of any single actor.

While public messaging often focused on ending detention of specific groups, these diverse asks tended, once the debate reached Parliament, to be funnelled into support for the achievable time limit asks. NGOs undertaking parliamentary advocacy generally supported the shared asks, and did not develop specific policy proposals around particular groups. The demonstrations to close Yarl's Wood, for example, were effective in amplifying voices against detention in general. Women for Refugee Women and the wider feminist mobilisation were highly effective in bringing feminist MPs to prioritise detention as an issue, while the parliamentary debates and opportunities in which they could speak out were largely framed around the discussion of detention in general. Likewise, faith groups often focused on asylum-seekers, due to the effective mobilisation of Cities of Sanctuary and their personal relationships with individual asylum-seekers in their communities; the parliamentarians they lobbied might frequently speak of the detention of asylum-seekers, but in the context of debates on detention as a whole.

A comparable opportunity/challenge was the interest of the anti-capitalist Left in the involvement of private sector security companies in running detention centres. There was a risk that this could lead the debate away from systemic change towards removing detention centres from private contractors. In practice, this risk did not materialise, as once again there was little attempt to formulate a relevant policy proposal; returning detention centre management to the Prison Service or Home Office was not widely considered a desirable ask. It proved possible to capture the energy of this strand of mobilisation, in particular in establishing detention as an issue for the Left and the Labour Party, and guide it towards shared demands.

While the growing media and parliamentary focus on detention was a condition of possibility of this growth in activism, it also required extensive grassroots organising and support. Right to Remain initiated These Walls Must Fall, a 'people-powered network' of community groups, voluntary organisations, charities, trade unions, activist groups, faith communities, student societies, sports clubs and others campaigning on immigration detention. These Walls Must Fall mobilised a wide range of grassroots groups, mainly through on-the-ground hosting of workshops and development of accessible materials, including on passing a council motion or union motion, writing to MPs and getting a letter published in local newspapers.

Grassroots mobilisation was particularly effective in contributing to the growing commitment of the Labour Party to detention reform. Having expanded the detention estate while in government between 1997 and 2010, Labour was out of power throughout the next decade. However, the effectiveness of the strategy of leadership by cross-party parliamentarians required the support of opposition parties, without which there would be little risk to the Government. The growing mobilisation of the labour movement, in particular local councils, unions and constituency parties, contributed to mainstreaming detention reform as a safe issue on which Labour could take radical positions. While motions by local councils had primarily symbolic value, they contributed to the atmosphere of reform by conveying the sense of detention as a priority at the local level.

This sustained grassroots mobilisation was complemented by a significant one-off intervention around the 2015 General Election by Citizens UK, a national community organising network, which had played a critical role in persuading the leaders of all the main parties to commit to ending child detention prior to the 2010 General Election. With discreet encouragement from Detention Action, Citizens UK decided to adopt ending indefinite detention as a key demand for the



2015 General Election, and used their community mobilising to put significant pressure on key figures in Labour and the Conservatives. Citizens had extensive reach in community institutions around the country, including schools and churches, and trained members to visit their MPs and put pressure on them to sign up to the Citizens pledge. This pressure was instrumental in bringing Labour to commit to ending indefinite detention in their 2015 manifesto, but narrowly failed to persuade the Conservative Party. Campaigners went into the 2015 election with a great deal of optimism, since all the other main parties were now committed to a time limit, and polls strongly indicated another coalition government involving the Liberal Democrats, who were already strongly committed to the issue and likely to make it a key demand in coalition negotiations. However, the surprise election of a Conservative majority government ended hopes of an immediate breakthrough.

## 6.7 Casework-and evidence-based advocacy

A key strength in the UK, relative to comparable countries, was the volume and quality of evidence and data. HM Inspectorate of Prisons (HMIP) and the Independent Chief Inspector of Borders and Immigration (ICIBI) are authoritative statutory inspectorates reporting to the Home Secretary, which conduct regular in-depth inspections and investigations, and publish their reports. HMIP is an independent inspectorate which reports on conditions for and treatment of people held in secure facilities, including immigration detention. HMIP coordinates the 21 member bodies of the UK

National Preventative Mechanism under the Optional Protocol on the Prevention of Torture, which include Independent Monitoring Boards based at each immigration detention centre.<sup>35</sup> ICIBI monitors and reports on the efficiency and effectiveness of the Home Office's immigration, asylum, nationality and customs functions. These bodies have a statutory role in scrutinising immigration detention, and as such have far greater access than civil society. HMIP in particular has a rigorous and highly respected methodology for visiting and assessing conditions in detention centres; its regular reports are published and attract significant media interest.<sup>36</sup>

While monitoring bodies are not campaigners and play a clearly distinct role, their in-depth and authoritative reporting meant that NGOs to a large extent did not need to report on detention conditions, and were able to use the evidence in their advocacy. Moreover, monitoring bodies played a significant role in giving authority and legitimacy to campaign demands. In 2015, HMIP began echoing civil society calls for a time limit, in line with the position adopted by the National Preventative Mechanism as a whole.<sup>37</sup> Its description of Yarl's Wood in 2015 as 'a place of national concern' was widely reported and crystallised a widely shared concern.<sup>38</sup>

The UK Home Office also provides more data on detention than almost any comparable country.<sup>39</sup> Extensive data is published on a quarterly basis, including numbers in detention on a given snapshot day, numbers detained over the period, and lengths of detention, allowing civil society to track progress.

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<sup>35</sup> <https://www.nationalpreventivemechanism.org.uk/>

<sup>36</sup> <https://www.justiceinspectorates.gov.uk/hmiprison/inspections?s&prison-inspection-type=immigration-removal-centre-inspections>

<sup>37</sup> HMIP, *Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons 13 April - 1 May 2015*. <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-20151.pdf>

<sup>38</sup> *Ibid*, p7

<sup>39</sup> <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/list-of-tables#detention-and-returns>

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NGOs working in detention used their access to individuals to systematically generate an evidence base that was used alongside government statistics and evidence from monitoring bodies in research reports, advocacy and strategic litigation. Bail for Immigration Detainees (BID), for example, have used their access to migrants, through assisting and representing individuals with bail hearings, as a basis for a series of research reports throughout the last two decades. This meant that there has always been reliable qualitative information about the reality of detention policy and practices. BID used their evidence base and legal expertise to conduct advocacy with the Home Office and in Parliament, whilst also supporting investigative journalists to explore the issue.

Likewise, Medical Justice mobilised the authoritative voices of doctors and medical institutions against the harm done to the health of migrants in detention. Medical Justice involved individual doctors as volunteers and spokespeople, able to bring their medical authority to bear on the issue. It also engaged institutions, including the British Medical Association and the Royal College of Psychiatrists, to take a strong public line, and play an important role in broadening opposition to detention beyond civil society. Medical Justice worked closely within the structures of these institutions, joining a BMA expert panel and the Royal College of Psychiatrists Working Group on Asylum. These institutional commitments, including the BMA passing a motion on phasing out detention, mainstreamed opposition to detention as an issue for the medical establishment. On health issues, doctors and medical associations wield significant authority vis-à-vis the Home Office, and were much more difficult to ignore than NGOs.

In 2015, the Vulnerable People Working Group of the Forum, led by the Association of Visitors to Immigration Detainees and Gatwick Detainees Welfare Group, published a report *Rethinking 'vulnerability': a crisis of harm*.<sup>40</sup> The report enabled grassroots service delivery organisations to use their expertise and access to people in detention to frame a narrative of the impact of detention in making individuals vulnerable. AVID and GDWG coordinated evidence-gathering over a sustained period among small visitors groups working on the ground in detention centres around the country, mobilising organisations not otherwise active in advocacy. The report helped to move the debate beyond a technical policy focus on particular categories of individual, towards a more dynamic and holistic approach to vulnerability, based on a model developed by Jesuit Refugee Service Europe (JRS),<sup>41</sup> that recognises that vulnerability changes over time and is the result of a variety of factors, including detention itself.

The report was timed to influence the Shaw review, which was tasked to focus on vulnerability. The Shaw review was highly critical of the Home Office's treatment of vulnerable migrants in detention. Shaw responded to lawyers and NGOs highlighting that the Home Office had been found six times between 2011 and 2014 to have breached European Court of Human Rights Article 3 rights against torture and inhuman or degrading treatment; Shaw commissioned a legal analysis of these cases. Shaw recommended the dynamic approach called for by the Vulnerable People Working Group, citing the JRS model. In its response to Shaw, the Home Office accepted the need to recognise the dynamic nature of vulnerability, and took various steps including the introduction of a new 'Adults at Risk' policy. This policy was heavily criticised by NGOs

<sup>40</sup> <https://detentionforum.org.uk/2015/07/09/rethinking-vulnerability-in-detention-a-crisis-of-harm/>

<sup>41</sup> Jesuit Refugee Service-Europe, *Becoming Vulnerable in Detention: Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union*, June 2010, pp11-12 <https://www.europarl.europa.eu/document/activities/cont/201110/20111014ATT29338/20111014ATT29338EN.pdf>



as a step backwards that allowed more people to be detained, and was successfully litigated by Medical Justice in terms of its definition of torture survivors in October 2017.<sup>42</sup> Nevertheless, the introduction of the policy marked a recognition of the need for change.<sup>43</sup>

## 6.8 Parliamentary strategy

The Detention Forum's theory of change relied on growing pressure for detention reform from Parliament. Given the Forum's limited profile and capacity for high-profile public campaigning, parliamentary advocacy was the one plausible route to influencing the Government. The relative openness of the British Parliament to civil society engagement, including via individual constituents, meant that this was a relatively accessible route for the Forum. However, it had not yet been explored in a sustained manner, as identified in the Forum mapping exercise: up until then, most of the influencing work was targeted at civil servants, who had little leeway for change without authorisation from Ministers.

The Forum's strategy was to incrementally build support for detention reform and ending indefinite detention by encouraging a small number of cross-party parliamentarians to feel ownership of the issue. The Forum had the benefit of membership across the country, and particularly in the areas of detention centres. This meant that local organisations could lead the communications to their local MPs, with strategic coordination and messaging support from the Forum. MPs would be more receptive to a locally-led approach, framing the issue as a priority in their area for their constituents, as opposed to a campaign by national NGOs. A shared

database of parliamentary supporters was developed, in which member organisations recorded their interactions with parliamentarians.

The Forum's strategy was initially to frame the issue as cross-party and non-political, given that many parliamentarians were fearful of being seen to be overly pro-migration. This dictated a shift away from the prior focus on the Labour left, which had contributed to detention being seen as a radical left issue. For many years, John McDonnell and Jeremy Corbyn had been almost the only MPs supportive on detention issues; John himself, the MP for Harmondsworth and Colnbrook detention centres, advised the Forum to broaden its reach to politically mainstream MPs.<sup>44</sup> It was necessary to build relationships incrementally with a wide range of parliamentarians, initially making small asks such as to visit a detention centre or speak at an event in their constituency, in order to gradually increase their confidence and commitment to the issue.

Parliamentary meetings were an important way to identify and engage new potential supporters and bring friendly parliamentarians together to connect with each other and make the topic appear politically safe. The Forum launched an informal parliamentary network on immigration detention in November 2010, with an unusually well-attended parliamentary meeting featuring speakers from all the main parties. This initiated a series of smaller parliamentary meetings, which established trust relationships with parliamentarians and helped Forum members become accustomed to collaborative parliamentary advocacy. The momentum generated by these parliamentary meetings enabled the Forum to feel confident enough to prioritise parliamentary lobbying in the 2012 strategy development exercise.

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42 <http://www.medicaljustice.org.uk/high-court-rules-government-redefinition-of-torture-in-immigration-detention-policy-is-unlawful/>

43 Challenging the 'Rule 35' system for reporting and assessing torture survivors in detention was a major focus of NGO policy work, generating significant pressure on the Home Office. As (highly complex) policy work, it is not described in this paper, notwithstanding its importance.

44 This strategy to some extent continued under the Corbyn leadership of the Labour Party; while the Forum worked closely with the shadow frontbench, the role of centrist MPs was crucial in ensuring wide support for party policy, enabling the party leadership to take radical positions.

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Instead of foregrounding speeches by NGOs, the meetings were facilitated by the Forum to focus on discussion and strategizing between parliamentarians. The Forum positioned its member organisations as a resource for parliamentarians, rather than making demands of them. Care was taken to thank parliamentarians for each action they took, both in private through thank you cards and publicly on social media. From 2018, the Forum began to recognise as ‘detention champions’ parliamentarians who had shown particular commitment to the issue, where possible holding ceremonies in their constituencies, with presentations from constituents and experts-by-experience. As a result, friendly parliamentarians increasingly identified detention as one of their personal priorities and took actions independently of being lobbied by civil society.

In the initial phase up until 2015, the parliamentary advocacy focused on recruiting individual mainstream Conservative and Labour parliamentarians, and encouraging the Liberal Democrats to make ending indefinite detention a manifesto commitment and priority. The Liberal Democrats were in the governing coalition and had prioritised ending child detention as a key demand for the Coalition Agreement in 2010. Detention Action held side-meetings at two party conferences and drafted proposals for the party policy review, alongside relationship-building with parliamentarians by various Forum members. This led Liberal Democrats for Seekers of Sanctuary to become active Forum members. The Liberal Democrats made a manifesto commitment to end indefinite detention in the 2015 General Elections; by the 2017 Election, all the main parties were making similar commitments, with the exception of the Conservatives.

The All-Party Parliamentary Group on Refugees was a focus of parliamentary lobbying. APPGs are informal groupings of MPs and peers around a shared issue of interest; they have no resources of their own, apart from an NGO-based secretariat, and usually little power, but they have the authority of being an established parliamentary mechanism. The Forum initially decided against seeking to initiate a new APPG on detention, instead coming to an informal arrangement that the chair of the APPG on Refugees would act as point of contact on detention, with the Forum’s support, and would coordinate with the APPG on Migration. Two Liberal Democrat MPs held the post up to 2015; the Forum assisted the APPG to hold several parliamentary meetings on detention. Later, in 2019, a formal APPG on detention was set up with Medical Justice as secretariat, involving 35 parliamentarians, reflecting the increasing mainstreaming of the issue.<sup>45</sup>

In early 2014 the chair of the APPG on Refugees Sarah Teather, a former Minister for Children, decided to stand down from Parliament at the next Election, and to devote her remaining time in Parliament to one or two key causes. She approached NGOs with the idea of a joint parliamentary inquiry by the APPGs on Refugees and Migration, to be led by a cross-party panel of mainstream parliamentarians, hand-picked by Sarah. She recruited an authoritative panel from across the political spectrum, including mainstream Conservative MPs, using her personal and faith-based connections. The Parliamentary Inquiry took written evidence, receiving over 200 submissions, and held three hearings in Parliament, prioritising hearing from people with direct experience of detention. One session took evidence directly from migrants in detention, through a fragile telephone link facilitated by Forum members Jesuit Refugee Service.

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<sup>45</sup> <https://appgdetention.org.uk/>

The Detention Forum dedicated all its resources to assist this process behind the scenes, producing guidance notes for community organisations and individuals with experience of detention on how they could contribute to the inquiry. The Forum also hosted a number of community ‘hearings’, in collaboration with other organisations. The Forum launched a social media project, Unlocking Detention, in collaboration with OpenDemocracy, to coincide with the process and draw public attention.<sup>46</sup> The Forum also fundraised for the costs of printing the report, and organised a media briefing on the date of publication.

The Parliamentary Inquiry report was published in early 2015, shortly before the General Election, and marked a major step-change for the campaign and political salience of detention reform.<sup>47</sup> It echoed the Forum’s call for a 28-day time limit and alternatives to detention; now the call was being made by an influential group of cross-party parliamentarians who had studied the issue in unprecedented depth. Further, the report called not for minor policy fixes, but for a major and structural shift away from detention towards the use of alternatives. Individual panel members, including Conservative and Labour MPs, were appalled by the evidence they had heard, and impressed by the Swedish case management model that they had visited, and became committed advocates on the issue. This made it possible to continue the growth of momentum into the new Parliament. When the Minister made no formal response, and the General Election yielded a Conservative Government, the two Conservative members approached the Minister for Immigration and initiated a backbench business committee debate for the new Parliament to discuss the report, at which the attending MPs unanimously voted to endorse the recommendations of the inquiry.

The subsequent passage of the 2016 Immigration Bill allowed scope for further parliamentary pressure through amendments to introduce a time limit. A range of NGOs and legal agencies worked together on the Bill, under long-standing coordination arrangements led by the Immigration Law Practitioners Association. The Labour front-bench were at that stage not willing to support an outright time limit amendment, so a compromise indefinite detention amendment increasing judicial oversight went forward in the House of Lords. The Forum and wider civil society supported this amendment strongly, despite its limited nature, with the Forum producing briefings and coordinating social media pressure before key votes, using Unlocking Detention as a platform. It also utilised a parliamentary event organised by Cities of Sanctuary to draw further attention to the Bill process. The Government were defeated on the amendment twice in the Lords. As a result, the Government offered the major concessions of guaranteed judicial oversight through automatic bail hearings (except for people with past convictions), and a time limit of 72 hours on the detention of pregnant women (extendable up to a week in certain circumstances). The detention of pregnant women had been a key focus of campaigning by many organisations.<sup>48</sup> This was the first time that the short time limits applied to the detention of children since 2010 had been extended to a group of adults.

A significant feature of the growing parliamentary momentum for change was the lack of backlash from the right, due largely to the specific political configurations of Brexit. On one level, this period was exceptionally unpropitious for campaigning for migrants’ rights, in that immigration was a key factor in the debate over Brexit that increasingly dominated political life. However, the priority of the UK Independence

46 <https://unlocked.org.uk>; <https://www.opendemocracy.net/en/tagged/5050-unlocking-detention/>

47 <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

48 Home Office, Immigration Act 2016, Factsheet - Detention of Pregnant Women (Section 60), July 2016. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537240/Immigration\\_Act\\_-\\_Part\\_3\\_-\\_Pregnant\\_Women.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/537240/Immigration_Act_-_Part_3_-_Pregnant_Women.pdf)

Party, the key party to the right of the governing Conservatives and a major influence on the Brexit debate, was to frame the immigration debate in terms of the EU and free movement. Notwithstanding occasional gestures at the EU 'refugee crisis', UKIP made no significant intervention in the detention debate, which did not fit its framing of EU membership having undermined the UK's borders. The UK has opted out of the EU Returns Directive that limits detention periods, so EU membership had little impact on UK detention policy. This meant that the parliamentary field was free for detention advocates to frame the debate, without significant influence of the xenophobic far right, or overlap with the Brexit debate. As a result, the Government was isolated in defending its practices, with the Minister sometimes the only voice defending its practices in parliamentary debates, while the Opposition could see detention as a winnable issue.

## 6.9 Communications

Detention was the object of growing media coverage throughout the decade. Previously there had been media interest in particular incidents such as disturbances, but little sustained interest in the reality of detention. As detention became a more high-profile political issue, the volume of media coverage increased, which in turn encouraged more interest in Parliament and communities. Mainstream journalists with a long-term interest in the issue, such as Diane Taylor at the Guardian, published more frequent stories, while journalists working on related issues such as the Windrush scandal repeatedly sought a detention angle.

Communications was an important part of the Forum strategy from the start; one of the initial working groups developed key messages in 2012 which are still used. The communications work was always led by and formed part of the overall advocacy and influencing

strategy, with the coordination group quickly deciding what communication activities to undertake for each significant event. Initially, none of the member organisations had a communications officer working entirely on detention.

This situation changed with an increase in investment by funders in migration communications, including for detention work. The Migration Exchange funder network took on a communications consultant in 2014 to help coordinate migration communications work. The consultant, Fiona McElroy, worked closely with the Forum Coordination Group and the office of Sarah Teather MP to plan the launch of the Parliamentary Inquiry in February 2015, securing front page coverage in several major newspapers. The creation of IMIX in 2016 brought further capacity and coordination to sector communications, including enabling Detention Action and Right to Remain to recruit dedicated communications posts for the first time.

The Forum's Unlocking Detention, an annual social media campaign, provided stimulus and tools to mobilise on-line supporters and activists. Initially used for the purpose of drawing attention to the parliamentary inquiry, the campaign used social media to mobilise individuals and groups around the country, encouraging supporters to tweet selfies with their messages on indefinite detention, and at key moments to lobby their local MPs. This was particularly effective during the passage of the 2016 Immigration Act, when the Forum was able to mobilise large numbers of supporters to write to their MPs at short notice to support a time limit amendment.

## 6.10 Strategic litigation

Strategic litigation played an important role in limiting the use of detention at times and in areas where there was no scope for progress through advocacy or political pressure. In the early 2010s, progress in challenging indefinite detention came almost exclusively through litigation. There was no scope as yet to discuss the policy of indefinite detention with the Home Office, and political pressure was still limited. Lawyers were the first to succeed in putting pressure on the policy of indefinite detention through bringing unlawful detention actions on behalf of individuals in detention. According to figures released to the Home Affairs Committee, between 2012 and 2017 the Government paid a total of £21.2m to more than 850 people in compensation for unlawful immigration detention.<sup>49</sup>

Between 2013 and 2016, Detention Action and their legal team, Migrants' Law Project at Islington Law Centre, brought a series of legal challenges to the Detained Fast Track asylum process (DFT). On the DFT, people seeking asylum were routinely detained on making their claim, and held in high-security immigration detention centres throughout their asylum claims. The DFT was designed to provide accelerated timescales for claims that were considered suitable for a quick decision, yet vulnerable people with complex cases were regularly detained. In 2013, almost one in five asylum-seekers (4,386 people) were put through the DFT process, which had a refusal rate of 99%.<sup>50</sup>

Once again, the issue emerged as a clear injustice in Detention Action's casework supporting individuals in detention. Alongside indefinite detention, the DFT was the overwhelming issue affecting Detention

Action's clients; similarly to the lack of time limit, there appeared to be little scope to address it through advocacy. BID had published several powerful reports in previous years, but the DFT had continued to expand. The DFT was seen within the Home Office as working well, as it generated quick removals; there appeared to be no willingness to consider how these were achieved. The judgement of the European Court of Human Rights in Saadi<sup>51</sup> had generated widespread consensus, even amongst immigration lawyers, that the DFT had been found lawful and was beyond challenge.

Detention Action began by speaking to clients in detention about their experiences of the DFT, in order to document how it was operating in practice. A picture emerged of a system that had become very different to the early version of the process considered by the European Court of Human Rights. Instead of being held for a few days in a low-security centre for an initial decision on their claim, asylum-seekers were by 2011 being held throughout their asylum claims, often for periods of months, in prison-like conditions. In May 2011, Detention Action published a report, *Fast Track to Despair*, which argued, based on casework evidence and the testimony of people in detention, that the DFT was 'structured to the maximum disadvantage of asylum-seekers at every stage.'<sup>52</sup>

In December 2013, Detention Action brought a High Court challenge to the DFT on the basis that it was operating in a way that was so unfair as to be unlawful. In July 2014, the High Court partially upheld the challenge, finding that a range of serious failings cumulatively meant that the DFT was operating unlawfully for vulnerable applicants. The Home Office responded by making minor

49 House of Commons Home Affairs Committee Immigration detention Fourteenth Report of Session 2017-19, p23 <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>

50 IVAR, *Detained Fast Track Litigation Case Study: Detention Action - Using the law for social change*, November 2017, p2 [http://www.aviddetention.org.uk/sites/default/files/images/IVAR\\_Detention-Action-Report\\_26Oct\\_v5.pdf](http://www.aviddetention.org.uk/sites/default/files/images/IVAR_Detention-Action-Report_26Oct_v5.pdf)

51 Saadi v UK (2008) 47 EHRR 17

52 Detention Action, *Fast Track to Despair*, May 2011, p3 <https://detentionaction.org.uk/wp-content/uploads/2018/12/Fast-Track-to-Despair.pdf>

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adjustments, including the earlier allocation of lawyers, and the Court of Appeal in December 2014 upheld the High Court's refusal to suspend the process. However, the Court of Appeal found in favour of Detention Action that the detention of asylum-seekers for their appeals was unlawful, where they were at no risk of absconding. Once again, the Home Office made minor adjustments, assessing all asylum-seeking appellants for absconding risk, and apparently finding that the vast majority were indeed at risk of absconding and could remain on the DFT.

Detention Action and Migrants' Law Project then in January 2015 brought a further challenge to the lawfulness of the legal architecture of the DFT, challenging the lawfulness of the Fast Track Rules by which asylum-seekers in detention were given less time to appeal. In June 2015, the Court of Appeal found that the Fast Track Rules were unlawful, but granted the Home Office a stay on the effect of the ruling pending appeal. In June 2015 this stay was lifted by the Court of Appeal, suspending the DFT appeals process. Days later, the Home Office conceded a further High Court challenge by individual migrants based on the initial Detention Action judgement, represented by Duncan Lewis and Wilsons LLP, with the intervention of Immigration Law Practitioners Association (ILPA) and evidence from Helen Bamber Foundation. The Home Office conceded that it had acted unlawfully by failing to identify vulnerable people unsuitable for the DFT; the Minister made a statement to Parliament suspending the DFT in its entirety. Large numbers of asylum-seekers were released, to pursue their cases in the community.<sup>53</sup> In November 2015, the Supreme Court refused the Government permission to appeal.

Within a few months, the Home Office in late 2015 approached the Tribunal Procedure Committee, the relevant judicial body responsible, to request that it draft new Fast Track Rules in order to allow a revised DFT process to be instituted. The Committee met with Detention Action, ILPA and the Law Society, before conducting a wider consultation, and in February 2016 wrote to the Home Office refusing to create new Fast Track Rules, attaching Detention Action's written submission. In June 2019, following a further request from the Home Office and further consultation, the Committee again refused to create new Fast Track Rules, concluding that '(i)f a set of rules were devised so as to operate fairly, they would not lead to the increased speed and certainty desired' by the Government.<sup>54</sup>

An external evaluation by IVAR has documented the learning from this successful strategic litigation.<sup>55</sup> It was critical that the DFT was a 'clear injustice', and seen as such across the detention sector; this enabled extensive collaborative work by a wide range of lawyers and NGOs, often unpaid. Also crucial was the extensive experience and commitment of the legal team at Migrants' Law Project; the lead solicitor had been involved in previous unsuccessful legal challenges to the DFT, with a clear understanding of why those challenges had failed, and the legal team put in large amounts of unfunded hours to research and prepare the case. Detention Action and Migrants' Law Project showed persistence and innovation to pursue the litigation through two cases over three years, and an ongoing strategic approach to respond to changing circumstances of the litigation within an agreed 'broad direction of travel.'<sup>56</sup>

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<sup>53</sup> <https://www.bbc.co.uk/news/uk-33285443>

<sup>54</sup> Tribunal Procedure Committee, Response to the consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to detained appellants (12 July to 04 October 2018), .74 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807891/dft-consultation-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807891/dft-consultation-response.pdf)

<sup>55</sup> IVAR, *Detained Fast Track Litigation Case Study: Detention Action - Using the law for social change*, November 2017 <https://www.ivar.org.uk/wp-content/uploads/2017/11/Detained-Fast-Track-Litigation-Case-Study-Nov-2017-IVAR.pdf>

<sup>56</sup> *Ibid*, p8



## 6.11 Leadership of experts-by-experience

The publication of the Parliamentary Inquiry report in 2015 also marked the point at which migrants with experience of detention became the main spokespeople for detention reform, in the media and in Parliament. It is highly likely that the increasing pace of change from that date reflected the increased leadership of people directly affected by the issue. 'Experts-by-experience' were able to speak out, both in detention and after release, using the authority of their personal experiences to call for policy change, in a way that could move unusual allies to understand and relate to the issue.

Detention Forum supported the Parliamentary Inquiry to prioritise the structured involvement of people affected by detention. The Inquiry encouraged individuals with experience of detention to make submissions, and took oral evidence from individuals who had been released from detention and, by telephone, from people still in detention. Detention Forum produced and disseminated tools that enabled the wide participation of people and communities affected: many individuals and community groups used the Forum tools to produce their own submissions, while Detention Forum and Detention Action held community evidence-giving events in London, Middlesbrough and Newcastle, with local partner organisations, to enable people to give verbal evidence, which was edited and presented as submissions to the Inquiry. This was the Forum's first attempt to assert, legitimise and normalise the central role of people with lived experience in the change process.<sup>57</sup>

Organised groups of experts-by-experience played a growing role in leading campaigning, from around the time of the Parliamentary Inquiry. Media coverage of the launch of the Inquiry report on 3

March 2015 was led by members of the Freed Voices group, who were subsequently leading spokespeople for the need for change. The policy of indefinite detention relies on and perpetuates the dehumanisation of individuals affected, and is reinforced by the presentation of individuals, in the words of Freed Voices, 'either as weak, passive victims or as dangerous, 'foreign criminals'. This has made it easier to silence both detention as an issue and the input of those with lived experience of detention in shaping policies that directly affect them.'<sup>58</sup>

The Freed Voices group was a semi-autonomous group, initiated and facilitated by Detention Action, but developing its own positions and speaking on its own behalf. It developed out of the involvement of migrants currently in detention in giving testimony for the organisation's campaign reports, and in speaking at events after release. It became clear that there was a need for more structured support and long-term participation to avoid tokenism, by which migrants' involvement was limited to speaking at events about their own stories, in the role of victims. Through supporting each other and working closely with policy and advocacy experts at Detention Action and other organisations, Freed Voices were able to become confident and articulate advocates. They frequently took more radical positions and made stronger statements than Detention Action, but the mutual trust and respect meant that positions and messaging could be harmonised without being identical.

Members of Freed Voices attended a ten-session training course to talk through their experiences in a group, explore different modalities of campaign activities, explore ways to mitigate trauma of their experiences of detention, and think through in an informed manner

<sup>57</sup> Detention Forum strategy review, September 2019

<sup>58</sup> Freed Voices, <https://detentionaction.org.uk/freed-voices/>

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the opportunities and risks of speaking out. The full group met regularly to discuss strategy and political developments and develop their skills and confidence as a group. Individual members undertook the campaign and advocacy opportunities that correspond to their interests and confidence levels. In 2015, this focused on media interviews, campaign events and online media blogs and pieces; by 2017, Freed Voices members were participating in the vast majority of parliamentary and other advocacy activities of the Forum and Detention Action, as well as holding meetings independently, including meeting the Shadow Home Secretary and the UN High Commissioner for Refugees. Freed Voices members became regular commentators on detention policy: for example, Mishka Pillay wrote for the Guardian, Independent, Metro, Huffington Post, Justice Gap and Amnesty International blog, among many others.<sup>59</sup>

The presence in media and public debate of highly articulate individuals talking about their own experiences was effective in delegitimising the policy. Experts-by-experience did not simply tell the stories of their own experiences in detention, as background case studies that policy experts could use as evidence. Experts-by-experience became, with training, experience and long-term investment from NGO partners, better and more effective advocates than NGO leaders, because they could both make sophisticated advocacy demands, and invoke their direct knowledge of the lived reality of detention. Freed Voices, and other expert-by-experience groups, worked in active partnership with NGOs, receiving the training, development and peer support that enabled them to contribute as professionals and equals.

The active involvement and leadership of people affected was not limited to after release. People in detention took significant risks to be heard in the debate, despite their incarceration. As well as giving evidence to the Parliamentary Inquiry, people in detention spoke frequently to journalists and collaborated with supporters running the Detained Voices website to get their experiences into the public domain.<sup>60</sup>

People in detention also combined organised protest with effective strategic coordination with journalists, politicians, NGOs and supporters, to intensify media and political interest in detention. For example, the Yarl's Wood hunger strikers in February to March 2018 used their protest effectively to get their message out. They took on the 28-day time limit demand, alongside their own more specific asks, enabling them to connect their protest to the wider civil society advocacy.<sup>61</sup> They coordinated with supporters outside detention, who organised a series of protests, including six around the country on one day.<sup>62</sup> An effective media campaign, working with NGO allies, culminated in an appearance on the highly influential BBC radio programme 'Women's Hour', an important step in mainstreaming detention as a feminist issue.<sup>63</sup> The strike stimulated interventions from politicians, with the Shadow Home Secretary and Attorney General visiting Yarl's Wood and speaking with the strikers, and subsequently asking an Urgent Question in Parliament.<sup>64</sup> Most significantly, the strikes triggered the parliamentary Home Affairs Committee to agree to expand its inquiry beyond Brook House to include Yarl's Wood and the rest of the detention estate; a member of the Committee also visited, spoke with the strikers in Yarl's Wood, and published an article on the experience.<sup>65</sup>

59 For example, see <https://www.independent.co.uk/voices/yarls-wood-hunger-strike-immigration-detention-centre-living-condition-deportation-uk-customs-a8232341.html>

60 <https://detainedvoices.com/>

61 <https://detainedvoices.com/2018/02/25/the-strikers-demands/>

62 <https://righttoremain.org.uk/hunger-for-freedom-day-of-action/>

63 <https://www.bbc.co.uk/programmes/b09smgy3>

64 <http://detentionforum.org.uk/2018/03/21/hungerforfreedom-opening-a-new-chapter-in-the-history-of-challenging-immigration-detention/>

65 Stuart McDonald MP, 'Everyone is crying: it is time for a limit on immigration detention', *openDemocracy* 21 March 2018 <https://www.opendemocracy.net/en/opendemocracynuk/everyone-is-crying-it-is-time-for-limit-on-immigration->



## 6.12 Public and media scandals

Despite the extensive strategizing and planning by NGOs, many of the key developments in the detention reform process were unexpected and out of the control of civil society, requiring agility to make the most of the opportunities suddenly arising. In particular, the BBC 'Panorama' documentary of September 2017 proved a crucial turning point.<sup>66</sup> A detention centre officer smuggled a camera into the detention centre, enabling the broadcast of shocking images of assault, verbal abuse and humiliation of migrants by officers at Brook House IRC. This led to extensive media coverage and a Home Office commitment to an investigation by the Prisons and Probation Ombudsman, which was in September 2019 upgraded to a public inquiry following successful High Court litigation in June 2019.<sup>67</sup> In February 2018, BID lodged legal action to make it more difficult for G4S, the private security contractor that had been operating Brook House, to bid for further contracts.<sup>68</sup> G4S announced in September 2019 that it would pull out of Brook House and the wider immigration detention industry.<sup>69</sup>

Likewise, the Windrush scandal of 2018 accelerated the collapse in Government confidence in current policy. Migrants, many of whom had lived lawfully in the UK for decades, some as part of the initial generation of migrants from the Caribbean association with the arrival of the 'Empire Windrush' ship in 1948, were wrongfully detained, deprived of their rights and in some cases deported, due to lack of documentation. The scandal led indirectly to the resignation of the Home Secretary Amber Rudd in April 2018.

However, it was by no means inevitable that these scandals would increase momentum for detention reform. There had been a succession of abuse scandals in the 2000s, with little apparent impact on the growth of detention throughout the decade.<sup>70</sup> Initial BBC messaging the 2017 Panorama documentary focused unhelpfully on asylum-seekers' fears of being detained with people with past convictions, without framing the abuse in the context of indefinite detention. The Detention Forum coordinated assertive attempts to reframe the revelations around the growing narrative of indefinite detention, disseminating messaging for members and allies to use and briefing parliamentarians, who consistently used the indefinite detention framing. This contributed to the documentary becoming a part of the discourse of the need for systemic reform, rather than a one-off incident of 'bad apple' officers or an exclusive focus on G4S as private-sector contractors. A Home Affairs Committee inquiry was originally intended to focus exclusively on the abuse in Brook House, but advocacy by the Forum and others, including people in detention themselves, led to it becoming a wider inquiry into immigration detain as a whole.

## 6.13 High profile voices

Campaigning and momentum for a time limit reached a peak in the period between late 2017 and 2019. Mainstream human rights and civil liberties organisations undertook sustained campaigning for a time limit, taking advantage of the media interest arising from Windrush and the Panorama documentary. A series of authoritative

[detention/](#)

66 [https://www.bbc.co.uk/news/resources/idt-sh/g4s\\_brook\\_house\\_immigration\\_removal\\_centre\\_undercover](https://www.bbc.co.uk/news/resources/idt-sh/g4s_brook_house_immigration_removal_centre_undercover)

67 <https://www.theguardian.com/uk-news/2019/jun/14/public-inquiry-into-abuse-claims-at-immigration-removal-centre-g4s-brook-house>

68 <https://www.biduk.org/posts/339-bid-launches-legal-action-to-ensure-the-government-holds-g4s-to-account>

69 <https://www.independent.co.uk/news/uk/home-news/g4s-brook-house-contract-immigration-removal-centre-a9117956.html>

70 For example, the March 2005 BBC documentary 'Detention Undercover' showed racist abuse and humiliation of migrants at Oakington detention centre, with no apparent political consequences.

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institutional voices joined the calls for change, including the British Medical Association, Bar Council, faith leaders and two parliamentary select committees. The potential to introduce a time limit through an amendment to the 2017-19 Immigration Bill gave urgency to the campaigning, but ultimately proved not to be an opportunity for legislative change.

The final surge of pressure for a time limit began in late 2017 with the release of a series of reports, marking new or renewed commitment to the issue from Amnesty International,<sup>71</sup> Women for Refugee Women,<sup>72</sup> the Bar Council<sup>73</sup> and the British Medical Association.<sup>74</sup> This was followed by a public call for a time limit of 28 days by faith leaders representing the Church of England, Catholic Church, Muslim Council of Britain, Hindu Council, Sikh Federation, Reform Judaism and others, coordinated by Liberty.<sup>75</sup> These reports remained carefully within the narrative established in the campaigning, repeating long-standing criticisms and recommendations. They marked a significant escalation in the mainstreaming of the issue, with voices of institutional and faith-based authority now leading calls for reform alongside mainstream civil liberties organisation Liberty.

This period marked a shift in the dynamics of civil society mobilisation. While the Detention Forum continued to coordinate advocacy and organised a Parliamentary meeting to showcase the civil society reports,<sup>76</sup> the nexus of parliamentary advocacy gradually moved away from the Forum, as campaigning began to focus on the Immigration and Social Security Coordination (EU Withdrawal) Bill 2017-19.

Liberty, Detention Action and other NGOs worked with Garden Court Chambers to develop an amendment for a time limit. Liberty used its extensive contacts and cross-party support in Parliament to build widespread support in Parliament for the amendment. Refugee Tales, which organises walks and literary events and publications around the theme of detention, were able to reach Conservative MPs wary of conventional NGOs or campaigns. Detention Action stepped up its media and parliamentary campaigning. Ultimately 88 MPs signed up to support the time limit amendment, including MPs from the governing Conservatives and their allies in the Democratic Unionist Party. In principle, this could have been enough to secure a majority in a vote, given that the Government did not have a majority. However, the Immigration Bill never came to a vote, and fell with the end of Parliament for the December 2019 General Election.

Indeed, it was unclear whether the Immigration Bill was in fact an opportunity for a time limit: the failure of the Bill at an early stage meant that it was never established whether the amendment would be considered to be within the scope of the Bill, and therefore acceptable for debate. The amendment was also divisive within the sector, as the scope of the Bill was limited to EU citizens, so any time limit would have been limited to them. Civil society hoped that any such time limit would in practice have had to be extended to other groups, given the issues with applying a different regime to Europeans in detention, but many organisations were unable to support the amendment on this basis.

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71 Amnesty International, *A matter of routine: the use of immigration detention in the UK*, December 2017 <https://www.libertyhumanrights.org.uk/sites/default/files/A%20Matter%20Of%20Routine%20ADVANCE%20COPY.pdf>

72 Women for Refugee Women, *We are still here: the continued detention of women seeking asylum in Yarl's Wood*, October 2017 <https://www.libertyhumanrights.org.uk/sites/default/files/We-are-still-here-report-WEB.pdf>

73 Bar Council, *Injustice in Immigration Detention*, November 2017 <https://www.barcouncil.org.uk/resource/injustice-in-immigration-detention.html>

74 British Medical Association, *Locked up, Locked out: health and human rights in immigration detention*, December 2017 <https://www.libertyhumanrights.org.uk/sites/default/files/Locked-up-locked-out-Immigration-Detention-Report-BMA-2017.pdf>

75 <https://www.libertyhumanrights.org.uk/news/press-releases-and-statements/time-act-now-religious-leaders-call-home-secretary-put-time-limit>

76 <https://righttoremain.org.uk/parliamentary-meeting-on-immigration-detention/>

Further, it was never clear to what extent it was possible or even desirable to obtain a time limit through defeating the Government in a vote; under pressure, the Government would certainly have offered concessions, which may well have induced rebellious back-benchers to back down. Any negotiation process would have been difficult for NGOs, since the Government would have offered a longer time limit and sought to exclude people with past convictions, a red line for civil society given this is the group most exposed to long-term detention. An offer of a time limit longer than 28 days would have split the broad but fragile civil society coalition, which did not have a negotiating strategy for compromise on its demands.

The December 2019 election gave the Conservatives a substantial majority, and probably ended the possibility of achieving a time limit through defeating the Government on a vote, at least for the period of this Parliament. In retrospective, however, it appears that the 2017-19 Bill was the last opportunity to put the Government under substantial parliamentary pressure. It is surely no coincidence that the Home Office in this period continued to reduce the numbers of people in detention and committed to working with civil society on alternatives to detention. It may be that, in not winning the parliamentary battle, civil society nevertheless deepened and accelerated the shift of culture taking place in the Home Office.

## 7. Providing solutions

### 7.1 Planning for success

A significant element of the success of the detention reform movement was the growing focus on solutions-based advocacy. As momentum for change grew, the Detention Forum and partners gave increased focus to thinking through what success would look like, scenario planning and developing viable solutions. Over several years, member organisations discussed the potential for a system that did not rely on detention, and the conditions of possibility for the Government to radically reduce the use of detention. The Forum had in the 2012 Theory of Change committed to developing an ask on alternatives to detention and started including it in public messaging; this was formalised and became a main component of the revised Theory of Change for 2017-20.<sup>77</sup>

In retrospect, the UK alternatives strategy involved four phases:

1. Scoping and developing solutions-based policy proposals and sensitising key allies;
2. Piloting elements of the proposals to show that they can work and build relationships with government;
3. Deploying constructive proposals at the political moment of opportunity for government commitment;
4. Working with government to ensure that alternatives are developed and implemented in a way that will be effective and maximise resilience in the context of political turbulence.

Detention Forum members had learnt from the experience of the campaign to end the detention of children in 2010, and wanted to ensure that, in the event of the campaign succeeding, it was positioned to influence the shape of the new system. Many agreed that campaigning would never be strong enough to dictate terms to a Conservative Government that was hostile on asylum, migration and human rights. The cuts faced by the Home Office created optimism that the Home Office would be receptive to arguments that it could meet its policy objectives whilst reducing detention, but it was anticipated that the Government would need a narrative for how reducing detention does not mean weakening immigration control. There was a need to provide solutions as well as highlight problems; the narrative of alternatives to detention could be presented as improving migration governance whilst reducing detention.

Alternatives to detention were and remain the dominant counter-narrative internationally to the global pressure to increase detention and enforcement. They have been strongly promoted by UNHCR in its five-year global strategy 'Beyond Detention'.<sup>78</sup> The Council of Europe has led the debate in Europe by publishing two ground-breaking studies focusing on how alternatives can be effective: an analysis of the legal and practical aspects of effective alternatives to detention<sup>79</sup> and a practical handbook for implementing alternatives effectively.<sup>80</sup> The debate in Europe is gradually moving beyond a longstanding focus on typologies of alternatives, that prioritises enforcement-based alternatives such as reporting requirements and designated residence in specified accommodation, towards a broader understanding of how engagement with migrants can make alternatives effective in terms of respect for human rights, compliance with procedures and cost-effectiveness.

77 Detention Forum, 'Theory of Change', October 2017 <http://detentionforum.org.uk/wp-content/uploads/2019/06/DetentionForumTheoryofChangeOct2017.pdf>

78 UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019*, 2014 <https://www.unhcr.org/uk/protection/detention/53aa929f6/beyond-detention-global-strategy-support-governments-end-detention-asylum.html>

79 Council of Europe, Steering Committee for Human Rights (CDDH), *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration*, 7 December 2017 <https://rm.coe.int/legal-and-practical-aspects-of-effective-alternatives-to-detention-in-/16808f699f>

80 Council of Europe, CDDH, *Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results*, October 2019 [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680979cb1#\\_Toc13047436](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680979cb1#_Toc13047436)

## 7.2 Scoping the UK context

The Forum saw alternatives not as a policy fix, but as a process for system change.<sup>81</sup> This meant identifying the elements in the existing UK system that could be developed and reframed as alternatives to detention, in order to enable a systemic shift away from detention. The Forum did not focus on specific good practices that could be transplanted from elsewhere, but on how alternatives could plausibly be developed in the UK.

The UK already used several of the main tools frequently identified in typologies of alternatives to detention, including reporting requirements, designated residence, bail and tagging. The Home Office had also unsuccessfully piloted two residential alternatives for families, which had focused on encouraging families to undertake voluntary return by transferring them away from their existing accommodation.<sup>82</sup> These pilots were unsuccessful on their own terms and had contributed to discouraging civil society interest in alternatives. The attention of civil society had in practice focused on bail as the main existing alternative, a release mechanism used routinely by migrants in detention, which had not contributed to reducing the overall scale of detention.<sup>83</sup>

Forum partners identified the strengths of the UK context as the strong presence throughout the country of civil society organisations delivering services to asylum-seekers and irregular migrants. Many such organisations were already undertaking some form of case management with individuals, including working with them to explore all options to resolve their cases through regularisation or voluntary return. It was clear that any migration system based on engagement with migrants would need to start from these well-established existing services. Many such organisations saw their role as defending individuals' rights and dignity against the Home Office, but there was potential to explore more collaborative ways of working that could benefit migrants and the Home Office.

## 7.3 Mainstreaming alternatives

Alternatives gradually become mainstreamed in the UK in both the political and government policy spheres. It was essential that these two debates progressed concurrently, since the Home Office would not commit to alternatives without a favourable political environment, and political pressure would not be effective without Home Office willingness to implement.

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81 Eiri Ohtani, 'What does a migration system without detention look like?', 18th July 2019. <https://detentionforum.org.uk/2019/07/18/migration-system-without-detention/>

82 ODS Consulting, *Evaluation of the Family Return Project*, May 2010; Scottish Refugee Council, 'We respond to evaluation of the Glasgow Family Returns Pilot', 2011; Tribal, *Review of the Alternative to Detention (A2D) Project*, May 2009; The Children's Society, *Bail for Immigration Detainees* and the Diana, Princess of Wales Memorial Fund, *An evaluative report on the Millbank Alternative to Detention Pilot*, May 2009

83 Ohtani, 'What does a migration system without detention look like?'

In the political sphere, the debate on alternatives was mainstreamed by the strong emphasis of the parliamentary inquiry in 2015. Panel members visited Sweden to learn about the approach to individualised community-based case management, and the final report recommended that ‘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.’<sup>84</sup> Subsequently, alternatives were a key focus of the second Shaw Review in 2018, which included a section on alternatives, a write-up of the Detention Action project, and a literature review. Shaw recommended that the Detention Action alternatives project be expanded, and that the Home Office establish an alternative to detention for vulnerable people.<sup>85</sup>

UNHCR played a key role in encouraging the Home Office to commit to exploring alternatives, using its authority and access to initiate high-level discussions, including bringing in other governments with positive experiences of alternatives. One of the three main goals of the ‘Beyond Detention’ global strategy was to ‘ensure that alternatives to detention are available in law and implemented in practice’.<sup>86</sup> UNHCR were able to arrange a series of high-level conversations with the Home Office to gradually build their interest and confidence on the issue, starting in late 2015, including the production of a non-paper with recommendations and good practice examples. This led in January 2016 to a first High Level Dialogue with the UK Government,<sup>87</sup> and in late 2017, to a roundtable discussion on alternatives with the governments of Sweden and Canada.

## 7.4 Piloting alternatives

Detention Action began piloting a small alternative to detention in April 2014. The Community Support Project was designed to address the specific drivers of indefinite detention in the UK, by meeting the needs of young male migrants with past convictions, the group most exposed to long-term detention.<sup>88</sup> While people with past convictions are a complex and diverse group, and their release is particularly politically controversial, there were clear commonalities of interests between migrants, NGOs and the Home Office to enable migrants who could not be deported to live safely in the community while their cases were resolved, without reoffending or absconding. These shared interests provided a foundation for collaborative working that would have been more difficult in relationship to other groups of participants.

There was little international experience of alternatives for people with past convictions, yet in many countries they are detained for the longest periods. The Toronto Bail Program in Canada was an important point of reference, as a well-established project working to facilitate the release of detained migrants, mainly people with past convictions, from prison onto the support of an NGO in the community.<sup>89</sup> Even more significantly, the Community Support Project could draw on established models and practices from the mainstream UK probation system, which addresses managing the risks associated with the rehabilitation of people with past convictions back into the community. This focus on the strengths

84 All Party Parliamentary Group on Refugees and All Party Parliamentary Group on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 3 March 2015, p9 <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

85 Stephen Shaw, ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons - A follow-up report to the Home Office by Stephen Shaw’, July 2018, p126 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728376/Shaw\\_report\\_2018\\_Final\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf)

86 UNHCR, *Beyond Detention*, p7

87 UNHCR, *Progress Report mid-2016. Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees - 2014-2019*, August 2016, p77

88 Detention Action, *Without Detention: Opportunities for alternatives*, September 2016 <https://detentionaction.org.uk/wp/wp-content/uploads/2018/08/Without-Detention.pdf>

89 Detention Action, *Without Detention*, p50



of the wider national context avoided the need to invent a wholly new approach, or the temptation to seek to import a model developed elsewhere to meet different needs in a different context.

The Community Support Project aimed to demonstrate that alternatives to detention can be effective for migrants with complex needs and risk factors who would otherwise face indefinite detention. With specialist support, it would be possible to reduce the risk of absconding and reoffending of young male people with past convictions with barriers to removal, assisting them to meet the conditions of their release and avoid long-term detention. Through one-to-one case management, participants develop skills and confidence to stabilise their lives, participate in the community and maintain contact with the authorities.<sup>90</sup>

Alongside meeting the needs of individual participants, the project aimed to:

- Develop working relationships with the Home Office around the implementation of an alternative to detention;
- Develop an evidence base that even the most complex individuals could be supported in the community, meeting the needs of individuals and the Home Office;
- Develop a model that could be adapted and scaled up to address the needs of other groups;
- Engage other migration and non-migration organisations, including the homelessness and post-prison rehabilitation sectors, to consider developing alternatives to detention;
- Mobilise funders to support the expansion of alternatives as part of an advocacy strategy to reduce detention.

## 7.5 Advocacy through doing<sup>91</sup>

The launch of the Community Support Project enabled the start of discreet meetings with the Home Office department responsible for people with past convictions. After the project began to show results, this evolved into informal arrangements for collaborative working, including the Home Office referring detained migrants onto the project in order to support their release. These meetings took place despite the fact that Detention Action was simultaneously litigating the Detained Fast Track.

Working with the Home Office on implementation of the project allowed for a different kind of communication, away from the formal NGO consultation mechanisms, which could be confrontational. The non-adversarial informal conversations that took place with key officials over several years allowed for the development of trust relationships. The project coordinator's professional expertise in the rehabilitation and risk management of people with past convictions gave him significant credibility in the eyes of the Home Office, and he was able to exercise influence in the course of working on individual clients.

## 7.6 Strategic proposals

In early 2016, Detention Action worked with Detention Forum and IDC to produce a series of policy briefings on practical options for alternatives to detention in different parts of the asylum and migration system for the first Shaw Review, in the context of growing interest in alternatives within the Home Office. These briefings set out how alternatives could address government priorities while

<sup>90</sup> See evaluation at <http://www.iars.org.uk/online/evaluation-of-detention-action-community-support-programme/>

<sup>91</sup> For more information on 'advocacy through doing' see CASE MANAGEMENT: LEARNINGS, TIPS AND POSITIVE PRACTICES - Outcomes of peer exchange workshop for NGOs implementing alternative to detention pilot projects as a strategy for change to reduce immigration detention, European Alternatives to Detention Network (2020).

avoiding the use of detention in three key areas: the asylum system (in response to the Fast Track litigation), for people with past convictions, and for returns in general.

In September 2016 Detention Action published an expanded version of these proposals in the report *Without Detention*, co-written with Eiri Ohtani of Detention Forum.<sup>92</sup> The report set out the strategy for change and the options for the Government to move forward with alternatives, including a write-up of the Community Support Project and assessment of how the model could be adapted to other areas of the system. It analysed the specific UK context in the light of the IDC's CAP model of effective alternatives to detention. It focused on the limited and ineffective nature of prior implementation of alternatives in the UK and Europe, which had focused on enforcement-based models and had involved little serious attempt to engage migrants to participate actively in the system. Drawing on learning from these failures, as well as more successful models like the Community Support Project and other European practices not formally considered to be alternatives, such as the Swiss reception model, the report set out plausible options for the Home Office to move forward with developing alternatives and reducing detention. Equally importantly, the report set out a strategy and theory of change for NGOs to use alternatives to achieve change, in the UK and in Europe.

## 7.7 Building support of NGOs

This focus on growing NGOs' awareness of and support for alternatives was an important part of the strategy. Following the publication of *Without Detention*, Detention Forum held a series of workshops with Forum members and non-members to encourage partners to think

through the strategic opportunities and limitations of working on alternatives. These included workshops for Detention Forum member organisations, Scottish NGOs and civil society, and Action Foundation in Newcastle, as well as a more intensive session on advocacy on alternatives for key civil society leaders.

Detention Action had been liaising with Action Foundation since the early days of the Community Support Project, at which time most project participants were being housed in the north-east of England. Detention Action and Detention Forum co-hosted with Regional Refugee Forum North-East an evidence session to enable migrants and asylum-seekers in the region to be heard by the Parliamentary Inquiry in 2014. This event led to discussions with Action Foundation about the scope for them to develop an alternative to detention project, based on their established existing services for asylum-seekers in Newcastle. These discussions progressed over several years, including collaboration on developing a concept note and exploring funding opportunities for such a project.

## 7.8 The Home Office pilots

In early 2018, following the discussions with UNHCR, the Home Office began to explore the potential for community-based alternatives to detention with groups and organisations offering support to migrants in the community, through workshops co-hosted with UNHCR and bi-lateral meetings. The Home Office had been working constructively with faith groups around the resettlement of Syrian refugees in the UK, and there was enthusiasm to find ways to extend this collaborative approach to other areas. This positive precedent contributed to openness and confidence in the Home Office to work with NGOs on alternatives to detention.

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<sup>92</sup> Detention Action, *Without Detention*



In early 2018, UNHCR jointly convened with the Home Office a workshop on alternatives for civil society stakeholders, which contributed to starting the process of design and implementation of a series of pilots, including setting up alternatives pilots and monitoring and evaluation.<sup>93</sup> Detention Forum, Detention Action and others presented their vision of the key principles that make alternatives effective, based on the learning from the Community Support Project and international experience captured in IDC's CAP model. UNHCR and Detention Forum maintained close dialogue throughout, to ensure effective coordination of activities.

In July 2018, in response to the follow-up Shaw Review, the Home Secretary announced a new community-based alternative to detention pilot for vulnerable women detained in Yarl's Wood or at risk of detention.<sup>94</sup> The Government was under significant political pressure by this stage: parliamentary momentum for a time limit had been sustained since the 2015 parliamentary inquiry, the previous Home Secretary had been forced to resign over the Windrush Scandal, and the follow-up Shaw Review had repeated serious criticisms of the detention system. The Government needed a positive initiative to show that it was actively responding to Shaw and taking concerns seriously. The political groundwork had been done, in the Home Office and in Parliament, to make sure that the Government initiative would take the form of alternatives to detention.

Action Foundation's 'Action Access' pilot in Newcastle opened in December 2018. The two-year pilot provides individualised case management and housing support to vulnerable women to resolve their immigration cases in a more humane and cost-effective way.

Up to 21 clients at a time are to be housed and supported by case managers with complex and personalised assistance to explore all their options and make informed decisions about their lives and futures.<sup>95</sup>

A total of five pilots are planned to run for approximately two years each, to allow time for results to become clear. They will 'test different aspects of the decision-making pillars, with different cohorts of migrants', targeting irregular migrants as well as asylum seekers. The five planned pilots will explore 'whether increased collaboration with faith and community groups at a local level can result in better outcomes for migrants through the faster resolution of their cases, whether that results in their integration in the UK or departure'. The Home Office framework of 'pillars of appropriate personal decision making' is a person-centred model that is to a large extent compatible with the principles of the CAP model, and is a radical shift from the traditional reliance on enforcement. The Home Office have made clear that they 'anticipate that supporting migrants in this way will lead to a reduction in the need for detention'.<sup>96</sup>

After the July 2018 announcement, the Forum's strategy shifted to a new phase. It was no longer necessary to push for the implementation of alternatives; instead, the challenge was to ensure that the pilots deliver positive outcomes and evolve to become a formal and established part of the system. This involved Forum members positioning themselves to help shape the Home Office's thinking, in particular through encouraging the creation of a stakeholder advisory group, which several Forum members joined in late 2019.

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93 Eiri Ohtani, 'How will migrants and civil society organisations shape the alternatives pilots?', July 2019, <https://detentionforum.org.uk/2019/07/18/will-migrants-and-civil-society-organisations-shape-the-atd-pilots/>  
UNHCR, *Progress Report 2018. Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees - 2014-2019*, February 2019, p70 <https://www.refworld.org/docid/5c9354074.html>

94 <https://www.gov.uk/government/news/new-pilot-schemes-to-support-migrants-at-risk-of-detention>

95 European Alternatives to Detention Network, 'Action Access: A New Alternative to Detention Pilot for Women in the UK', June 2019 <https://www.atdnetwork.org/news/action-access-new-alternative-to-detention-pilot-for-women-in-uk-joins-european-atd-network/>

96 Quoted in Ohtani, Eiri, 'How will migrants and civil society organisations shape the alternatives pilots?'

# Immigration Detention Reform in the UK: 2009-2019

The unpredictable UK political environment continues to pose substantial risks to the development of alternatives and shift away from detention. Political upheavals in the context of Brexit and coronavirus will mean that the pilots strategy will need considerable resilience to maintain political support and momentum, as large numbers of EU nationals become subject to immigration control. The establishment of structures for collaboration, such as the pilots and stakeholder advisory group, can potentially normalise and establish the work within the Home Office.

Likewise, the process can be given internal credibility as the Home Office begins to promote developing good practices internationally. In April 2019, a representative of the UK Home Office presented the model of pilots to over 200 government representatives and others at the International Conference on Effective Alternatives to the Detention of Migrants, jointly organised by the Council of Europe, the European Commission and the European Migration Network.<sup>97</sup> There was a great deal of interest in the UK programme's focus on quality case management, plans to support individuals in the community to explore all options available and not just return, and the Home Office's commitment to co-design the process with NGOs and to use the learning from the process to inform the development of both the pilots and the wider immigration system.<sup>98</sup>

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97 <https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/detention>

98 Ohtani, Eiri, 'How will migrants and civil society organisations shape the alternatives pilots?'



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