

Immigration Detention Reform in the UK: 2009-2019

Jerome Phelps, April 2020

**International
Detention Coalition**
Rights and dignity for all who migrate



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,¹ 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.²

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.'³ 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

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

derived from NGO casework, a 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 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.

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.

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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