



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Immigration detention](#), HC 1484

Wednesday 14 November

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Jeremy Lefroy; Baroness Lawrence of Clarendon; Baroness Nicholson of Winterbourne; Lord Trimble; Lord Woolf

Questions 15–19

Witness: Rt Hon the Lord David Blunkett

Q15 **Chair:** We are very delighted that you have taken the time to come and give evidence to us. As you will know, because you were around at the time the Human Rights Act was introduced, we are the Joint Committee on Human Rights: half Members from your House, half Members from the Commons.

Lord Blunkett: I do remember it, because they used to give me a hard time.

Chair: Indeed, yes. We are looking into the human rights aspects of detention across a range of issues, including mental health detention and young offender institutions, but we have also been looking at immigration detention. We are very pleased to be able to question you today because, as a former Home Secretary, you have seen the system from the inside and understand how the system works. But, because you are not a member of the current Government, you can speak freely about what actually goes on and what the real constraints and opportunities are. I often think that one has much greater insight into ministerial affairs once one stops being a Minister, which is a bit unfortunate. But at least we can have the opportunity of you giving evidence to us today, so thank you very much indeed.

Q16 **Baroness Lawrence of Clarendon:** Good afternoon, David. While the numbers entering detention have declined slightly in recent years, the UK is still one of the largest users of immigration detention in Europe. Why has this use of immigration detention increased so dramatically over the last few decades?

Lord Blunkett: The use of detention increased when the visibility of the whole issue increased. That was on the back of major international conflicts and regional zones of terror, ranging from major conflicts in Iraq

and Afghanistan to the genocide in Liberia and other events of that sort. This led to a massive pressure on the asylum system and a consequent difficulty, which seems to remain, for the Home Office and its adjuncts to deal with that administratively effectively, quickly and, therefore, in a way that would help to secure human rights.

I am not familiar with the present statistics relating to other countries, but our own legal system in this country is much more robust in terms of the rights of the individual—I was often amazed at the lack of representation for people in other European settings—although that has been made a lot worse by the changes to legal aid. It strikes me, if I may say so, that we do not often go back to first principles. I wished, as you wished, to be able to have hindsight at the time we were doing things. If I were doing it again I would have asked immediately for us to go back to the first principle: what is it that we are trying to achieve here? Why are we using this particular mechanism at all? There was an immediate presumption that it was because people were going to abscond, therefore they would become illegal migrants and therefore we would have even greater pressure in the political arena, including the rise of the far right, due to the fact that we had no control over the system.

I am presuming that the Joint Committee on Human Rights is completely committed to the importance of having a legitimate, secure and therefore viable system that secures our borders and ensures that people who have been through the whole of the appeals process and have no right to be in the UK can, either voluntarily or, regrettably, compulsorily, be removed, because without it we have no system at all. There are people, who may have given evidence to you or written in, who believe we should have open borders and that we should not have any follow-up system at all. They are welcome to their view, but the consequences, as we see in Europe at the moment, are pretty desperate.

Baroness Lawrence of Clarendon: Should the UK reduce the use of immigration detention? What alternatives already exist and how should they be used?

Lord Blunkett: We should minimise to the absolute degree holding anyone who has not been found guilty of or suspected of a crime. It is bad enough holding people in custody awaiting trial, but there are circumstances where that is absolutely necessary. For those who have not committed any criminal act or are not suspected of it, we should be minimising that necessity to an absolute degree. I am struck by the number of people who are incarcerated, because that is what it is, for three or four days and then released. Correct me if I have got the wrong figures, but there are thousands. There were 14,000 in a year who were picked up and then within 72 hours released. We release anyway families within 72 hours, or a week in terms of pregnant woman, on the say-so of a Minister.

The question I have to ask myself is the one you are asking. If that is the case and we can release people with the knowledge that we will know

where they are, why are we not doing that automatically rather than picking them up and then releasing them? Is there not a way, before the final appeal is rejected and we have to remove someone from the country, voluntarily or otherwise, to put in train alternatives?

One of the alternatives that is now available in a way that was only just beginning to emerge when I stepped down as Home Secretary is to tag a person or persons in cases where there is a genuine—and I mean genuine—belief that they will abscond. People could be offered the alternative of having the ignominy of being in a secure centre if they refused, but that would obviously negate them being in what are often really awful circumstances. That could be done on a proper basis, through an intelligent analysis of whether this person is willing to leave the country, or whether they have indicated that they are certainly not going to and therefore the likelihood of them absconding is very high.

Chair: Basically, David, the figures from June this year stated that 26,215 people were detained. You were saying that you would like to have thought about first principles. Is that what the Home Office should do now? Should it ask itself the absolutely fundamental and basic question: what are we doing with these 26,000 people? That is a lot of people being detained every year.

Lord Blunkett: It is very expensive. It clearly diverts resources from the process of helping people to return to their country of origin, if that has been secured, and the help for them that will be necessary to make that a viable process, particularly where there are children involved. If we are releasing people, and we clearly are, within 72 hours if they are a family, within a week if they are pregnant and in other circumstances, why are we holding them at all? Why can the process of analysis and the representations made on their behalf not be undertaken without them being held? It does not mean that there would not be a justifiable reason for holding the remainder.

There are people, including those with aspirations to be in government, who believe that we should do away with secure centres altogether, but I have not heard what they believe would be the alternative.

Chair: You think the numbers somehow show system drift. It has just drifted into this, having started to increase in this particular context.

Lord Blunkett: I am driven to that belief by having the opportunity of coming to this Committee and therefore doing a bit of work on what it looked like. I was just staggered by how many people are released quite quickly once representations are made. We are quite familiar with this, and there are people round the table who are familiar with the fact that we were struggling with the process of immigration and asylum appeals anyway, and why so many people won on appeal when the process should have dealt with them more effectively in the early stages. We keep making progress and then the tide goes out again. It is almost like a revolving door system. We think we are making progress, and then we go backwards again.

Q17 **Lord Trimble:** On the question of time limits, what are your views on the idea that there should be a limited time for a person to be held in detention?

Lord Blunkett: There should be two stages. There should be a minimum time in relation to the review of their case, and there should be a maximum time in relation to the process of removal or, if it is identified that removal, for all sorts of reasons, does not become a viable proposition, there should be an alternative way of ensuring the person can remain viable in the community until that becomes apparent again. For instance, there were people whom we could not release because we were worried about them absconding, but there were also people who were held when I was Home Secretary because we did not have agreements—and the Foreign Office frankly was not bothered about getting these agreements—with countries that would have been safe havens, and therefore legal challenges under the ECHR and the Human Rights Act would not have applied.

To do Theresa May justice—and my God she needs a bit of help today—when she was Home Secretary she both pressed the Foreign Office and personally did a great deal to get agreements with countries such as Jordan. I just wish we had been able to do that 15 years ago.

Lord Trimble: One thing that strikes me about the question of timing is that we have a very interesting set of figures on page 21 of the material we have. It looks as though a quarter of people are released within three days. When you get to one or two months, you are in the position where over three-quarters of them have been released. Then there is a long tail that goes on after that, with the numbers dropping down. But it looks as though there is no need to hold people for any great length of time, and a lot of them can be dealt with very quickly.

Lord Blunkett: I agree with that. Therefore, on human rights grounds, we need to concentrate on those who are held, in what you have described as the long tail. Should there be a mechanism for more urgent review? Is there a role not just for the tribunal but for judicial intervention? I know 28 days has been bandied about. I know people talk about 24 hours. Frankly, you have to have things that are administratively doable. You can dream up any figure, but if it is not doable it results in you simply making a mockery of the whole system. You might as well release everybody and say, "Stay. You are very welcome. We have decided to do what Angela Merkel did and cause complete political havoc".

Otherwise, you could have a system that bears a resemblance to competence, and 24 hours does not work for everybody; 72 hours would not work for everybody. It does for families, because there is a concentration of resources on doing it. But 28 days for what you describe as the long tail seems to me to be a reasonable compromise.

Lord Trimble: There is not much difference between one month and two months. There is a big step down coming up to one month, and then after the second month there is another big step down. If you were going to look for a time limit, it would be between what I have mentioned as the two large steps down in the numbers. One would have to take a closer look at the administrative arrangements and the capacity for dealing with that.

Chair: David, should the time limit prompt a review or a release, subject to certain overriding safeguards? If there is a time limit, what should the time limit be to do? There is a very strict time limit in Scotland: unless you have charged people you have to release them, which prompts the system. What should happen after 28 days? Should there be one thing or should there be all sorts of different criteria for different time limits? Would that not make it more complex?

Lord Blunkett: The simpler it is, the less likely it is to deal with difficult cases. The more complex it is, the more of an administrative nightmare it becomes, and the more the system breaks down. My instincts are in favour of simplicity, but, in saying that, if you are going to have a time limit and then you are going to release, there has to be some appeals process by the Home Office that could be referred, for instance, for judicial oversight to say, "We have really good reason for this". But that should have been stated in the first place, and other mechanisms are in place to deal with it.

Chair: Did you ever have the discussion about time limits when you were in government?

Lord Blunkett: We did. We had this wonderful idea that never came off: we would have an eight-week limit right through the appeals process and people would be in a residential setting, which was not a prison and did not have bars. People would go through that. In the last few days, when the process had been gone through and the final appeals had been dealt with, their removal from the country and their arrangements for rehousing back home would have been put in place.

We never pulled it off partly because, although we got money from the Treasury, in the end we got the asylum claims and the time down so dramatically that the Treasury felt we were going to waste a lot of money by putting an entirely new system in place. In other words, we were hoist with our own petard. We got it down from 18 months to 18 weeks, and then eventually most of the claims had at least the initial process dealt with in eight weeks. That led to people saying, "You have really sorted it"—which we had not, to be honest.

Jeremy Lefroy: Good afternoon, David. Is there a risk with time limits that people, as for instance with four-hour targets in the NHS, will work to a time limit? Therefore, if you had a 28-day limit, instead of a large chunk of people being detained for a lot less than 28 days, you might suddenly find that a lot were detained for 27

days, because people would simply work to the time limit. Would that be a risk or is that not something that would come into play?

Lord Blunkett: There is always a danger that people will say, "Now you have given us this threshold we can take our time". But if you have built in the 72 hours for families, you have built in the week for ministerial oversight, and you have held the feet of the Administration to the fire on how much it costs to do that, there are other mechanisms to bring pressure downwards. That is true of the criminal justice system as well, of course.

Q18 **Lord Woolf:** You will not be surprised, David, to hear that I am quite enthusiastic about the idea of some continuous judicial oversight, first to maintain standards, and secondly to see that the Home Office is actually making the arrangements in advance so there is not the problem of finding a place they can be sent to. Most immigrants come, at a particular time, from the same place. I wonder whether you would have to wait until a hard case comes along, where nobody would want to see the person released into society before anything is done about being able to get rid of them.

Lord Blunkett: With a bit of common sense, it is possible to build that in, in a way that deals with extremists rather than routine cases, because otherwise you get completely bogged down. There is enormous enthusiasm, not just from you, Harry, but from the legal profession and more broadly, to get judges involved in just about everything. There has to be a bit of common sense applied, given the length of time people are waiting for the normal course of trials to take place at the moment. Again, it is about capacity and the ability to do that.

My instincts tell me that you can identify hard cases. People who have already absconded are one case in point. There are people who do not agree to the process once their final appeal is over, or who have other challenges to make to the system and the judicial process. Therefore, those people and, in extremis, people whose behaviour has led to them being at risk, in which case they should be in the normal judicial system, should be dealt with differently from routine cases, where people should not be held just because nobody has fixed the date and put in train the process for their removal.

Lord Woolf: In putting my leading question to you, I was thinking, first, about the expense, to which you referred, of keeping them in detention. Secondly, I was thinking that the longer a person is in detention, the more difficult it is to send them back to where they have come from. Thirdly, I was bearing in mind that we now have a very sophisticated set of administrative tribunals, to which immigration cases go. I was not thinking that we should ask the High Court judges to go round and check whether a person was being properly kept in detention. I was wondering whether it should

be some form of junior judicial figure, who is independent—that is the important thing—and who could perhaps sort things out.

Lord Blunkett: The sorting out should address not just the individual case but the whys and wherefores: why are the individual and others in similar circumstances there? That would help them to change the system. It is a good idea if it drives change for the better and is not just there to take the volume of cases, because then it becomes an industry in its own right. It needs to be part of changing behaviour and changing the way the system operates.

Lord Woolf: I can see the sense in what you say.

Chair: You think a time limit would drive some change and independent oversight would drive some change. Those are important thoughts, but the deprivation of liberty is such an important human rights issue. Obviously, there is your right to life, but quite near to that is your right not to be locked up, unless it is for a justified reason. Is it all right for that to be done administratively by the Home Office? Because it is such an important human right, should deprivation of liberty only be decided independently?

When we looked at the files of the Windrush people, we thought the administrative decision to detain looked really not acceptable at all. It was just done, without seeing the person, without proper checks and without proper evidence. It looked like an administrative tick-box thing. Should that right to detain be performed administratively by insiders in the Home Office, both making the original decision and extending it? Should it not be independent ab initio?

Lord Blunkett: I am pausing because that really challenges the fundamental system, does it not? It challenges the whole process of holding people before removal, and not just those who may be at risk of absconding or for other reasons. I am pausing because an administrative process that is underpinned by legal representation for those who are to be held in those circumstances, and a process that has actually assessed the risk—I was trying to deal with this right at the beginning, in answer to Doreen's question—is fine.

We could take this completely outside the administrative process rather than trying to get it right. It would have to be as though the person was to be placed in front of a magistrate. The logic of it is overwhelming. The practicalities are also overwhelming. The system would just break down. Bear in mind how difficult it is to recruit magistrates, particularly magistrates with broader backgrounds.

Chair: Something like 95% of people are not detained. Although it is a large number, it is only 5%. It is interesting that the administrative system often recognises, when it is challenged after the event, that it has got it wrong, and £21 million was paid out in compensation between 2012 and 2017. When the system is challenged, it clearly goes "Oops", and realises it.

Lord Blunkett: It is a crazy misuse of resources. I do not know what Stephen Shaw has said to you about all this: the conditions in which people are held, the review of who is being held and the administrative ability to come up with good statistics about the numbers. I took a little look at what you have already done in terms of interviews; it seemed to be important homework. If the Home Office does not have proper statistical knowledge of who has been held for how long, and what happened to the families and why, we are really working in the dark, are we not?

Q19 **Jeremy Lefroy:** What other improvements would you make to the immigration detention system or, even more broadly, to the immigration system itself, to ensure that detention is used only when necessary?

Lord Blunkett: You have to try to find even greater incentives for people to agree to go. Bear in mind that people came in the first place wanting to be here. They may not have had a legitimate asylum claim and they may not be able to prove refugee status, but they wanted, for other reasons—economic reasons—to be here. They may, because of delays in the system, have families well established here. We want to avoid the situation of them being removed forcibly from the country. Many of them, whom we are not talking about today, have gone voluntarily. Can we improve the system? Given that we are wasting a lot of money, could we use some of that resource to make it a lot more attractive?

If we have to hold people, we should hold them in a lot better circumstances. When I was Home Secretary, I took the trouble to go to secure centres, one of which was burned down on my watch. We had the most horrendous time because there were no proper records of who had been in there. It took us a month to find out that there were no human remains. It was one of the great reliefs of a very un-relieving three and a half years as Home Secretary that there were not. But the circumstances in which we hold people are really important from a human rights standpoint.

There is something else I would do, which I mentioned earlier. If we have a real problem, we should tag people. When I was Home Secretary, we were experimenting with tagging more broadly. But at that time they could still make a monkey of it. We had a classic case of a guy who had a tag placed on his artificial leg and left the leg at home while he went out. You have to avoid things like that. It did make me smile at the time, but it also made me want to tear my hair out. That discredits alternatives that are not desirable in themselves but are a lot better than being held in secure accommodation.

Jeremy Lefroy: The Chair has already spoken briefly about the Windrush case. In reflecting on this, as you must have done over the past few months, as indeed we have as a Committee and both

Houses will have done, you can think of how things could have been handled much better, perhaps over a number of years.

Lord Blunkett: I am very happy to be giving an interview to the reviewer. It is correct that that review will, I hope, ensure that we put the lessons in train and we do it properly. What surprised me about it was that things we thought we had done did not work. At the moment, there is a campaign around those from Hong Kong, particularly those who served in the armed services. I thought we had dealt with that, in terms of those who were passport holders but were not British citizens, and British citizens who were not passport holders, and the ability to give them their rights. There was a big hoo-hah—not very big, actually—in Parliament about whether we were going to allow in people for instance from Hong Kong and whether we would, therefore, be overwhelmed by large numbers of people coming.

First, they did not. Secondly, if we were giving those rights, why did the Windrush issues not get picked up at the time? It must have been because we—I include myself, obviously—failed to make clear the changes and the intentions of those changes at the time. I hope the review will come up with some answers, because I would be interested in them as well.

Chair: We were told that it was a series of mistakes made by people who had responsibility for the files of these people who had been detained. Is that fair, or is it actually the system and not the individuals? If it was the individuals who were at fault, why would the Home Office be the sort of organisation, when individuals have made mistakes, that does not try to work out which individuals it was and have any accountability, or even retraining, for those individuals?

Lord Blunkett: If you want an honest answer, within the Home Office the idea behind avoiding a blame culture is that, on so many occasions, there would be so many people to blame that there would be nobody working there any more. It is a sort of facetious answer, but there is an underlying truth in it. They are dealing with such difficulties. Bear in mind that the Home Office in my time had the justice department as well, so there were so many issues that potentially could go wrong and did go wrong.

I used to say to the staff—we used to hold all-staff meetings, which were available for staff to come to—that it was a miracle they wanted to work there at all, because you could find a much more comfortable job somewhere else in the Civil Service, in MAFF or the Foreign Office at the time—although it is more difficult now than working in the Home Office. Some people did it out of sheer public service duty, and some people because it was just a job. We did not reward them—I do not mean just monetarily but in terms of recognition—enough. Therefore, people were used to avoiding blame for genuine mistakes, which the process often led to. What was the point in blaming the individual if the process had put

them in an impossible position? They were trying to handle the pressures in circumstances that most human beings would find very difficult.

One other bit of that is that the way in which the systems often work leads to people getting the message from above—in other words, from us as politicians—and responding to it. They genuinely think they are following the Thomas à Becket road of doing what their masters or mistresses want them to do. How can you blame somebody in those circumstances, other than those of us who have got the message wrong?

Chair: So you think the message that is going through the system is to detain, and people are responding in the best way they can, with the sense that they are being expected to do that.

Lord Blunkett: Yes. At times when I was there, the pressure was so great that we said to staff—I am trying to be honest with the Committee; there is no point in coming otherwise—"You really have to up the removals, because we are being made monkeys of. The press are running stories about the thousands of people whose appeals have been turned down and who have not been removed, and the system is being shown to be breaking down". The message from Ministers would be to say, "You have to take steps". Some of those steps were so unpleasant that we had to say, "Sorry, the message has been overdone"—I mean the dawn raids and people being dragged out of bed. Who in a civilised society really feels comfortable with that? Nobody does.

Chair: Thank you very much indeed for taking the time to give evidence to us.

Lord Blunkett: You are very welcome.