

Written evidence submitted by Detention Action (COR0164)

Introduction

1. Our Director Bella Sankey gave oral evidence to the Committee on 21st April, and we made written submissions on 22nd April. The purpose of these follow-up submissions is to update the Committee on subsequent developments and concerns that have arisen

Our legal challenge

2. The Government has now settled the claim brought by Detention Action in March over the lawfulness of continued detention while global travel restrictions prevent removals from the UK, and while conditions in detention centres present a high risk to those detained.
3. At the interim hearing in this case, the Government undertook to review all existing detained cases against new COVID detention policies and to create a presumption against new detentions of people who are not currently removable. It also asserted that these policies were being put in place regardless of Detention Action's litigation.
4. At the end of the interim hearing, costs were awarded against Detention Action which Government later advised amounted to £40, 000. However, it then emerged that the Home Office appeared to have withheld material evidence from Detention Action and the Court and – once this was pointed out – the Home Office offered to accept only a fraction of its costs, £5000.
5. The issues do not end there. Over the course of the litigation, the Home Office disclosed a number of detention policies and materials related COVID which have not been disclosed publicly, either on the Home Office website or anywhere else.
6. These include:
 - a document entitled “Operational Instructions: COVID-19 – detention considerations v 1.3” (20 March 2020). This confirmed that persons with health conditions placing them at increased risk from COVID-19 should be considered and assessed as an Adult at Risk Level 3.
 - a document entitled ‘General principles for managing COVID-19 in an immigration removal centre (IRC), residential short-term holding facilities (RSHTF)’ (20 March 2020).
 - a list of countries to which the Defendant cannot remove detainees (which has been produced daily, from 17 March 2020), with the instruction that only “*high harm FNOs*” whose removal is proposed to a country on the list should be referred to the Detention Gatekeeper to be considered for detention. It was confirmed in a statement by an official of the Defendant's official, Frances Hardy, that this guidance was sent to “*frontline*” and “*detained casework staff*”, “*in order to prevent detention where the SSHD has, at present, no way of removing a detainee*” (para 43).

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7. It is very concerning that the Home Office has not published these policies. In practice, and as attested to by one of the witnesses before the Committee, Tim Buley QC, this makes it very difficult for individuals to effectively and fairly challenge their ongoing detention. It is a basic principle of public law that Government policies which have a significant impact on individuals' rights, such as loss of liberty, must be made public.
8. On 13th May, Detention Action therefore issued a second pre-action letter further challenging the Government's approach to detention during the COVID-19 pandemic. We are challenging the Home Office's failure to publish the detention policies applicable during the COVID-19 pandemic, and what we believe to be the Home Office's irrational and discriminatory approach in applying inconsistent criteria to the detention of new and existing detainees.

The current situation in immigration detention

9. Thanks in large part, we believe, to the pressure we have exerted through our litigation, there has been a significant reduction in the UK detained population since mid-March. Close to 1000 people have been released since the start of the crisis, with 368 people being held in IRCs according to the latest figures, compared to 1225 at the start of 2020. However, we do not believe that these continuing detentions can be justified, given the high COVID-19 risks and poor protection measures within IRCs as described in our earlier evidence, and given the fact that removals from the UK remain impossible and unsafe in the vast majority of cases.
10. In addition to the 368 being held in IRCs, 340 people are being held under immigration powers within prisons according to the latest figures. The high rates of COVID-19 within the prison system make this deeply concerning.
11. Of the 368 people held in IRCs on 21 April 2020, Government has disclosed that 61 were identified as having COVID comorbidities, 18 were identified as being Adults at Risk Level 3 and 172 as Adults at Risk Level 2. This means that of those detained in IRCs, 52% are accepted to be Adults at Risk Levels 3 or 2. There is no equivalent to the AAR policy for those detained in prisons.
12. While we note that the rate of bail being granted to those detained has been high in recent weeks, we are also concerned by reports that numbers within some of the IRCs - for example Brook House - may now be rising again.

The impact of quarantine measures for new arrivals

13. We are further concerned about the Government's announcement that, in the near future, all new arrivals to the UK should be quarantined for 14 days. Whilst this may be a sensible measure in itself in light of the continuing COVID-19 crisis, we are concerned that the Government may use immigration detention to 'quarantine' those arriving seeking asylum or without a visa or form of leave to enter the UK. Detention would be a highly inappropriate and unsafe measure to use for this purpose.
14. Relatedly, we are concerned that the numbers of migrants crossing the Channel by boat in recent weeks may be being detained in many cases, which we believe to be unnecessary in itself but which also exposes those held to the risk of contracting COVID19. We received information that on 13th

April around 40 men who had been detained having crossed the Channel by boat were being held at Yarl's Wood IRC. According to some reports, as many as 1000 people may have crossed the Channel in small boats since the start of the COVID-19 crisis,¹ and we are concerned that detention may be being used frequently and without oversight in the cases of these individuals.

Recommendations

15. We would like to reiterate the recommendations made in our previous submissions of 22nd April.
16. It is the position of Detention Action, from our decades of experience as an organisation and because of our conversations with detainees currently being held under immigration powers, that the situation in IRCs and for those held under immigration powers in prisons is potentially life-threatening unless urgent action is taken now by the Home Office. We are particularly worried about the situation for vulnerable detainees, especially for those with physical underlying health concerns.
17. **Recommendation 1:** All detainees should be released, given that the Home Secretary is under no duty to detain anybody; the extreme and deadly risks posed by COVID-19; and that individuals no longer meet the criteria for detention as their removal is no longer imminent. These releases would also prevent the spread of COVID-19 across the detention estate. In addition, all detainees must be assessed to determine if they have been exposed to COVID-19 before being safely released.
18. **Recommendation 2:** All released detainees should be accommodated in suitable, safe accommodation which allows for self-isolation and access to essential services regardless of immigration status. People with no means to provide for themselves should be provided with adequate financial support, equivalent to Universal Credit levels.
19. **Recommendation 3:** No new detentions should take place while the COVID-19 risks remain high, and an accompanying ban on all in-country immigration enforcement activities.
20. **Recommendation 4:** The death of a detainee ("A") immediately following release to his home from the quarantined "Dove wing" at Harmondsworth IRC on 20th March 2020 needs to be urgently investigated to establish the cause of death and the Home Office's role or responsibility in the death.
21. **Recommendation 5:** In light of the widespread failings we have evidenced in this statement, along with the serious long-term failings within the detention system, notably the failure to identify and protect vulnerable people, and the fact that 61% of detainees are currently ultimately released back into the UK in any case, the government should urgently commit to a strict statutory time limit in the forthcoming Immigration Bill as previously recommended by this Committee.

Please do not hesitate to contact us if you require any further information.

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¹ <https://www.telegraph.co.uk/news/2020/05/16/1000-migrants-reach-uk-small-boats-since-lockdown-children-picked/>