

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's response to the Joint Committee on
Human Rights' immigration detention inquiry**

September 2018

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at
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Contact

Sam Grant
Policy and Campaigns Manager
Direct Line: 020 7378 5258
Email: samg@libertyhumanrights.org.uk

Zehrah Hasan
Advocacy Assistant
Direct Line 020 7378 3662
Email: zehrah@libertyhumanrights.org.uk

Introduction

1. Liberty welcomes this opportunity to respond to the Joint Committee on Human Rights (JCHR) inquiry into immigration detention in the UK. As the scope of this inquiry is considerably broad, we have chosen to focus our submission on why immigration detention should be time-limited.
2. Alongside other leading human rights and migrants' rights organisations, Liberty strongly recommends a 28-day time limit on immigration detention in order to end the unnecessary system of indefinite detention in the UK. It is the indefinite nature of detention that (1) increases the risk of arbitrary and lengthy periods of detention, (2) devastates people's physical and mental health, (3) separates families for months – if not years – on end, and (4) remains detrimental to the welfare of vulnerable people.
3. As we set out in these submissions, the case for a time limit is by no means simply a "*slogan*"¹ but a fully developed policy proposal that advocacy groups have long been articulating. We welcome the Home Office's decision to launch an internal review of indefinite detention.² However, we worry that this is likely to cause further delays to the introduction of a 28-day time limit. We also encourage the internal review to engage with the diverse and powerful range of voices that have already evidenced the need for a 28-day time limit. We are urging Ministers to use the upcoming Immigration Bill to implement a time limit and fix this broken system.

Summary of Liberty's Recommendations

4. Liberty believes there should be a 28-day time limit on immigration detention for the following reasons:
 - We are the only country in Europe that continues to detain people indefinitely, contrary to international human rights legal standards.
 - The case for a time limit has repeatedly been made by cross-party parliamentary groups, NGOs, the legal profession and medical bodies alike.
 - Evidence shows that the severity of harm to a person's mental health increases drastically after just one month in detention.
 - The psychological distress caused by indefinite detention devastates the lives of vulnerable people.
 - Lengthy detentions waste public money and there are workable alternatives that should be prioritised.
5. Liberty would urge the Committee to encourage the Home Office to:
 - Pay close attention to the serious human rights implications of indefinite detention as outlined in this submission.
 - Introduce a 28-day time limit in legislation – namely the upcoming Immigration Bill.

¹ Stephen Shaw, "*...at present, the case for a time limit has been articulated more as a slogan than as a fully developed policy proposal*", 'Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: A follow-up report to the Home Office', July 2018, p.viii.

² The Rt Hon Sajid Javid MP, '[Home Secretary statement on immigration detention and Shaw report](#)', Home Office, 24 July 2018.

- Consult experts by experience and key stakeholders when conducting their internal review into indefinite detention.
- Discuss any findings from this internal review with relevant and consulted parties, and be ready to implement any necessary system reforms.

Immigration detention in the UK

6. In the year ending June 2018, 26,215 people were subject to indefinite administrative detention. It is one of the largest operations of its kind in Europe and importantly – the only one without a time limit.³ No judge authorises detention and during the course of incarceration, a person may never be brought before a court.⁴ The system has been criticised by the United Nations High Commissioner for Refugees (UNHCR) for its indefinite and systematic nature⁵, and in 2015 a cross party-group of MPs called for a time limit in a system that is “*expensive, ineffective and unjust*”⁶.
7. Many professional bodies in the UK have also raised serious concerns about indefinite detention. The British Medical Association (BMA) have stated that: “*As long as the practice [of detention] continues ... we believe that there should be a clear limit on the length of time that people can be held in detention, with a presumption that they are held for the shortest possible time.*”⁷ The Bar Council has made similarly robust statements highlighting the injustice of indefinite detention. In a research report commissioned by the Bar Council, Dr Anna Lindley highlights that the one issue, which cuts across and offers the potential to address their many concerns about immigration detention, is the need for a time limit.⁸ The report states that, “*At the international level, there is a body of international guidelines and case law pointing to the importance of a maximum time limit.*”⁹
8. Further, Dr Lindley argues that indefinite detention causes great variation in the length of time in which people are actually held. By the end of June 2017, for instance, 56 per cent of people in detention had been held for more than 28 days, 271 people had been held for more than six months, and 80 had been locked up for more than one year.¹⁰ In the first quarter of 2018, one person had been detained for around three and a half years.¹¹ As one expert by experience describes:

“We are told the focus of detention is removal. But I don’t see the justification for detaining someone for one year, two year[s], for three years. And you’re telling me the purpose is to

³ Home Office, [‘Home many people are detained or returned’](#), 23 August 2018.

⁴ Immigration Act schedule 10, paragraph 11, would offer some limited prospect of judicial oversight, but only after four months of incarceration for certain people in detention.

⁵ UNHCR, *Global Strategy Beyond Detention: Progress Report*, August 2016.

⁶ All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, [‘The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom’](#), March 2015, p.4.

⁷ *Ibid.*

⁸ Dr Anna Lindley, [‘Injustice in Immigration Detention: Perspectives from legal professionals’](#), research report commissioned by the Bar Council, p.3.

⁹ *Ibid.*, referencing Fordham *et al* ‘Immigration Detention’, p.13.

¹⁰ *Ibid.*

¹¹ Detention Tables, National Statistics, [‘How many people are detained or returned?’](#), Home Office, published 24 May 2018, Tab, dt_01.

*remove people? ... This is a country that promotes human rights – they are the first ones to do so.... But what would the rest of the world think about this. It's not right.*¹²

9. In Stephen Shaw's second review of the immigration detention estate, he also identifies that, "... the number of people held for over six months has actually increased. The time that many people spend in detention remains deeply troubling."¹³ Further, many people experience multiple stints of detention, which is not captured by Home Office data. For instance, an Algerian national who Liberty assisted with a detention complaint states that he has been locked up in different detention centres in excess of eight years.¹⁴
10. Therefore, it is clear that indefinite detention contributes to the arbitrary, unnecessary and lengthy detentions of thousands of people every year. It separates families and deprives people of their liberty for unreasonable periods of time. Liberty believes that a 28-day time limit would secure a more human-rights compliant framework for people in detention across the UK.

Why a 28-day time limit is fair, just and necessary

11. UNHCR Guidelines from 2012 outlined that indefinite detention is arbitrary as a matter of international human rights law and maximum time limits should be established in national legislation.¹⁵ More than a decade ago - in 2006/07 - the Joint Committee on Human Rights conducted an inquiry into the treatment of asylum seekers in detention and concluded that, "*We recommend that where detention is considered unavoidable to facilitate the removal of asylum seekers who are at the end of the process, subject to judicial oversight the maximum period of detention should be 28 days. In our view this is sufficient time in which to make arrangements for return...*"¹⁶ Similarly, an eight-month long joint inquiry by the All Party Parliamentary Groups (APPG) on Refugees and on Migration published a report in 2015 on the use of immigration detention, recommending that a "*maximum time limit of 28 days should be introduced and that this should be set in statute*".¹⁷ Therefore, there has long been cross-party, parliamentary support for a 28-day time limit.
12. The 2015 cross-party report also found that detention has a damaging impact on people's mental health, and after just 30 days of incarceration there is a marked rise in the severity of harm.¹⁸ We subsequently believe that setting a time limit under 30 days can protect people from experiencing significant levels of harm in detention.¹⁹ The cross-party report's findings were evidenced by Dr Katy Robjant, whose research is particularly pertinent for vulnerable people in detention. It shows that those who experienced interpersonal trauma *and* longer detention

¹² F*, Morton Hall Immigration Removal Centre (IRC), testimony shared by [Detained Voices](#).

¹³ Stephen Shaw, '[Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#)', July 2018, p.9.

¹⁴ This individual had been in the UK since 1992 and has a British spouse. In 2008, he was detained for 18 months in Wandsworth prison, and then for two years and eight months in Colnbrook Immigration Removal Centre. After being released on bail and tagged, he was then detained again in 2011-12 in Thameside prison for two years and two months. He was then transferred to an Immigration Removal Centre in Dover for another year and eight months. In 2018 he was then placed in Brook House Immigration Removal Centre and at the date of this paper is still in detention.

¹⁵ UNHCR, '[Detention Guidelines](#)', 2012, p.26.

¹⁶ The Joint Committee on Human Rights, '[The Treatment of Asylum Seekers: Tenth Report of Session 2006-07](#)', Volume 1 – Report and formal minutes, para 275.

¹⁷ The All Party Parliamentary Groups on Refugees and Migration, '[The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom](#)', 2015, pgs. 9-10.

¹⁸ *Ibid*, p.19

¹⁹ Dr Katy Robjant, '[1st Oral Evidence Session of Joint Inquiry by the APPG on Refugees and on Migration](#)', July 2014.

scored higher for depression and anxiety than those who had experienced interpersonal trauma and had been in detention for less than one month.²⁰ As one person in Brook House Immigration Removal Centre (IRC) describes:

“... They have kept me in here for 50 days ... I have no hope left in this country. I [have] become different, I don't know who I am. I start to believe I am [a] criminal because I am here ... I didn't leave my country to come to one without human rights. But this is happening to so many people.”²¹

A 28-day time limit will go some way to address the significant welfare and safety concerns for people – and particularly adults at risk – in the detention system.

13. Moreover, Home Office guidance indicates that where removal is considered imminent, it can take place within four weeks – even in complex cases.²² If a key purpose of immigration detention is indeed removal – as specified in the Immigration Act 1971 – then a 28-day time limit could and should apply to *all* detention cases.
14. Liberty would also like to draw the Committee's attention to time limits set for deprivations of liberty in other contexts. Considering these have often coalesced around 28 days – and sometimes even less – it is unclear why the limit should be any different for immigration detention.
15. First, current counter-terrorism legislation allows for people suspected of terror offences to be detained without charge for 14 days.²³ Despite attempts to significantly extend this period, the limit was only increased to 28 days in 2006. During this time, an extra safeguard was introduced and in 2011, the 28 day time limit was allowed to lapse back to 14 days by then Home Secretary, Theresa May. She stated that, *“the 28-day maximum period should be a temporary measure and one that we will be looking to reduce over time”*.²⁴ Then Home Office Minister – Damian Green – also said the government was clear that the increase to 28 days was meant to be an *“exceptional power”*.²⁵ Many ministers voiced the need to detain people for as short a time as possible – citing ‘ancient liberties’ and the ‘rule of law’. Therefore, the same logic should apply to those held in immigration detention.
16. Second, pre-charge bail – also known as police bail – is limited to 28 days. Although the level of deprivation of liberty here is not as grave as immigration detention, the practice of indefinite police bail ended in 2017. Then Home Secretary – Amber Rudd – said, *“Pre-charge bail is a useful and necessary tool but in many cases is being imposed on people for many months, or even years, without any judicial oversight – and that cannot be right.”*²⁶ The reasons stipulated for a 28 day time limit were aimed at reducing the amount of people and the length of time spent on bail. Both are aims of the immigration detention sector and the Home Office.

²⁰ Dr Katy Robjant *et al*, ‘Psychological distress amongst immigration detainees: a cross-sectional questionnaire study’, *British Journal of Clinical Psychology*, Vol 48, 2009, p. 282.

²¹ C*, Brook House IRC, testimony shared by Detained Voices.

²² Imminence: 55.3.2.4, Chapter 55 - Detention, [‘Enforcement Instructions and Guidance’](#), April 2016.

²³ Home Office and The Rt Hon Damian Green MP, [‘Pre-charge detention will revert to 14 days’](#), 20 January 2011.

²⁴ House of Commons Library, [‘Pre-Charge Detention in Terrorism Cases’](#), 16 March 2012.

²⁵ BBC, [‘Damian Green announces terror detention change’](#), BBC News Online, 20 January 2011.

²⁶ Home Office, The Rt Hon Brandon Lewis MP and The Rt Hon Amber Rudd MP, [‘28 day pre-charge bail limit comes into force’](#), Press Release, 3 April 2017.

The human cost of indefinite detention

17. Concerns about the delivery of care in detention are broad – from unsanitary and unsuitable conditions that fail to meet basic standards of hygiene²⁷, to “*serious failings in healthcare provisions, around the quality of care ... and in particular in relation to mental health services.*”²⁸ Further, as the first Shaw Review determined, the severity of the impact on people’s mental health increases the longer detention continues.²⁹ Subsequently, indefinitely detaining people in such poor conditions risks breaching their right to be free from inhuman and degrading treatment (Article 3 ECHR).
18. The psychological distress of indefinite detention has also led to rising self-harm and suicide rates, which risks violating people’s right to life (Article 2 ECHR). Between January 2016 and August 2017, there were 647 cases of people in detention receiving medical treatment following incidents of self-harm, which equates to more than one person a day.³⁰ In 2017, there were six reported deaths in detention – the majority of these men had taken their own lives.³¹ Liberty believes that by instating a 28-day time limit in law, the risk to people in detention’s mental and physical health will significantly decrease.

An ineffective system

19. The human price we pay for indefinite immigration detention is high, yet the system fails to deliver the enforcement gains sought by the Government. Around £76 million per year is wasted on the long-term detention of people who are ultimately released. In fact, the *majority* of people in detention are released back into the community – by the end of June 2018 at least 56 per cent were either granted leave to remain or released on immigration bail.³² Stephen Shaw similarly notes that “*detention is not fulfilling its stated aims*”³³ and that the figures “*call into question the extent to which the current use of detention is cost effective or necessary*”.³⁴ Introducing a 28-day time limit would therefore both reduce human rights violations and mitigate excessive costs.
20. Liberty strongly believes that there are clear alternatives to detention that provide a far more human-rights compliant and effective way of processing people’s immigration cases. In the UK, Detention Action’s Community Support Project is a clear model of an effective alternative to detention. The pilot of 21 individuals showed a rate of compliance with conditions of at least 90 per cent. Jalloh - a participant in the project - commented on its effectiveness by saying, “*Really, it’s simple: when someone invests in you as human, you respect them. You respect what they say.*”³⁵

²⁷ Ibid, p. 69.

²⁸ Stephen Shaw, ‘[Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#)’, July 2018, p. 46.

²⁹ British Medical Association, ‘[Locked up, locked out: health and human rights in immigration detention](#)’, 2017, p.27.

³⁰ Liam O’Hare, ‘[At least one person a day is self-harming in UK detention centres](#)’, The Independent, April 2018.

³¹ Harmit Athwal, ‘[2017: The deadliest year in immigration detention](#)’, Institute of Race Relations, November 2017.

³² Detention Tables, National Statistics, ‘[How many people are detained or returned?](#)’, Home Office, published 23 August 2018, Tab, dt_01.

³³ Stephen Shaw, ‘[Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#)’, July 2018, p.22.

³⁴ Ibid, p.27.

³⁵ Detention Action, ‘[Detention doesn’t work for anyone: we need alternatives](#)’, July 2018.

21. We welcome Stephen Shaw's recommendation that the Home Office should, "*demonstrate much greater energy in its consideration of alternatives to detention*"³⁶, and to expand Detention Action's project as part of this. The Home Secretary has similarly made a commitment to explore alternatives to detention and to launch a pilot project that seeks to support and care for vulnerable women in the community, rather than incarcerating them in Yarl's Wood IRC.³⁷ The need for alternatives is clear, as one woman in Yarl's Wood describes:

*"This six months' time period which I have spent in Yarl's Wood has made me a completely different person ... I know if something wrong happens to me, it will not bother the Home Office as I, along with all other detainees, are just numbers for them rather than human beings ... We do have hope that people are starting to wake up to what is really happening in this country that likes to present itself to the rest of the world as a leader in human rights and civil liberties."*³⁸

22. As Detention Action have outlined in a 2016 report³⁹, the European Court of Human Rights has found that immigration detention can only be justified as a last resort, after less severe measures have been considered.⁴⁰ It also found that immigration detention must avoid arbitrariness to be lawful.⁴¹ The UN Working Group on Arbitrary Detention also stated this year that, "*Any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose...*" and that "*...detention in the course of migration proceedings must be ordered and approved by a judge or other judicial authority.*"⁴² The Working Group relies on Article 9 of the Universal Declaration of Human Rights, which states that no one shall be subjected to arbitrary arrest, detention or exile.⁴³ In the UK, the Home Office has also set out in its guidance that immigration detention should always be used as an absolute last resort⁴⁴, and the Home Secretary has recently reaffirmed this position.⁴⁵ However, it is clear that this rhetoric does not match current practices.

23. In order to comply with international human rights standards and the Government's own commitments, Liberty believes the UK should establish a 28-day time limit in law, with the underlying principles that (1) detention should be used as an absolute last resort and (2) people should be held for the shortest possible time period under 28 days.

Should the Committee require any further evidence on this issue, please get in touch with Sam Grant (SamG@libertyhumanrights.org.uk) or Zehrah Hasan (ZehrahH@libertyhumanrights.org.uk).

³⁶ Stephen Shaw, '[Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons](#)', July 2018, p.121.

³⁷ The Rt Hon Sajid Javid MP, '[Home Secretary statement on immigration detention and Shaw report](#)', July 2018.

³⁸ P*, Yarl's Wood IRC, testimony shared by Detained Voices.

³⁹ Detention Action, '[Without Detention: Opportunities for Alternatives](#)', September 2016, p.15.

⁴⁰ *Witold Litwa v Poland*, European Court of Human Rights, no. 26629/95, 4 April 2000, para 78; Return Directive, Art 15.1.

⁴¹ *Saadi v. the United Kingdom*, No. 13229/03, GC, 29 January 2008, para 74; *Louled Massoud v. Malta*, No. 24340/08, 27 July 2010; Return Directive, Art. 15.1.

⁴² UN Working Group on Arbitrary Detention, '[Revised Deliberation No.5 on deprivation of liberty of migrants](#)', 7 February 2018, p.2.

⁴³ [Article 9, the Universal Declaration of Human Rights](#).

⁴⁴ Home Office, '[Immigration Bail](#)', Version 3.0, 10 August 2018, p.7.

⁴⁵ Sajid Javid, '[Immigration Detention: Shaw Review](#)', Hansard, House of Commons, Volume 645, 24 July 2018.