

Briefing: Immigration detention after the Shaw Review

About Scottish Detainee Visitors (SDV)

SDV is an independent charity based in Glasgow that seeks to influence policy on immigration detention and provides support to people detained in Dungavel Immigration Removal Centre. Since 2002, SDV volunteers have visited people in Dungavel twice a week to provide support. We visit over 200 people in Dungavel every year and are the only organisation in Scotland that focuses on immigration detention.

Purpose of this paper

On Tuesday 14 March a Westminster Hall debate will be held on the subject of vulnerable people in detention. The debate is an opportunity for MPs to discuss the Shaw Review into the detention of vulnerable people and the progress of detention reform since its publication in January last year. This paper outlines some of the specific issues facing people detained in Scotland, considers the Shaw Review in the context of other relevant developments and argues for a new approach to people subject to immigration control, which would address many of the points raised by Shaw.

Dungavel and the issues for Scotland

In February 2017, the UK Government abandoned plans to close Dungavel following the rejection of its planning application to build a short term holding facility at Glasgow Airport. So Dungavel, Scotland's only detention centre will remain open for the foreseeable future. The impacts of detention on the people affected by it have been well-documented, not least by the Shaw Review. However, there are some particular issues for Scotland, considered briefly below.

Isolation

Dungavel is in an isolated position. It is not served by a bus route, the nearest railway station is 14 miles away, and it is six miles from Strathaven in South Lanarkshire, the nearest town. The nearest detention centre is Morton Hall in Lincolnshire, 270 miles away.

People are brought to Dungavel from all over the UK, often taking them far from where they have been living before their detention. Dungavel's remote position, as well as its status as the only centre in Scotland, exacerbates the negative impacts of detention.

Difficulty in maintaining contact with family and social support networks

The location of Dungavel means that maintaining contact with family and friends can be extremely difficult for people detained there. For visitors without access to a car, the journey to Dungavel can be lengthy. For people coming from the south of England or the north of

Scotland, a visit to Dungavel is likely to require an overnight stay. SDV visitors frequently talk to people whose families and friends are unable to afford to visit them. ***This increased difficulty in maintaining contact with family and friends exacerbates the mental health impacts already inherent in indefinite detention.***

Vulnerable people in Dungavel

SDV visitors have met people in detention with serious physical health issues including those who had scars that would strongly support their claim to have been tortured. We have also met people in detention suffering from mental ill health. This includes people with pre-existing serious mental health conditions, such as schizophrenia, and those whose mental health has deteriorated as a result of their indefinite detention. ***HMIP's latest inspection report¹ of Dungavel highlighted concerns about the detention of vulnerable people including a torture survivor and a woman with a serious health condition.***

Women in Dungavel

There are 14 bed spaces for women in Dungavel compared to 235 for men. In a film made by SDV, one woman who had been detained there described it as being ***'like a chicken surrounded by dogs'***.² Over the years that SDV has been visiting, it has not been unusual for just one or two women to be detained at the centre: an isolating and potentially frightening experience, particularly in light of research by Women for Refugee Women showing the histories of gender-based violence of many detained women.³

The most recent inspection report of Dungavel noted that: ***'there were inevitable risks associated with holding women in a predominantly male centre. There were no specific policies focusing on this issue'*** and recommended that a specific safer custody and safeguarding policy should be developed for women.

Legal issues specific to Scotland

Wherever they are detained, people are subject to frequent and arbitrary moves around the detention estate.⁴ These moves are disruptive and disorienting to anyone who is detained but when the moves are between Dungavel and centres in England, the consequences can be particularly serious because of the differences in the legal systems between England and Scotland.

A move to England often takes place just before an attempt is made to remove someone. It may then not be possible for a Scottish solicitor to make representations on a person's behalf in England and there may not be time to find an English solicitor to challenge a possibly unlawful removal.

¹ <https://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/Dungavel-web-2015.pdf>

² <https://vimeo.com/47544343>

³ <http://www.refugeewomen.co.uk/wp-content/uploads/2014/01/WRWDetained.pdf>

⁴ http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-73.htm

The vast majority of people are released back into the community

According to the government's own guidance⁵ a key purpose of detention is to effect removal from the country. However, official figures⁶ show that detention is ineffective in facilitating removal and that Dungavel is even more ineffective than the detention estate as a whole.

In 2016, more than three quarters (76%) of those leaving detention in Dungavel were granted temporary admission or were bailed. This compares to 52% for the detention estate as a whole.

Just 23% of people leaving detention in Dungavel were removed from the country compared to 47% for the detention estate as a whole.

Destination of people leaving detention in 2016, all of UK and Dungavel

	All		Dungavel	
	No	%	No	%
Removed from the UK	13,466	47%	274	23%
Granted leave to enter/remain	61	0%	3	0%
Granted temporary admission/release	11,931	42%	788	66%
Bailed	2,833	10%	120	10%
Other	370	1%	17	1%
<i>Total</i>	<i>28,661</i>	<i>100</i>	<i>1,202</i>	<i>100</i>

The Shaw Review in context

The Shaw Review⁷ into the detention of vulnerable people was commissioned by the Home Office in 2015. The terms of reference for the review specifically precluded investigation of the decision to detain and confined it to a consideration of the conditions in which vulnerable people are detained. This narrow scope was heavily criticised by parliamentarians and civil society organisations, but in the event, Shaw interpreted his remit broadly and was highly critical of detention. He argued that “vulnerability is intrinsic to the very fact of detention” and observed that the uncertainty caused by indefinite detention and the poor quality of casework adversely affect the welfare of people in detention.

The report made 64 specific recommendations. Among them were: a call for a greater use of alternatives to detention; strengthening of legal safeguards against excessive length of detention; a new approach to ‘vulnerability’; an absolute ban on the detention of pregnant women, greater safeguards for people with physical and mental illnesses, and the extension of the presumption against detention to torture survivors, survivors of gender-based violence and other groups. But the overall call within the review was for a reduction in both the use and the duration of immigration detention.

⁵ <https://www.gov.uk/government/collections/enforcement-instructions-and-guidance>

⁶ <https://www.gov.uk/government/statistics/immigration-statistics-september-to-december-2016>

⁷

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

The Shaw Review was published after the Detention Inquiry report of 2015⁸ and echoed many of its findings. The Detention Inquiry concluded that the UK detains too many people for too long and that the system is ‘expensive, ineffective and unjust’. It recommended a time limit and a move towards community based alternatives to detention.

In response to Shaw, the UK Government said that it accepted the broad thrust of the report’s recommendations and would introduce reforms to the system that would result in less use of detention and a reduction in the length of detention⁹.

The Immigration Act 2016 introduced some limited reform. It committed to a new process for managing vulnerable people in detention (the new Adults at Risk Policy has been in operation since September 2016) and introduced automatic judicial oversight of decisions to detain for the first time. It also limited the detention of pregnant women to 72 hours (or a week with ministerial approval). This mirrors the situation for families with children since 2010, which has resulted in a large reduction in the number of children entering immigration detention (from 1,119 in 2009 to 71 in 2016).

Since Shaw reported there has been a reduction in the size of the detention estate. Dover IRC has been closed, the closure of Cedars has been announced and the closure of Dungavel was announced, and subsequently abandoned. But all these developments have been made in a piecemeal fashion. A promised Immigration Enforcement Business Plan for 2016/17 has never been published and there remains no overall strategy for detention reform.

A new approach

We would argue that it is time for the UK Government to abandon its current approach and commit to a new one, which would radically reduce the use of detention and limit the harms it causes. Such an approach would meet the recommendations of the Shaw review and would be based on the following elements:

1. Developing a range of community based alternatives to detention

There is increasing evidence that working with people subject to immigration control within the community using a case management approach, based on early intervention and tailored to the specific needs of different populations has significant advantages:

- It is more humane;
- It is more cost effective;
- It assists in integration in the event that a person’s right to remain in the country is recognised;
- It increases compliance with a negative immigration decision and enables people to return voluntarily in a planned way.

⁸ <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

⁹ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>

The Detention Inquiry report highlights a number of examples of community based alternatives to detention from Europe and the United States, and argues that a shift to such alternatives would encourage better decision making and move the UK away from its focus on end-stage enforcement. In 2016, UNHCR's progress report on its global detention strategy described its support for a range of pilot projects across the world¹⁰. In the UK, research from Detention Action has argued that community based alternatives can be successful even with ex-offenders, reducing re-offending and delivering very low rates of absconding¹¹.

2. Better immigration casework and decision making

We know from official figures that the majority of people leaving detention are released back into the community. In Dungavel in 2016, *911 people were detained only to be released back into the community*. The fact that these 911 men and women were detained, at significant cost the public purse (an average of £86.08 per person per day¹²) and even greater cost to their wellbeing and that of their families, friends and communities, raises serious concerns. By working with civil society and investing in the development of a range of alternative measures, the UK Government could avoid the costly and harmful impact of detention and enable people to remain in the community.

3. Better end of sentence planning for foreign national offenders

Approximately 40% of people currently in immigration detention across the UK are detained pending removal following a prison sentence. Some are detained in immigration removal centres and others remain in prisons beyond their sentence, detained under immigration powers. Often their detention is prolonged as there are significant barriers to their removal. We would argue that prolonged, costly and harmful detention under immigration powers could be avoided with better planning while people are serving their sentences. Where it is clear that there are barriers to removal or voluntary return, ex-offenders should be released and any potential risks managed within the community, as they would be for UK nationals.

4. Detention as a last resort and for a maximum of 72 hours

The UK Government has recognised the harm that detention causes to families with children and pregnant women, and committed to alternatives to detention beyond 72 hours (or exceptionally a week). We believe that the UK Government can and should be working with civil society and statutory services to explore alternatives to detention for all those currently subject to immigration detention, with a view to making 72 hours the maximum period of detention across the board.

An event organised by SDV at the Scottish Parliament on 31 January 2017 brought together MSPs and civil society organisations to hear speakers from SDV, UNHCR, Detention Action and people who had experience of detention in Dungavel, to discuss alternatives to detention.

¹⁰ <http://www.unhcr.org/uk/protection/detention/57b579e47/unhcr-global-strategy-beyond-detention-progress-report.html>

¹¹ <http://detentionaction.org.uk/wordpress/wp-content/uploads/2016/09/Without-Detention.pdf>

¹² <https://www.gov.uk/government/publications/immigration-enforcement-data-february-2017>

There was a great deal of interest from participants and a sense that Scotland, with its devolved Government and greater commitment to progressive migration policies, its separate legal system, and its wide range of civil society groups and individuals working with migrants was an ideal place to begin to develop such an approach.

Case studies

The first time she was visited by SDV, Maria told us she had been trafficked. She was young and very vulnerable and was one of only a few women detained in Dungavel at the time. She said that it wasn't too bad in Dungavel but she was anxious and very stressed. Our visitors supported her in engaging a solicitor who could help her challenge her detention. She was released after a few weeks but should never have been detained.

SDV visited Ali for nine months while he was in Dungavel and under threat of removal. He had lived and worked for many years in London and his wife and young children were still there and unable to visit him. Ali entered Dungavel in good health but visitors became increasingly concerned about him as his mental health suffered under the strain of indefinite detention. His behaviour became erratic, he appeared depressed and he expressed paranoid thoughts. We literally watched him deteriorate before our eyes. He was eventually released and was able to be reunited with his family.

Pablo, who Scottish Detainee Visitors visited for over two years, was finally released after spending 37 months in detention, at an *estimated cost of nearly £96,000*¹³. At an event organised by SDV he described his 'three years in a cage' and talked of how 'you have to isolate yourself from everything that makes you human to survive detention'. That meant cutting himself off from his family and friends to minimise the pain of being separated from them for an indefinite period.

Abigail was detained for four months in Dungavel. For some of the time that she was there, the women's dormitories were nearly full and she found the lack of privacy difficult. But her biggest concern was being surrounded by a lot of men, some of whom had criminal convictions. She didn't feel safe. Some of the women used to go outside for fresh air but Abigail tended to stay indoors as one time she went outside she had felt intimidated by looks and comments from some of the men.

For more information, please contact Kate Alexander (director@sdv.org.uk)

¹³ Based on an average cost of detention of £86.08 per day as reported in: <https://www.gov.uk/government/publications/immigration-enforcement-data-february-2017>