

Beyond immigration detention in Scotland

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, and on release from detention. 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 civil society organisation to visit people in Dungavel every week.

Detention in the UK

The UK detains around 30,000 people a year for immigration purposes, in nine detention centres and two residential short-term holding facilities. Dungavel is the only detention centre in Scotland. The UK government has confirmed that it will remain open, despite their attempt to close it last year and replace it with a short term holding facility at Glasgow Airport.

The power to detain for immigration purposes was created by the Immigration Act 1971. People are detained under the administrative authority of Home Office officials and, according to the UK Government's own guidance¹, detention is used in the following circumstances: to effect removal; to establish a person's identity or basis of claim; or where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.

People who can be detained include: asylum seekers whose applications have been refused; people who have overstayed their visas; people who have breached the terms of their visas; people who have been refused permission to enter the UK; and foreign nationals who have served a prison sentence and have been issued with a deportation order. Forty-nine per cent of the 28,000 people entering detention in the year ending 30 June 2017 were categorised as 'asylum detainees'².

Uniquely in Europe, there is no time limit on detention in the UK, and it can be very prolonged in some cases. At the end of June 2017, 44% of the 2,994 people in detention had been detained for 28 days or less, but 3 per cent (80 people) had been detained for more than a year. One man had been detained for more than 4 years. Crucially, people entering immigration detention have no idea how long their detention will last, making it a particularly stressful experience.

¹ <https://www.gov.uk/government/collections/enforcement-instructions-and-guidance>

² <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2017>

What detention means for people in Scotland

The mental health impacts of detention on the people affected by it have been well documented in, for example, 2015's report of the parliamentary inquiry into the use of detention in the UK³ and the Shaw Review into vulnerable people in detention⁴. However, there are some particular issues for people detained in Scotland, considered briefly below.

Isolation

Dungavel is in an isolated position. It is not on 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.

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. The latest inspection report highlighted concerns about the detention of vulnerable people including a torture survivor and a woman with a serious health condition⁵.

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'*.⁶ Over the years that SDV has been visiting, it has been commonplace 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.⁷

³ <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

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

⁵ <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/Dungavel-web-2015.pdf>

⁶ <https://vimeo.com/47544343>

⁷ <http://www.refugeewomen.co.uk/wp-content/uploads/2014/01/WRWDetained.pdf>

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.⁸

Legal issues specific to Scotland

Wherever they are detained, people are subject to frequent and arbitrary moves around the detention estate.⁹ 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.

The vast majority of people are released back into the community

According to the government’s own guidance,¹⁰ a key purpose of detention is to effect removal from the country. However, official figures¹¹ show that detention is ineffective in facilitating removal and that Dungavel is even more ineffective than the detention estate as a whole.

In 2016, three quarters (75%) of those leaving detention from 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 from Dungavel were removed from the country compared to 48% for the detention estate as a whole.

Time for a new approach

Over the last few years, advocacy and campaigning focused on immigration detention in the UK has resulted in the issue being pushed higher up the political agenda, with major inquiries, parliamentary debates, and research calling for urgent reform. The Detention Inquiry report of 2015 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 detention¹².

⁸ <https://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/Dungavel-web-2015.pdf>

⁹ http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-73.htm

¹⁰ <https://www.gov.uk/government/collections/enforcement-instructions-and-guidance>

¹¹ <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2017>

¹²

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

The Shaw Review into the detention of vulnerable people echoed many of the findings of the Detention Inquiry and called for a drastic reduction in the number of people detained and the length of detention. In response, the UK Government said that it accepted the broad thrust of Shaw's recommendations and would introduce reforms to the system that would result in less use of detention and a reduction in the length of detention¹³.

The Immigration Act 2016 introduced some limited reforms to detention. It committed to a new process for managing vulnerable people in detention 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).

These developments all suggest that the direction of travel should be towards reduction in the use of detention across the UK. There is cross-party support for detention reform. In their 2017 General Election manifestos the SNP, the Labour Party and the Liberal Democrats all promised to end indefinite detention, with the SNP and the Liberal Democrats specifying a 28 day time limit, in line with the Detention Inquiry's recommendation. The SNP also restated their intention to seek the devolution of immigration powers.

Elements of a new approach

SDV believes that a new approach to working with people subject to immigration control could substantially reduce both the use of detention and its duration. Elements of this new approach would include the following.

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.

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

¹³ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>

described its support for a range of pilot projects across the world¹⁴. 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 absconding¹⁵.

2. Better immigration casework and decision making

We know from official figures that the vast majority of people leaving detention in Dungavel are released back into the community. In 2016, the figure was 75% or 928 people. Just 276 people were removed from the UK¹⁶. The fact that 928 men and women were detained, at significant cost the public purse and even greater cost to their wellbeing and that of their families, friends and communities, only to be released again, 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 ex-offenders

Approximately 40% of people currently in immigration detention across the UK are detained pending removal following a prison sentence. Some are detained in detention 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 with a strict time limit

The 2015 Detention Inquiry recommended a time limit for immigration detention of 28 days, a call subsequently supported by the SNP and the Liberal Democrats. SDV believes such a time limit would represent a vital first step, but also that there is a case for greater ambition. The detention of families with children (since 2010) and pregnant women (since 2016) is prohibited beyond 72 hour (or exceptionally a week). This recognises the harm that detention can cause and indicates that the UK Government is able to commit to alternatives to detention for people subject to immigration control.

Immigration is a reserved matter. But Scotland has a devolved Parliament with wide powers, a separate legal system, and a generally more progressive approach to immigration and asylum than the rest of the UK. We believe that makes Scotland the ideal place to pilot the new approach described above.

There is a real opportunity for the UK Government to commit to working with the Scottish Government and Scottish civil society to develop effective alternatives to detention, based on

¹⁴ <http://www.unhcr.org/uk/protection/detention/57b579e47/unhcr-global-strategy-beyond-detention-progress-report.html>

¹⁵ <http://detentionaction.org.uk/wordpress/wp-content/uploads/2016/09/Without-Detention.pdf>

¹⁶ <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2017>

international examples of good practice and emerging evidence from existing projects in the UK. With a firm commitment that men and women living in Scotland who are currently at risk of immigration detention will not be removed from their legal and support networks to detention in other parts of the UK, we and other civil society organisations will be pushing for a rights based approach to working with people in the community that is centred on dignity, fairness and, most importantly, freedom.

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