

Inquiry into the use of immigration detention in the UK

Evidence submitted by Scottish Refugee Council

October 2014

1. About Scottish Refugee Council

Scottish Refugee Council has worked since 1985 to ensure that all refugees in Scotland are treated fairly, with dignity and that their human rights are respected. Our vision is for a Scotland in which all people seeking refugee protection are welcome. As an independent charity, we provide essential information and advice to people seeking asylum and refugees in Scotland. We also campaign for political change, raise awareness about issues that affect refugees and work closely with local communities and organisations.

2. About the inquiry

The APPG on Migration and the APPG on Refugees are holding a joint parliamentary inquiry into the use of immigration detention in the UK and are seeking the views of a broad range of stakeholders.

3. Introduction

Scottish Refugee Council warmly welcomes the APPGs' timely inquiry into this area. Our response focuses on our concerns in relation to immigration detention in the Scottish context in particular.

4. General Comments

4.1 Detention Policy

As outlined in our January 2013 publication *Refugees in Scotland after the Referendum*¹, Scottish Refugee Council does not support the current UK government policy of immigration detention. We believe that the current use of detention is arbitrary and often unnecessary and disproportionate, with scant consideration given to available alternatives. The period of detention is often indefinite and reviews are irregular and lack judicial oversight. We are particularly concerned about the detention of children and vulnerable people (including people with physical and mental health problems, pregnant women and victims of torture and trafficking), who should never be detained.

4.2 Movement around the detention estate

Criminal justice and legal aid are devolved to the Scottish Parliament, which means that Scottish lawyers representing immigration detainees held in Scotland are unable to continue to act for clients if they are moved to another detention centre in another part of the UK; and vice versa, should a detainee represented by an English solicitor be moved to Scotland. Anecdotal evidence from stakeholders in Scotland² suggests that detainees are often moved around the UK detention estate, away from the jurisdiction where legal representatives can act on their behalf. This is particularly worrying for individuals whose immigration case rests on the right to private and family life under Human Rights legislation, as to be moved away from their family and community connections could significantly impact on their claim.

Academics have also explored the implications of frequent movement around the UK immigration detention estate.³

A legal representative who works with clients detained at Dungavel provided the case study below to illustrate this point.

M, an Algerian national, was detained under immigration powers following a criminal sentence for use of false documents. M had a partner and child who resided in Glasgow. After his sentence in a Scottish prison, M was sent to Colnbrook Immigration Removal Centre to affect his removal. M remained in Colnbrook for four weeks, during which time the Home Office advised him he was to remain there in order for them to facilitate interviews with the Algerian Embassy and obtain an emergency travel document. During his time at Colnbrook, M was not given access to a solicitor.

After two weeks, M was moved to Dungavel House. Whilst M was unhappy about being detained he was at least able to see his partner and child on a regular basis. During his time at Dungavel he was given access to a solicitor. M's legal representative was able to obtain legal aid for him and submit an application for leave to remain. His representative prepared a bail application. However, prior to its submission, M was moved back to Colnbrook Detention Centre.

M's representative was unable to obtain legal aid for an applicant detained in England and could

¹ Shisheva, M. et al (2013) *Improving the Lives of Refugees in Scotland after the Referendum: An Appraisal of the Options*, Scottish Refugee Council http://www.scottishrefugeecouncil.org.uk/assets/0000/5495/4087_SRC_Referendum_Report_V3.pdf

² Concerns about movement between jurisdictions have been raised at the Detention Forum Scotland, a group convened by Scottish Detainee Visitors and whose membership includes Scottish Refugee Council, Legal Services Agency and other legal representatives working with detainees in Scotland, Glasgow Refugee Asylum and Migration Network, and Medical Justice.

³ Gill, N. (2009) *Governmental mobility: the power effects of the movement of detained asylum seekers around Britain's detention estate*, Political Geography, Vol. 28, No. 3, 03.2009, p. 186-196

not submit a bail application for him at the Asylum and Immigration Tribunal in Glasgow. Further to this, his partner could not leave her child and travel to London to support his bail application. M requested to be returned to Dungavel House on account of his family. This application was refused by the Home Office and no reasons were given. M's representative made a request to the Home Office to either transfer him to Dungavel or release him. The representative received no response.

M remained in Colnbrook for four weeks. During this time, M was physically assaulted by fellow detainees. He was treated by the healthcare team at Colnbrook.

M was given access to a solicitor on this occasion. His solicitor in England advised him that due to his conviction, M had poor prospects of success and he could not take his case further. M requested to return to Dungavel but his request was once again refused. M did not submit a bail application at Colnbrook as he did not have access to a solicitor. He remained in detention until he was eventually moved back to Dungavel House.

Upon his return to Scotland, M's Scottish solicitors recommenced with his case and he was eventually granted bail.

M's case remained outstanding for nine months until he was eventually granted three years discretionary leave to remain in the United Kingdom.

4.3 The Detained Fast Track (DFT) process

Scottish Refugee Council believes that the DFT system is not fit for purpose and would strongly advocate that asylum claims are not decided in detention. As evidence of the DFT's unsuitability, we direct members of the inquiry to the recent High Court judgement in which Mr Justice Ouseley found there to be "*an unacceptably high risk of unfairness*" in the way the Home Office is currently operating the DFT, including evidence that men and women with complex asylum claims (including LGBT, torture and trafficking related claims) are being detained in contravention of Home Office policy.⁴ We would recommend that no asylum claims are decided whilst the applicant is in detention; however, whilst the DFT remains in operation, we strongly advocate that more robust procedures are put in place to guarantee that no survivors of torture, trafficking, gender based violence, nor people with complex asylum claims based on gender identity or sexual orientation, are put through the DFT.

4.4 Detention in Scotland

4.4.1 Judicial oversight

Dungavel House is the only Immigration Removal Centre in Scotland. However, following a Freedom of Information Request in 2013, Scottish Refugee Council became aware that people are routinely being detained in Scottish prisons under immigration powers.⁵ Scottish Refugee Council finds this lack of judicial oversight concerning and would recommend that there is greater transparency in the location and circumstances under which people held under immigration powers in Scotland are detained to ensure that immigration detainees are held separately from criminal detainees, as per Home Office policy. Asylum seekers, including those whose claims have been refused, should never be detained in prisons.

⁴ Detention Action v SSHD [2014] EWHC 2245 (Admin)

⁵ Correspondence with the Scottish Prison Service, 8 November 2013

4.4.2 Provision of healthcare

Under the current constitutional settlement, immigration and nationality are reserved matters under Schedule 5 of the Scotland Act 1998. Healthcare is devolved to Scotland under this same constitutional settlement and is available to those detained in Dungavel Immigration Removal Centre. Currently, we understand that responsibility for the provision of primary healthcare services in Dungavel lies with the Home Office, who commissions these services privately. As such, it is not clear whether health authorities in Scotland are able to ensure that the quality of healthcare provided to people detained in Dungavel is on a par with that of others accessing care in Scotland, nor how health authorities can ensure continuity of care when detainees are released into the community.

4.4.3 Gender imbalance

Dungavel Immigration Removal Centre has a capacity of 170 men and 18 women. Although there are separate sleeping areas for men and women, social areas are open to both men and women. The vast gender imbalance within these social spaces has led to female detainees speaking of feeling intimidated and threatened by this overwhelmingly male environment.⁶ Many detainees are refused asylum seekers, and given the prevalence of gender based violence experienced by women in the asylum process (with around 70% of women seeking asylum reporting having experienced physical or sexual violence in their lifetime⁷), there is a serious risk that this disparity could reawaken underlying trauma or indeed heighten existing trauma.

4.4.4 Geographical location

The remote location of Dungavel serves to further isolate those living in immigration detention in Scotland. The centre is not served by direct public transport. Instead, visitors to the centre must take at least two forms of public transport from Glasgow or Edinburgh (which can take over an hour and can prove to be a costly journey). Those with access to a car can drive for around an hour from Glasgow city centre to reach Dungavel. For people seeking asylum who may wish to visit their friends or family in detention, methods of transport are difficult to access, meaning that they often have to rely on the generosity of others to make this journey. The difficulty in reaching this far off location seeks to add to the intense isolation experienced by people detained in Dungavel.

4.4.5 Release from detention

Research published in 2012 by the Scottish Poverty Information Unit at Glasgow Caledonian University investigating asylum destitution in Scotland suggests that a significant proportion of detainees are destitute upon release.⁸ This is often due to a lack of communication between detention centre staff and the Home Office, and essential confiscated documentation not being returned to detainees upon their release.

⁶ Scottish Detainee Visitors

⁷ Scottish Refugee Council & London School of Hygiene & Tropical Medicine (2009) Asylum Seeking Women: Violence & Health, http://www.scottishrefugeecouncil.org.uk/assets/0000/0097/Asylum_seeking_women_violence_and_health.pdf

⁸ Gillespie, M. (2012) *Trapped: Destitution and Asylum in Scotland*, Scottish Poverty Information Unit, Glasgow Caledonian University http://www.scottishrefugeecouncil.org.uk/assets/0000/5050/Trapped_destitution_and_asylum_final.pdf

5. Recommendations

5.1 All voluntary return options and **alternatives to detention** should be exhausted before enforced return and/or detention are considered.

5.2 Detention should always be for the shortest possible time, where removal is imminent, and should be subject to regular review and judicial oversight across the UK.

5.3 The UK Government should consider introducing a **maximum time period** for immigration detention.

5.4 Detention should never be imposed on children or vulnerable people (including people with physical or mental health problems, pregnant women, survivors of gender based violence, torture and/or trafficking).

5.5 The Home Office must ensure that **movement around the detention estate is kept to an absolute minimum** and should only occur where no other alternative is available. The Home Office must ensure that any movement to another detention centre **does not preclude or interrupt a detainee's access to legal representation**.

5.6 We recommend that **asylum claims are not decided in detention** and that the **Detained Fast Track process is abolished**. We stress that under no circumstances should vulnerable people and those with complex cases (particularly LGBTI cases) be placed in the Detained Fast Track system.

5.7 There must be **transparency and judicial oversight** of the location and circumstances of all people held under immigration powers in Scotland and asylum seekers, including those whose claims have been refused, **should never be detained in prisons**.

5.8 We urge the UK Government to provide **clarity around the responsibility and provision of healthcare within Dungavel Immigration Removal Centre** and **ensure continuity of care for detainees** through appropriate communication with local health providers.

5.9 The Home Office should **address the gender imbalance** within Dungavel Immigration Removal Centre so as to **guarantee the physical and mental well-being of female detainees**. The Home Office should guarantee that even within mixed gender spaces, **female detainees feel secure and safe**. Consideration must be given to the past experiences of female detainees, especially so where there is a history of physical and/or sexual violence.

5.10 We strongly recommend that Dungavel Immigration Removal Centre is made **more accessible to visitors**, with an affordable direct public transport route from Glasgow city centre.

5.11 The Home Office must ensure that nobody is made destitute upon release from detention. Detention centre staff should promptly inform the Home Office as to the release of individual asylum claimants and should promptly return essential confiscated documentation to detainees upon their release.

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