



## UNHCR's evidence to the Home Affairs Select Committee's inquiry into Brook House Immigration Removal Centre

October 2017

### Introduction

UNHCR, the UN Refugee Agency, is a non-political, humanitarian organisation entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees, asylum seekers and stateless persons and together with governments, to seek permanent solutions to their plight.<sup>1</sup>

As part of its mandate, UNHCR has a direct interest in the situation of asylum-seekers, refugees and stateless persons in detention. Addressing practices not in conformity with international human rights in the detention of asylum-seekers and refugees is a priority for UNHCR, as reflected in its 5-year Global Strategy *Beyond Detention*.<sup>2</sup> The UK is a focus country participating in the Global Strategy and UNHCR has shared good practice, including on the global use of alternatives to detention, with the UK authorities.

We welcome the opportunity to contribute to the Home Affairs Select Committee's inquiry into the running of Brook House following the BBC Panorama investigation, which revealed deeply concerning conduct on the part of G4S staff and other issues around detention. This is not the first time that allegations concerning the treatment of immigration detainees have come to light in the UK. For example, in his role as Prisons and Probation Ombudsman, Stephen Shaw investigated concerns similar to those identified in the Panorama documentary, and in 2004 and 2005 he carried out two inquiries into allegations of racist mistreatment within Yarl's Wood Immigration Removal Centre (IRC) and Oakington IRC.

In 2015, Shaw began his Review into the Welfare in Detention of Vulnerable Persons (Shaw Review),<sup>3</sup> which highlighted similar concerns to those seen at Brook House. For example, it drew to light the presence of illicit psychoactive substances throughout the immigration estate and that 'the smuggling and abuse of drugs and 'legal highs' is almost always associated with intimidation and violence' (paragraph 3.129).

Also in 2015, Channel 4's documentary 'Yarl's Wood: Undercover in the Secretive Immigration Centre' exposed incidents of self-harm, questions over standards of healthcare and the general mistreatment of detainees on the part of detention custody officers employed by Serco.

Following the publication of the Shaw Review in 2016, the Immigration Minister pledged to reduce the number of those detained within immigration detention. The Minister also stated that 'more effective

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<sup>1</sup> 1950 Statute of the Office of UNHCR (paragraph 8(a)). UNHCR's supervisory responsibility over the implementation of international instruments is also reflected in Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of its 1967 Protocol (1951 Refugee Convention), obliging State Parties to cooperate with UNHCR in the exercise of its functions. UNHCR has also been formally mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless persons.

<sup>2</sup> UNHCR. 'Beyond Detention' available at: <http://www.unhcr.org/53aa929f6.pdf>

<sup>3</sup> Shaw, Stephen. 'Review into the Welfare in Detention of Vulnerable Persons.' Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/490782/52532\\_Shaw\\_Review\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf)

detention, complemented by increased voluntary departures and removing without detention, will safeguard the most vulnerable while helping control immigration abuse and reducing costs.’ It is of significant concern to UNHCR that despite this pledge, problems with the treatment of immigration detainees recur and there is little evidence of a meaningful reduction in the use of detention in the UK.

UNHCR’s brief response to the Committee does not address the specific issues regarding the management of Brook House or other IRCs, but highlights our broader concerns regarding immigration detention policy in the UK. Specifically, we will focus on the fundamental rights to liberty and freedom of movement, our concern over the indefinite nature of detention in the UK, the treatment of vulnerable people in detention and then propose models that could be considered as alternatives to detaining vulnerable individuals. We recommend that consideration be given to a wider review of the use of detention estate in the UK with a view to reducing its use and avoiding the treatment witnessed at Brook House arising in the first place.

### **1. Rights to liberty and freedom of movement**

The fundamental rights to liberty and security of person, as well as freedom of movement, apply to asylum-seekers, refugees and stateless people. And yet large numbers of asylum-seekers, refugees and stateless persons are routinely detained within the immigration estate.

The UK relies on and uses detention in asylum procedures more frequently than most other countries in the EU. As such, it is essential that appropriate screening and review mechanisms are in place and effectively applied to ensure that people with protection needs are not unnecessarily detained and that they receive appropriate care within the community. If asylum-seekers, refugees or stateless people are to be detained, that detention must be regulated by law, carefully circumscribed, and subject to prompt and periodic review. We stress that alternatives to detention should be used wherever possible so that detention is used only as a measure of last resort.

### **2. Indefinite detention in the UK**

The UK is one of only a handful of countries without a time limit on immigration detention. This leaves asylum-seekers at risk of being detained indefinitely and arbitrarily, with an even greater risk for people who are stateless or unremovable.

This indefinite nature of detention is known to cause extreme anxiety and distress for detainees across the detention estate, and have a negative impact on detainees’ mental health and longer-term prospects of integration. There is little doubt that the indefinite nature of detention would have contributed to some of the psychological issues observed at Brook House and in other IRCs. For the reasons outlined above, UNHCR strongly recommends that maximum periods be set in law.

### **3. Vulnerable people**

In the last year, there have been positive developments towards addressing the recommendations of UNHCR, the Shaw Review and others, including the introduction of statutory safeguards to restrict the detention of pregnant women and provide for further judicial oversight of detention. However, Schedule 10 of the 2016 Immigration Act has yet to be enacted through a commencement order.

It is critical that adequate procedures are in place to identify vulnerable individuals to ensure that they are not detained. The UK’s Adults at Risk policy was designed for this purpose and in response to the Shaw Review. However, there are concerns that rather than strengthening procedures to identify vulnerable individuals, the policy makes it more likely they will remain in detention as, among other

things, it increases the burden of evidence on vulnerable people needed to secure their release. UNHCR has not seen evidence to suggest that the Adults at Risk policy has resulted in a reduction in the number of individuals detained. The procedure is currently being challenged before the High Court and will be considered by Mr. Shaw as part of his current review of the government's implementation of recommendations made in his 2016 report.

#### 4. Alternatives to detention globally

UNHCR's global research has found that stringent detention regimes do not deter irregular migration, while alternatives to detention – particularly community supervision arrangements – can address governments' concerns regarding irregular migration and assist with functioning asylum systems. There are also financial savings to be made, by avoiding litigation costs arising from unlawful detention cases.

In light of the historic and recent allegations of mistreatment within the immigration detention estate, we urge the Government to strengthen access to the current alternatives to detention and introduce new alternatives to detention that have been shown to secure high compliance rates.

One of the most established alternatives-to-detention projects is in Canada. The Toronto Bail Programme provides an alternative to detention centred on community-based release. This model has achieved a 94% cost saving compared to detention, and a compliance rate of close to 100%. This success is attributed to effective case engagement and management, including close contact with the asylum-seekers before and after their release, provision of mental health services and counselling. An options and elements paper prepared in March by UNHCR UK for the Home Secretary is provided as an annex.

Hong Kong and Sweden also operate successful alternatives to detention programmes.

#### 5. Alternatives to detention in the UK

Currently in the UK, the Government operates alternatives to detention including bail, designated residence and reporting conditions. These are focused largely on enforcement and not on establishing trust between asylum-seekers, refugees and migrants. UNHCR's own commissioned research<sup>4</sup> supports the views held by other stakeholders that in the UK, that the alternatives currently offered have not always been effective or sufficiently accessible to asylum-seekers. There appears to be significant room to introduce alternatives based on engagement and case management within the community, and for the UK to benefit from the more positive outcomes they achieve.

Detention Action is currently piloting a project based on a community support system (their target group is non-national, ex-offenders aged 18 to 30 years). Participants are provided with case management and training to comply with conditions of release. The project also aims to minimise risk to the public of re-offending, through reintegration and community participation. A transitional planning phase based on a probation service model is followed, while the person is also referred to local services based on his or her individual needs. On-site coaches provide information, practical assistance and discussion of return.

While the alternative does not focus on persons of concern to UNHCR, it does demonstrate the added value of community-based alternatives; the project is achieving a 90% rate of compliance with conditions and is estimated to save between 83% and 95% of the cost of detention. We would therefore urge the

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<sup>4</sup> UNHCR. 'Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants.' Available at: <http://www.refworld.org/docid/4dc935fd2.html>

Government to support and promote projects such as these, including for asylum-seekers, refugees and stateless persons.

## 6. Conclusion

International law requires that detention must be a measure of last resort. But in cases where detention is deemed necessary, every effort must be made to ensure that detainees are treated humanely. In view of repeated allegations of misconduct and abusive treatment within the immigration detention estate, UNHCR urges the Select Committee to ensure that safeguards are in place for people with protection needs who are detained and to introduce a time limit which will reduce the frustrations inherent within the system. More broadly, UNHCR strongly encourages the Select Committee to consider a broader review of the use of immigration detention by the UK authorities, including expanding its use of alternatives to detention. This, it is hoped, would reduce reliance on detention and the likelihood of the deeply concerning conduct witnessed at Brook House arising in future.



## ANNEX 1

### Alternatives to Detention: options and elements

#### Why do States adopt alternatives to detention?

States adopt alternatives to detention in order to protect the security on their territory and to ensure the cooperation of migrants and asylum seekers with immigration procedures, including the departure of those found not to have a right to stay in the country. Alternatives to detention put in place by States in recent years have seen high rates of cooperation. A 2010 UNHCR-commissioned study of 13 alternatives to detention implemented in different countries around the world found that the rate of absconding was between 1 and 20 per cent, with 10 of the 13 projects enjoying cooperation rates above 94 per cent.<sup>i</sup> With respect to removal, voluntary departure rates of between 65 and 85 per cent have been observed in contexts where alternatives to detention have been used. Further empirical research commissioned by UNHCR in 2014 found that asylum-seekers are predisposed to comply with immigration procedures and that perception of fairness in the asylum procedure was far more important for ensuring compliance than the use of detention.<sup>ii</sup>

Additionally, empirical evidence demonstrates that alternatives are considerably less expensive than detention. Community-based alternative to detention programs have demonstrated per person/per day cost saving of USD \$148 in the United States of America, AUD \$617 in Australia and CAD \$167 in Canada.<sup>iii</sup> Significant savings are also evident in the context of removal. When refused asylum-seekers depart voluntarily after having being accommodated in community-based alternative to detention, the average cost to the State is around one-third of the cost of escorted deportation.<sup>iv</sup> Forced removal in the United Kingdom was previously estimated to cost ten times more than independent departure, at £1,100 compared with £11,000 per forced removal.<sup>v</sup> Using alternatives to detention can also assist states in preventing or reducing cases of wrongful or arbitrary detention, avoiding costly litigation.

The UK has made widespread use of traditional alternatives such as reporting requirements and designated residence. These alternatives have a good record of enabling the Home Office to maintain contact with migrants, with a much-reduced degree of coercion compared to detention. However, there is little evidence that they promote cooperation with immigration and return processes. By contrast, there is growing evidence that alternatives to detention based on engagement with migrants are effective in promoting such cooperation. In the UK, this has been shown through the Family Returns Process and, more recently, Detention Action's Community Support Project – both of which are briefly addressed below.

A brief overview of a range of alternatives to detention that work as well as the elements of successful alternatives to detention follows.

## Which alternatives work?

Lessons and good practices can be drawn from many alternatives to detention currently in use in a wide range of countries and contexts. UNHCR previously published two options papers on open reception and alternatives to detention, which documented more than 30 good examples.<sup>vi</sup> Some of the most effective alternatives to detention are set out below.

### Designated or directed residence

Use of a designated or directed residence as an alternative to detention requires asylum-seekers to reside at a specific address or within a particular administrative region. In **Germany**, a quota is calculated on an annual basis per *Länder* (state), as asylum-seekers are assigned to an initial reception center using a nationwide distribution system called “EASY”. Distribution systems need to take into account the personal situation of the individual and his or her family, such as links with the local community, as well as any special support or health services required. For example, the EASY system takes into account the presence of family members in the designated area.

### Alternatives based on bail or bond

Bail or bond systems typically require a financial deposit that may be forfeited in the event the individual absconds. However, such systems tend to discriminate against persons with limited funds, or those who do not have connections in the community, as may be the case for many asylum-seekers. Efforts to minimize these disadvantages are encouraged. For example, the **Toronto Bail Program**, a non-profit organization under contract with the Canada Border Services Agency, provides a guarantee to support the release of immigration detainees, subject to a number of reporting and other conditions. It also provides important case management support services which are seen to contribute significantly to the success of the alternative to detention. In **Lithuania**, foreigners may be released to the “guardianship” of a citizen of Lithuania or a relative legally residing in the country, and there have also been cases of release to a charity or church.

### Community supervision and case management

There is a range of options that can permit individuals and families to reside in the community subject to supervision and/or case management. Living independently in the community is the preferred approach, to allow asylum-seekers and others to resume as far as possible “normal lives”. In **Chile**, for example, asylum-seekers are issued renewable temporary stay permits, with work entitlements attached. Comprehensive social assistance is provided, facilitating the linking of asylum-seekers to local social and economic structures, with support diminishing over time to facilitate self-reliance. In many countries, a network of open accommodation options are available, including groups of self-contained flats or purpose-built centers, providing a range of services on site. Individuals may come and go freely, but often must meet their caseworker regularly. In **Hong Kong SAR, China**, the International Social Service, a non-governmental organization, runs a government-funded programme enabling refugees and torture claimants to live in the community, mostly in privately-owned accommodation, while their cases are being processed. As many as 5,000 claimants benefit from this alternative to detention.

Many community-based reception arrangements include a component of case management. Case management is a strategy for supporting and managing individuals while their asylum or other claims are

being considered, with a focus on informed decision-making, timely and fair status resolution and improved coping mechanism and well-being.

In **Sweden**, two case workers are appointed to an asylum-seeker after registration: one dealing with the asylum process, the other assisting with everyday life questions and making appropriate referrals for medical care, counselling or other services. Motivational counselling is used, which prepares the asylumseekers for all possible eventualities, including return. In the **United Kingdom**, the NGO Detention Action is implementing one-to-one case management support for young ex-offenders with barriers to removal; a particularly challenging group to manage. Over the first two and a half years of the project 80% of participants (20 out of 25) have maintained contact with the project, received support and avoided absconding. The project costs only 5% of the cost of detention, or 17% if the cost of housing and support are taken into account.<sup>vii</sup>

### Child- and family-appropriate alternatives to detention

Individual care plans, coordination conferences of relevant institutional bodies, guardianship systems and mechanisms to hear from and listen to children are all good practices. For children seeking asylum together with their families, detention remains a last resort. It therefore is appropriate to explore familybased alternatives to detention, prior to any detention decision or separation of the child from his or her parents. **Belgium's** open family units are a good example of family and child-adapted accommodation, with children enrolled in local schools, and families enjoying freedom of movement and able to receive visitors. The **United Kingdom's** Independent Family Returns Panel, which assists the Home Office in taking decisions in the child's best interest during the removal process, minimizes the need for enforcement action involving detention. Notably, the Independent Family Returns Panel ascribes the improved rates of non-enforced return to improved case management and engagement with families, noting that "the creation of the Family Engagement Manager role for example has greatly improved communication with families and helps them to understand the process and prepare for a return both practically and psychologically".<sup>viii</sup>

### Elements of successful alternative to detention

The following elements have been widely found to contribute to the success of alternative to detention:

- Treating asylum-seekers (and migrants) with dignity, humanity and respect throughout the relevant asylum or migration procedures;
- Providing clear and concise information about rights and duties under the alternative to detention and the consequences of non-compliance;
- Providing asylum-seekers with legal advice, including on their asylum applications and options available to them should their asylum claim be rejected. Such advice is most effective when made available at the outset of and continuing throughout relevant procedures;
- Providing access to adequate material support, accommodation and other reception conditions; and
- Offering individualized "coaching" or case management services.<sup>ix</sup>

Recent research in Europe confirmed that alternatives were less successful when they did not incorporate one or more of the above elements.<sup>x</sup> Other features of successful alternative to detention identified by States and other actors include taking holistic approaches to alternative to detention - that is, approaches that apply from the beginning to the end of the asylum or migration process, and that identify and address individual needs in a comprehensive way, and ensure close working partnership between government and

civil society. Notably, in the UK civil society organizations already have a strong focus on engagement with asylum-seekers and migrants, and have developed trust relationships that can support them to resolve their cases in the community.

Finally, it is worth highlighting the importance of alternatives to detention being developed and implemented in a way that is context-specific. No single alternative to detention will be fully replicable in every context, however, there are elements that remain constant.

## Conclusion

There is clearly a range of good State practices of successful alternatives to detention. UNHCR, together with its partners, stands ready to support efforts to introduce, enhance and expand the use of alternatives to detention in the United Kingdom.

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i Alice Edwards, *Back to basics: the right to liberty and security of person and “alternatives to detention” of refugees, asylum-seekers, stateless persons and other migrants*, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, 2011, available at: <http://www.refworld.org/pdfid/4dc935fd2.pdf>

ii UNHCR, *Building empirical research into alternative to detention: perception of asylum-seekers and refugees in Toronto and Geneva*, 2013, PPLA/2013/02 available at: <http://www.refworld.org/docid/51a6fec84.html>

iii International Detention Coalition, *There are alternatives: a handbook for preventing unnecessary immigration detention*, 2015, p.11, available at: <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>

iv International Detention Coalition, above p.11, available at: <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>

v United Kingdom National Audit Office, *Returning Failed Asylum Applicants*, London: The Stationary Office, 2005, available at: <https://www.nao.org.uk/report/returning-failed-asylum-applicants/>

vi UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2015, available at: <http://www.refworld.org/docid/5523e8d94.html> and UNHCR, *Options Paper 2: Options for governments on open reception and alternatives to detention*, 2015, available at: <http://www.refworld.org/docid/5523e9024.html>

vii See Detention Action, *Without Detention, opportunities for alternatives*, 2016, p. 52, available at:

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

viii Independent Family Returns Panel: 2014 to 2016 Report, 2017, p. 7, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583790/Independent\\_Family\\_Returns\\_Panel\\_report\\_2014-16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583790/Independent_Family_Returns_Panel_report_2014-16.pdf)

ix UNHCR, *Guidelines on the applicable criteria and standards relating to the detention of asylum –seekers and alternatives to detention*, 2012, available at: <http://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>

x Odysseus Network, *Alternatives to immigration and asylum detention in the EU: time for implementation*, 2015, available at:

<http://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-Alternatives-to-detention-in-the-EU.pdf>. See also European Migration Network (EMN), *Synthesis Report – The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*, 2014, available at: <http://www.refworld.org/docid/546dd6f24.html>