

# Alternatives to detention in the UK: from enforcement to engagement?

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**The UK detains migrants on a large scale, and has had limited success in developing alternatives. The British experience highlights the need for a cultural shift towards engagement with migrants in place of reliance on enforcement.**

The development of alternatives to detention has become a significant global counter-trend to the normalisation of detaining migrants. Where alternatives have worked, they have relied on the engagement and participation of migrants themselves in immigration processes. Yet they have not worked everywhere, and the failures of states like the UK highlight important lessons.

Both Sweden and Australia have successfully developed alternatives to detention based on case management in the community.<sup>1</sup> A single trusted individual is responsible for working with the migrant to ensure that his or her practical needs are met: housing, information about the migration process, legal advice. This case manager also spends time with the migrant to build a relationship of



Asylum seeker awaiting deportation from Tinsley House immigration detention centre in the UK

trust, taking time throughout the immigration process to explore all potential long-term options, including leave to remain, assisted return and possibilities in third countries. These programmes have largely met the needs of governments as well as migrants, since very few migrants absconded and large proportions of those refused leave to remain decided to take up assisted return.

The origins of these case-management programmes are significant. Both were introduced as responses to systemic crises. In Sweden, change followed a public and media outcry over detention conditions in the late 1990s. In Australia, international condemnation of the mandatory indefinite detention of children and adults combined with flagrant errors such as the repeated deportations of Australian citizens led the government to introduce radical community-based programmes for irregular migrants on the territory.<sup>2</sup> Of course, off shore processing, in appalling conditions, of migrants arriving by boat has continued, and has intensified with the reopening of detention facilities on Nauru and Manus Island. Nevertheless, in Australia as in

Sweden case management has become an established part of the immigration system.

In Britain, the European Union's biggest detainer of migrants, no such change has taken place. Detention is heavily used in the asylum process, with around 22% of asylum seekers detained at some stage, not just for removal but throughout the asylum process, on the controversial Detained Fast Track.<sup>3</sup>

Despite financial incentives offered through assisted returns programmes, the UK has exceptionally low levels of take-up of assisted return: only around 16% of refused migrants arrange their own return (with assistance), compared to 82% in Sweden.<sup>4</sup> The various mechanisms for managing migrants in the community, including bail, reporting requirements, electronic monitoring and requirements to live at a designated residence, make little apparent contribution to the take-up of assisted return.

Many migrants subjected to long-term detention cannot be returned to their countries, often because of the difficulties of obtaining travel documents from countries

September 2013

of origin such as Iran, Algeria and Palestine. As a result, 57% of migrants leaving detention after a year or more are released back into the UK, rather than deported.<sup>5</sup> Recent independent research has found that £70 million per year is wasted on the long-term detention of migrants who are ultimately released.<sup>6</sup> This figure includes large pay-outs for unlawful detention, a rare phenomenon before 2009. Since then, the courts have repeatedly found long-term detention without prospect of deportation to be unlawful. Long-term detention has been even more catastrophic for migrants with serious pre-existing mental health conditions; the High Court has found on four occasions since 2011 that the prolonged detention of migrants who are experiencing psychological collapse breached their Article 3 rights against inhuman and degrading treatment.<sup>7</sup>

Only one crisis has shaken the UK's approach to immigration control in recent years, and it has unfortunately not generated much progress on alternatives. Sustained campaigning against the routine detention of children and families forced the government into piloting two half-hearted alternatives programmes at Millbank and Glasgow in 2007-08 and 2009-10. Both involved moving families into different accommodation, where they would be prepared for return. Neither succeeded in building trust with migrants; the families were at the end of the process, and the overriding objective was to persuade them to return. However, in 2010, under continued political pressure, the new government announced that it would end the detention of children for immigration purposes.

The subsequent Family Returns Process substantially reduces, but does not end, the detention of families, who are now held for short periods in conditions that do not resemble the prison model of detention centres. However, while refused families now have meetings with the UKBA to discuss their options, and an independent Panel considers returns options, there is little real dialogue or case management. Families are given

more information and time, and protracted detention is usually avoided, but the fundamental reasons why they might distrust the process go unaddressed. The Family Returns Process does, however, show that even the UK government can be persuaded to change direction – that detention can become accepted as a bad thing, at least for children – and could yet be a first step towards a more substantial change in culture in the treatment of families and ultimately migrants in general.

### The shift to engagement

Why has there been so little substantial progress on alternatives to detention in the UK? All of the British alternatives to detention to date, from bail and reporting to Glasgow and the Family Returns Process, operate at the end of the process: for migrants who have already been refused. They focus only on returns; all other migration outcomes are already excluded. As a result, they both manifest and perpetuate a total absence of trust between migrants and the UKBA, where asylum seekers and irregular migrants feel that their cases have not been carefully and fairly considered. NGOs and legal advisers largely agree.

The UK needs a systemic shift away from enforcement towards engagement with migrants. It is this shift that alternatives to detention can instigate and realise. The question is whether such a shift can be achieved without a precipitating crisis. Britain's child detention crisis was limited to children, and any resulting shift has so far also been limited to children. How can wider change be initiated without the will in government to make a genuinely fresh start?

In 2010, with an International Detention Coalition delegation, I visited a housing unit for families in Belgium.<sup>8</sup> The families were legally detained but actually lived a relatively normal life in a block of flats outside Brussels. A small team of returns 'coaches' (employees of the government authorities) worked in the flats every day with them. This was a clear example of a limited pilot project, with little investment or commitment from the authorities, within an overall context of

enforcement. Families were at the end of the process, and the purpose of the project was to persuade them to go home 'voluntarily'. We asked the coaches about their work with the families, and they told us that they tell the families to go home. But it became clear that what they actually did was very different. They went shopping with the families. They talked through their problems with them, and did what they could to assist. They found them lawyers, and even got their cases reopened and helped them to apply for leave to remain when the opportunity presented: unexpected elements of case management. As a result, there seemed to be a certain level of trust between the families and the coaches.

The suspension of the detention of families and the piloting of open housing units preceded a European Court of Human Rights ruling that Belgium's detention conditions were unsuitable for children. Three years later, further housing units have opened. Belgium has by no means an engagement-based migration system but the housing units have become established, generating considerable international interest and equally considerable government pride. The hope for alternatives may lie in similar small steps. If they can be shown to work, for governments as well as migrants, engagement approaches might catch on.

The learning from alternatives to detention shows clearly that support, legal advice and dialogue benefit migrants and improve case resolution for governments. Could initiatives be developed that build on the strengths of existing community-based service providers, which already help migrants to play more active and informed roles in the systems in which they find themselves? After all, talking to migrants about their problems and building trust are what NGOs do every day.

This is the aim of a new project of the Lutheran Immigration and Refugee Service and Presbyterian Disaster Assistance in the US.<sup>9</sup> Since 2012, LIRS has been coordinating a network of community projects that provide support to migrants released from

detention in a way that supports both their needs and their compliance with the requirements of release. The hope is both to get individuals out of detention and to gather evidence that undermines the case for detention. The similarities with the UK – a strong enforcement culture with an active civil society – mean that the learning should be valuable.

Restoring trust in migration systems requires more than NGO pilots. In the UK, distrust goes deep. Alongside improved communication there also need to be improvements in decision-making to ensure that migrants with other compelling fears of persecution or other strong reasons to stay are not forced into return – and whose circumstances make cooperation with return inconceivable.

Such a change in strategy today seems implausible but immigration control priorities and tactics have changed fast in recent years, so the actual should not be confused with the inevitable. The model of dialogue and engagement is better, on every level, than the current approach of detention and enforcement. There is an urgent need to gather more evidence for this, and to persuade governments of its merit.

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1. IDC, *Case management as an alternative to immigration detention: The Australian Experience*, 2009 <http://tinyurl.com/IDC-Australia2009>
2. See McKay pp25-7.
3. UK Border Agency, Asylum Data Tables Immigration Statistics April to June 2012, Vol 4, tables 11 and 13 <http://tinyurl.com/UKBA-stats-april-june-2012>
4. IDC, op cit, p35
5. UKBA, op cit, table dt.05
6. Matrix Evidence, *An economic analysis of alternatives to long-term detention*, January 2012 See <http://detentionaction.org.uk/timelimit/publications> for this and other publications.
7. <http://tinyurl.com/bhattmurphy-feb2013>
8. See Schockaert p53-5.
9. See Bremer et al pp51-2.