

Parliamentary Briefing (September 2023)

Ending the immigration detention of LGBTQI+ people

Around 70 countries worldwide still criminalise same-sex relations, some with the death penalty. LGBTQI+ people fleeing persecution leave their homes and families behind to seek safety in the UK, but are met with an increasingly hostile reception here and may face immigration detention.

Detention is inhumane and expensive, and LGBTQI+ people are not safe while detained. Indefinite detention takes a huge toll on a person's mental health, and cannot be justified when compassionate and effective alternatives exist. We are calling on the UK government to commit to:

- **End the immigration detention of LGBTQI+ people**
- **Implement a cumulative 28-day time limit on all immigration detention**
- **Accelerate the introduction of more compassionate programmes to support people in communities instead of detaining them**

What is immigration detention?

Immigration detention is the practice of locking up people who are subject to immigration control in custody, while they wait for permission to enter the UK or before they are deported or removed from the country. Unlike other European countries, there is no statutory time limit on immigration detention in the UK.

Many thousands are held in immigration detention each year – some for very lengthy periods – causing serious mental distress. However, the vast majority are ultimately released into the community rather than removed from the UK.¹ In the financial year 2021-22, the Home Office issued a record number of compensation payments for unlawful detention, paying out £12.7 million across 572 cases.²

LGBTQI+ people are not safe in immigration detention

It is widely recognised that LGBTQI+ people are at significant additional risk of harm in immigration detention. In their report *LGBTI persons In Immigration Detention*³, the International Detention Coalition states that “*LGBTI persons face heightened levels of harassment, discrimination, psychological abuse, physical and sexual violence by detention*

staff as well as other detainees. ... Almost universally, LGBTQI+ people in detention are in situations of extreme vulnerability."

Similarly the Association for the Prevention of Torture has found that "[b]ecause of intersecting factors stemming from both their migration status and their sexual orientation or gender identity, LGBTI persons held in immigration detention settings are particularly vulnerable to abuse."⁴

In its Detention Guidelines⁵, UNHCR warns that special measures may be needed to avoid exposing LGBTQI+ people to risks of violence and ill-treatment in detention, and that if their safety cannot be assured, then alternatives to detention should be considered.

In the UK context, Rainbow Migration and Stonewall's joint report *No Safe Refuge*⁶ found that LGBTQI+ people were routinely harassed and abused by other people held in detention, and discriminated against by staff who failed to keep them safe from harm.

"He was in the gallery and he called: 'Hey! Mr Gay, I love you! I want to f**k you.' I was so scared. I just went in my room. Here in detention it is the same as where I came from. I was so scared" - Bilal, from Pakistan.

A recent pilot study by the University of Brighton⁷ echoes many of the findings of *No Safe Refuge* and indicates that mistreatment of LGBTQI+ people in UK immigration detention remains an issue. Participants reported verbal homophobic abuse from staff, and failures by staff to keep them safe in the face of escalating violence from people they were held in locked rooms with.

"He spat on my face, yeah. And I had to report him as well but I'd already, yeah, they couldn't do anything tangible. He spat on my face for being a gay... He has been threatening me all the while but that day he decided to do it himself with that weapon" - Usman, from West Africa.

In the recent public inquiry into Brook House detention centre, one of the 19 incidents of inhuman and degrading treatment revealed involved a gay man. He was mocked and humiliated by staff, causing him to be bullied by others held in the centre. He told the inquiry that "*he did not feel detention was an environment where it was safe to be open about his sexuality*" and that "*he believed staff were hostile towards gay people*".⁸

For LGBTQI+ people seeking asylum who have experienced violence, harassment, torture and imprisonment in their countries of origin, these experiences in UK immigration detention can be re-traumatising and extremely damaging.

“I got flashbacks of everything I’ve been through in Africa. I’ve been free for two or three years and then here I am back in a cell” - Gasha, from Cameroon.

- **We are calling for an end to the immigration detention of LGBTQI+ people in recognition of the heightened risks they face when detained.**

This can be achieved by amending the Home Office’s ‘Guidance on Adults at Risk in Immigration Detention’ ([see page 6](#)).

Indefinite detention is severely damaging to mental health

The UK remains a significant outlier in Europe due to the lack of any overall statutory time limit on the government’s power to detain people under immigration powers.

In the mental health literature review commissioned for Stephen Shaw’s review of immigration detention, one of the main findings was that: *“Literature from across all the different bodies of work and jurisdictions consistently finds that the negative impact of detention on the mental health of detainees increases the longer detention persists.”*⁹

The Joint Committee on Human Rights has recommended a 28-day time limit on the basis that indefinite detention *“causes distress and anxiety and can trigger mental illness and exacerbate mental health conditions where they already exist. Moreover, the lack of a time limit on immigration detention reduces the incentive for the Home Office to progress cases promptly which would reduce both the impact on detainees, and detention costs.”*¹⁰

A limit of 28 days has also been supported by the Home Affairs Committee on the basis that this would accord with the Home Office’s stated intention to only maintain detention when removal is “imminent”.¹¹ A 28-day time limit has also been backed by numerous refugee and asylum organisations¹².

As well as limiting the damage caused by indefinite detention, a time limit would act as an additional safeguard for any LGBTQI+ person who slips through the net and for any reason does not access the protections of the Adults at Risk policy (when updated).

- **While detention remains a part of our immigration system, we are calling for a 28-day time limit on all immigration detention to limit the harm that it causes.**

This should be an upper limit – with people detained for the shortest time possible – and should be cumulative to prevent cycles of release and re-detention.

There are alternatives to detention

Immigration detention is inhumane and expensive¹³. Home Office policy states that it “must be used sparingly, and for the shortest period necessary”¹⁴, but in reality many thousands are detained every year only to be released back into the community again.¹⁵ This system destroys lives and tears families apart, while needlessly depriving people of their liberty and support from their communities. However, there are alternatives.

In 2018 as part of its response to Stephen Shaw’s review of immigration detention, the UK government announced a series of pilot schemes to offer support in the community to people who would otherwise be at risk of immigration detention.¹⁶

The first pilot – Action Access – supported women seeking asylum, most of whom were detained in Yarl’s Wood prior to joining the project. They were given holistic one-to-one support in the community, shared accommodation, professional legal counselling and help to meet subsistence needs. The second project – Refugee and Migrant Advice Service – supported people without immigration status who were liable to detention with a similar package of support, but without accommodation or subsistence payments.

Both projects were evaluated by the National Centre for Social Research (NatCen)¹⁷ and the findings have been summarised by UNHCR.¹⁸ There was clear evidence from both pilots that supporting people to navigate the asylum and immigration system in the community instead of detaining them:

- is better for their mental health and wellbeing
- costs less than detention, and
- does not affect compliance with Home Office requirements.

With viable alternatives available, holding people in indefinite detention at significant cost to both their mental health and public finances does not make sense.

- **We are calling for the accelerated introduction of more compassionate programmes to support people in communities instead of detaining them.**

Under new legislation many more LGBTQI+ people will be detained

We cannot be sure how many LGBTQI+ people are in detention as the government does not monitor this. However, every single LGBTQI+ person who is locked up in an environment where they are not safe is one too many.

In 2019 the Home Affairs Committee recommended that the Home Office monitor and publish statistics on the number of LGBTQI+ people it detains¹⁹. The government agreed that it “should consider publishing information about detained LGBTQI+ individuals”²⁰ but has not done so. The Independent Chief Inspector of Borders and Immigration (ICIBI) has also criticised this lack of data collection, noting that without such data “it is

hard to see how the Home Office is able to assess the quality of its decisions to detain or the impacts of detention on specific groups".²¹

On 25 July 2023, in response to a Freedom of Information request, the Home Office confirmed that at least 129 LGBTQI+ people had been held in the detention estate in 2022. The Home Office also confirmed that any disclosure of sexual orientation or gender identity to detention centre staff "is at the discretion of the individual"²², and we know that many LGBTQI+ people will try to hide their sexual orientation or gender identity in detention for their own safety. We can assume, therefore, that the true number of LGBTQI+ individuals detained in 2022 would have been higher.²³

When relevant provisions of the Illegal Migration Act come into force, there will be an exponential increase in the number of people detained and the length of their detention. It will make the detention of people (including those seeking asylum) who arrive irregularly in the UK a matter of routine, while stripping away the protections that are currently in place by preventing bail applications for the first 28 days of detention.

This will inevitably mean more LGBTQI+ people in detention, and for longer. To protect the safety and wellbeing of LGBTQI+ people who are seeking sanctuary in the UK and enable them to rebuild their lives, it is vital that our recommendations are enacted.

Conclusion and recommendations

The system of immigration detention in the UK has repeatedly been found to be harmful and inhumane. The recent Brook House Inquiry has confirmed many of the criticisms already levelled at the system, while also revealing shocking levels of abuse and failures of safeguarding.²⁴ At the same time, government-funded pilots in the UK have demonstrated that compassionate alternatives work. The use of detention should ultimately be phased out, and while it remains it must be significantly curtailed.

Any government that seeks to promote the rights and welfare of LGBTQI+ people in the UK must urgently:

- **End the immigration detention of LGBTQI+ people by including them in an expanded and improved Adults at Risk policy**
- **Implement a cumulative 28 day time limit on all immigration detention**
- **Accelerate the introduction of more compassionate programmes to support people in communities instead of detaining them**

Home Office Guidance on Adults at Risk in Immigration Detention

Everyone agrees that certain groups of people are at greater risk of harm than others in immigration detention. The Home Office's "Adults at Risk in Immigration Detention" guidance²⁵ currently recognises various groups as falling within this category, including trans and intersex people alongside others such as victims of torture, people with a serious physical disability and pregnant people. Given the evidence of LGBTQI-phobic bullying and abuse experienced within immigration detention, and the significant harm that this does to LGBTQI+ people who have fled persecution, we recommend that all LGBTQI+ people be recognised as being particularly vulnerable to harm in immigration detention under the guidance. This is in line with a recommendation from the Home Affairs Committee in 2019.²⁶

However, the Adults at Risk policy is currently falling short when it comes to protecting those it is intended to help. By categorising people according to the level of evidence of risk they can provide, the policy has increased the burden on vulnerable people to evidence the risk of harm they face. The policy also replaced the prior assumption that people at risk should not be detained except in "very exceptional circumstances" with a balancing exercise taking into account levels of evidence of risk and opposing "immigration control factors". This seriously undermines the protection that is supposed to be offered by the policy, and we know from recent Freedom Of Information requests (see page 5) that some trans people are still being detained despite being recognised as at risk.

We are calling for the Adults at Risk policy to include all LGBTQI+ people, and to be reviewed and simplified to ensure that those at increased risk of harm are correctly identified and diverted from detention.

We recommend that the three levels of evidence of risk be abolished and the presumption not to detain vulnerable individuals other than in very exceptional circumstances be reinstated. These recommendations are in line with those made by the Home Affairs Committee²⁷ and have been supported by the Helen Bamber Foundation²⁸, Medical Justice²⁹ and others.

The guidance can be amended by statutory instrument subject to the negative resolution procedure.³⁰

About Rainbow Migration

Rainbow Migration supports lesbian, gay, bisexual, trans, queer and intersex (LGBTQI+) people through the asylum and immigration system.

We lead the No Pride In Detention coalition of 20 organisations campaigning for an end to the detention of LGBTQI+ people in the UK.

¹ In the year ending September 2022, 20,446 people entered immigration detention. Of the people leaving detention that same year, 78% were bailed and 21% were returned. See: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/how-many-people-are-detained-or-returned>

² The Migration Observatory, *Immigration Detention in the UK*. Oxford, University of Oxford, 2 November 2023. Available at: <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk> (accessed 26 May 2023).

³ International Detention Coalition (2016) *LGBTI Persons in Immigration Detention: Position Paper*. Available at: https://idcoalition.org/wp-content/uploads/2016/06/LGBTI-Position_web_June-2016.pdf

⁴ Association for the Prevention of Torture (2018) *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Available at: https://www.apt.ch/sites/default/files/publications/apt_20181204_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf (see p.119)

⁵ UNHCR (2012) Detention Guidelines. Available at: <https://www.unhcr.org/media/unhcr-detention-guidelines> (see Guideline 9.7)

⁶ UK Lesbian and Gay Immigration Group* & Stonewall (2016) *No Safe Refuge: Experiences of LGBT asylum seekers in detention*. Available at: <https://www.rainbowmigration.org.uk/publications/no-safe-refuge> (* now known as Rainbow Migration)

⁷ Harvey, L. (2022) *LGBTQI+ People's Experiences of Immigration Detention: A Pilot Study*. Available at: <https://www.rainbowmigration.org.uk/publications/lgbtqi-peoples-experiences-of-immigration-detention-a-pilot-study>

⁸ House of Commons (2023) *The Brook House Inquiry Report: Volume 1* (HC 1789-I, 2023-24). Available at: <https://brookhouseinquiry.org.uk/main-page/> (See Volume 1, Section C.9)

⁹ Bosworth, M. (2016) *The impact of immigration detention on mental health: A literature review*. Available as Appendix 5 to Shaw, S. (2016) *Review into the Welfare in Detention of Vulnerable Persons*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf (see p.305). This review also references a UK study which found that “mental health deteriorated after merely 30 days” (p.318)

¹⁰ Joint Committee on Human Rights, *Immigration detention, Sixteenth Report of Session 2017-19*. Available at: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148407.htm> (see paragraph 68)

¹¹ Home Affairs Committee, *Immigration Detention, Fourteenth Report of Session 2017-19*. Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf> (see p.73, para 224)

¹² Including for example Detention Forum, which represents more than 50 organisations – see e.g. <https://detentionforum.org.uk/wp-content/uploads/2022/04/Briefing-paper-Time-Limit-final.pdf>

¹³ In Q1 2022 the average cost to hold one person in immigration detention was £107 per day. See: The Migration Observatory, *Immigration Detention in the UK*. Oxford, University of Oxford, 2 November 2023. Available at: <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk> (accessed 26 May 2023).

¹⁴ Home Office (2022) *Detention: General Instructions*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1114683/Detention_General_instructions.pdf

¹⁵ See note 1 above.

¹⁶ <https://www.gov.uk/government/news/new-pilot-schemes-to-support-migrants-at-risk-of-detention>

¹⁷ UNHCR (2021) *Evaluation of 'Action Access', an Alternatives to Detention Pilot*. Available at: <https://www.unhcr.org/uk/media/evaluation-action-access-alternatives-detention-pilot> and UNHCR (2023) *Evaluation of*

the Refugee and Migrant Advice Service's Alternatives to Detention Pilot. Available at:

<https://www.unhcr.org/media/evaluation-refugee-and-migrant-advice-service-s-alternative-detention-pilot>

¹⁸ UNHCR (2023) *Alternatives to Detention in the United Kingdom*. Available at:

<https://www.unhcr.org/uk/media/alternatives-detention-united-kingdom>

¹⁹ Home Affairs Committee, *Immigration Detention, Fourteenth Report of Session 2017–19*. Available at:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf> (see p.21, para 54)

²⁰ See <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/2602/260602.htm>

²¹ Independent Chief Inspector of Borders and Immigration (2020), *Annual Inspection of 'Adults at Risk in Immigration Detention' (2018-2019)*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881648/Annual_inspection_of_Adults_at_Risk_in_Immigration_Detention_2018-29_.pdf (see p.34, paras 5.98-5.99)

²² Quotes are from unpublished correspondence from the Home Office to Rainbow Migration dated 25 July 2023 re: FOI 77109. Copies available on request.

²³ The Home Office had previously confirmed that in respect of both Larne House and Manchester Short Term Holding Facilities, “[f]rom 2019 onwards LGBT numbers are not recorded, only numbers of transsexual residents”, further indicating that the real number could be higher. (Unpublished correspondence from the Home Office to Rainbow Migration dated 8 September 2022 re: FOI 71416. Copies available on request.)

²⁴ House of Commons (2023) *The Brook House Inquiry Report: Volume 1* (HC 1789-I, 2023-24). Available at:

<https://brookhouseinquiry.org.uk/main-page/> (See Volume 1, Executive Summary)

²⁵ Home Office (2021) *Immigration Act 2016: Guidance on Adults at Risk in Immigration Detention*. Available at:

<https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>

²⁶ Home Affairs Committee, *Immigration Detention, Fourteenth Report of Session 2017–19*. Available at:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf> (see p.21, para 54)

²⁷ Home Affairs Committee, *Immigration Detention, Fourteenth Report of Session 2017–19*. Available at:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf> (see p.42, para 119)

²⁸ Helen Bamber Foundation, Anti-Trafficking and Labour Exploitation Unit, Focus on Labour Exploitation & Medical Justice (2022) *Abuse by the system: Survivors of trafficking in immigration detention*. Available at:

https://www.helenbamber.org/sites/default/files/2022-10/Abuse%20by%20the%20system_survivors%20of%20trafficking%20in%20immigration%20detention_1.pdf (see p.29)

²⁹ Medical Justice (2018) *Putting Adults at Risk: A guide to understanding the Home Office's "Adults at Risk" policy and its history*. Available at: https://medicaljustice.org.uk/wp-content/uploads/2022/02/2018_Putting-Adults-At-Risk_Consice_Final.pdf (see p.5)

³⁰ Immigration Act 2016, Section 59. Available at: <https://www.legislation.gov.uk/ukpga/2016/19/section/59>