



# Written evidence to the Joint Select Committee on Human Rights: Immigration detention inquiry

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Submission by René Cassin

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## About René Cassin

1. René Cassin is a UK-based human rights non-governmental organisation that works to promote and protect universal human rights, drawing on Jewish experience and values. The Jewish people have been forced to seek asylum from persecution many times throughout their history. Due to this experience we believe that the Jewish people should encourage the protection of human rights for other groups including asylum seekers.
2. In our efforts to do so, we have been at the centre of mobilising interfaith campaigns to end indefinite detention in the UK; we have taken Rabbis to Harmondsworth Detention Centre and have engaged Jewish and non-Jewish communities through numerous public events. We are also a proud member of the *Detention Forum*, a network of organisations with the intended goal of challenging the UK's use of indefinite detention.

## Introduction

3. Our predominant concerns are threefold: the imprecise legal definition of the justified length of immigration detention, the conditions within immigration detention centres and the impact they have on vulnerable groups and individuals.
4. We believe the UK government has a legal and moral obligation to do more to enhance the protection of human rights for those in immigration detention, starting with the immediate introduction of a 28-day time limit, after which the detainee must be released on bail. This decision should be made by an independent first tier tribunal. An imposed review limit would focus the attention of the Home Office towards greater efficiency, and ultimately lead to a more humane immigration system.
5. Calls for a time limit come from a wide array of influential rights organisations including the UN Committee Against Torture, the UN Human Rights Committee, the Equality and Human Rights Commission, HM Inspector of Prisons, the Red Cross and the Joint Inquiry by the All Party Parliamentary Group on Refugees and Migration.
6. A limit as of law has been shown to work effectively in places that have incorporated limits and basic rights through the EU Return Directive, and even where the Directive is not imposed, such as in Ireland, a 21-day immigration detention limit is practiced. Should the UK wish to remain at the forefront of championing human rights legislation, the UK government should also introduce a time-limit on immigration detention.

## How the current system infringes human rights

7. The current legal requirements for lawful immigration detention are that a deportee must only be detained for a period of time that is reasonable in all circumstances. From there, the Secretary of State must act with reasonable diligence and expedition to effect removal within a reasonable period of time.<sup>1</sup> These principles have previously led the government to argue time limits on immigration detention already exist, with detained migrants generally being held for around two months, and only a fifth held for a longer period.<sup>2</sup>
8. However, we believe the extensive flexibility provided by the lack of a statutory limit has led the UK to neglect many procedural safeguards for detainees under its auspices. This is particularly the case for the 2-3% of detainees that are currently held for up to 6 to 12 months, and the additional 1% that are held for more than a year,<sup>3</sup> whom have limited recourse to legal action and no clarity over their position under current legislation.
9. There is a growing body of evidence as to the damage this policy causes. In research by Medical Justice in 2015, 83% of detainees, between the years 2000 and 2015, reported they experienced a negative impact on their mental and physical health as a result of their experience within detention. 35 deaths were subsequently recorded since 2000. The number of those that have died may be higher as there is no specified recording of the numbers.<sup>4</sup>
10. The first Shaw report, commissioned by the Home Office and published in 2016, revealed further breaches of safeguards. It reported that current policy does not help protect the most vulnerable. For example, a culture of disbelief has been found among different immigration detention centres' staff, whereby detainees' symptoms or health complaints were viewed with suspicion.<sup>5</sup> In several cases, detainees in urgent need of assessment were not seeing a specialist for months on end.<sup>6</sup>
11. The Shaw Report also states that in 2014, the Helen Bamber Foundation found that there is an extremely high propensity towards individuals within detention centres

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<sup>1</sup> These are known as the Hardial Singh principles, as held in *R (on the application of Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB).

<sup>2</sup> <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

<sup>3</sup> <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

<sup>4</sup> [http://www.medicaljustice.org.uk/wp-content/uploads/2016/09/MJ\\_death\\_in\\_immigration\\_detention\\_FINAL\\_WEB-1.pdf](http://www.medicaljustice.org.uk/wp-content/uploads/2016/09/MJ_death_in_immigration_detention_FINAL_WEB-1.pdf)

<sup>5</sup> See page 167, 7.53 of the Report

<sup>6</sup> See page 168, 7.54 of the Report

towards suffering from Post-Traumatic Stress Disorder. Detainees entering the current system had experienced a total of 2,523 human rights violations from 790 referrals, including by way of example, “beatings, cuttings, burns”<sup>7</sup>. Detention centres are simply ill-equipped to properly treat the subsequent symptoms of associated trauma from these historical experiences, which can have severe exacerbating effects on those individuals.

12. All this suggests the Home Office’s current practice drastically conflicts with the government’s commitment to human rights legislation and the underlying legal justification of immigration detention- that it is to be used only in *exceptional* circumstances. Instead, it reveals a picture that immigration detention is being used as a “catch-all” measure, with little regard to the actual principles of the law and the wellbeing of detainees.

### **Economic incentive**

13. In addition to the human rights imperative for reform, there is an important economic argument to be made for an effective 28 days’ time limit. The expense of current policy is overwhelming. £523.5 million of public funds was spent on detaining people for immigration reasons between April 2013 and March 2017 alone<sup>8</sup>. Over the past five years the Home Office has paid over £21 million in compensation to migrants that have been unlawfully detained<sup>9</sup>. In light of this, as noted in Stephen Shaw’s report, it is particularly surprising the Home Office makes “so little use”<sup>10</sup> of alternatives to detention, such as electronic monitoring.

### **Human rights after Brexit**

14. The government is intent on keeping British law within the scope of the European Convention on Human Rights after Brexit<sup>11</sup>. It is therefore important to consider what violations the government may be performing through its current detention policy.
15. We believe the use of immigration detention in its current form is wholly incompatible with Article 5 of the European Convention on Human Rights and Article

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<sup>7</sup> See page 89 of the Shaw Report.

<sup>8</sup> <https://www.independent.co.uk/news/uk/home-news/uk-immigration-detention-centre-cost-taxpayer-brexit-eu-migrants-a8195251.html>

<sup>9</sup> <https://www.theguardian.com/uk-news/2018/jun/28/wrongful-detention-cost-21m-as-immigration-staff-chased-bonuses>

<sup>10</sup> See Foreword of the Report

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/725288/The\\_future\\_relationship\\_between\\_the\\_United\\_Kingdom\\_and\\_the\\_European\\_Union.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf)

9 of the International Covenant on Civil and Political rights. We wish to remind the Select Committee that the power to detain any individual must be exercised “reasonably and for the purpose of facilitating deportation.”<sup>12</sup> Yet, the longer the period of detention, the less likely its purpose is to facilitate deportation and the more likely it is that the UK’s international obligations will be breached.

16. Current practice also challenges the UK’s compliance with Article 3’s prohibition on inhuman or degrading treatment. One (Jewish) refugee that we interviewed told us how his first week in detention was spent in solitary confinement, where he was not allowed to contact anyone, nor even to shower. He claims he witnessed guards violently assault detainees. On a visit to hospital, he was handcuffed and had his legs tied together.<sup>13</sup> He is grateful to the UK for eventually giving him sanctuary, but it took thirteen years for him to be believed and only happened because a volunteer visitor found him an independent solicitor, and a Rabbi, who insisted that the evidence in his case be properly examined.
17. Alternatives to Detention are a “humane and person-centred approach”<sup>14</sup> to immigration policy. There are many different workable alternatives, such as the Community Assessment and Placement (CAP) Model developed by the International Detention Coalition<sup>15</sup>. In the UK, *Detention Action* has adapted international models “to show that alternatives can work even for the most complex situations, those of ex-offenders with barriers to return”<sup>16</sup>. Through their Community Support Project, *Detention Action* has shown that “one-to-one, person-centred support can help ex-offenders facing deportation to stabilise their lives in the community, avoiding re-offending or absconding while their cases are resolved”<sup>17</sup>.
18. We welcome the recent announcement that an ‘Alternatives to Detention’ scheme will be designed by the UK Home Office and the UN Refugee Agency for women currently detained in Yarl’s Wood and hope that this model will be expanded to include the thousands of others who are also locked up for immigration purposes elsewhere.

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<sup>12</sup> R (Lumba and Mighty) v SSHD 2011 UKSC 12

<sup>13</sup> <http://www.renecassin.org/they-are-playing-with-peoples-lives-treatment-of-jewish-refugee-highlights-the-uks-shameful-policy-of-indefinite-detention/>

<sup>14</sup> Detention Forum (2018) [http://www.detentionforum.org.uk/wp-content/uploads/2018/07/AlternativestoDetention\\_A4\\_4.pdf](http://www.detentionforum.org.uk/wp-content/uploads/2018/07/AlternativestoDetention_A4_4.pdf)

<sup>15</sup> International Detention coalition <https://idcoalition.org/cap/>

<sup>16</sup> Detention Action, ‘Without Detention’, page 4 <http://detentionaction.org.uk/wordpress/wp-content/uploads/2016/09/Without-Detention.pdf>

<sup>17</sup> *ibid*

## **The Way Forward**

19. Migration and seeking asylum are central to the Jewish experience. Granting refuge to those who seek shelter is a core value within the Jewish tradition and one that the community remains committed to. Post-Brexit, the UK has a unique opportunity to set the tone when it comes to progressing human rights. On this basis, we are proud to promote a 28-day limit for immigration detention, and an increase in the use of alternatives to detention. These policies would help to streamline the current system of expedition and prevent the government from overreliance on the more draconian elements of flexibility available under the current law, and would invaluablely contribute to protecting that individual's dignity, and we, therefore, encourage the government to adopt this notion.