COVID-19 Pandemic and Immigration Detention: A Case for the Abolition of the Latter

1. Introduction

The UK immigration 'detention estate' comprises immigration removal centres (IRCs), short-term holding facilities and pre-departure accommodation.[1] Unlike most European countries, the United Kingdom (UK) has not legislated a statutory upper time limit as to how long an individual can be held in immigration detention.[2] In fact, according to some reports, the UK detains three times more individuals in immigration detention as compared to its European counterparts.[3]

The statutory powers to detain individuals can be found in different pieces of immigration legislation in the UK. The power to detain individuals in immigration detention centres was created by Immigration Act 1971.[4] As per this Act, there is a presumption against the use of immigration detention, however, a person can be detained when his/her claim is being examined, pending removal or in cases concerning deportation.[5] Individuals liable to deportation (known as foreign national offenders), can also be detained under the UK Borders Act 2007.[6] Further, under the Nationality, Immigration and Asylum Act 2002, the Home Secretary has a free standing right to detain individuals where he/she is due to set removal directions.[7]

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[1] House of Commons, *Immigration Detention in the UK: AN Overview* (12 September 2018: Number 7294) 3, available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://researchbriefings.files.parliament.uk/documents/CBP-7294/CBP-7294.pdf>

[2] All Party Parliamentary Group on Refugees, All Party Parliamentary Group on Migration. *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom: A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration*. (2016) Available at: <https://detention.org.uk/wp-content/uploads/2017/08/immigration-detention-inquiry-report.pdf>

[3] AVID, 'What is immigration detention?' (2019) Available at: <http://www.aviddetention.org.uk/immigration-detention/what-immigration-detention>

[4] See Immigration Act 1971, of Sch 2, paras 16.1-2; Nationality Immigration and Asylum Act 2002, s.62(1)-(2)

[5] See Immigration Act 1971, of Sch 2, paras 16.1-2

[6] UK Borders Act 2007, s.36; Immigration Act 1971, Sch 2, para 2

[7] Nationality, Immigration and Asylum Act 2002, s.62

Prior to the end of the Brexit transition period, the UK applied the Common European Asylum System,[8] which included the Reception Conditions Directive that regulates the detention of asylum seekers and provides for the use of alternatives to detention (ATDs), which will be discussed below.[9] This Directive was transposed into the UK framework firstly through the Detention Centre Rules 2001 which governed the application of immigration detention.[10] These rules emphasised the importance of holding individuals in detention in a dignified way.[11]

Secondly, the Directive has been transposed into the UK framework by the Home Office through the Enforcement Instructions Guidance.[12] The immigration detention policy could also be found in Chapter 55 of the Enforcement Instructions Guidance.[13] The purpose of detention is to maintain effective control according to this policy.[14] More specifically, detention is most usually appropriate: firstly, to effect removal; secondly to establish a person's identity or basis of claim; or where there is reason to believe that the person would fail to comply with conditions attached to a grant of immigration bail.[15] Thirdly, detention must be used sparingly, and last for the shortest period possible.[16] Fourthly, detention can be lawfully exercised where a realistic prospect of removal within a reasonable period exists.[17] Therefore, the pre-removal detention set up contains a presumption in favour of immigration bail, and the Home Office is encouraged to make use of ATDs wherever possible.[18]

For detention to be lawful, it must not just fulfil the criteria as set out in the statutory powers/guidance above, but it must also accord also with domestic and the European Court of Human Rights (ECtHR) case-law.[19] At the time of writing in February 2023, the UK is still

[8] The Common European Asylum System was established by the European Union in 1999 and it detailed a comprehensive approach to migration and asylum policy based on three main pillars; efficient asylum and return procedures, solidarity and fair share of responsibility and strengthened partnerships with third countries, see Migration and Home Affairs, 'Common European Asylum System', Available at: <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en

[9] https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/reception-conditions_en> Date Accessed: 23 October 2022

[10] The Detention Centre Rules 2001, SI 2001/238

[11] ibid

[12] Home Office, 'Enforcement Instructions and Guidance: Chapter 55 Index', Available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/442253/Chapter55_v19_1.pdf

[13] ibid

[14] ibid, chapter 55.1.1

[15] ibid, chapter 55.6.3

[16] ibid

[17] ibid

[18] ibid

[19] House of Commons Library, *Immigration Detention in the UK: An Overview* (Cmd 7294, 2018) para 1.2

party to the European Convention on Human Rights (ECHR). Under Article 5(1)(f) of the ECHR, a person may be lawfully detained to prevent them from unlawfully entering a country and/or to deport or remove them from that country. The main case in relation to the above-mentioned Acts/Article is the *Hardial Singh* case.[20] The State's powers to detain individuals for immigration purposes as set out by the *Hardial Singh* principles apply where the immigration authorities are seeking to remove a person from the UK.[21] According to these principles, if it becomes apparent that the Home Secretary will not be able to effect deportation within a reasonable period, then he/she should not seek to exercise the power of detention against the individual in question.[22]

Criticisms have been levelled towards the UK's immigration detention system despite the presence of extensive safeguards. The Detention Forum which comprises a network of 38 organisations that campaign against the use of immigration detention in the UK argued that detention is harmful, expensive and robs people of their dignity.[23] They further argued against the use of indefinite detention in the UK and its widespread use against vulnerable individuals.[24] They noted that there was an absence of robust judicial oversight of detention, and that insufficient attention was awarded to the usage of ATDs.[25] Other criticism concerned the lack of transparency about the use of detention and conditions in IRCs; the treatment of detainees; inadequate access to legal advice and poor healthcare facilities.[26]

Thus, there have been several calls for reform calling for the introduction of a maximum time limit on the length of detention; second, for there to be automatic judicial oversight of decisions to detain; third, and most importantly, that alternatives to immigration detention such as community-based case management approaches ought to be given serious attention and the final suggestion was that the UK would benefit from learning from international practice(s).[27]

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[20] *R v Governor of Durham Prison, Ex parte Singh* [1984] 1 WLR 704-this case sets out the principles that are applied in judicial review applications challenging the legality of immigration detention.
[21] ibid
[22] ibid, para 706
[23] House of Commons Library (n 19) para 3.1
[24] ibid
[25] ibid
[26] ibid
[27] Ibid-much of this criticism is echoed by international bodies also such as the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, the United Nations Committee Against Torture, the United Nations High Commissioner for Refugees, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings and the Equality and Human Rights Commission; see The Detention Forum, 'UK Detention in Focus', Available at: <https://detentionforum.org.uk/resources/detention-facts/uk-detention-in-focus/>

Despite repeated calls for reform, the law regulating detention remained unchanged throughout the COVID-19 pandemic, although, detention practices shifted remarkably in response to it. This article argues that detainees were highly dependent on the actions of the Home Office during the COVID-19 pandemic. We were all vulnerable to contracting COVID-19, but not more than the detainees themselves due to the enclosed settings they were residing in within immigration detention centres that provided an ideal fertile ground for the rapid spread of COVID-19. As a result of the COVID-19 pandemic, the Home Office limited the use of immigration detention throughout the UK for a short period of time, as did some of the countries within the European Union (EU).

I firstly argue that the reduction in the use of immigration detention during the pandemic carried no negative consequences for the State. Thus, ATDs should be adopted as the rate of absconding was at its lowest point in 2020 (when most detainees were released due to the pandemic), as compared to 2019, 2021 and 2022. I further argue that ATDs should be used against individuals whose detention would be lawful, but not necessary or proportionate. Thus, if detention is lawful in a specific case but not necessary and proportionate, then the individual should be released from detention and placed under ATD. ATDs are restrictive even in they take more lenient forms.[28] Thus, their use should be kept in check. The third option is to refrain from detaining and placing individuals in ATDs if they do not meet any grounds for detention such as lacking the propensity to abscond, being removed quickly or posing a harm to the public.

The reaction by the Home Office and the courts to the COVID-19 pandemic in relation to the *Hardial Singh* principles (discussed above) and the 'Adults at Risk' (AAR) policy that stipulates that vulnerable individuals should not be placed in detention (discussed in detail below) was somewhat of a mixed bag. Thus, this article will conclude by arguing that the COVID-19 pandemic revealed the extent of the flaws of the current immigration detention system and argue for its abolition.

This begs the question of what one can learn from the use (and disuse) of immigration detention during the pandemic. In order to address this question, the article will firstly examine the Home Office's response to the COVID-19 pandemic vis-à-vis immigration

[28] Similar arguments have been raised by the Joint Committee on Human Rights-see Joint Select Committee on Human Rights, The Government's Response to COVID-19: Human Rights Implications (21 September 2020) 5, Available at: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/265/26508.htm#footnote-110-backlink>

detention. Then it will assess the challenges that were posed to the legality of immigration detention during the pandemic in the UK and it will consider the position of those that remained detained, comparing it to that of prisoners. It then considers the EU's policy on detention and their response to the COVID-19 pandemic. Finally, it examines the usage of ATDs, paying particular attention to community-based initiatives.

2. The Covid-19 Outbreak and Immigration Detention in the UK

On 11 March 2020, the World Health Organisation declared that there was a COVID-19 outbreak in the world.[29] The UK implemented its first national lockdown on 23 March 2020.[30] Soon after, it was reported that a person had contracted COVID-19 in immigration detention with fears that the immigration estate offered an ideal breeding ground for its spread.[31]

The Home Office released guidance for IRCs during the height of the COVID-19 pandemic,[32] to manage the risk of those whose health could deteriorate in detention.[33] As part of the initial healthcare screening check, the 'AAR' policy is considered.[34] The 'AAR' policy represents a different approach to detention. Instead of the principle of detaining vulnerable individuals only in 'very exceptional circumstances' (as was case previously under chapter 55 of the EIG discussed above), the 'AAR' policy is based on balancing evidence of risk against immigration considerations, so that individuals are detained only when the latter outweigh the former.[35] Individuals are categorised as being 'AAR' if they suffer from physical or mental

[29] World Health Organisation, 'Coronavirus Disease (COVID-19) Pandemic', <https://www.who.int/europe/emergencies/situations/covid-19>
[30] Ian Sample, 'COVID Timeline: The Weeks Leading up to the First UK Lockdown', *The Guardian*, (London, 12 October 2021), Available at <https://www.theguardian.com/world/2021/oct/12/covid-timeline-the-weeks-leading-up-to-first-uk-lockdown>.
[31] Rachel Harger, 'Immigration Detention and the Politics of COVID-19', *Red Pepper* (2 June 2020) Available at <https://www.redpepper.org.uk/immigration-detention-and-the-politics-of-covid-19/>
[32] Home Office, 'Guidance for Immigration Removal Centres (IRCs), Residential Short-Term Holding Facilities (RSTHFs) and Escorts During the Pandemic' (1 April 2022, Version 9), Available at, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066002/Detention-and-escorting-services-guidance-during-covid-19-V9.pdf>
[33] ibid 4
[34] Home Office, 'Adults at Risk in Immigration Detention' (Version 7, 8 March 2021) Available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031900/Adults_at_risk_in_immigration_detention.pdf>
[35] Secretary of State for the Home Department, *Assessment of Government Progress in Implementing the Report on the Welfare in Detention of Vulnerable Persons: A Follow-up Report to the Home Office by Stephen Shaw* (Cm 9961, 2018) Available at <

health difficulties, which include victims of, torture, gender based violence, human trafficking or modern slavery; or those that are 70 years old or over, transsexual/intersexual individuals or those that are pregnant.[36] The 'AAR' policy consists of three evidence levels that are crucial to its operation.[37] For level 1, the detainee or his/her legal representative makes a declaration of vulnerability; to be assessed as being a level 2 'AAR', professional evidence corroborates that the detainee is vulnerable and to be assessed as being a level 3 'AAR', in addition to meeting the above-mentioned criteria, it is confirmed (by a medical expert) that detention is likely to cause harm to the vulnerable detainee.[38] This policy was introduced in September 2016 following Mr Shaw's first review into the use immigration detention system.[39] Mr Shaw criticised the 'AAR' policy both as to its principles and its practical implications as it has weakened the safeguards against inappropriate detention of vulnerable people, enabling 'immigration factors' to outweigh vulnerability and risk.[40] According to a manager of an IRC, this policy has made no difference to the number of vulnerable detainees (in some cases, the numbers had actually increased).[41] Bail for Immigration Detainees,[42] informed Mr Shaw that vulnerable detainees were released from detention following a successful bail hearing, rather than through the application of the 'AAR' policy.[43]

Many of these concerns were also echoed by the Independent Chief Inspector of Borders and Immigration (ICIBI). The ICIBI acknowledged that although this policy had offered some degree of protection to vulnerable detainees, its effectiveness was negatively impacted by its flaws and the way in which it was implemented by staff.[44] The ICIBI's report noted that there was a culture of scepticism in the Home Office towards claims of vulnerability that were

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf> para 2.103

[36] Immigration Act 2016, s.59

[37] Home Office (n 34) 13

[38] ibid, 13-14

[39] Immigration Act 2016, s.59

[40] Secretary of State for the Home Department (n 35) para 1.24

[41] ibid 15

[42] A charity that works with detainees.

[43] Secretary of State for the Home Department (n 35) para 2.116

[44] ICIBI, *Annual Inspection of Adults at Risk in Immigration Detention*, April 2020, Available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

made by immigration detainees.[45] According to the Home Office, a disproportionate number of Medico-Legal Reports were being relied upon, amounting to an abuse of process; however, external stakeholders rejected this proposition, arguing that this reflected 'the failures of the Home Office's internal mechanisms for identifying vulnerabilities'.[46]

Thus, a number of legal challenges were triggered partly due to the way the 'AAR' policy was being applied in immigration detention during the height of the pandemic. There were two further practical difficulties associated with the pandemic; namely, the 'congregate' settings of detention centres, and removals were halted (and were thus no longer reasonably imminent) for a period of time as a result of the international travel bans that were in place.

Initially, the Home Office was reluctant to release detainees even though there should have been greater scrutiny of the restrictions on liberty in light of the pandemic, as argued in the case of *R (on the application of Dolan and Others) v Secretary of State for the Health and Social Care and Another*.[47] Detention Action,[48] thus lodged a legal challenge against the Secretary of State for the Home Department (SSHD),[49] in the Administrative Court. They submitted an urgent interim relief application to order the release of 736 detainees whose removal was not imminent.[50] A number of additional grounds were raised as part of this challenge. The first ground concerned individuals that were identified as being at an increased risk of harm owing to COVID-19.[51] It was argued that their continued detention was subject to challenge on the grounds that it would be in breach of the 'AAR' policy and give rise to a real risk of ill-treatment contrary to Articles 2 (right to life) and 3 (prohibition from torture and inhumane treatment) of the ECHR.[52] Second, it was argued that the SSHD should release detainees whose removal was not imminent due to the travel bans that were in place at that time that prevented them from being removed/deported;[53] and that those released should be provided with accommodation within 48 hours.[54] In support of these grounds, Detention Action relied on three reports that were prepared by Professor Coker (a Professor

[45] Electronic Immigration Network, 'ICIBI and Immigration Published Inspection Report on Adults at Risk in Immigration', 4 May 2020, Available at <https://www.ein.org.uk/news/independent-chief-inspector-borders-and-immigration-publishes-inspection-report-adults-risk>
[46] ibid
[47] [2020] EWCA Civ 1605
[48] A charity that promotes the welfare of detainees
[49] *R (on the application of Detention Action) v SSHD* [2020] EWHC 732 (Admin)
[50] ibid at 5
[51] ibid at 7
[52] ibid at 21
[53] ibid at 5
[54] ibid at 2

of Public Health) that suggested that 60 per cent of the prison and detention population could become infected by COVID-19 due to overcrowding, poor ventilation and poor hygiene levels; these reports were further corroborated by a medical doctor, Dr Selina Rajan.[55]

However, Mr Justice Swift refused to grant the interim relief application because he argued that the issues within the reports were not serious enough to invoke Articles 2 and 3 of the ECHR.[56] He further stipulated that the SSHD had taken adequate measures to minimise the risk of the infection being spread in detention as she was seeking to reduce the number of detainees.[57] Those that satisfied the 'AAR'/increased risk group should have had their detention reviewed in light of whether they were due to be removed to a country that was not accepting returns and whether their continued detention satisfied the *Hardial Singh* principles.[58] In relation to these principles, the Court stressed that even if removal was impossible then a process was in place for the SSHD to review detention within a short period of time.[59] The decision of the Court left much to be desired. Firstly, with reference to the *Hardial Singh* principles, the Court should have instructed the SSHD on the outcome of the reviews. Instead, the Court granted the SSHD time to review individuals' detention before she was deemed to have breached her duties.[60] Contrary to the *Hardial Singh* principles, this ruling failed to indicate whether the detainees should have been released after the necessary time had elapsed. Further, this ruling gives very little inkling in reference to how the *Hardial Singh* principles ought to be decided prospectively. It was based on the proposition that the timescale to decipher whether the removal should proceed had not yet elapsed, in contravention of the *Hardial Singh* principles. Nevertheless, the risk to health stemming from the COVID-19 pandemic within 'congregate' setting in detention should have had a bearing on the assessment of whether removal within a reasonable timescale remained possible.[61] However, the Court warned that cases must be brought sensibly and proportionally, terming these as 'golden rules' that had to be adhered to.[62] The Court here should have paid greater attention to the operation of the 'AAR' policy and the *Hardial Singh* principles, especially in light of a public health emergency. There were exceptional circumstances arising from an

[55] ibid at 22-23
[56] ibid at 24
[57] ibid
[58] ibid at 10-11
[59] ibid at 19
[60] ibid at 19
[61] ibid at 25
[62] ibid at 32

outbreak of a highly contagious and deadly virus that could spread easily in enclosed facilities like immigration detention centres.

Similarly, in the case of *R (Samson Bello) v Secretary of State for the Home Department*,[63] despite the existence of the *Hardial Singh* principles and the 'AAR' policy, the High Court refused to release a detainee who was at high risk of developing complications due to COVID-19 in immigration detention.[64] There were also travel restrictions in place at that time.[65] In addition, Mr Bello was assessed as meeting the level 2 criteria of the 'AAR' policy.[66] Once again, the Home Office was deviating away from the *Hardial Singh* principles and its obligations as set out in the 'AAR' policy. The flaws identified in the 'AAR' policy by Mr Shaw and ICIBI were clearly prevalent in both these cases as the courts were not paying adequate attention to this policy, even in a public health emergency which called for there to be a greater scrutiny of the restrictions that were placed on the liberty of individuals.

Therefore, clearly at the beginning of the pandemic, the steps taken to protect vulnerable individuals in detention from COVID-19 were insufficient and possibly in breach of the 'AAR' policy. Further, as reiterated in this article, the pandemic impacted on the Home Office's ability to remove individuals within a reasonable timescale. Therefore, as a result of this uncertainty, delay and the international travel bans that were in place, the Home Office and the courts were possibly failing to adhere to the *Hardial Singh* principles by detaining, or allowing for the continued detention of individuals. In light of the pandemic, one would think that the *Hardial Singh* principle of reasonableness would be examined through a new lens. This was because public health imperatives should cast a new light on what could be expected of the SSHD as far as non-dilatory action was concerned.

Nevertheless, the judiciary adhered to the *Hardial Singh* principles and the 'AAR' policy in some cases. In *R (on the application of Zalys) v Secretary of State for the Home Department*,[67] the claimant challenged the SSHD's decision to detain him. He was not only awaiting the outcome of his deportation appeal, but he was unable to be deported to Lithuania in light of the travel restrictions that were in place at that time.[68] He also had multiple health problems and detention was likely to have a negative impact on his mental and physical

[63] [2020] EWHC 950 (Admin)
[64] ibid at 3, 5
[65] ibid
[66] ibid
[67] [2020] 4 WLUK 86
[68] ibid at 6

wellbeing.[69] Thus, he was considered as being a level 3 'AAR'.[70] In view of the risks posed as a result of his continued detention and the impossibility of his removal, the judge granted his judicial review application.[71]

From 25 April 2020, the number of countries that had travel bans in place had increased to 130.[72] These issues were discussed in the case of *R (Abulbakr) v Secretary of State for the Home Department,*[73] in which the High Court awarded £17,500 in compensation for unlawfully detaining an individual for 40 days. This is a high figure given the length of detention. However, the courts started to take note of the unhygienic conditions in detention, detainees' vulnerability to contracting COVID-19 in light of the 'AAR' policy, the Home Office's inability to remove detainees as well as the *Hardial Singh* principles.

Therefore, following the legal challenges, the Home Office released 1000 detainees between 16 March and 21 April 2020, leaving just 368 individuals in immigration detention, marking the lowest level in 10 years.[74] The Home Office confirmed that each case would be considered on its merits, however, its priority would be to detain the most serious foreign national offenders.[75] At the start of May 2020, there were 313 people detained in the detention estate – 97 per cent of whom were foreign national offenders. This compared to 1,278 at the end of December 2019 and 555 at the end of March 2020.[76] The Home Office also started to realise that the pandemic called for greater scrutiny of restrictions which explains it change in stance given the exceptional circumstances that existed at that time.

Furthermore, Bail for Immigration Detainees,[77] provided legal representation to 109 immigration detainees between 23 March and 30 June 2020, enjoying a success rate of 94 per

[69] ibid at 27, 32, 33, 36, 42, 49
[70] ibid
[71] ibid at 51-53
[72] Sharmila Devi, 'Travel Restrictions Hampering COVID-19 Response' (2020), 395 (10233), *The Lancet*, 1331-1332
[73] [2022] EWHC 1183 (Admin); [2020] EWHC 3905 (Admin)
[74] May Bulman, '"I Don't Know why I am Still Here": Hundreds Held for Deportation Despite Coronavirus Ban', *The Independent* (London, 20 May 2020)
[75] Diane Taylor, 'Home Office Released 300 from Detention Centres Amid COVID-19 Pandemic', *The Guardian* (London, 21 March 2020) https://www.theguardian.com/uk-news/2020/mar/21/home-office-releases-300-from-detention-centres-amid-covid-19-pandemic
[76] Home Office, Statistics Relating to COVID-19 and Immigration System, May 2020, (28 May 2020), 10, Available at < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887808/statistics-relating-to-covid-19-and-the-immigration-system-may-2020.pdf>
[77] A charity that assists detainees

cent.[78] There were 70 per cent fewer migrants in immigration detention in June 2020 as compared to December 2019.[79] This substantial release of immigration detainees demonstrates that their detention was not necessary at all, given the dangers posed by detaining individuals in a public health emergency, in addition to the fact that the detainees faced no reasonable prospect of being due removed owing to the international travel bans that were in place at that time. Therefore, one can question whether their detention would have been necessary even in the absence of the COVID-19 pandemic given that removal proceedings are usually protracted. The control of immigration in the UK could indeed function without widespread, prolonged and indefinite detention.[80]

Additionally, following the above-mentioned legal challenges, the Home Office announced the temporary suspension of reporting as a condition of immigration bail/temporary release (forms of ATD) due to COVID-19.[81] The Home Office maintained telephone contact with some individuals not just during the pandemic but before then also.[82] Importantly, the number of absconders did not increase according to the Home Office's response to my freedom of information request. Indeed, just 1.9 per cent of individuals absconded in 2020, compared with 3.14 per cent in 2019, 3.75 per cent in 2021 and 4 per cent in 2022.[83] Therefore, releasing a mass number of immigration detainees does not result in an increase in the rate of absconding; if anything, it decreases it. Thus, the Home Office should pay serious consideration to utilising ATDs for those whose detention is lawful but nor proportionate and necessary. It should refrain from detaining those that do not fulfil any ground of detention (as

[78] Bail for Immigration Detainees, 'Research Paper: Immigration Bail Hearings during the COVID-19 Pandemic' (December 2020), 2, Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fhubble-live-assets.s3.amazonaws.com%2Fbiduk%2Fredactor2_assets%2Ffiles%2F1263%2F201214_v6_Immigration_bail_monitoring.pdf&clen=935875&chunk=true>

[79] Home Office, 'National Statistics: How Many People are Detained or Returned' (24 September 2020) Available at <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2020/how-many-people-are-detained-or-returned>

[80] However, the Home Office has started to make use of widespread detention once again now that the pandemic was slightly under control, even though there was no evidence to suggest that the Home Office was losing track of those detainees that were released because of the COVID-19 pandemic. For example, in 2021, 24,497 people were placed in immigration detention which is 65 per cent higher than the previous year. So, the number of people that are now entering detention are the same as the pre-COVID period era-see, Home Office, 'National Statistics: How Many People are Detained or Returned' (3 March 2022), Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2021/how-many-people-are-detained-or-returned>

[81] The Migration Observatory, 'Briefing Immigration Detention in the UK', 16 September 2021, 2, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://migrationobservatory.ox.ac.uk/wp-content/uploads/2020/05/Briefing-Immigration-Detention-in-the-UK.pdf>

[82] Letter from Immigration Enforcement to Ms A Riaz (dated 27 January 2023)-formal telephone reporting did not commence until May 2022, therefore, the Home Office was unable to provide the data requested.

[83] Letters from Immigration Enforcement to Ms A Riaz (dated 12 December 2022 and 27 January 2023).

above) because releasing a substantial number of detainees does not carry any negative consequences (from the statistics above).

As some individuals remained in detention, it would be worth exploring how they were treated. They encountered several challenges; firstly, legal visits to detention centres were halted, therefore, they could only access legal advice through a telephone service/video conferencing.[84] It was arguably difficult for practitioners to assess the merits of cases without face-to-face appointments as they may not have been able to examine detainees' documents properly.[85] This may have made their removal unlawful.[86] However, these points were raised in the case of, *R (on the application of SPM) v SSHD*,[87] where it was held that the arrangements made by the SSHD for legal aid advice and representation on behalf of women detained at Derwentside IRC were not unlawful or discriminatory. The Court held that there was no impediment to the right of access to a lawyer which interfered with detainees' fundamental common law rights of access to justice.[88] Accordingly, providing legal advice via telephone or using video conferencing for a short period of time was deemed as being acceptable.[89] Although, it was acknowledged that in-person meetings should be accommodated where possible.[90]

The other problems that emanated from the pandemic (which have been mentioned briefly in this article) concerned the lack of hygiene and the prolonged period of detention. Bail for Immigration Detainees clients reported that they could shower every other day and that they were locked in their cells for approximately 23.5 hours daily.[91] Indeed, such lengths of prolonged isolation are prohibited under the United Nation's Standard Minimum Rules for the Treatment of Prisoners,[92] and may be in breach of Article 3 of the ECHR. Furthermore, their clients described such long periods of detention as amounting to 'psychological torture', or

[84] BID (n 78), 'Research Paper: Immigration Bail Hearings during the COVID-19 Pandemic' 15
[85] ibid
[86] ibid
[87] [2022] EWHC 2007 (Admin)
[88] ibid at 95, 98-99, 106-107, 110
[89] ibid
[90] ibid
[91] BID, 'Research Report Risky Business: Immigration Detention Decision-Making During the COVID-19 Pandemic', 5, (May 2020) Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1203/BID_COVID-19_Detention_research_report.pdf>
[92] Rule 44 defines solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact.

constituting feelings of being 'trapped', 'hopeless' and 'suffocated'.[93] Thus, the continued detention of individuals during the pandemic posed severe health repercussions.

These issues further came to light in the case of *R (NB and Ors) v SSHD*, where it was held that the Home Office had contravened the Public Health's Guidance on COVID-19.[94] The High Court condemned the treatment of asylum seekers that were detained at the former military barracks in Kent, Napier Barracks, as they were residing in crammed conditions.[95] Further, the arrangements at the Barracks contravened the public health guidance as the Home Office had failed to implement key aspects of their risk mitigation measures.[96] Mr Justice Linden's opening summary noted that 'on the evidence, it was inevitable that there would be a major outbreak of COVID-19 infections at the Barracks' and he highlighted several different independent reports that castigated conditions at the site.[97] According to Judge Linden, the SSHD had failed to adopt a suitable system of identifying asylum seekers that were unsuitable to be placed in that accommodation owing to their vulnerabilities.[98] This ground also breached the Public Sector Equality Duty under section 149 of the Equality Act 2010, however, no relief was granted.[99] Despite shifting those that were considered as being 'vulnerable' to alternative accommodation, the flaws identified in respect of the 'AAR' policy by Sir Stephen Shaw and the ICIBI were prevalent here given the way the authorities operated this policy when balancing risks against harm during a public health emergency.

Moreover, similar problems came to light in prisons, which were arguably more onerous. COVID-19 posed an unprecedented public health crisis, placing additional pressure on a prison system that was already in a state of crisis.[100] Prisoners were placed under severe restrictions, as they were spending less time out of their cells; visits were suspended and educational activities were severely restricted amongst other restrictions placed on prison life.[101] However, unlike the immigration detention system, where most detainees were

[93] BID, 'Every day is like Torture: Solitary Confinement and Immigration Detention' (July 2021), 4, Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1328/Solitary_Confinement_Report_Final_2.pdf>
[94] [2021] EWHC 1489 (Admin)
[95] ibid at 3-5
[96] ibid at 94
[97] ibid at 5, 9
[98] ibid at 10
[99] ibid 10
[100] House of Commons Justice Committee, *Coronavirus (COVID-19): The Impact on Prisons* (HC299, 27 July 2020), 3, Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://committees.parliament.uk/publications/2154/documents/20016/default/>
[101] ibid at 3, 7

released, the Temporary Release Scheme that applies to prisoners had minimal impact because just over 200 of the 4000 plus potentially eligible prisoners were released in three months.[102] In fact, the Temporary Release Scheme was partially suspended.[103] Therefore, although the pandemic called for greater scrutiny of the restrictions on liberty, it was hard to see this in practice.

3. The EU's Policy/Reaction Vis-a-Vis Detention During the Pandemic?

The EU's law on detention and expulsion is set out in the 2008 Returns Directive,[104] which sets out the common standards and procedures that EU member states are obligated to abide by for the purposes of returning irregular migrants.[105] Although the Returns Directive states that third country nationals should return to their country of origin voluntarily, it has devoted four of its 23 Articles to detention of third country nationals for the purposes of removal.[106] According to Article 15, EU member states may detain irregular migrants for as short a period as possible where removal arrangements are in progress, there is a risk of absconding or where the third country national may be obstructing the removal process. The Court of Justice of the European Union has adopted a strict approach to Article 15 because once a reasonable prospect of removal no longer exists then detention ceases to be justified and the detainee concerned should be released immediately.[107]

According to the European Commission, the health risks posed to individuals as a result of detention do not automatically constitute a justification for resorting to ATDs.[108] Instead, EU member states are required to consider various factors to determine whether, in each individual case, a reasonable prospect of removal continues to exist. If it does not, then States are advised to use ATDs.[109] The Commission's guidance further stressed the need to adopt measures that would seek to reduce the spread of COVID-19, and to ensure that the detainees

[102] ibid at 4
[103] ibid at 7
[104] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals , OJ L348/98 (hereinafter Return Directive); see also Alan Desmond, "The European Approach to Irregular Migration in Pandemic Times: The More Things Change, the More They Stay the Same?" in P. Czech et al, eds., *European Yearbook on Human Rights* (Intersentia, 2021) 290
[105] Izabelle Majcher, *The European Union Returns Directive and Its Compatibility with International Human Rights Law: Analysis of Return Decision, Entry Ban, Detention, and Removal* (Brill Nijhoff , Leiden 2020) 50.
[106] Desmond (n 104) 304
[107] E.g., CJEU, Said Shamilovich Kadzoev (Huchbarov) , Case C-357/09 PPU, 30.11.2009; CJEU, Bashir Mohamed Ali Mahdi , Case C-146/14 PPU, 05.06.2014; see also Desmond (n) 304
[108] European Commission, *Communication from the Commission, COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement Brussels*, C(2020) 2516 final 16.04.2020, 23.
[109] Desmond (n 104) 304

were subjected to medical screening.[110] The Commission also recommended that EU member states should consult the guidance of the World Health Organisation that detailed how the former could deal with a disease outbreak in a place of detention.[111] According to Desmond, the message from the April 2020 guidance appeared to express the view that the EU's efforts vis-a-vis detention and return should not be hindered by the ongoing global health emergency.[112]

Therefore, the reality on the ground concerning pre-removal detention in Europe was something of a mixed bag also. Despite the mixed messages of the European Commission, some States acted in line with the recommendations of the Council of Europe Commissioner for Human Rights and the European Council for Refugees and Exiles (ECRE) by ceasing returns and releasing irregular third country nationals from detention.[113] Simultaneously, however, some EU member states continued to detain migrants, despite an official or de facto suspension of removals owing to the pandemic.[114]

Most EU member states with the exception of Spain, continued to detain individuals.[115] In March 2020, Spain had vacated its detention centres in light of the COVID-19 pandemic.[116] Partial and large-scale releases were also reported in other parts of the EU.[117] The French judges ordered the release of detainees on health grounds, thus, a number of detention centres remained empty.[118] Although by the end of 2020, France had begun to increase pre-removal detention in spite of a dearth of flights.[119] Netherlands realised the impossibility of removing migrants and thus released 390 migrants (with 260 remaining in detention) between 11 March and 31 May 2020, which is praiseworthy because it usually releases between 10 to 20

[110] European Commission (n 108) 23-24
[111] WHO/EUROPE , ' Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance ' , 15.03.2020 , available at https://apps.who.int/iris/bitstream/handle/10665/336525/WHO-EURO-2020-1405-41155-55954-eng.pdf?sequence= 1&isAllowed=y.
[112] Desmond (n 104) 305
[113] PICUM, 'Non-Exhaustive Overview of European Government Measures Impacting Undocumented Migrants Taken in the Context of COVID-19 ' (2020) 15 – 16 , available at <https://picum.org/wp-content/uploads/2020/10/Non-exhaustive-overview-of-Europeangovernment-measures-impacting-undocumented-migrants-taken-in-the-context-ofCOVID-19.pdf>.
[114] Desmond (n 104) 306
[115] Monty Aal, 'Locked up like Animals-Immigration Detention Centres in the Time of the Coronavirus' *Politico* (4 August 2021) Available at <https://www.politico.eu/article/inside-immigrant-detention-centers-coronavirus-times-covid-19-europe/>
[116] Magdelena Majkowska-Tomkin, 'Countries are Suspending Immigration Detention due to Coronavirus: Let's Keep it That Way. *Euronews*, (29 Apr 2020)
[117] ibid
[118] Human Rights Watch, 'Europe: Curb Immigration Detention Amid Pandemic' (27 March 2020) Available at <https://edit.hrw.org/news/2020/03/27/europe-curb-immigration-detention-amid-pandemic>
[119] FRA, 'Migration Quarterly Bulletin' (05.11.2020) Available at https://bit.ly/3otjcpy

detainees every week.[120] Similarly, the Belgian authorities released 300 detainees as they could not enforce social distancing measures in detention.[121] Although, Slovakia suspended removals in 2020, it did not view this as a reason for abstaining from detention.[122] Germany had a better record of dealing with COVID-19, as it abided by the necessary COVID-19 precautions, ensuring that the detainees were continually in touch with their lawyers, counsellors and mental health practitioners.[123] Indeed, their Federal Interior Minister reported that fewer deportations/removals would take place during the pandemic and thus several detention centres remained empty.[124]

The detainees that were released from immigration detention during the COVID-19 pandemic were not placed in ATDs, according to the Human Rights Watch.[125] It recommended that the European Commission should work in collaboration with the United Nations Network on Migration to provide clear guidance on release, ATDs, and on ensuring that the EU member states provided adequate and safe shelters to detainees that were released.[126] However, from the 390 detainees that were released from detention in the Netherlands, the majority ended up on the streets.[127]

Greece and Italy did not react like the other EU member states, as they continued to hold detainees in squalid, dangerous and overcrowded detention centres.[128] Similarly, detainees in Malta were residing in overcrowded facilities where a dozen of them shared one shower, just like Cyprus.[129] The EU however, did not allocate adequate funds to halt the drastic deterioration of conditions.[130] The United Nations Network on Migration also voiced concerns over the continued use of immigration detention during the COVID-19 pandemic.[131]

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[120] Irene de Zwaan, 'A Striking Number of Foreign Nationals Released from Detention, the Majority End up on the Street' *de Volkskrant* (30 June 2020) Available at <https://www.volkskrant.nl/nieuws-achtergrond/opvallend-veel-vreemdelingen-vrijgelaten-uit-detentie-merendeel-belandt-op-straat~b9f395ab/?referrer=https%3A%2F%2Fwww.politico.eu%2F>

[121] Human Rights Watch (n 118)

[122] Global Detention Project, 'Slovakia COVID-19 update ' (19.08.2020) Available at <https://bit.ly/36A6Oy4>

[123] Human Rights Watch (n 118)

[124] Christian Jacob, 'The World Becomes a Fortress' *Taz* (19 March 2020) Available at <https://taz.de/Fluechtlinge-in-der-Corona-Krise/!5672393/>

[125] Human Rights Watch (n 118)

[126] ibid

[127] Irene de Zwaan (n 120)

[128] Magdalena Majkowsa-Tomkin (n 116)

[129] Monty Aal (n 115)

[130] ibid

[131] United Nations Network on Migration, 'COVID-19 and Immigration Detention: What can Governments and Other Stakeholders Do?' (undated) 2 Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-

4. Time to Make Use of ATDs?

ATDs may refer to 'any of a range of policies and practices that States use to manage the migration process, which fall short of detention, but typically involve some restrictions'.[132] The key question (as reiterated in this article) regarding the usage of ATDs is whether they are applicable only to persons who would otherwise be detained? If that is not the case, then every undocumented migrant may be subjected to ATD which expands restrictive, coercive and surveillance measures. Thus, those that are not due to be removed within a reasonable timescale, or those that show no propensity to offend/abscond or fulfil any of the other detention criteria, should not be placed under ATDs and be released from detention altogether. A number of non-governmental organisations have voiced concerns about the restrictions imposed by ATDs due to their coercive nature.[133] At times judges adjudicate on the appropriateness of them also.[134] The academic work on ATDs is still largely in its developmental phase.[135]

Bosworth noted that governments across the world use a wide range of programmes as ATDs which include (but are not limited to), temporary admission, reporting requirements, parole, bail, appointment of a guarantor, open or semi-open centres, alternative places of detention (including family and community detention), house arrest, curfew, voluntary return initiatives, electronic surveillance, case-worker support, surrendering of identification and travel documents and assisted voluntary return schemes.[136]

19_and_immigration_detention_0.pdf?eType=EmailBlastContent&eId=d14f0a6c-e715-471d-b2fb-1d20b95f08dc?eType=EmailBlastContent&eId=d14f0a6c-e715-471d-b2fb-1d20b95f08dc>

[132] Catherine Costello and Esra Kaytaz, 'Building Empirical Research into Alternatives to Detention: Perception of Asylum Seekers and Refugees in Toronto and Geneva', 10 (2013, Geneva, Toronto) Available at <https://www.refworld.org/docid/51a6fec84.html>

[133] Stephen Shaw, 'Review into the Welfare in Detention of Vulnerable Persons' (Secretary of State for the Home Department, 2016) Available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf> ; Catherine Costello, 'Immigration Detention: The Grounds Beneath Our Feet' (2015) 68(1), Current Legal Problems, 143; Jennifer .M. Chacon, 'Immigration Detention: No Turning Back?', 113(3), South Atlantic Quarterly, 621-628; Michelle Ceccorulli and Nicola Labanca, 'The EU, Migration and the Politics of Administration Detention' (Abingdon, Routledge)

[134] See for example, L Bieska Bruzaite, E Samuchovaite, 'Detention of Asylum Seekers and Alternatives to Detention in Lithuania' (2011, Vilnius: Lithuanian Red Cross)

[134] See for example, Catherine Costello and Esra Kaytaz, 'Building Empirical Research into Alternatives to Detention: Perception of Asylum Seekers and Refugees in Toronto and Geneva', 10 (2013, Geneva, Toronto); Robyn Sampson and Grant Mitchell, 'Global trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales', (2013) 1(3), Journal of Migration and Human Security, 97-121

[135] ibid

[136] Mary Bosworth, 'Alternatives to Immigration Detention: A Literature Review' (2018) 4

COVID-19 showed us that detaining fewer people is 'possible'. Not only is the immigration detention system deeply flawed, but it is also very costly. It costs £108 million every year, which equates to £30,000 per detainee in the UK.[137] Furthermore, the partial suspension of immigration detention in the UK did not carry any immediate negative consequences as the number of absconders decreased in the UK (above). This raises the fundamental question of whether detention (at least on the scale practised in the UK) is a necessary means of immigration control; or, alternatively, whether community-focused approaches to hosting migrants provide an adequate safeguard for those whose detention is lawful but not necessary and proportionate.

Evidence about the impact of ATD programmes on physical and mental health is mixed. Community based alternatives to detention engender better outcomes than immigration detention, whereas temporary admission/bail,[138] generate mental distress akin to that caused by immigration detention, and those subjected to electronic monitoring reported feelings of shame and criminalisation.[139]

Therefore, the most popular non-custodial options that the authorities should utilise are community-based initiatives that have been endorsed by the United Nations Network of Migration,[140] and the Global Compact for Migration (objective 13), which many EU member states have signed up to.[141] Here individuals reside within a community and benefit from the ability to move freely, enjoying access to support services, so that they may be able to benefit from a dignified stay.[142] Such arrangements encourage asylum seekers/migrants to develop and strengthen their links with the community and help preserve family life. These programs are not only cheaper than the current immigration detention system, but they result in high

[137] Detention Action, 'Detention Action's Briefing on the Nationality and Borders Bill' (July 2021) Available at < https://detentionaction.org.uk/publications/detention-actions-briefing-on-the-nationality-and-borders-bill-july-2021/>

[138] Temporary admission implies that a person can be temporarily released from detention whilst their immigration/asylum claim is pending.

[139] Bosworth (n 136) 8

[140] United Nations Network on Migration, 'COVID-19 and Immigration Detention: What can Governments and Other Stakeholders Do?', 3, (undated) Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention_0.pdf?eType=EmailBlastContent&eId=d14f0a6c-e715-471d-b2fb-1d20b95f08dc?eType=EmailBlastContent&eId=d14f0a6c-e715-471d-b2fb-1d20b95f08dc>

[141] United Nations, 'Global Compact for Safe, Orderly and Regular Migration', chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

[142] Detention Action, 'Community Support Project' (17 January 2022) Available at <https://detentionaction.org.uk/community-support-project/>

compliance rates as migrants abide by their immigration matters/deadlines.[143] ATDs can also assist authorities in preventing or reducing cases of wrongful and arbitrary detention, thereby avoiding costly litigation.

In the UK, Detention Action has been running a project entitled the 'Community Support Project' since 2014.[144] Through this alternative pilot scheme, Detention Action works in collaboration with individuals who have experienced or are at risk of experiencing long-term detention in the UK.[145] Practical and emotional needs of such individuals are addressed whereby they are offered more holistic advice.[146] 93 per cent of those that were a part of this program did not reoffend since joining it.[147] Perhaps instead of detaining individuals, the UK Government could encourage and take steps to make more widespread use of this program for individuals whose detention is lawful but not necessary and proportionate. Thus, the UK Government could scale up non-custodial, community-based alternatives to immigration detention in accordance with international law.

Similar programs were also introduced in Bulgaria, Cyprus and Poland and the results showed that mass surveillance of detainees was not necessary as individuals remained engaged in the programs they had enrolled in, with 86 per cent reporting that they would continue to remain engaged with their immigration process.[148] The USA uses a case management program that enables migrants to be a part of their new community as they benefit from receiving critical services such as legal assistance, mental health and housing support.[149] A 10 year study between 2008 and 2018 in the USA demonstrated that 83 per cent of non-detained migrants placed on such community-based initiatives with pending cases attended all their court hearings.[150] In Australia such programs attracted a compliance rate of

[143] ibid
[144] ibid
[145] ibid
[146] ibid
[147] ibid
[148] Human Rights Watch, 'Dismantling Detention: International Alternatives to Detaining Immigrants', 2021, Available at <https://www.hrw.org/report/2021/11/03/dismantling-detention/international-alternatives-detaining-immigrants>
[149] ibid at 7
[150] ibid

94 per cent.[151] Such programs have also saved $49 in the USA; $86 in Australia and $167 in Canada per person on a daily basis.[152]

5. Conclusion

Immigration has always been a contentious issue, and the mechanisms of detention and returns have long been fraught by politicisation and byzantine bureaucracy. What the pandemic did was make the system even more inconsistent, as countries across the world adopted slapdash emergency measures, with little or no coordination between them. This should not be the case as authorities should have reacted like Spain and closed all detention centres to minimise the risk of infection. Countries should work together collaboratively and devise appropriate policies vis-a-vis immigration detention so that if another public health emergency occurs in the future, they are better equipped to deal with it.

This pandemic revealed how broken the immigration detention system is and that although we were all vulnerable to contracting COVID-19, detainees/migrants were placed in a more precarious position as they exercised a lack of control over their lives. The mass incarceration of individuals clearly does nothing to help the immigration system. If anything, it destroys trust between immigration authorities and individuals/communities. These problems are compounded with a lack of adequate healthcare facilities, restricted or no legal support in light of the cuts to legal aid and deterioration of mental health. The Home Office should explore the possibility of using ATDs, before making decisions to detain. For those whose detention is lawful in a specific way, but not necessary and proportionate, ATDs should be used. If the administration cannot show that the potential detainee will abscond, harm the public or be removed within a reasonable timescale then such an individual ought to be released from detention altogether. From the freedom of information request, the rate of absconding did not increase following the mass release of detainees in 2020. In fact, the rate of absconding was at its lowest point as compared to 2019, 2021 and 2022. Therefore, the mass release of detainees carries little to no negative consequences.

Moreover, ATDs programs clearly also enhance individuals' understanding and engagement with the immigration process, leading to high compliance rates. They are also more cost-

[151] Grant Mitchell, 'Detention Reform and Alternatives in Australia: Case management as an alternative to immigration detention: the Australian experience. International Detention Coalition' (2009) 10, Available at: https://idcoalition.org/wp-content/uploads/2014/10/BriefingPaper_The-Australian-Experience-2009-1.pdf.
[152] International Detention Coalition, 'There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention' (13 May 2011) 52 Available at <http://www.refworld.org.docid/4f0c14252.html>

effective than detention. But critically, funding for community-based programs needs to be provided. Of the alternatives, community-based schemes present the least restrictive and most humane way of ensuring that people comply with immigration procedures.