



## Samina Iqbal (1999)

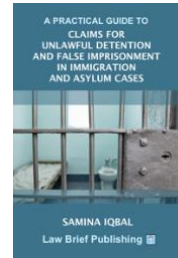
Joint-head of Immigration and Public Law Team

*Legal 500 2021* Tier 3 – **Leading Junior** - “Her exceptional clarity in arguments and attention to subtle details always leads her to shine in her work.”

*Chambers & Partners 2021* Tier 4 – **Leading Junior** - “She is extremely easy to work with and exceptionally knowledgeable.”

Samina is a senior public law and immigration practitioner with over 20 years’ experience, who also has a background in family law. She is a versatile lawyer, dynamic and fair, relentless in her pursuit of a positive resolutions for her clients

More recently, Samina’s growing specialism has been in challenges to unlawful detention, crossing over with claims for damages in the civil courts. Her expertise and vast experience in this area led to her being commissioned to write a ‘A Practical Guide to Claims for Unlawful Detention and False Imprisonment in Immigration and Asylum Cases’ published by Law Brief Publishing Ltd in December 2020. It is now available to buy at [Law Brief Publishing](#) and/or [Amazon](#) (with a sneak preview from a chapter online).



In this article Samina, updates on how immigration detention operates in the UK, highlighting statistics, the debate to introduce time limits and the effect of the pandemic on detention, which we hope you will find useful. In the meantime, enjoy the online snapshot of Samina’s new guide!

## Immigration Detention in the UK

The Home Office have the power granted by Parliament under various legislation to detain anyone for the purposes of immigration control. The reasons for detention are generally to effect an individual’s removal and/or deportation, although there are a host of other reasons for detention, for example to establish a person’s identity or where there is reason to believe that the person will fail to comply with any conditions attached if they were released.

**The UK is unique within Western Europe in that there is no maximum time limit on immigration detention.** The UK opted out of the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (“the Returns Directive”), which does set out at Article 15 of Chapter IV, **a maximum time limit of 18 months** for detention pending deportation.

What we do have in the UK for the purposes of checks and balances on the limits to detention are principles developed under common law known as the ‘*Hardial Singh*’ principles.

The ‘*Hardial Singh*’ principles have been endorsed time and again with the European Courts of Human Rights concluding that these principles do ensure that checks are in place, i.e. that the UK detention system does not breach Article 5 of the ECHR. But are these truly enough?

## **STATISTICS**

Courtesy of The Migration Observatory who informs debates on international migration and public policy, their briefing on Immigration Detention in the UK (May 2020) – provides helpful overview on the statistics for 2019 for those in detention.

### **Facts:**

- 25,000 – 30,000 migrants are detained in the UK every year;
- 1/3 held for longer than 28 days;
- On average, it costs more than £30,000 to detain someone for a year- a total of 89 million was spent for the year ending March 2019
- The longest someone has been detained was for 9 years.

### **Who is held there:**

- In 2019, detainees who had sought asylum accounted for 58% (14,086) of people entering detention;
- In 2019, 94% were under the age of 50 with 73 being children although the figures are seen as an improvement on the 1000's of children held 10 years ago.
- Statistics show highest number of detainees from three countries: Albania, Iran and India, with citizens of 10 countries accounting for over half of those in detention

### **Debate on Limits to Detention ?**

A recent vote last October 2020 concerned amendments to the [\*Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2019-21\*](#). The UK has opted out of the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (“the Returns Directive”), which does set out at Article 15 of Chapter IV, a maximum time limit of 18 months for detention pending deportation.

The specific Time Limit on Immigration Detention Amendment was first tabled by a Conservative MP and former Brexit Secretary David Davis. It was approved by the House of Lords, by 184 votes to 156. The bill returned to the House of Commons, where it had growing cross-party support.

Some of the contributions below capture the issues involved in detention without time-limits, fittingly. For example Baroness Hamwee stated<sup>1</sup>-

*“The use of detention for immigration purposes, in part because of the Windrush scandal, is attracting increasing concern across civil society. These amendments address one particular aspect: that it is indefinite. The amendment would impose a time limit of 28 days; there could not be re-detention—cat and mouse—without a material change in circumstances; and there is an exclusion where detention is in the interests of national security.*

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<sup>1</sup> [https://hansard.parliament.uk/lords/2020-10-05/debates/97A02583-03AD-4CBD-BAE9-8E85758EA004/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill](https://hansard.parliament.uk/lords/2020-10-05/debates/97A02583-03AD-4CBD-BAE9-8E85758EA004/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill)

She further gave clear reasons :-

*“The impact of detention, and the prospect of re-detention, is an extraordinary burden. People are picked up from living in the community in what seems quite a random fashion, and people are taken straight from their regular and proper reporting into detention. It takes its toll on people who are, by definition, almost to some extent vulnerable; some are highly vulnerable and traumatised by their experiences.”*

*“the majority of people detained—almost two-thirds according to the last figures—are ultimately released into the community. That prompts the question: if they are suitable to be released into the community eventually, why do they need to be detained for any longer than 28 days?*

The Lord Bishop of Southwark further highlighted:

*“The process of detention is an intensely dispiriting one. It is often accompanied by a physical denial of hope and attendant mental distress. We have heard of extensive periods of internment, just as we have heard from the Minister of expeditious dealing with detainees. We have heard, too, from her that detention cannot be indefinite because the Secretary of State’s power is constrained by common law. That is undeniably correct. However, for an individual who is affected by this and who might be unaware of how and when a caseworker will weigh the different elements of Hardial Singh, that is no comfort.”*

On the 19<sup>th</sup> October 2020, however, the amendments proposed by the Lords, having returned to the House of Commons were defeated with a vote of 328 to 264. There were some encouraging observations from the Minister for Immigration, Kevin Foster MP, which certainly accords with the growing calls for reform in this area:

*“On detention, we have outlined our arguments. I am conscious that there are strong feelings on this in the House. We all want to see people swiftly moved out of detention and, if they have no right to be in this country, to be removed from it. We want detention to be used as a last resort. Its use has been declining over the past few years. That is partly because we cannot guarantee that a country in sub-Saharan Africa, for example, will issue us with travel documents for the person to be returned to it within the timeframe. In particular, we have to be clear that there is no ability to put someone in detention for no reason. We have to have a lawful basis for doing so, and that can only be where there is a reasonable prospect of removal or a threat to the public—although I accept that only a very small number of people are serious foreign national offenders.”<sup>2</sup>*

Following agreement by both Houses on the text of the Bill it finally received Royal Assent on 11 November 2020, with the debate on time limits for detention left to another day.

### **Effect of the Pandemic**

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<sup>2</sup> [https://hansard.parliament.uk/commons/2020-10-19/debates/97E83258-6E39-432F-8AE0-C2D7E0B1966F/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill](https://hansard.parliament.uk/commons/2020-10-19/debates/97E83258-6E39-432F-8AE0-C2D7E0B1966F/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill)



There has been an increase in concerns around detention during the pandemic – this led to the challenge of *R (Detention Action & Anor) v SSHD [2020] EWHC 732 (Admin)* calling for the release of “*the ongoing detention of all immigration detainees, in particular those with pre-existing conditions which increase vulnerability to COVID-19... [and]... the absence of an effective system for protecting immigration detainees from COVID-19.* Whilst this case was not successful, it certainly led to closer examination of individual cases with more than 700 detainees being released between 16 March and 21 April 2020, which demonstrates that management of immigration enforcement in the community is possible.

In the case of *R (on the application of Zalys) v. Secretary of State for the Home Department [2020] 4 WLUK 86*, that followed, the court certainly considered the claimant’s underlying medical conditions, together with the fact that removal was not possible within a reasonable timeframe, given his outstanding appeal and travel restrictions and granted permission in a judicial review challenge.

Further challenges to detention may well be expected in light of the recent call for release of all detainees by Bail for Immigration Detainees (BID) in their [letter dated 14<sup>th</sup> January 2021](#) to the Home Secretary. This letter highlighted that the situation was much worse now than at the start of the pandemic, with a more infectious variant of COVID and the inability of Home Office measures to stop the rapid spread of the virus. This letter was supported and signed by many organisations such as JCWI, Liberty, detention charities, such as Detention Action, barristers chambers etc and called for the release

### **Detention centres**

Usually detainees are housed in Immigration Removal Centres - ten in the UK, their purpose to detain those due to be removed/deported. More recently Napier Barracks in Kent and Penally Barracks in Pembrokeshire were used to hold more than 600 men between them.

Medical staff (represented by Doctors of the World) wrote to the Home Secretary to raise concerns about the sites which were considered unsuitable due to the lack of access to adequate and appropriate healthcare services and risks from a lack of compliance with Covid-19 Regulations.

The action from the healthcare professionals came after the Guardian revealed that the Home Office was [attempting to gag charity workers and community volunteers](#) with a confidentiality agreement, following reports of dire conditions at the site. Volunteers have been asked to sign confidentiality agreements underpinned by the Official Secrets Act before entering an army barracks used to house asylum seekers, as details emerge of the “disturbing” conditions on the site.

They highlighted that the fear instilled by the military environment risks triggering further trauma for the men, many of whom will have fled conflict, militias and may have been detained in similar environments in their home countries.

On the 16<sup>th</sup> December 2020, there was an outbreak of Covid-19 in Brook House Immigration Removal Centre, which led to renewed calls for all detainees to be released. On the 8<sup>th</sup> January 2021, the Home Office closed Brook House with detainees being transferred to other centres



not deemed to be any safer. On the 15<sup>th</sup> January 2021, there were reports of an outbreak at Harmondsworth Immigration Removal Centre, as well as the Napier Barracks in Kent.

As already highlighted above these developments have led to a renewed challenge to all immigration detention in a [letter dated 14<sup>th</sup> January 2021](#) from Bail for Immigration Detainees(BID) to the Home Secretary.

### **Conclusion**

A record breaking 7,400 people were recorded as having arrived in 2020, in the UK, which was four times those recorded in 2019. Given the lack of progress to ensure a less hostile environment, particularly highlighted through this pandemic, it is evident that even the common law protections are not a complete answer and more is needed in this area to ensure that detention is regulated more formally by way of time limits and place of detention.

There is also the possibility of applying for bail as a remedy against detention, but despite this we often see successful claims for “unlawful detention” and/or “false imprisonment” for damages – and a grant of bail cannot compensate for the damage to the well-being and reputation of a person. In the year ending March 2019, there were 312 proven cases of wrongful detention, for which £8.2m compensation was paid, up from 212 cases totalling £5.1 million in 2017–18.

It is clear that reform is needed sooner rather than later, to ensure that individuals are only detained for short periods either to effect imminent removal or to allow for their immigration status to be ascertained.

**Samina Iqbal**  
**January 2021**

*Remember, Samina’s practical guide can help navigate what is quite a complex area of law. We hope that those who need some assistance in the field of immigration detention will find this useful. It is now available to buy at [Law Brief Publishing](#) and/or [Amazon](#) (with a free chapter online). Lookout for the special discount code when you reshare this post!*