

## Alternatives to Detention in the United Kingdom

### The Community Engagement Series: Pilot 1 - Action Access; and Pilot 2 - Refugee & Migrant Advice Service

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#### Key Messages:

1. Alternatives to Detention provide a people centered approach to supporting asylum seekers whilst waiting for case resolution without any evidence of a reduction in compliance with UK Home Office directives.
2. Based on the two pilot Alternatives to Detention models tested by these evaluations, Alternatives to Detention are cheaper and offer better value for money compared with the costs of detaining asylum seekers.
3. The two ATD pilots, by building on the networks and experience of civil society, were able to better support asylum-seekers' access to services and quality advice.
4. Evidence from both evaluations shows significant improvement in the mental health and wellbeing of those participating in the pilot ATD programmes.
5. By taking a holistic people centred approach the ATD pilots provided an environment in which asylum-seekers were better able to understand their legal options and better able to make informed decisions on their future, whether that was launching new applications for asylum or opting for voluntary return to their country of origin.
6. The two pilots have shown a promising avenue of civil society and UK Home Office collaboration that can produce improved, more humane outcomes for asylum-seekers.

#### Background

The need for governments to consider alternatives to detention (ATD) has never been more important, with the detention of asylum-seekers and refugees becoming commonplace in many countries and the serious lasting effects on individuals and families well documented.

In view of the hardship that detention entails, and consistent with international refugee and human rights law and standards, detention of asylum-seekers should normally be avoided and be a measure of last resort; and ATD should always be considered prior to resorting to detention.

The term 'alternatives to detention' may be mistaken for referring only to a process in which asylum-seekers are able to reside in the community, rather than in detention. However, properly designed ATDs do much more than this, providing community-based case management and services, with a focus on informed decision-making, timely and fair status resolution and improved well-being on the part of individuals. There is no legal definition of an ATD, and ATDs can take many forms, including bail, community release and supervision, and designated residence. All ATDs should be established in law and policy, and be subject

to human rights oversight, including periodic review of individual cases, as well as independent monitoring and evaluation. They should also be designed to ensure that individuals are able to enjoy economic, social, and cultural rights, such as their right to health and to adequate housing.

Recognising that community-based case management can have positive impacts on vulnerable persons, both with regards to a person's welfare and case progression, the Shaw Progress Report, published in 2018, recommended that the UK Home Office (UKHO) establish an ATD project. Following on from this the then Home Secretary, Sajid Javid asked the UKHO to explore ATD with faith groups, NGOs and communities.

### **The Home Office Community Engagement Pilot Series**

In 2019, after several months of consultation with UNHCR and civil society organisations, the UKHO announced the Community Engagement Pilot (CEP) series, aimed at testing approaches to supporting people, including asylum-seekers, to resolve their cases in the community, rather than in detention. The CEP series comprised two ATD pilots: Action Access from June 2019 through to June 2021; and Refugee & Migrant Advice Service from June 2020 through to June 2022.

Both pilots were funded by the UK Government and managed under contract by two implementing partner civil society organisations in the UK: Action Access, by Action Foundation<sup>1</sup> and the Refugee & Migrant Advice Service, by King's Arms Project.<sup>2</sup> UNHCR provided advice and support to the UK Government, as well as to Action Access and King's Arm's Project throughout the period of the two pilots.

Following the request from the UK Government to conduct an independent evaluation of both ATD pilots, UNHCR commissioned the National Centre for Social Research (NatCen)<sup>3</sup> to conduct the evaluation of the CEP series.

### **Action Access**

Delivered by Action Foundation over two years from 2019 to 2021, Action Access supported women with asylum-seeking status in a community-based, engagement-focused ATD through the provision of one-to-one support from a support worker, shared managed accommodation, and legal counselling from a qualified lawyer. The legal counselling model provided the participants with at least three supported opportunities to reflect on their options outside of the stressful environment of detention.

Action Access initially aimed to support up to 50 female asylum seekers (a maximum of 21 at any one time) who would otherwise have been detained. Action Access tested whether support in the community could lead to more efficient case resolution for asylum-seekers in comparison with immigration detention. Due to the UK Government's decision to bail most of the people detained within the immigration detention estate as a response to the COVID-19 pandemic, fewer woman were able to join Action Access and in the end a total of 20 woman participated. These participants received a total of 481 case management support sessions and 32 legal counselling sessions.

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<sup>1</sup> Action Foundation, information available at: <https://actionfoundation.org.uk/about/#what-we-do>.

<sup>2</sup> King's Arms Project, information available at: <https://kingsarmsproject.org/what-we-do/>.

<sup>3</sup> The National Centre for Social Research, NatCen, information available at: <https://natcen.ac.uk/who-we-are/about-us>.

In their evaluation of Action Access, NatCen found that:

- the ongoing cost of Action Access would be less than half the price of immigration detention per person per day.
- the provision of structured casework support and legal counselling ensured that participants had the support as well as the space and time to engage with immigration decisions.
- participants reported an immediate improvement to their health and wellbeing resulting from leaving immigration detention and having the freedom to move around, leave their accommodation, explore the local area and travel to visit friends.
- the pilot made a difference to participants' trust in the immigration system, ensuring greater compliance with conditions of release as set by the UKHO; most notably through the efforts of the casework support staff at Action Foundation who helped the participants with communication and supported the participants at meetings.

In total, four participants decided to opt for voluntary return as a result of the advice and support they received whilst on the Action Access pilot. Eight participants determined that following advice received through legal counselling, further applications for leave to remain in the UK, including further submissions in respect of asylum in the UK should be made; with Refugee Status being granted in one case.

### Refugee & Migrant Advice Service

Delivered by King's Arm's Project, the Refugee & Migrant Advice Service was the second pilot in the CEP series. The Refugee & Migrant Advice Service aimed to support both male and females in a community-based, engagement-focused ATD through the provision of one-to-one support from a support worker and legal counselling from a qualified legal professional. The Refugee & Migrant Advice Service provided access to high quality legal advice (adopting the same model as Action Access), information about voluntary return, GP registration, health & social care, hardship payments, food, clothing, mental health support, and English language lessons.

In contrast to the Action Access pilot, in the Refugee & Migrant Advice Service pilot, the participants' accommodation was neither provided nor managed. Participants instead had to already have access to reliable and consistent accommodation for the period they were on the pilot. Whilst participants were only accepted onto the pilot if they were already in stable accommodation, for a number of participants support was ultimately needed with moving to new accommodation. It is of note that King's Arm's Project were able to offer accommodation support through their links with other housing and UK hosting projects (where asylum-seekers are able to access short-term accommodation providing a high level of autonomy and independence, and tenancy support).

In total, the Refugee & Migrant Advice Service provided support to 84 participants (52 men and 32 women). The age range was from 21 to 96 years old.

In their evaluation of the Refugee & Migrant Advice Service, NatCen found that:

- the cost of detention would have been approximately two-thirds more expensive than the pilot.
- participants reported that their relationships with the King's Arm's Project caseworkers helped ensure their holistic support needs were better understood and provided for than had previously been the case.

- the legal counselling model was determined to be a positive aspect of the pilot that could and should be offered more widely where lawyers had availability to assist; noting that it was however difficult to find appropriately experienced and qualified lawyers.
- the role of the King's Arm's Project caseworker was invaluable in encouraging participant confidence related to their immigration case, as well as more generally.
- the complexity in immigration cases for many of the participants, combined with the length of time (for some) living with an insecure immigration status, meant that achieving case resolution whilst on the pilot might not be achievable.
- access to lawyers post legal counselling for those who had a legal option for remaining in the UK was challenging given the shortage of solicitors available to undertake this work – this further hampered the ability of the participants to achieve case resolution.

Six participants were granted leave to remain in the UK during their time with the Refugee & Migrant Advice Service pilot. Fifty-two participants made applications for leave to remain on the basis of the legal counselling that they received; including 14 participants who were making applications for asylum, 36 participants who were making applications to remain on human rights grounds and two participants making other types of application. No participants took up the option of voluntary return and unfortunately, two participants died during their time with the Refugee & Migrant Advice Service pilot.

### Evaluation Recommendations

As part of their evaluations of the two pilots, NatCen made several recommendations directed at the UKHO with regard to future ATD programmes, but also more generally for organisations designing and/or delivering ATD Programmes.

Key recommendations include:

- **For consideration by the Home Office:**
  - o accelerate the introduction of effective aspects of the ATD programme into the Home Office's 'business as usual' model.
  - o Consider the wider use of partnership-working between the Home Office and civil society in supporting those with insecure immigration status. The input of caseworkers can act as a conduit between the Home Office, legal advisors and participants by bringing a degree of independence from government and helping to demystify the legal process for participants.
  - o consider implementing the three-meeting model of legal counselling for others with unresolved immigration cases as early as possible in their journey through the immigration case management process to avoid the need for more complex legal counselling at a later stage.
  - o ensure that future ATD programmes are informed by the outcomes from earlier ATD programmes, with clarity afforded to longitudinal tracking of participants and an understanding how to define and measure engagement with the system.
- **For organisations designing and/or delivering pilots**
  - o Make the roles and purpose of casework support and legal counselling explicit, specifically in terms of supporting and developing links for participants in the community, effectively managing the participants expectations, and cooperating directly with local legal representatives.
  - o Manage expectations when communicating with ATD participants regarding potential immigration case outcomes. Incorporate clear communication

about potential options (and implication of each) at every stage of the support work process.

The UKHO have provided management responses in respect to the evaluations of the Action Access and the Refugee & Migrant Advice Service pilots. The UKHO reflect on the positive engagement between government and civil society in both pilots, noting the unique relationship that was developed by the UKHO with both Action Foundation and King's Arm's Project, and express hope that the example of collaboration will help other pilots in other countries.

Whilst NatCen's recommendations for the UKHO in the evaluation of Action Access were accepted in full by the UKHO, recommendations for the UKHO in respect of the Refugee & Migrant Advice Service were either accepted, accepted in principle or only partially accepted. None of the recommendations were rejected.

### Emerging examples of promising practice

Through the CEP series, the UKHO was able to test two different ATD models, helpfully adding to an evidence base on the use of ATD. The independent evaluation of these pilots conducted by NatCen furthers our understanding of good practice with regards to ATD, particularly in relation to design, community and legal support, compliance and government and civil society partnership.

#### *Holistic case management and support*

Case management and support has been identified as an important aspect in successful ATD programmes, leading to benefits both in terms of the wellbeing and the mental health of individuals but also ensuring that their case can be resolved in a timely and fair manner. Both pilots in this series had at their core a holistic case management and support model.

In the Action Access pilot, the Action Foundation caseworkers ensured that support was offered throughout the time a participant was engaged in the pilot. NatCen report that the Action Access pilot provided a more humane and less stressful environment for pilot participants to engage with a support worker, ensuring that mental and physical health needs were better understood and provided for. The Action Foundation caseworkers were responsible points of contact for the participants on any arising issues – including referral and support with attending a GP, hospital appointments, legal appointments, Home Office reporting events, and day to day managing home economics on the basis of a low income, and support with local integration. This best practice approach ensured that appointments were not missed, finances were managed and compliance with UKHO conditions remained high.

*“She [support worker] helps with everything, every time I contact her, she is really nice. She always calls me to check how I am. She supports me. I am happy for this.”*

In the Refugee & Migrant Advice Service pilot, the participants required more engagement and support at the pre-legal counselling advice stage rather than once they had started to engage with the solicitor. The King's Arm's Project caseworkers were able to use the time waiting for participant files to be shared by the UKHO to work with the participant on stabilizing other support needs not directly related to their legal matters. Like the Action Access pilot, the King's Arm's Project caseworkers supported the participants with day to day support and local integration where required. NatCen highlight that the relationship between caseworker and participant in the Refugee & Migrant Advice Service pilot helped to ensure that participants' holistic support needs were better understood and provided for

so that they could be best positioned to achieve case resolution. As with the above findings relevant to the Action Access pilot, this best practice approach ensured a positive environment that contributed to high levels of compliance with UKHO conditions.

*“She invests into you if that makes sense. She takes time to know your case and to know you. She listens. She's like, 'Oh, how's things going?' If you tell her you haven't been well, she will check up on your next session how you're feeling and stuff like that. She also manages to give you that backbone support that gives you - takes off a bit of load knowing that there's somebody on the other end that you can call.”*

### Legal Counselling

Both pilots used a ‘three-meeting model’ of legal counselling. In the first meeting the individual gets to know their legal representative and has an option to request a different one at the end of the session. In the second meeting the individual explains their situation and discusses their case with the legal representative. And finally in the third session the legal representative explains to the individual their options and answers any questions. Importantly after the final meeting the individual has time to consider their options and discuss them with their social worker, friends and family. Once they have decided what to do their social worker will help them take their decision forward.

The ‘three-meeting model’ allowed for the individual to feel comfortable and ask questions over a period of time, building trust with the legal representative and providing time for reflection on options. The provision of quality legal advice was seen by stakeholders and participants as a way to ‘reset’ previously received poor legal advice and a fair way of communicating legal options to participants. A stakeholder in the Action Access pilot noted that:

*“Even if they (the participant) ultimately end up making difficult decisions in terms of voluntary return and things like that, at least then they've had the time to do that, rather than within an instant hour consultation in a detention centre somewhere. I think that reflection time is really important, because these are big life decisions that they end up making.”*

The evaluation also found that the support workers were critical to the success of the legal counselling model. The support worker was able to provide practical and pastoral assistance, including in gathering the paperwork required by legal advisors; attending video call meetings with legal advisors to support women; and conducting debriefs with participants after meetings with their legal advisor to ensure they understood what was said during meetings. A stakeholder in the Refugee & Migrant Advice Service set out that:

*“Of course, immigration is a huge part of their life, but we want to look at them, look after them and help them, and help them succeed as a whole person. I think that then empowers them - and giving them the choice as well, like with the solicitors. Also, with other things. 'Which GP do you want to be registered with?' 'Which class do you want to go to?' 'What would you like to do?' 'What day works for you?' All of those kind of things, and giving choice and empowering again. I think that humanises people again where they've been dehumanised previously. Then they feel more allowed or permitted to actively be involved in their immigration case. Whilst I think, previously, that impression may not have been given if that makes sense.”*

The evaluation further highlighted the importance of good-quality and reliable interpreting services during legal counselling, which outside of the pilot is not always available. Additionally the evaluation found that participants reported better engagement with their

legal representatives when meetings were in person. A stakeholder in the Action Access pilot stated that:

*“Perhaps if they felt more comfortable in an office environment, they may be able to take a bit more ownership of their case and really argue their case, where I can't imagine how stressful it must be to have to sit there on a screen and say your case to somebody you've never met before.”*

These findings should be considered in line with the current situation for immigration detainees in the UK. Many immigration removal centres in the UK are located in remote locations where it is not possible to access quality, face to face legal advice. Further the mere fact of not being in detention allowed participants to more fully engage in their case resolution and feel empowered to make informed decisions as to their future.

Given the success of this model UNHCR is pleased to note that the UKHO have committed to exploring further how this model may be applied more broadly across the immigration case system.

#### *Collaboration between the Government and Civil Society*

UNHCR has been pleased to observe the collaboration between the UKHO, and respectively Action Foundation and King's Arm's Project, in the design and delivery of each pilot.

In the context of ATD, the arrangements between the UK Government and civil society were unique as other ATD being managed in the European Union were exclusively civil society led and funded. The CEP series provides a unique approach to delivering ATD, where civil society groups who already have on the ground expertise, were able to build trust more easily and act as a buffer between the participant and the UKHO, especially important when considering the collaborative and iterative process of planning and developing the pilot.

Of further importance for reflection, are the positive outcomes that arose because of the way that the Government and civil society worked together – breaking down barriers in order to reach better outcomes for the participants, ensuring trust in the process with the caseworkers at Action Foundation and King's Arm's Project able to advocate on behalf of the participants, leading to high rates of compliance. Indeed, this is highlighted in all of the management responses and demonstrates best practice in terms of partnership.

UNHCR agrees with the UKHO that the collaboration shown between the UKHO and civil society on these pilots can help inform ATD programmes in other countries.

#### **ATD in the UK – Where to from here?**

As outlined in this report, the CEP series provides clear evidence that community-based case management and services, with a focus on informed decision-making, can be cost effective for governments, increase compliance, and make a real difference to the lives of asylum-seekers.

These findings are of particular note given that the Government is currently working to expand the immigration detention estate. There is no evidence that detention deters irregular migration, nor encourages individuals to return home. Further as noted in the evaluation reports, good levels of compliance with UKHO conditions can be achieved when people are in the community.

UNHCR notes that the UKHO has indicated that they do not see any *‘evidential basis for further initiatives to support individuals following the CEP model at this time’*. However, it is our view that the two pilots in this series provide a strong evidential basis for making ATD business as usual in the UK.

As noted above, the legal counselling and case management models, along with the collaboration between civil society and the UKHO, show great promise and we would urge the Government to consider how these aspects can be integrated into the immigration system more broadly.

UNHCR remains available to support both the Home Office and civil society on ATD and in regard to the accepted recommendations. UNHCR will also continue to advocate for the UK government to explore options for ensuring people seeking protection in the UK are supported pending the resolution of their case in the community.

In conclusion, it is the voices of those involved who make the most powerful case for change in the UK. Their experiences should be considered by governments when seeking to create policy on detention and case resolution. In the UK, as the government considers next steps, it is the voices of those in the pilot that should be at the centre. By understanding their experiences we can build a more humane system for all:

*“I will say in one word. It’s like comparing day and night. King’s Arms Project is like the day where the sun is out and my life before was like in the night, without stars. It was everything black, so with them in my life, they make everything great, yes. So, you understand what I mean? So, with them, without them I was, I lost myself. I lost every hope. I lost the joy to eat and to sleep. I lost everything, so now I am like I am. I am from them.”*