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Medical Justice
seeking basic rights for detainees

10th March 2016

Response to the Home Office consultation on "Detention Services Order x/2016- Use of Restraint(s) for Escorted Moves - All Staff"

Medical Justice is a small charity that facilitates the provision of independent medical advice to those detained in immigration removal centres (IRCs). The organisation was established in 2005 and achieved charitable status in 2009. Medical Justice is the only organisation in the UK that arranges for independent volunteer doctors, midwives and psychologists to visit men, women and children in immigration detention. We reach more than 600 detainees with physical and mental health problems a year.

We welcome this opportunity to comment on a draft DSO on restraint, an issue on which there have been longstanding concerns.

Introductory Comments

Restraint, especially during hospital appointment, has negative consequences for detainees, including lack of confidentiality, loss of dignity, problems sleeping, problems receiving treatment etc. Detainees may be inhibited in their ability to communicate freely with doctors by the fact of escorts being present. Detainees with a history of imprisonment and torture in their home countries may find being handcuffed especially difficult.

There have been two cases in the immigration detention context where it has been found that prolonged restraint amounted to inhuman and/or degrading treatment: FGP, a man who was handcuffed and attached to a closes chain for 8 days during a hospital attendance and Mr Dvorzak, who died while still in restraints. It is therefore clearly very important that detailed guidance is issued to prevent a repeat of these cases.

Unfortunately, we are not convinced that the draft DSO as it currently stands sufficiently addresses these risks.

Pregnant Women

The Home Office policy on the use of force on pregnant women states that "*Force should only ever be used on a pregnant woman to prevent her from harming herself, any member of her family or any member of staff. Any force used must be appropriate, justified and proportionate. Staff must complete the use of force form detailing and justifying the reasons for using force".* The current policy was introduced following the case of *R (on the application of Yiyu Chen and Others) v Secretary of State for the Home Department* (CO/1119/2013) and was based on concerns about the serious risks to the woman and the unborn child if force was used.

We are concerned that the reference to waist restraint belts, leg restraints and mobile chairs not being permitted to be used on pregnant detainees in the current draft DSO is therefore not sufficient. To avoid any misunderstanding by contractors who may be involved in using force and restraints, the current DSO should clearly state the current policy of force not being permitted to be used on pregnant women except when it is necessary to prevent the woman harming herself or another person.

Restraint to prevent self-harm or suicide

Self-harm and suicide attempts are given as a possible justification for restraint. It is somewhat reassuring that the use of restraint equipment to prevent self harm is suggested only in the 'most exceptional cases'. Additional guidance may be helpful in this.

Restraint during trips to hospital

The section on 'request by a clinician for restraints to be removed' provides only limited reasoning and ignores, for example, the risk to confidentiality. This needs to be corrected.

It appears to be assumed that, if there is a clinical reason not to use restraints, the clinician would necessarily request for them to be removed. However, clinicians may be unfamiliar with the situation and not be aware they can request restraints to be removed. The clinician's opinion on whether restraints should be removed, therefore needs to be actively sought.

When a detainee attends hospital, there needs to be differentiation between restraints being justified during the journey/waiting time and during the doctor's appointment, given the risk to confidentiality during the doctor's appointment. It is difficult to envisage a situation where continued restraint during clinical examination or treatment would be justified, given that detainees are risk-assessed before being moved to an IRC (if they have previously been in prison) and so the risk of violence will generally be low. Any attempt at escape can normally be prevented by positioning the escorting DCOs outside the treatment/examination room.

Restraint equipment and the recommendations of the Independent Advisory Panel on Non-Compliance Management

Following the death of Jimmy Mubenga, who died while being restrained, an Independent Advisory Panel on Non-Compliance Management was formed and commissioned to provide guidance including on the use of restraint equipment. The Panel's report was published in March 2014. The government accepted all of it recommendations. The panel envisaged that the mobile chair and waist restraint belt would only be used very rarely, on charter flights or as an exceptional measure. This should be reflected in the DSO. As advised by the Panel, the use of this type of equipment can be inimical to the detainee's dignity.

Auditing

It is crucial that the use of restraints is properly audited. Data relating to the rate of use of restraint and specific restraint equipment should in collated centrally and published. This should include data on when escorting staff were present during medical examination/treatment.

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10th March 2015