

Briefing for Westminster Hall debate 14th March 2017

Detention of vulnerable persons

There has been a longstanding consensus that detention can have negative impact on all detainees' health, but those with pre-existing vulnerabilities, such as existing mental illness, serious physical health problems, disability and history of past torture or trauma are most at risk. This was reinforced by Stephen Shaw in his review (published 2016) and the literature review carried out by Prof Mary Bosworth on behalf of Mr Shaw.

Impact of detention on vulnerable people can be catastrophic and there have been 6 cases where detention of a mentally ill person has been found by the courts to amount to inhuman and/or degrading treatment contrary to article 3 of the European Convention of Human Rights. Stephen Shaw commented on these case saying "*It is simply inconceivable that these cases would be so little known if they involved children in care, hospital patients, prisoners, or anyone else equally dependent upon the state.*" The details of the cases are shocking. They include:

- a. A man with a psychotic illness who stopped eating as a result of his illness and almost starved to death. Instead of transferring him to a psychiatric unit an 'end of life care plan' was put in place.
- b. Another mentally ill man deteriorated to the point where he slept in the toilet area and drunk out of the toilet. He was not given appropriate psychiatric treatment for more than 5 months
- c. A woman became increasingly ill during her detention of more than a year and self-harmed repeatedly. She did not receive psychiatric assessment for almost a year but was restrained, placed in handcuffs and segregated.

Stephen Shaw's report found that "*the nature of the findings and the pattern of findings as between the different cases (taken together with some observations made in cases where no Article 3 breach has been found) do tend to suggest that these cases may be symptomatic of underlying systemic failings*". Medical Justice's experience is that these are far from isolated cases.

Based on his findings Stephen Shaw made a number of recommendations, that he believes would lead to less people and less vulnerable people being detained for shorter periods of time.

The Government accepted the 'broad thrust' of Stephen Shaw's recommendations and promised change, but so far, 14 months after his report, there has only been progress on very few of Stephen Shaw's recommendations. There has been no meaningful change on the number of people being detained and vulnerable people are still being detained. The most recent report by Her Majesty's Inspector of Prisons, a report on Brook House detention centre published on 10th March 2017 found that the average length of detention there had increased substantially and commented that "*Surprisingly, there did not appear to have been any analysis or investigation as to why this had happened. In the absence of such analysis, it was hard to see how detention periods could be systematically reduced and the inevitably negative outcomes for detainees mitigated*"¹.

'Adults at Risk'

Many of Mr Shaw's recommendation are said to be addressed by the introduction of the 'Adults at Risk' policy which is said to be intended to better identify and lead to the release of vulnerable people, but so far there is no indication that it is having that effect. Aspects of the policy are subject to litigation². Medical Justice and a number of other NGOs have raised concerns that, instead of increasing protections for vulnerable people, the policy does the opposite, including by narrowing the definition of torture so less vulnerable people would not be identified as torture survivors and protected.

The policy states that survivors of sexual and gender-based violence should not be detained, but there is no proper

¹ <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2017/03/Brook-House-Web-2016.pdf>

² <http://www.medicaljustice.org.uk/medical-justice-challenges-the-detention-of-victims-of-torture-in-the-high-court/>

mechanism for identifying them and no proper mechanism for monitoring whether they are being identified.

Rule 35 or the Detention Centre Rules, which requires doctors working in detention centres to report to the Home Office cases of vulnerable detainees including victims of torture has long been the key mechanism for identifying those who are likely to be at risk of suffering harm in detention. The most recent statistics published by the Home Office shows that there has been a dramatic decline in the number of rule 35 reports completed and in the number of detainees being released from detention following rule 35 reports (see appendix).

It is of particular concern that the number of Rule 35 reports completed at Yarl's Wood have decreased dramatically. Victims of sexual and gender based violence was one of the groups identified by Mr Shaw as in need of specific protection but there are no particular mechanisms for identifying these vulnerable women, only Rule 35. The dramatic decline in the number of Rule 35 reports suggests that victims of sexual and gender based violence are not being identified and protected from harm in detention.

We believe that it is crucial that there are proper mechanism to identify all detainees who are at risk of harm in immigration detention. This cannot be achieved by further limiting the processes which Shaw already found were insufficiently effective.

Detainees who are identified as being vulnerable should normally be released. No additional evidential hurdles, such as requiring vulnerable people to provide specific evidence that they are suffering harm, should be created.

Detainees who lack mental capacity

There are no proper processes for identifying and assisting detainees who lack mental capacity to engage with their asylum or immigration case, because of a mental illness, severe learning difficulty or brain injury.

We believe that detainees who lack mental capacity to fully engage with the immigration or asylum processes they are subject to should not be detained and should be properly supported by independent supporters/advocates. This will normally require further assessment and support in the community

Social care

It is unclear who is responsible for social care in detention. As a result, detainees who need care are often left without. One detention centre has recently not had any properly working wheelchairs and disabled detainees had to use broken wheelchairs that did not meet their needs. (we do not know whether working wheelchairs have since been obtained)

Medical Justice believes that those who require social care, which appears is not being provided to an acceptable standard, should not be detained.

Segregation

There are less safeguards around the use of segregation in detention centers than exist in prisons. A report by Medical Justice shows has been used in contravention of the Detention Centre Rules to punish detainees, to deal with mentally ill detainees who are not fit to be detained and to monitor people at risk of self-harm or suicide³, even though it is not difficult to see that isolation risks making health of vulnerable people worse. There currently is no detailed policy to guide on the use of segregation in immigration detention. The Home Office consulted on a draft policy in July 2016, but there were serious concerns about this draft, for example that it allowed for segregation of someone on the basis that they are 'stubborn'⁴. Medical Justice believes that it is crucial that a detailed policy is implemented, that it is substantively revised from the flawed original draft, and that it provides for proper effective safeguards and recognises that segregation has potentially irreversible detrimental effects on detainee's mental health.

Medical Justice, 2017

Rule 35 reports and release rates per quarter 2016

Quarter	Rule 35 reports made by Medical Practitioner to Home Office	Number of detainees Rule 35 reports relate to	of which:- number of Rule 35 releases from detention	% released
2016 Q1	647	635	208	32.1
2016 Q2	816	803	318	39.0
2016 Q3	741	724	256	34.5
2016 Q4	481	468	161	33.5

Quarter	Total Detention			Brook House IRC			Campsfield House IRC			Colnbrook IRC			Dungavel IRC		
	Total detainees	Detainees receiving R35 Total	% received R35 Total	Total detainees	R35 Brook House	% received R35	Total detainees	R35 Campsfield	% received R35	Total detainees	R35 Colnbrook	% received R35	Total detainees	R35 Dungavel	% received R35
2016 Q1	7,286	635	8.7	976	29	3.0	748	65	8.7	722	72	10.0	311	21	6.8
2016 Q2	7,578	803	10.6	609	43	7.1	685	45	6.6	855	83	9.7	340	62	18.2
2016 Q3	7,196	724	10.1	837	33	3.9	643	43	6.7	737	86	11.7	279	48	17.2
2016 Q4	6,848	468	6.8	1,031	61	5.9	560	35	6.3	674	36	5.3	306	40	13.1

Quarter	Harmondsworth IRC			Morton Hall IRC			The Verne IRC			Tinsley House IRC			Yarl's Wood IRC		
	Total detainees	R35 Harmondsworth	% received R35	Total detainees	R35 Morton Hall	% received R35	Total detainees	R35 The Verne	% received R35	Total detainees	R35 Tinsley House	% received R35	Total detainees	R35 Yarl's Wood	% received R35
2016 Q1	545	239	43.9	713	64	9.0	776	29	3.7	492	21	4.3	824	101	12.3
2016 Q2	689	291	42.2	754	63	8.4	1,002	42	4.2	474	25	5.3	990	155	15.7
2016 Q3	662	260	39.3	697	84	12.1	914	25	2.7	346	37	10.7	923	118	12.8
2016 Q4	611	129	21.1	725	65	9.0	879	40	4.6	0	0	0.0	910	66	7.3

(source: Home Office quarterly statistics <https://www.gov.uk/government/collections/immigration-statistics-quarterly-release> and immigration enforcement transparency data <https://www.gov.uk/government/collections/migration-transparency-data>)