

High Court rules Government redefinition of torture in immigration detention policy is unlawful

A group of unlawfully detained torture victims, including Mr PO who had been beaten, knifed and flogged in homophobic attacks, have been successful in their legal challenge. The ruling found that the Home Office narrowing the definition of torture in its flag-ship policy lacked “rational or evidence base”.

Download the full judgement [here](#)

The Home Office may face dozens of unlawful detention claims and is being forced to change how it treats thousands of torture victims in detention.

Aspects of Home Office policy to identify and release victims of torture and other vulnerable detainees from immigration detention in the UK were challenged by 7 detainees and Medical Justice, the charity that sent volunteer doctors to assist two of them in detention. The Equality and Human Rights Commission intervened in the case.

The 7 detainees included victims of sexual and physical abuse, trafficking, sexual exploitation, homophobic attacks, a child abused by loan sharks, and a young man kidnapped and abused by Taliban. The Home Office narrowed the definition of torture used in the new “Adults at Risk” policy, excluding the 7 from being recognised as torture victims.

The judge stated that the definition of “torture” intended for use in the policy would require medical practitioners to “reach conclusions on political issues which they cannot rationally be asked to reach”.

The Home Office dismissed warnings from Medical Justice whose evidence exposed that the policy purporting to lessen the risk of harm was actually likely to increase it. The policy fundamentally weakens protections for vulnerable detainees leading to more rather than fewer being detained, for longer.

The Home Office admitted it unlawfully detained the 7 detainee claimants and applied the policy wrongly in 57% of 340 cases in its initial 10 weeks of implementation, describing that as a “bedding in” issue.

Systemic policy and healthcare failures were highlighted by last month’s BBC Panorama undercover footage of detainees appearing to be abused, including a guard throttling a detainee whilst threatening to kill him and a nurse colluding in falsifying the detainee’s medical records. Since the documentary was broadcasted, three detainees died in immigration detention.

Mr PO, who was unlawfully detained and suffered mental health deterioration while held in detention.

“I welcome the decision and I am happy that the Judge accepted that the Home Office’s policy to narrow the definition of torture was unlawful. The Home Office said that detention will not affect me because I am not a victim of torture. It is difficult to believe that the Home Office could happily detain me knowing that I was tortured. It affected me greatly to be subjected to this unlawful policy. It has left a scar in my life that will never be healed. Although I was recognised as a refugee by an independent tribunal, the reminder of being detained as a torture survivor is torture in itself. The policy allowed the Home Office to turn a blind eye to my suffering and the suffering of hundreds of other torture survivors. Although I welcome the decision, it is still upsetting that the Home Office, who should protect people like me, rejected me and put me in detention which reminded me of the ordeal I suffered in my country of origin. I hope that the decision will benefit other survivors of torture held in immigration detention and it will prevent the Home Office from implementing a policy that will hurt vulnerable individuals in the future”.

Medical Justice spokesperson

“Narrowing the definition of torture by the Home Office demonstrates its sheer contempt for vulnerable detainees whose lives it is responsible for. The Home Office should have welcomed our evidence of the policy’s harm suffered by torture victims, not dismissed it.

There is ample justification for immediately releasing all detained adults at risk so they can access the care and support they need in the community. We believe that The Home Office’s denials of systemic healthcare failings

for over a decade has enabled mistreatment of detainees and that its inability to stop abuse means that the only solution is to close immigration removal centres.

For those detainees excluded by the narrower definition of torture, the policy required specific evidence that detention is likely to cause them harm – described as an “additional hurdle” in the judgment. Not only does the policy lack effective mechanisms for obtaining such evidence, it also weakened already ineffective safeguards, encourages a ‘wait and see’ approach where vulnerable people were detained and allowed to deteriorate until avoidable harm has occurred and can be documented. As such, the policy effectively sanctioned harm to vulnerable detainees. “

Jed Pennington of Bhatt Murphy Solicitors who represent Medical Justice and 2 of the (ex)detainees

“It is shameful that the Home Office reintroduced a definition of torture that the High Court had already thrown out under the guise of a policy that is supposed to be more protective of vulnerable detainees. Adults at risk is fundamentally flawed and should be replaced with a framework that genuinely protects the vulnerable with, as a minimum, a prohibition on the detention of all victims of torture or trauma.””

Duncan Lewis Solicitors, representing 5 of the (ex)detainees

“This ruling is a great victory for our clients, and should serve as a reminder to Amber Rudd that she and her department are not above the law, but the policy on torture was just one cog in the machinery by which the Home Office demeans and degrades those most in need of protection. We will continue to fight the whole rotten system on behalf of our clients.”

The Equality and Human Rights Commission intervened in the case, their Chair David Isaac said:

“People who have been subjected to torture should not be kept in immigration detention. This unlawful policy has been scrapped, but the government should now go further and strengthen the human rights protections for people in immigration detention.

“It is just one aspect of the government’s immigration detention programme that causes us serious concern. Following recent revelations about the treatment of people in immigration detention, we question the ability of the Home Office to ensure that companies contracted to run immigration detention facilities safeguard people’s basic rights. We are the only country in Europe that doesn’t have a statutory time limit on immigration detention and we continue to call for its introduction.”

Martha Spurrier, Director of Liberty, said: “We welcome today’s ruling – but it is a damning indictment of our Government that this sickening policy ever saw the light of day. In the UK in 2017, the Home Secretary ignored medical expertise, basic humanity and the law to sign off a barbaric policy to lock up traumatised torture survivors.

“It is symptomatic of a vicious approach to immigration detention that sees thousands of people locked up in brutal conditions around the UK, with no certainty of when or if they will be released. Until that ends, this Government is endorsing abuse.”

Quotes from Lord Dubs and from the Royal College of Psychiatrists Working Group on Asylum will be available on request.

Medical Justice and 2 individual detainee claimants were represented by Bhatt Murphy solicitors, Shu Shin Luh and Stephanie Harrison QC. Duncan Lewis solicitors and Chris Buttler and Ayesha Christie represented 5 other linked detainee claimants.

Interviews for broadcast and print with Mr PO and other ex-detainees, Medical Justice spokesperson and volunteer doctors can be arranged. Medical Justice skeleton argument and other legal documents may be made available on request.

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Notes

Mr PO case-study

Mr PO was beaten, knifed and flogged in homophobic attacks. The judgment summarises ; “The [Home Office] case worker responded that this did not fit the definition of torture as he was beaten by non-state actors. This position was maintained until release. ... a consultant neuropsychiatrist, Dr Lohawala, provided a report expressing the view that their condition had deteriorated in detention. Dr Wootton, a consultant forensic psychiatrist, expressed the view in PO’s case, that “the identity of the perpetrator of the torture” was not relevant to the harm he suffered in detention, where “he experienced the same loss of agency and powerlessness that he had during his previous traumatic experiences, and this triggered a worsening of his symptoms”.

Other ex-detainee claimants included ;

A 20-year-old Vietnamese victim of trafficking who worked from the age of six to pay off her dead parents’ debts from a loan shark. She was repeatedly beaten with sticks, broken bottles and burned with cigarettes before being trafficked to the UK.

A 21-year-old Afghan man who was kidnapped and recruited by the Taliban at the age of five, beaten with rifle butts, stabbed and thrown off a mountain.

Two women who say they suffered severe ill-treatment at the hands of persons who were not state agents and were subjected to sexual violence, rape and human trafficking for sexual exploitation.

Background

In 2015, Channel 4 news filmed inside Yarl’s Wood and Harmondsworth immigration removal centres undercover, revealing abuse of detainees and references to medical mistreatment. The next day, an All Party Parliamentary Group published a damning report following an inquiry on detention.

In response to the mounting criticism, the government commissioned Steven Shaw, an ex Prison & Probation Ombudsman, to carry out a review of the welfare of vulnerable detainees. In 2016 this found that safeguards for vulnerable people were insufficient and that overall detention was used too frequently and for too long. He made 64 recommendations that were broadly accepted by the government.

The new “adults at risk” policy states that it “emerges from the Government’s response to the report of Stephen Shaw of his review” and the intention is that it will, in conjunction with other reforms, “lead to a reduction in the number of vulnerable people detained and a reduction in the duration of detention”

The policy was laid before parliament the day before summer recess and came into effect one week after recess with little opportunity for meaningful debate. Parliamentarians’ attention was not drawn to the intention to narrow the definition of torture when the policy was laid before parliament. There was no formal stakeholder consultation process for the policy.

Stephen Shaw is currently undertaking a review of the Home Office’s progress regarding recommendations he made in 2016.

About the Adults at Risk policy

The judgment summarises that : “The chief problem with the narrowed definition is that “it excludes certain individuals whose experiences of the infliction of severe pain and suffering may indeed make them particularly vulnerable to harm in detention.”

The policy relies on mechanisms to identify vulnerable detainees (‘Rule 35’) that have been demonstrated by the courts, as well as the Shaw review, to be ineffective.

The new policy uses a narrow definition of torture ; article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). This is very technical and complex and led Home Office caseworkers and IRC doctors to apply it in such a manner as to exclude cases of non state torture.

The policy as written is flawed and these inadequacies are compounded by misapplication of the policy, with errors in 57% of cases in the first 10 weeks of its implementation.

There are further concerns about the policy which did not form part of this challenge: Under the previous imperfect policy to identify and release vulnerable detainees, detention of vulnerable people was meant to be used only in 'very exceptional circumstances'; however, the new policy relies on a much vaguer category of 'immigration risk factors' so most people's detention continues.

The policy placed IRC doctors in a difficult position where they were asked to make distinctions as to who qualifies as victims of torture - a complex legal question and therefore something that goes beyond their clinical expertise. The new definition of torture has meant that some vulnerable detainees have simply not had their scars of torture documented despite their evident vulnerability. In terms of vulnerabilities other than torture, the 'wait and see' approach that the policy encourages means that, rather than preventing harm, doctors are simply waiting to document preventable harm.

The Home Office ignored warnings by Medical Justice and others

Together with other NGOs, Medical Justice raised concerns about the policy increasing the risk of harm to detainees directly with the Home Office but they were dismissed. They resorted to publishing a letter in the Guardian.

As such, Medical Justice says the policy failures were not an oversight, that the Home Office has knowingly allowed the risk of harm to continue, and has spent significant public funds on defending the policy.

The harm caused continues

Medical Justice continues to see cases where vulnerable detainees are detained and suffer harm in detention under the adults at risk policy. Potentially thousands of detainees continue to suffer.

HM Inspectorate of Prisons inspected Morton Hall IRC ; 69 detainees were identified as being at risk of harm under the new policy but the identity of all these detainees was known neither by local Home Office nor custodial staff so they received no systematic support or monitoring. An inspection found that detainees identified as being at risk by the Home Office at Brook House IRC were not known as such by the regime there.

Inadequate healthcare in immigration detention

Immigration detention in the UK is indefinite and not part of any criminal sentence or subject to meaningful judicial oversight sanctioned. About 30,000 men, women and children are detained every year. Many have mental and physical scars of torture and persecution from which they fled. Detainees' medical conditions are often exacerbated by, and sometimes caused by, prolonged detention and inadequate healthcare.

Home Office policy stipulates that vulnerable people should not be detained. However, many are, and in the last few years there have been six court findings of "inhuman and degrading" treatment of detainees . There have been 3 detainee deaths in the last month. We come across so many instances of medical mistreatment, lack of medication and access to hospital for serious conditions that these tragic outcomes seem almost inevitable. We regularly bring these failings to the attention of the home office and NHS England but as with out concerns about the AAR they are routinely dismissed.

Healthcare provision within detention, much of it provided by private companies like G4S has repeatedly been shown to fall short of NHS equivalence. Many detainees, because of past or present trauma, have complex health needs and find it difficult to access healthcare and this is exacerbated by short consultations, lack of staff training, late screening, poor use of interpreters, poor clinical assessments, and lack of adherence to clinical protocols." These inadequacies are compounded by Home Office caseworkers with no declared medical qualification, appeared to make their own clinical judgments.

About Medical Justice

Every year Medical Justice receives more than 1,000 referrals from detainees, including victims of torture and those with serious health problems. We are the only charity that organises for independent volunteer doctors to visit all of the UK's nine immigration removal centres to assess detainees and document their scars of torture and medical conditions that should be considered in their immigration and asylum claims. Our doctors also identify and challenge any inadequate healthcare and instances of medical mistreatment. We work to bring about lasting change by producing research and undertaking policy work and strategic litigation.

