Medical Justice's submission to the Joint Committee on Human Rights'

Inquiry into Immigration detention

Medical Justice welcomes this inquiry into the areas in which the UK's immigration detention system fails to comply with human rights and fails to protect against arbitrary detention.

Medical Justice has been working with detainees in Immigration Removal Centres (IRCs) across the UK since 2005 and has seen thousands of cases. We are the only organisation to send independent doctors into IRCs to document evidence of torture, challenge instances of inadequate healthcare and evidence the further harm that detention has caused.

Detention is harmful to those detained: There is consistent research evidence that detention harms detainees' health. Those with pre-existing vulnerabilities, e.g. mental health issues or survivors of torture and other forms of cruel or inhuman treatment, including sexual violence and gender-based violence, are at particular risk of harm.

Lack of access to NHS equivalent healthcare*:* Healthcare in detention falls short of NHS equivalence. A summary of the shortcomings, including short consultations, late screenings, inadequate use of interpreters, poor clinical assessments, and lack of adherence to clinical protocols can be found here. We share the British Medical Association's concern about inadequate healthcare and echo their call for a phasing out of immigration detention. We are particularly concerned about the treatment of vulnerable detainees with mental health issues who are denied access to the range and quality of treatments available in the community. We share the concern of the Royal College of Psychiatrists that IRCs are not therapeutic environments and therefore adequate treatment cannot be provided.

The current legal and policy framework for immigration detention does not prevent people from being detained wrongfully: This is evidenced by £21m paid in compensation for wrongful detention to 850 individuals between 2012 -2017. This does not include those who did not pursue legal action, which is likely to include many who were removed or too damaged by their experience to be aware of, or in a position to take up, legal challenges. The numbers must also be understood in relation to the target driven culture in the Home Office, so evident in the Windrush scandal, which recently forced the Home Secretary to admit that the Home Office has *'become too concerned with policy and strategy and sometimes loses sight of the individual'*.

The legal and policy framework also fails to adequately protect detainee's human rights. There has been a significant increase in deaths, including self-inflicted deaths. 10 immigration detainees died in 2017, the deadliest year on record. In recent years there have been 6 cases where the High Court found detention and the conditions of detention, including the use of segregation, amounted to 'inhuman and degrading treatment' in breach of Article 3 of ECHR. These rulings most likely represent only the tip of the iceberg as many cases claiming breaches of Article 3, get settled out of court. 6 cases of breach of Article 3 is a shocking fact that may not have gone so unremarked had it transpired in any other setting. A desire to prevent further Article 3 breaches was one of the primary drivers behind the commissioning of the Shaw Review.

The Adults at Risk Policy (AAR)

The initial Shaw review found that too many vulnerable people are detained for too long and existing safeguards fail to adequately protect vulnerable people from a detention environment which, in and of itself, undermines welfare and contributes to vulnerability. In response to Shaw's recommendations, the Home Office introduced the AAR policy. However, it is now clear that the AAR policy leads to more vulnerable people being detained for longer and that it does not provide adequate safeguards.

Reviewing the past Article 3 cases in light of the AAR policy it is clear that the policy would most likely not have prevented these situations and we fear that it would therefore fail to prevent future Article 3 breaches.

A full explanation of the Adults at Risk policy and its shortcomings can be found here and here but our main concerns are outlined below:

- The policy fails to identify vulnerable persons prior to detention, has not improved the safeguards found to be inadequate by the Shaw review and therefore fails to protect vulnerable persons from inappropriate detention.

- The narrow definition of torture applied in the policy means survivors of severe ill-treatment and trauma could fall outside of the policy.

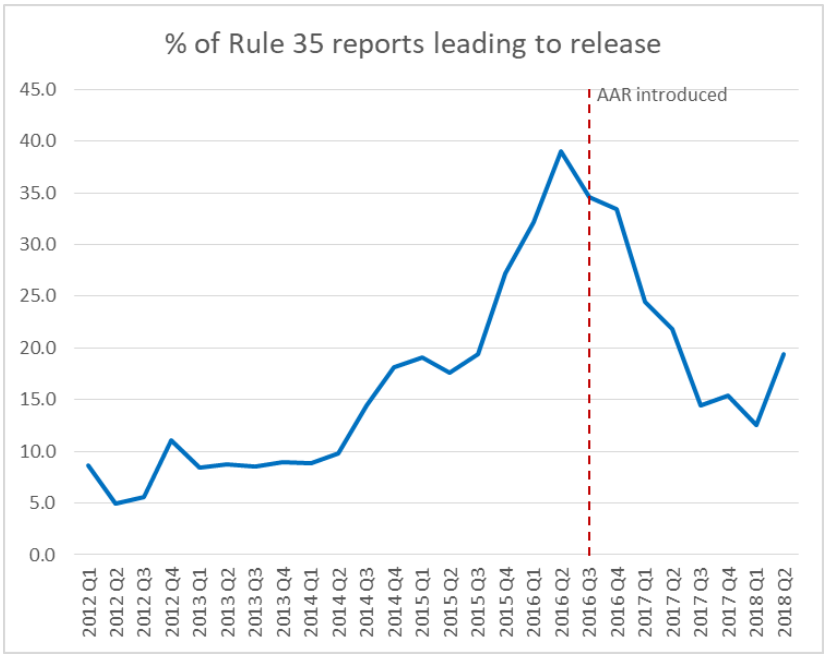
- The policy increases the evidential burden on individuals and increases the threshold for release from detention. The policy requires that a person present evidence not only of their vulnerability but of the fact that they are likely to suffer harm in detention in order to qualify for a level of protection equivalent to the previous policy. Such evidence is very hard to come by prior to detention, and once in detention the evidence is only likely to be generated as a result of the person deteriorating, at which point the harm has already occurred. Such a 'wait and see' approach knowingly places vulnerable people in a harmful environment. As a result we see many extremely vulnerable people, e.g. victims of trafficking or sexual violence, languishing in detention despite the acknowledged risk of harm to these groups. This is particularly important as the most vulnerable are often those least likely to have ready evidence of their vulnerability.

One client had been severely ill-treated by traffickers who forced him to work in cannabis production in the UK. Even though his account of trafficking was accepted by the Home Office, he was told the risk to him was outweighed by immigration factors- in that he had a criminal conviction for cannabis production.

Another client had been tortured in prison in Sri Lanka. Since she only had evidence of the history of torture, but not of the likely harm she would suffer in detention, she remained in detention and received almost no follow-up. Predictably, her health deteriorated, and she eventually needed transfer to a psychiatric unit where she remained for 6 months.

- Detainees recognised to be at increased risk of harm languish for longer in detention. Home Office statistics on releases following a 'rule 35' reports (safeguard for vulnerable people in detention) shows that in the last quarter before the introduction of the AAR policy the release rate following a 'rule 35' report was 39%. By the first quarter of 2018 this had dropped to 12.5%. Even where the policy identifies vulnerable people they are not being released from detention and their detention continues indefinitely.

We analysed 100 rule 35 reports and responses of people referred to Medical Justice between March and October 2017. 97% of cases were accepted as Adults at Risk. In 95% of cases the decision was taken to maintain detention. Only 2% of cases were assessed as level 3 (highest level) and the average duration of detention considered reasonable by the Home Office was 10 weeks. This is a very long time for vulnerable people acknowledged to be at increased risks of harm in detention to be exposed to risk of harm, particularly in the face of the known inadequacies in healthcare in IRCs.



- **There is a systemic lack of follow up of vulnerable detainees who end up in detention.** HMIP have found that IRCs could not systematically identify and support vulnerable people. This is particularly worrying as the policy places individuals known to be at risk into an environment known to be harmful. In addition it requires evidence of harm occurring in order for release to be seriously considered. The lack of follow up means that where harm does result, this is often initially missed.

People are routinely deprived of their liberty for the purposes of administrative convenience, as evidence in research from Amnesty and Bar Council which found that immigration detention is being used as a matter of routine. Under Article 5 ECHR detention must be proportionate to the objective (e.g. removal or assessing someone's right to enter the UK), and alternatives to detention must have been properly considered for detention to be lawful. More than 50% of those detained are released back into the community bringing into question the purpose of their detention. There are currently no requirement for the Home Office to document what alternatives have been considered and why these were deemed inappropriate.

The initial decision to detain an individual should be made independently: Those detained under immigration powers must be subject to the same safeguards and burdens of evidence as in criminal cases including automatic judicial oversight by a judge within 24 hours. This must go hand in hand with reinstating legal aid withdrawn under LASPO. Any immigration decision, including notice of removal, must be challengeable and thus accompanied by access to legal advice and representation. High quality, free and timely legal advice together with judicial oversight are vital components of a just system.

The second Shaw re-review echoed some of our concerns about the AAR policy including that AAR had weakened safeguards and had failed to lead to a reduction in the number of vulnerable detainees.

We believe the AAR policy is fundamentally flawed and does not significantly reduce the risk of further breaches of Article 3 ECHR.

The AAR policy must be redrafted to ensure that it is protective, effective and inclusive – by reinstating a category-based approach to identifying vulnerability; ensuring adequate mechanisms for identifying

vulnerable adults; introducing effective screening for vulnerability; abandoning evidence levels; and ensure that all those identified as particularly vulnerable to harm in detention can be detained only if there are 'very exceptional circumstances'.

September 2018, Medical Justice