



Association of Visitors to Immigration Detainees (AVID)

United Kingdom

**Submission to the UN Special Rapporteur on the Human Rights of
Migrants**

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The needs and protection concerns of vulnerable groups:

Detention of those with mental health needs in the UK

About AVID: We are the national network of volunteer visitors to immigration detainees in the UK. Established in 1994, AVID has over 16 years experience in supporting immigration detainees wherever they are held; our 20 member groups visit in immigration removal centres (IRCs), short term holding facilities (STHFs) and prisons. Working with and through our membership, AVID collates evidence of the daily realities of immigration detention and uses this to present a collective voice for change.

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The needs and protection concerns of vulnerable groups:

Immigration detention of those with mental health needs in the UK

1. **AVID has become increasingly concerned about the numbers of people in immigration detention with a range of complex health needs, including mental health issues, despite UKBA policy to ensure vulnerable groups are not detained. Detainees face a range of barriers in accessing appropriate mental health care in the UK detention estate. Our member visitors groups have also seen first-hand the devastating impact that detention can have on the mental health of detainees who are held for long periods and with no idea of the outcome of their cases. Many are then released back into the community, without adequate levels of protection or support.**
2. We wish to highlight that many of the UK government's practices in relation to the immigration detention of vulnerable asylum seekers and other migrants with mental health needs are at odds with its obligations under the UK Human Rights Act and the European Convention of Human Rights (ECHR). The 1998 Human Rights Act 'gives further effect' in UK law to the rights contained in the ECHR.
3. Many vulnerable detainees with mental health needs are not receiving humane treatment in line with the UK Border Agency (UKBA)'s duty of care towards those deprived of their liberty for administrative purposes. We make particular reference in this regard to the ECHR Articles 2 (the right to life) and 3 (that no one shall be subject to torture or to inhuman or degrading treatment or punishment).

Context: Immigration Detention in the UK

4. The UK has statutory powers of detention in respect of asylum seekers and other migrants and currently detains over 30,000 people each year. The majority of those detained will have claimed asylum at some point (64% of those held in 2010¹). The powers to detain are set out in the 1971 Immigration Act. The UK may detain in 11 designated immigration removal centres (IRCs²) and 3 residential short term holding facilities (STHFs³): these places are included in the official Home Office statistics. However, immigration detention may also be in prisons; other short term holding centres at ports, and police stations- these places are not included in the statistics. The number held annually is therefore believed to be much higher than official records show at any one time.
5. The UK has derogated from the European Qualifications Directive and as a result there is no upper time limit on the length of detention. The longest period of

¹ UKBA, [Immigration Statistics April – June 2011](http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2011v2/detention-q2-11-tabs) available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2011v2/detention-q2-11-tabs>

² Brook House, Campsfield, Colnbrook, Dungavel, Dover, Haslar, Harmondsworth, Lindholme, Morton Hall, Tinsley House and Yar's Wood.

³ Larne, Pennine House, Colnbrook and Cedars

detention as at 30th September 2010 was just under five years⁴. Figures show that of all those detained as at 30th June 2011 (2,685), 15% were held for six months or more (407)⁵.

6. The UK is also detaining people for longer periods. This has come under intense criticism from NGOs and statutory monitoring bodies⁶. The High Court recently found that one man's detention for 4 years 11 months was unlawful throughout⁷. In 2009-10 £12 million was paid in compensation and legal costs for unlawful detention cases⁸. For many detainees, removal from the UK within a reasonable time – the statutory purpose of immigration detention – has ceased at some point to be achievable yet detention continues, at great cost both to the public purse and the mental health of detainees.

Promotion and protection of Human Rights: Immigration Detainees with Mental Health Needs

Failure to protect the right to life: Article 2

7. Article 2 places an obligation on the state both to refrain from taking life and a positive duty to take appropriate measures to safeguard life. These obligations are particularly relevant for those in state custody for whom the state has a duty of care. There is a higher risk of suicide generally amongst detained populations⁹, as well as among certain 'high risk' groups including young adults, males, those who have suffered a previous traumatic experience, those with a history of contacting mental health services and those who do not have family or social support¹⁰. A significant proportion of the UK's detained population consists of these high risk groups.
8. There were three deaths in detention in 2011¹¹.
9. There were 183 incidents of self harm *that required medical treatment* in 2010 in IRCs. In the same period, 1,367 detainees were deemed to be 'at risk' of self harm¹². These figures do not include detainees held in short term holding facilities or prisons.
10. HM Chief Inspector of Prisons (HMCIP) found that half of all the IRCs inspected in 2009 were not judged to offer a sufficiently safe environment for detainees¹³. HMCIP

⁴ House of Commons Hansard, 25th January 2011, 36217 accessed at

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110125/text/110125w0001.htm#11012554000019>

⁵ UKBA, *Immigration Statistics April – June 2011* available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2011v2/detention-q2-11-tabs>

⁶ See for example: Independent Chief Inspector of UKBA *A thematic inspection of how the UKBA manages foreign national prisoners* (November 2011), Detention Action *Detained Lives* (2009)

⁷ *Sino, R (on the application of) v Secretary of State for the Home Department* [2011] EWHC 2249 (Admin) (25 August 2011)

⁸ House of Lords Hansard, HL3794 accessed at

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129w0001.htm>

⁹ Her Majesty's Inspectorate of Prisons *Suicide is Everyone's Concern* (1999)

¹⁰ *Ibid*

¹¹ House of Commons Hansard, 13th September 2011, c 1132W accessed at :

<http://www.theyworkforyou.com/wrans/?id=2011-09-13a.70818.h&s=detention#g70818.r0>

¹² Data obtained via a Freedom of Information request submitted by 'Freemovement' and accessed online at

www.freemovement.org.uk on 16th march 2011

¹³ HMCIP *Annual Report 2008-9* p15

has repeatedly expressed concerns that mental health provision in IRCs is inadequate¹⁴.

11. Preventive strategies for the reduction of harm to vulnerable detainees in IRCs are not in line with the equivalent standards in the UK Prison Service. For example, first night screening including a detailed assessment of risk of self harm is not carried out in IRCs.
12. Operational management of IRCs is contracted out by the UK government to commercial operators and HM Prison Service¹⁵. Provision of healthcare is also sub-contracted, resulting in a mixed provision of private and public healthcare systems. AVID's research into conditions in detention reveal uneven provision in terms of mental health support across the UK's detention estate. There is no standardised allocation of mental health nurses, or other staff trained to support those with mental disorder.
13. **Recommendation: That the UKBA discharges in full its positive obligations under Article 2 with respect to those detained under Immigration Act powers and for whom it has a duty of care. This should include as a very minimum, the alignment of protection and treatment for mentally disordered and vulnerable detainees with current provision in the prison service.**
14. Vulnerable adults including people who have survived torture, pregnant women, disabled people, the elderly, those suffering from mental illness or with serious medical conditions are routinely detained. AVID has become increasingly concerned by the number of detainees we see who are suffering from mental disorder. The mechanisms in place to protect these groups have been considerably weakened in recent years. This has compounded an already difficult and potentially damaging situation for the most vulnerable.
15. The first mechanism is statutory provision: Rule 35 of the Detention Centre Rules. This is the mechanism through which concerns about those whose health may be 'injuriously affected' by detention, are raised and passed to UKBA to enable release where required¹⁶. NGOs including AVID have raised concerns for some time about the efficacy of this process¹⁷. In 2009 an audit of the process by UKBA revealed the dysfunction of Rule 35 and its failure to protect the vulnerable: in 91% of the audited cases, detention was maintained¹⁸.
16. A second example is that the UKBA's own operational policy guidance towards the detention of vulnerable groups has been considerably diluted. This policy outlines

¹⁴ See, for example: HMCIIP (2010) Report on an announced inspection of Brook House IRC (15-19 March 2010) p15, HMIP (2010) Report on an announced full inspection of Harmondsworth IRC (11-15 Jan 2010) p31

¹⁵ Current private providers are: Serco, Group 4 Securicor (G4S), Mitie PLC, and the GEO Group

¹⁶ UK Legislation: Detention Centre Rules (2001) Rule 35. Accessed at: <http://www.legislation.gov.uk/ukxi/2001/238/contents/made>

¹⁷ See, for example, minutes of the UKBA Stakeholder Meetings 'UKBA Detention User Group Medical Sub Group' throughout 2009 and 2010

¹⁸ UKBA (2011) Rule 35 Audit accessed at

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/detention-centre-rule-35-audit/>

those groups of people unsuitable for detention except in *'exceptional circumstances'*¹⁹.

17. The section of this policy entitled *'Persons considered unsuitable for detention'* was amended without consultation in August 2010, and introduces a new 'manageability' clause with regards to certain groups. This effectively alters the previous presumption *against* the detention of these groups to a new presumption *of* detention, provided their specific vulnerability can be 'satisfactorily managed' within detention. The UKBA has confirmed to NGO stakeholders that there is no agreed policy definition or guidance on what would constitute *'satisfactory management'*.
18. This policy change effectively dilutes the policies to protect vulnerable people from detention, enabling the Secretary of State to detain more broadly, and from a wider range of vulnerable people whose conditions may be injuriously affected by their detention.
19. The aforementioned policy on those people deemed unsuitable for detention was amended further with regards to the level of severity of 'mental illness' that would be deemed unsuitable for detention. Prior to August 2010, the policy stated that detention of people with a *'mental illness'* should only be detained in *'exceptional circumstances'*²⁰. This was amended as follows: *'those suffering from serious mental illness which cannot be satisfactorily managed in detention'*²¹. This represents a substantive shift in the policy, in that it suggests that those with serious mental illness are now suitable for detention rather than unsuitable. It also suggests that there is a presumption in favour of detention for those whose mental disorder is deemed to be less serious.
20. Further, once in detention, the risk of further mental deterioration is well documented²². Many AVID member groups, who visit in every IRC in the UK, have highlighted the negative impact of immigration detention on mental health of those they visit:

¹⁹ UKBA Enforcement Instructions and Guidance Chapter 55 'Detention and Temporary Release' Section 55.10 'Persons Unsuitable for Detention' accessed at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary>

²⁰ *ibid*

²¹ *ibid*

²² See, for example: Pourgourides, C. Et al (1997) The mental health implications of detention of asylum seekers in the UK *Psychiatric Bulletin*, Vol. 21, p673-4, Detention Action (2009) Detained Lives: the real cost of indefinite detention, Cohen, J. (2008) Safe in Our Hands? A study of suicide and self harm among asylum seekers, *Journal of Forensic and Legal Medicine*, May 15 (4), p 235-4

Case Study: Mr B

Mr B, a victim of torture, was diagnosed with Post Traumatic Stress Disorder prior to his arrival in detention. A young man in his twenties, he was hearing constant voices in his head. His visitor said *“he experienced regular hallucinations; self harmed and complained of a permanent headache. He told me about nightmares, many of which centred on a recurring dream of ‘being locked in a bunker”*.

Mr B was detained by UKBA for over three years. As a result of uncertainty on how to handle the manifestations of his behaviour, Mr B was kept in isolation under Rule 40 for extended periods of time.

Report from AVID member visitors group, March 2010

Case Study: Mr F

A young man from Afghanistan, Mr F was diagnosed with Post Traumatic Stress Disorder and prescribed anti-psychotic medication. Prior to his detention, Mr F was visited every day by a community mental health crisis team. In detention he frequently suffered panic attacks and heard voices, such as women and babies, screaming at him. He waited a long time to see a psychiatrist in detention, and was kept in isolation under Rule 40 for about 5 weeks as a result of behavioural issues related to his mental health.

Report from AVID member visitors group, March 2011

Case Study: Mr A

A visitor at Brook House IRC visited Mr A in early 2011 and found him extremely distressed. His solicitor arranged for a psychologist and psychiatric assessment to be carried out, which concluded that Mr A had the mental age of an 11 year old. Despite this, Mr A was held in isolation in Brook House for six weeks. His visitor told us *“he has evidently been emotionally scarred from being detained in isolation for so long”*. ***Report from AVID member visitors group, 2011***

Recommendation: That the UKBA fulfils its positive obligations under Article 2 by ensuring its duty of care is consistently applied throughout its policy guidance. In particular, the UKBA should reverse the policy amendments to the Enforcement Instructions and Guidance (Chapter 55.10 *Persons Unsuitable for Detention*) to ensure that vulnerable groups included those with mental disorder are not detained.

Violation of Article 3: Prohibition of torture and inhuman or degrading treatment

21. The UK's detention of people suffering from mental disorder has been found to breach article 3 of the ECHR in two recent cases²³, the case of 'S' (August 2011) and the case of 'BA' (October 2011). In these two cases the prolonged immigration detention of people suffering from severe mental disorder was found to amount to inhuman and degrading treatment.
22. The case of 'S' found that the detention of this man between April and September 2011 was unlawful. In prison and psychiatric hospital prior to detention he had psychotic symptoms and had a history of self harm, and this medical history was known to UKBA prior to his detention. Medical reports clearly state that immigration detention would lead to a regression in his psychotic state. Whilst in detention he was regularly placed on suicide watch and was assessed by a psychiatrist as being unfit for detention. 'S' was not released until a second High Court intervention in September 2010. The High Court found that in detaining S, the UKBA had breached both negative and positive obligations under article 3 ECHR, in that the circumstances of his immigration detention amounted to inhuman and degrading treatment, but also that the UKBA had failed to put appropriate measures in place to ensure that he was not subject to this treatment²⁴.
23. In the case of 'BA', the High Court ruled that the Secretary of State had unlawfully detained a man with severe mental illness between June and October 2011. While serving a prison sentence prior to detention, BA was twice admitted to hospital under the Mental Health Act as a result of deterioration in his mental health – he had a history of psychosis and refusing food and fluid. On his discharge from hospital BA was detained in an IRC, despite evidence from his psychiatrist that his mental health would deteriorate in detention. The UKBA continued to detain him despite various medical professionals raising concerns with UKBA about his poor mental health. The IRC healthcare manager noted that BA was unfit for detention and that as a result of his refusal of fluids he was near death. The centre began to prepare an 'end of life care plan' for him. Despite this his detention was maintained until a High Court order on the 7th October 2011. The High Court found that the circumstances of his detention amounted to inhuman or degrading treatment under Article 3 and described the behaviour of UKBA staff as "chilling" and displaying a "callous indifference"²⁵ to this man's plight.
24. **Recommendation: In light of the recent judgements concerning Article 3 that the UK undertakes a comprehensive review of the identification and management of mental disorder for those detained under immigration act powers.**

²³ S, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2120 (Admin) and BA, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2748 (Admin)

²⁴ S, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2120 (Admin)

²⁵ BA, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2748 (Admin)