



association of **visitors** to
immigration detainees

AVID (Association of Visitors to Immigration Detainees) briefing for Westminster Hall debate on the Detention of Vulnerable People

Tuesday 14th March 2017

About AVID: AVID (Association of Visitors to Immigration Detainees) is the national membership organisation of volunteer visitors to immigration detainees in the UK. Established in 1994, AVID is a registered charity with 17 independent member organisations, who visit in every single Immigration Removal Centre (IRC) and Short Term Holding Facility (STHF) in the UK, as well as in some prisons. As such we have a unique perspective on detention nationally. Working with and through our membership, AVID collates evidence of the daily realities of immigration detention nationally and uses this to advocate for change.

This briefing outlines our key concerns in relation to the continued detention of vulnerable people, despite the far-reaching recommendations for change outlined in the ‘Shaw Review’, the Government commissioned independent review which was published in January 2016. While we wholly welcomed the commitments to detention reform made in the Ministerial Statement of January 2016, we are concerned that progress has been too slow, is not transparent, and in some policy areas has stalled completely. In particular, we remain concerned that the detention of vulnerable people, rather than being reduced, is becoming an even more complex area for people at risk of detention, and those supporting them, to navigate. AVID believes that vulnerable people should never be detained and would urge the Government to consider community based alternatives to detention which would reduce the use of detention, one of several commitments made post-Shaw Review which has not been met.

Increasing the availability of community based alternatives would provide a pathway that enables vulnerable and at risk groups to be routed away from detention into case management programmes based on engagement rather than enforcement, ensuring they have access to the supports they need while dealing with their immigration cases. This would reduce the UK’s use of immigration detention, by systematically routing those at risk away from immigration detention into supportive case management programmes where immigration concerns can be addressed from within the community without putting people at further risk of harm.

1. The Shaw Review and the Reform Agenda

More than 30,000 people are held under Immigration Act powers in the UK, every year, without a time limit. It is now well recognised and understood that indefinite detention is damaging to mental health. Home Office policy states that vulnerable people should not be detained. However, many vulnerable people are detained, and this reached crisis point when on no less than five occasions, the High Court found that the Home Office’s use of detention had breached Article 3 of the European Convention of Human Rights, amounting to “cruel, inhuman or degrading treatment” of people with mental health needs¹. In response to these cases and mounting criticism, the Government commissioned Stephen Shaw

¹ R (BA) v SSHD [2011] EWHC 2748 (Admin); R (HA) v SSHD [2012] EWHC 979 (Admin); R (D) v SSHD [2012] EWHC 2501; R (MD) v SSHD [2014] EWHC 2249 (Admin).

to carry out a review of the welfare of vulnerable people in detention, published on 14th January 2016. This comprehensive review found that protections for vulnerable people were inadequate and made 64 recommendations for change².

In response, then-Immigration Minister James Brokenshire promised “significant and transformative change”, accepting the broad thrust of Shaw’s findings and committing to reduce the numbers of individuals detained, and the lengths of detention³. For the first time, there was recognition that the current safeguards in place were not working and that vulnerable people – who found themselves in detention without time limit –should be systematically routed away from detention. The critical point in Brokenshire’s statement was that there would be a ‘clear presumption that people who are at risk should be detained’⁴.

Shaw’s review called for, amongst many other things, an end to the detention of pregnant women; an end to the detention of those with ‘serious mental illnesses’; and an extension of the presumption against detention to groups previously not protected, such as transsexual people, people with learning difficulties, or those with a diagnosis of PTSD (Post Traumatic Stress Disorder). He also called for an alternative to the dysfunctional ‘Rule 35’, the key protection mechanism for people who have suffered torture or whose mental health would be injuriously affected by a period of detention. Following the Shaw Review, the Government could no longer deny the damage caused by immigration detention and was forced to acknowledge the need for greater protections for those most at risk of harm. As such, the centrepiece of the Government’s reforms to date has been the ‘Adults at Risk’ policy, which was implemented in September 2016, to ‘reduce the number of vulnerable adults detained’ as part of a commitment to reduce the use of detention overall. We are concerned that the new policy will be unable to fulfil this aim.

2. Adults at Risk Policy

No formal consultation on the ‘Adults at Risk’ policy proposal took place, although stakeholder NGOs working in detention centres, including AVID, were granted a meeting with the Home Office to discuss the draft policy, after it had been developed. At that time, AVID, and many other NGOs, expressed our concern that the ‘Adults at Risk’ policy would not achieve its aim to reduce the number of vulnerable people in immigration detention, and would, in fact, further weaken the already inadequate safeguards for vulnerable detainees. A [joint letter](#) was sent to the Home Office, signed by several NGOs including AVID and Medical Justice, highlighting our concerns. The policy was implemented in September 2016 without consideration of the issues we raised. These included:

- **Downgrading the definition of torture:**

The Adults at Risk policy restricts the wider definition of torture previously used in its detention policy, instead applying the narrower definition in the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) Article 1, which limits ‘torture’ to acts involving a public official only. This means that those tortured at the hands of non-state actors (Isis, Boko Haram) would no longer be included. Previously, torture was understood in terms of the damage caused to the individuals, rather than by the perpetrator.

² See <https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>

³ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470/>

⁴ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470/>

This leaves many others, such as survivors of rape, sexual or gender based violence, or gang violence by non-state agents, at risk of detention. Legal proceedings are already underway to challenge this downgrading of previous protections. NGOs have noted that it seems to be women, LGBTI people or other minority groups who are suffering most under the new policy.

- **‘Evidencing’ vulnerability - Balance of risk factors and burden of proof:**

The policy increases the burden of evidence on vulnerable people and balances vulnerability against a wider range of other factors. We fear this will lead to more vulnerable people being detained for longer.

The new policy introduces the concept of ‘balancing’ or weighing up vulnerability factors against immigration factors to be carried out by those making the decision to detain. Vulnerability is ranked on three levels, based on the types of evidence one can provide. Providing your own testimony would constitute ‘level one’ evidence. Professional evidence that a person may be an adult at risk would form a ‘level two’ evidence. Professional evidence that the person is at risk and that detention will cause harm gets a person to the highest level – level three. This is then weighted against immigration factors, such as length of detention, public protection issues and compliance issues, or a late asylum claim. It is important to note that a late asylum claim or other poor ‘immigration factor’ may be a direct effect of someone’s vulnerability, of the experience of trauma, or the mental ill health they experience. There is no requirement for the decision maker to provide evidence that this detention may be injurious to the health of the person being considered for detention: the evidence burden falls disproportionately on the person being considered for detention.

Once detained, it remains as difficult as it was previously to be released under mechanisms such as Rule 35 which are not effective. We are worried that this will result in a ‘wait and see’ approach where vulnerable people are detained, and deteriorate, before they are considered for release. Imposing an additional evidential burden in this way is inconsistent with the objective to reduce the numbers of vulnerable people detained; we are worried that it is already leading to more vulnerable people being detained for longer, because they cannot provide adequate ‘evidence’.

- **Vulnerable people who fall outside the defined categories of risk:**

There are also major gaps in the types of vulnerability acknowledged in the new policy. A glaring omission is the absence of any mention of how to ensure protection for those who lack capacity to deal with their immigration case or to instruct someone to do so. This is arguably one of the most heightened examples of vulnerability one can imagine in detention.

- **Lack of any baseline data will make monitoring and audit difficult:**

AVID has raised concerns that the stated aim of the ‘Adults at Risk’ policy will be difficult to monitor and audit, and we have asked the Home Office to provide information on how it will be able to measure progress. Prior to the implementation of the new policy, the Government has repeatedly outlined that it did not gather information on, for example, people in detention with mental health needs, or people detained who had survived torture. There was, therefore, no baseline against which any progress could be measured.

Further, the Government has thus far been elusive in the provision of statistics in other areas relating to the detention of vulnerable people. A 72-hour time limit was introduced in relation to pregnant women in July 2016, a very welcome step forward. Data on the detention of pregnant women had been collected since August 2015 on the recommendation of HMIP, yet the Home Office will not make this data publically available, which would enable the

commitment to a time limit for this group to be monitored in a way that is transparent. Figures obtained via a parliamentary question revealed that between 12 July 2016 and 30 September 2016, following the introduction of a time limit, 12 pregnant women were detained. Only one of these women was removed, which means that 92% (11 women) were detained and then released⁵, their detention having served no purpose. This does not give confidence that the safeguards for pregnant women in the detention system are working. The Government must consider monitoring and audit of vulnerable people in the detention system in a way that is transparent so that it can be held accountable for the commitments made since the Shaw Review.

3. One year on: what has changed?

Vulnerable People remain in detention: On the 11th January 2017 a 27-year-old Polish man was found hanging in his room at Morton Hall detention centre in Lincolnshire. Media reports that his girlfriend had given birth to their child earlier that day. There are suggestions that he suffered from mental health problems. This tragic loss of life of someone so young, less than five months after the implementation of a new flagship policy which purports to protect these groups, is a grave concern. AVID member visitors groups visit in every single detention centre in the UK, and we have not seen any reduction in the number of volunteers raising concerns about visiting people who have mental health needs or who have survived torture.

The policy is already the subject of a legal challenge: That there is already litigation underway to challenge the downgrading of the definition of torture in the new policy, suggests that the policy should be reviewed as a matter of urgency, as it is leaving people at risk.

The Government has backtracked on its promises regarding detention of children: It is also deeply troubling that the Government also appears to have taken retrograde steps in relation to the detention of children, arguably the most vulnerable group of all. That the Government has significantly reduced the numbers of children in detention since 2010 is undisputed. However, the announcement in 2016 that Cedars pre-departure accommodation is to close and the family unit moved to Tinsley House, a purpose built high security detention centre near Gatwick airport, is a backwards move that will once again see children held in a prison like environment. The contract for the delivery of welfare to these vulnerable children, previously held by Barnardo's, was awarded to G4S, an organisation with a history of human rights violations, against both children and adults in the UK, detailed in a [dossier collated by Liberty](#) in 2016⁶. Detention is always harmful to the best interests of the child, and we are concerned that by moving the family unit to Tinsley detention centre and by awarding the contract for welfare to G4S, the Government has demonstrated that it is not prioritising the welfare and wellbeing of vulnerable children, at a time when the detention of vulnerable people is under more scrutiny than ever before.

Recommendations:

- The Adults at Risk policy is not implementing Stephen Shaw's calls for greater protection for those at risk, and in some areas, has resulted in a downgrading of protection mechanisms. **MPs should call for new statutory guidance to be developed in consultation with experts** in working with vulnerable groups including clinicians and NGOs, and based on the presumption that vulnerable people should be routed away from detention into community based alternatives to reduce the use of detention.

⁵ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-12-05/56126/>

⁶ <https://www.liberty-human-rights.org.uk/sites/default/files/G4S%20dossier.pdf>

- For there to be confidence in the effectiveness in any new framework to protect vulnerable people, it is essential that meaningful data is provided. **MPs should encourage the publication of key statistical data and information in relation to the detention of vulnerable people so that progress towards the recommendations of the Shaw Review can be monitored in a way that is transparent.**
- MPs should encourage the Government to consider the mounting body of evidence that community based alternatives to detention can have significant advantages, including increasing compliance with immigration control. **A working group should be established and tasked with exploring options for alternatives for vulnerable groups**, within the UK context, so that migrants can resolve their cases in the community, without detention.

For more information about this briefing, contact:

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