

The Detention Forum



**Submission by the Vulnerable People Working Group of the
Detention Forum to**

Review into the welfare in detention of vulnerable persons

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Key contacts:

Ali McGinley, Director, Association of Visitors to Immigration Detainees

ali.mcginley@aviddetention.org.uk 0207 281 0533

Nic Eadie, Director, Gatwick Detainee Welfare Group

nic@gdwg.org.uk 01293 657 070

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About the Vulnerable People Working Group of the Detention Forum and this submission:

1. The Detention Forum is a network of over 30 organisations who are working together to challenge the UK's use of immigration detention. We have three objectives:
 - To put a time limit on immigration detention
 - To end the detention of vulnerable people
 - To improve the judicial oversight of detention
2. This submission is from the **Vulnerable People's Working Group** of the Detention Forum. The Working Group is Co-convened by Nic Eadie (Gatwick Detainees Welfare Group) and Ali McGinley (Association of Visitors to Immigration Detainees). Other members of the group are Yarl's Wood Befrienders and UK Lesbian and Gay Immigration Group. Our group is concerned specifically with the issue of vulnerability in detention, and we have been investigating and gathering evidence on this issue for over 18 months. As groups working with detainees on a daily basis, we are united in our concern that there are high numbers of very vulnerable people being held in detention, the effects of which are devastating.
3. Our submission is based on the evidence gathered by our Working Group which forms the basis of a report to be published in Autumn 2014. This report is based on our own findings from interviews and case studies with 31 vulnerable people who were detained in the UK. Our evidence demonstrates three overarching concerns:
 - That the Home Office (HO) has failed to follow its own guidance and continues to detain the individuals they have recognised as 'vulnerable groups';
 - That detention centres are inadequate to meet the basic care needs of these individuals;and
 - That reliance on the existing categories of vulnerability (within the current policy guidance, Chapter 55.10 of the 'Enforcement Instructions and Guidance') overlooks individual characteristics and changes over time, creating a system where vulnerable detainees who do not fit within the pre-existing categories remain invisible and at risk.
4. We hope that the Review team will find this evidence useful, as well as our recommendations for change. We propose that all individuals are at risk of becoming vulnerable within detention, and as such the Home Office should establish a substantive process to identify those at risk of harm from detention in an on-going manner. This requires a re-conceptualisation of vulnerability that takes account of both individual characteristics and changes over time.
5. **The Home Office fails to follow its own guidance and continues to detain individuals they have recognised as 'vulnerable groups'**. Chapter 55.10 of the 'Enforcement Instructions and Guidance' outlines particular groups of people deemed

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to be only suitable for detention in ‘exceptional circumstances’¹. We will illustrate this with particular emphasis on detainees with mental health needs, those who have survived torture, and detainees with disabilities.

6. The most profound example of UK Home Office failing the most vulnerable is demonstrated in the findings by the High Court on no less than six occasions that the Home Office breached its responsibilities under Article 3 of the European Convention on Human Rights (freedom from torture, cruel and inhuman or degrading treatment) in relation to the detention of people with mental health needs, over a period of three years². For these human rights breaches to have taken place in the UK is an international embarrassment; it also demonstrates the systemic nature of the problem and the need for urgent action to prevent such abuses in the future.
7. Our sample of 31 detainees included a number who, by the Home Office’s own definitions, would constitute a ‘vulnerable group’. This includes:
 - An overwhelming majority who told us they’d experienced mental ill health in detention: 24 people (77%). Seven detainees expressed suicidal ideations or thoughts, and four were on self-harm prevention plans. In all 24 cases, detainees described their mental health worsening as detention continued.
 - Nine (30%) of our cases were detainees with a history of torture. In three of these cases, this was declared in the substantive interview, but Home Office decision-makers pursued no follow-up action.
 - Four cases involved detainees with serious disabilities, three physical and one with a learning disability. In all three cases involving a physical disability, detainees were held for over seven months, despite having little to no possibility of imminent removal and limited liability as a flight risk. In one case, the detainee was only released following an unlawful detention claim accepted in the High Court.
 - One of the detainees in our sample had been trafficked to the UK. She was initially disbelieved by the (then) UKBA, but this was challenged when an NGO intervened and she was referred to the National Referral Mechanism. No rule 35 report was made, and an application to the UKBA for temporary admission was refused, but she was eventually released on bail by at the Immigration and Asylum Tribunal.

¹ Namely:

- (i) the elderly
- (ii) pregnant women
- (iii) those suffering from serious medical conditions
- (iv) those suffering from serious mental illness
- (v) those with independent evidence of a history of torture
- (vi) persons with serious disabilities
- (vii) persons identified as victims of trafficking.

² R (BA) v SSHD [2011] EWHC 2748 (Admin), R (HA (Nigeria)) v SSHD [2012] EWHC 979 (Admin), R(S) v SSHD [2012] EWHC 1939 (Admin), R (D) v SSHD [2012] EWHC 2501 (Admin), R (Das) V SSHD (2014) EWCA Civ 45, R(S) v SSHD [2014] EWHC 50 (Admin)

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- One of the detainees in our sample was a minor of 15 years of age, who was detained for six months before it was finally accepted that he was a child and he was released to social services' care. Eric claimed to be 15 years of age from the beginning of his asylum claim. He was found to be over the age of 18 in an initial age assessment; however, Refugee Council's Children's Panel and the solicitor involved disputed the assessment.
8. The mechanisms currently used to identify the range of vulnerabilities outlined in Chapter 55.10 are therefore grossly inadequate and putting many people at risk.

Case study - Sam

Sam has a history of torture and imprisonment in his home country. He was detained for four months during which time his mental health deteriorated rapidly. Although Sam's PTSD was manageable outside of detention, being detained in a locked room was similar to his experience of detention and torture in his home country. The similarity had an extremely negative impact on his mental health. Before being finally released, he was experiencing auditory hallucinations and became suicidal.

At times Sam resorted to banging his head against the wall in order to quiet the voices he was hearing. Despite his visible indicators of trauma, the majority of his claim was disbelieved. The Rule 35 report reiterated the Home Office disbelief of his claims of past persecution rather than reporting on his poor mental health in detention. Although Sam was placed on an Assessment Care in Detention Teamwork (ACDT) suicide prevention strategy, medical notes suggest that his hallucinations and suicidal ideation were doubted, claiming Sam was using the ACDT as a 'crutch'. This was despite entries in the same notes documenting Sam's reports of voices telling him to commit suicide.

In addition to Sam's attempts to express that he was unwell and unable to eat to the health care staff, concerns were raised to the Home Office by his solicitor, visitors groups, and the Helen Bamber Foundation. Despite these representations, Sam remained in detention for an additional two months before eventually being released on bail.

9. **Detention centres are inadequate to meet the basic care needs of these individuals.** Once detained, the detainees in our sample found it very difficult to access the support and provision they needed.
10. In five cases, detainees had been diagnosed with severe mental illnesses *prior to entering* the detention centre. They told us that their requests to see psychiatrists were often ignored for months. One detainee reported that his medication was changed when he arrived, without a consultation with a psychiatrist. He was not in fact seen by a psychiatrist until he began hunger strike, after six months of deteriorating mental health.
11. In many cases, detainees were only seen and assessed following a suicide attempt or hunger strike. In these instances, attempting suicide and refusing food were a means of responding to extreme desperation and the enduring decline of mental health. A number of detainees suggested that they stopped attempting to access medical care because they knew it was hopeless.

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12. Detainees who had survived torture rely on the Rule 35 mechanism as a means to facilitate their identification and release. The Rule 35 mechanism has been the subject of much criticism and scrutiny³, with the Home Affairs Committee commenting that 'The Agency cannot plausibly claim to take Rule 35 reports very seriously when its Chief Executive does not understand his own guidance.'⁴ Of the three detainees in our sample who initially presented their claims of torture, none were provided with medical review or Rule 35 reports to determine the validity of their claim as a result of their disclosure.
13. In many cases detainees faced significant barriers in accessing medical appointments to detail their claims of torture. Even for participants with obvious scarring, their claims of torture were ignored prior to involvement by outside organisations. In two cases, detainees were not issued a Rule 35 until their second detention, despite making their claims clear during the first detention. In the majority of the cases in our sample involving torture, detainees were held for extended periods of time, even after Rule 35 reports were issued.

Case study - Cynthia

Cynthia is paralysed on one side of her body as a result of a stroke and walks with the aid of a stick. In addition to her paralysis she has heart problems, which leave her feeling constantly tired. She was detained following a prison sentence in an attempt to deport her and medical reports stated that she would never be fit to fly, even for short distances.

For the first six months of her detention, Cynthia had no access to breakfast, despite needing to take her morning pills with food. She was placed in the disabled room on the ground floor, and was provided with a lift in order to enable access to the cafeteria.

However, no staff members were available to operate the lift at that time in the morning. Following a request in writing to the Home Office, Cynthia was granted provision of breakfast in her room, after six months without it. Additionally, although provided the disabled room, Cynthia was not provided with a shower seat, which resulted in limited ability to wash for over one month.

Cynthia was finally released after 15 months when Home Office doctors reiterated previous medical reports that she would never be fit to fly as a result of her conditions. She is currently visiting a psychiatrist, but finds that her time in detention is too painful to discuss.

14. **Reliance on the existing categories of vulnerability (*within the current policy guidance, Chapter 55.10 of the 'Enforcement Instructions and Guidance'*) overlooks individual characteristics and changes over time, creating a system where detainees who do not fit within the pre-existing categories remain invisible and at risk.** Our study also found various examples of vulnerabilities

³ The Second Torture: Immigration Detention of Torture Survivors', Medical Justice, 2012, at 95, available at <http://www.medicaljustice.org.uk/reports-a-intelligence/mj/reports/2058-the-second-torture-the-immigration-detention-of-torture-survivors-22052012155.html>

⁴ The Work of the UK Border Agency (July-September 2012), House of Commons Home Affairs Committee, 2013, at 62, available at <http://www.parliament.uk/documents/commons-committees/home-affairs/HC792-UKBA-Q3-Report-FINAL.pdf>

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experienced within detention that did not fall neatly within one of the predetermined categories. Many of the cases suggest that vulnerability is a result of a combination of factors and that these may change throughout time in detention.

15. For example, a number of detainees in our sample discussed the impact of their treatment in detention on their physical health. The findings suggest that mental health is significantly tied up with physical health. A number of detainees described being refused medication for physical injuries, until the injuries were serious enough to require that they be transferred to an outside hospital. In one case, a detainee received surgery for a hernia and was forced to sleep in a wheelchair the next night due to lack of available bed space. After the surgery he was not given pain relief until he was transferred to an outside hospital. In another case a detainee complained of a broken leg for a month and was only given paracetamol periodically. When he was finally transferred to the hospital the doctors found that his leg had indeed been broken and he had therefore been denied care. While these detainees would not fit the criteria for vulnerability as it is currently set out, it is clear from their stories that being physically ill in detention had an impact on their mental health and hence made them more vulnerable while in detention.
16. Language, learning disabilities, and immigration status are not always included in vulnerable categories, despite the impact they have on an individual's chances for self-representation within the system. Inadequate access to information leaves detainees extremely vulnerable to lengthy detention or unfair decisions, which impact the outcomes for immigration cases and mental and physical health.
17. Although many of the detainees in our study had at least a working knowledge of English, for those who spoke very little or no English at all, language was a significant barrier for their cases or for highlighting their particular needs. Limited knowledge of English creates challenges for obtaining information about the process; it often results in isolation for the detainee, and creates a dependence on other detainees who share the same language, which at times can lead to positions of vulnerability.
18. The impact of language is especially heightened in complex cases. In two cases, detainees had limited understanding of English as well as complications arising from their status as possible third country cases under Dublin II, which made them more vulnerable. For Eric, the negative impacts of detention were exacerbated by his age (being a minor, 15 years old) as well as having contact with only one other detainee who spoke his language within the detention centre.

Conclusion:

19. Our research has found that the UK government is detaining in large numbers people who are clearly vulnerable and at serious risk of harm from their detention. This is even true for those people who fall within categories that the Home Office accept should not be held in detention, save for in exceptional circumstances.
20. The Home Office needs to think about vulnerability in a different way. Our study corroborates international studies⁵ in making clear the need to move away from a

⁵ Enhancing Vulnerable Asylum Seekers Protection, found at <http://www.evasp.eu/TrainersHandbookOnline.pdf> and 'Becoming Vulnerable in Detention', DEVAS Project, JRS Europe, found at https://jrseurope.org/assets/Publications/File/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC.pdf

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category based approach, to one which enables the identification of different vulnerabilities over time.

21. To put it simply, current policy is failing to do what it is supposed to do to protect the most vulnerable from harm. However, we have also found evidence that not only is the policy failing, but it is also inadequate in its current form, as it fails to take into account other factors which may affect a person's vulnerability, and also does not adequately monitor and measure how this may change over time during the period of detention. We propose that it is possible to introduce a system which can do all of these things, and in doing so will reduce the number of vulnerable people who are detained for immigration purposes.
22. With this in mind, we recommend the following:
 - Those identified as vulnerable should never be detained. A community alternatives case management model should always be used for those at risk of harm in detention.
 - The current policy on detention of vulnerable people is not working. The UK Home Office should implement the use of a vulnerability tool based on the international EVASP model which enables a more thorough approach to screening before detention but is also adaptable to changes over time in detention.
 - The development of this tool should be carried out in consultation with independent experts including clinicians and mental health professionals, through the establishment of an independent expert working group. This working group should oversee both the development of a vulnerability tool and its implementation, which should be regularly reviewed and externally audited.
 - The vulnerability tool should be engaged at regular intervals if detention continues, to enable changes over time to be reviewed. Those identified as becoming increasingly vulnerable over time should be released.