



Vulnerability and the Crisis of Harm in Detention: Time for Change

Summary

The conclusions of the Parliamentary Inquiry into the use of detention were clear: the UK's use of detention is disproportionate and inappropriate. Too many people are detained, for too long. The cross party panel of MPs and Peers, basing their recommendations on months of evidence gathered from a wide range of sources, called for a time limit on detention and the use of community alternatives. At a time when increasing numbers of extremely vulnerable people are held in detention - often with devastating consequences - there is an urgent need for a rethink of the decision making process around who is detained, and this must include those most at risk of harm. One simple way to achieve these changes would be to reduce the numbers of people entering detention.

To date, however, the government's response to the Inquiry has been to defer to the so called 'Shaw Review' - the *Review into the Welfare in Detention of Vulnerable People*, being carried out by Stephen Shaw CBE and Home Office secondees. To pre-empt the review's findings in this way is to ignore the fundamental difference between the terms of reference within which Shaw must draw his conclusions, and the findings of the Inquiry. Shaw and his team are restricted to consideration of policies and procedures in detention; they are not permitted to consider the decision to detain, and the principle of detention as such is 'not in question'. It will not therefore be able to address the Inquiry's substantive findings of a disconnect between the official guidance on detention (which states that detention should be used sparingly and for the shortest period necessary) and the current practice of holding more than 30,000 people a year.

Now is not the time for piecemeal reviews of existing procedures, but for what the Inquiry has called a '*wholesale change in culture, towards community models of engagement and better caseworking and decision making*'. This is particularly pertinent to the detention of vulnerable people.

Crisis of harm in UK detention centres

Monitoring bodies, academics, clinicians, NGOs, and those with experience of immigration detention themselves have all expressed their concern that the UK's detention system is putting vulnerable people at risk. The High Court has found on no less than six occasions over three years that the Home Office had breached its responsibilities under Article 3 of the European Convention on Human Rights (the right to freedom from torture, cruel and inhuman or degrading treatment), of immigration detainees with serious mental health needs. Most recently, it is reported that a young man took his own life in the Verne detention centre earlier this month, just as HMIP reports on Yarl's Wood as 'a place of national concern' which is 'not meeting the needs of vulnerable women'. The burning question is why these vulnerable people - those who have experienced torture, people who have been trafficked, people with mental health needs or pregnant women, for example - are in a detention centre in the first place, when the latest figures show that 51% of those detained are then released in to the community. It is time to rethink the decision making process so that vulnerable people are not held in detention but are routed

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into community based, casework centred alternatives where they can access the support they need. Sadly, this is beyond the remit of the current Shaw Review to consider.

Rethinking 'vulnerability'

A recent research report by AVID and GDWG for the Detention Forum revisits the issue of vulnerability through 31 case studies of vulnerable people detained across the UK. This included an overwhelming majority (77%, 24 people) who had experienced mental ill health in detention, 9 people (30%) who had experienced torture, four people with serious disabilities, a woman who had been trafficked to the UK and a boy detained aged just 15. The research highlights a series of substantive failings in the system which led to the continued detention of these individuals despite policy guidance which is supposed to prevent the detention of vulnerable people - people like Jacques:

Jacques was detained for the purposes of removal to Denmark where he had previously claimed asylum. He had a traumatic history as a child soldier and was severely impacted by Post Traumatic Stress Disorder. Despite being visibly unwell, and despite anecdotal evidence of staff feeling unable to manage the situation, he was detained for over two months before being removed to Denmark.

During detention, Jacques suffered periodic blackouts and dizziness, which at least once led to injury. He was unable to communicate with staff or other detainees and exhibited erratic behaviour, at times running naked out of his room or speaking in what was understood by staff as gibberish. In response, Jacques was regularly placed in isolation, which appeared to exacerbate his confusion and paranoia.

The local visitors' group made efforts to raise concerns with the detention centre staff, but got no response from the healthcare centre. Attempts to support Jacques were made by a fellow detainee who spoke the same language as well as a solicitor who was willing to represent him for a temporary admission application and for unlawful detention. Jacques' paranoia made him unwilling to enter the room with the solicitor, and so it was impossible to represent him. Communication was so difficult that his fellow detainee was unable to do much to support him either.

Our case studies demonstrate what the inquiry panel called '*the enforcement-focused culture of the Home Office*' - the current vulnerability assessment used in decision making about these individuals is narrow, static and category based, ignoring changes over time. It is used primarily to broaden as far as possible the number of people who can be deemed 'suitable for detention', rather than to prevent vulnerability from happening in detention. We draw three main conclusions:

- The Home Office is repeatedly failing to follow its own guidance and continues to detain individuals they have recognised as members of vulnerable groups including pregnant women, people who have survived torture, or people with serious mental health needs;
- Detention centres are inadequate to meet the basic care needs of these vulnerable people;
- Reliance on *categories* of vulnerability within the current policy guidance overlooks the dynamic nature of vulnerability, and does not consider changes over time. Detainees who do not fit these pre-existing categories remain invisible and at risk.

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The narrow, static and category based approach to vulnerability contrasts starkly with a more holistic approach recommended by researchers and international specialists. There are a range of tools and resources available which enable a holistic approach, recognising that vulnerability is dynamic and changes over time.

Recommendations for change:

Reform of detention should include the introduction of a more holistic approach to vulnerability so that the detention of vulnerable people for immigration purposes can be truly eliminated:

- The government should implement the recommendations of the parliamentary inquiry into the use of detention.
- The Home Office should revise its approach to vulnerability, by developing a specialised vulnerability assessment tool and practice which enables a more thorough approach to screening of individuals in detention but is also adaptable to changes over time in detention.
- This tool should be developed in consultation with independent experts including clinicians and mental health professionals, and it should be externally reviewed and audited.
- This tool should be engaged at regular intervals to enable changes over time to be reviewed.
- It is vital that the government considers international best practice in alternatives to detention for the most vulnerable.

Community based casework management: the necessary alternative that will reduce vulnerability

The International Detention Coalition has found that migrants are far more likely to comply with the decision making process if they feel that their case has been dealt with fairly, and they have been informed and supported throughout this process. They suggest as high as 90% compliance can be achieved with alternatives to detention. International best practice models of case management - where migrants are supported in the community by an independent case manager, who bridges the gap between the individual, the immigration authority, and community supports - include Sweden and Australia, cited by the Inquiry Panel in their report. Sweden has achieved 76% voluntary return to the UK's 46%, and the average length of detention in Sweden is five days. Detention in Sweden is truly a last resort. As recommended by the parliamentary inquiry, community-based alternatives to detention utilising a case management model should be developed in the UK. This would enable a shift away from the current enforcement culture and significantly reduce the use of detention. Such a model should ensure that vulnerable and potentially vulnerable people can go through the immigration system without experiencing detention.

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