

# Vulnerable people in detention after the Shaw Review

DETENTION ACTION

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## Introduction

In January 2016, following the Shaw Review into the Welfare in Detention of Vulnerable Persons, the Government made a commitment to Parliament to 'safeguard the most vulnerable', with a 'clear presumption that people who are at risk should not be detained'. More than one year on, Detention Action continues to see vulnerable people held in detention on a daily basis. There is little evidence that the Home Office's new policy on Adults at Risk, published in September 2016, has marked a significant shift away from the detention of vulnerable people. The Government must do much more to ensure that its policy and practice address the pressing concerns highlighted in the Shaw Review.

## The scale of detention of vulnerable people

Following the Shaw Review, the categories of people who are considered vulnerable and not usually suitable for detention has been expanded. Amongst others, the list includes torture survivors, trafficking survivors, people with mental health issues, people with serious learning difficulties, victims of rape and gender-based violence, transsexual and intersex people. However, since September 2016, Detention Action has met large numbers of vulnerable people in immigration detention. This includes 22 torture survivors, 10 trafficking survivors, and 24 people who have identified as suicidal or self-harming.

Case study: T is a trafficking survivor. We talk regularly with him through a volunteer interpreter, as he speaks no English. When we meet him in detention, a friend interprets for him. T is quiet and subdued, gesturing repeatedly where he feels pain. Like many Vietnamese people in detention, he was trafficked to work in a cannabis farm. He has been left with long-lasting injuries and psychological trauma after being beaten by his traffickers. The Home Office accept that he is a torture survivor but have refused to release him. On the basis of limited information, the Home Office refuses to believe that he is a trafficking survivor. He has been detained for four months.

Case study: R has a serious physical condition and mental health issues. He talks repeatedly of suicide. He tells us he is not getting treatment for his physical health, but he says he doesn't need it, he wishes to die. He has been detained for four months so far.

Case study: We met S in Healthcare in detention. He was clearly very mentally unstable, and was moved between Health care and segregation due to his behaviour. He has since been found to be lacking capacity, and has been sectioned. By the time he was sectioned, S had ceased to be able to care for himself and was no longer washing or performing other basic personal hygiene functions.

## The impact of detention on vulnerable people

There is no shortage of evidence of the harm caused by immigration detention. In 2010, JRS Europe provided a detailed analysis of the impact of detention on vulnerable people across Europe, explaining how detention itself makes people vulnerable.<sup>1</sup> Research by the Detention Forum described a ‘crisis of harm’ in UK detention centres.<sup>2</sup> In 2015, the Parliamentary Inquiry into the Use of Immigration Detention found that people with mental health issues were detained too often, that survivors of torture and trafficking should not be detained, and that the safeguards to protect vulnerable people were failing.

There have been 28 deaths in detention since 2000, with four deaths last year alone. In 2016, there were 341 reported suicide attempts in detention and 2,582 people on suicide watch.<sup>3</sup>

‘Death is everywhere in detention. People are trying to kill themselves every day. People are expecting to be killed if they are returned to their countries. People feel like they are dying from suffocation, all locked up. You look at some people and they are already dead – they are ghosts. Death is not a strange thing in detention. It has become normalised. It is part of the DNA.’

*Ishiaba, detained for 2 years, Freed Voices, ‘The reality of life and death in detention’*

*‘I don’t sleep well in here. They lock the cell doors at 8.45. I start thinking and thinking. (I worry about what will happen to me, will I be deported?) Recently I’ve started to have panic attacks. I have nightmares, sometimes I remember them, sometimes I don’t. Usually it’s something coming after me, something scary – always related to my life. I’ve had this problem since I 12 years old – I went to hospital with my father and they gave tablets for 6 months and afterwards I was ok. But they don’t give me the right medication here. I wake up and I’m so stressed my heart is beating and beating and my head aches. I pray to Allah. I just feel like I want to go out and walk around. But the doors are locked. I can’t go. A lot of people in here have problems that mean every day is a bad day. They are suffering from torture that comes from inside.’*

*K, ‘A footnote on Harmondsworth’, November 2016*

## The recommendations of the Shaw Review

In 2015, the Shaw Review was commissioned by the Home Secretary to examine the welfare of vulnerable persons in detention. In January 2016, the review was published, making sixty four often radical recommendations. These included specific recommendations that categories of vulnerable people (e.g. people with PTSD) should be presumed unsuitable for detention. But Shaw also called for a fundamental re-think in the Government’s approach, to reduce the use of detention and put more energy into exploring the development of alternatives.

<sup>1</sup> *Becoming Vulnerable in Detention*, 2010

<sup>2</sup> *Rethinking “Vulnerability” in Detention: A Crisis of Harm*, 2015

<sup>3</sup> [www.no-deportations.org.uk](http://www.no-deportations.org.uk)

The Shaw Review commissioned Jeremy Johnson QC to analyse how on six occasions the UK has been found to be in breach of Article 3 of the European Convention on Human Rights, outlawing inhuman and degrading treatment. Shaw pointed out that ‘No domestic court found a breach of Article 3 in the first eleven years after the passage of the Human Rights Act 1998. I was, therefore, acutely concerned to discover that there had been six recent cases involving people in immigration detention where the British courts had found the Home Office to be in breach of Article 3.’ In the case of MD, a young woman seeking to join her refugee husband in UK, detention did not exacerbate existing mental health issues, but actually caused their onset. After six months in detention, MD had experienced six episodes of ‘acutely severe mental distress’ including self-harm, had been diagnosed with a major depressive illness and lacked the capacity to instruct a lawyer.

‘I’ve been diagnosed with Post-Traumatic Stress Disorder by two psychiatric doctors, because of the long time detention and conditions, I don’t really come out of my room because the noise around, it makes me think I’m going to go mad. I am on suicide watch in this place too. I tried to use a sheet, my bedding, to stop my breathing. Days I wake up I don’t want to wake up, I just want that one day they will put in a carrier bag and take me out of this place.’

*C, trafficking survivor, detained for 3 years, oral evidence given from one of the detention centres to the Parliamentary Inquiry in to the Use of Immigration Detention in the UK*

## The new Adults at Risk policy

On 14 January 2016, the Government accepted ‘the broad thrust’ of Shaw’s recommendations and promised a wide-ranging programme of reform. The Minister set out the new ‘adults at risk’ concept as a key reform that would ‘strengthen the approach to those whose care and support needs make it particularly likely that they would suffer disproportionate detriment from being detained, and will therefore be considered generally unsuitable for immigration detention’. The new Adults at Risk policy, published in September 2016, sets out a balancing exercise, in which the potential harm that detention could cause to vulnerable people is balanced against immigration factors such as the risk of absconding. Yet vulnerable people continue to be detained.

- **Narrowing definitions**

Although the new policy creates new categories of people considered to be ‘at risk’, it narrows the definition of one of the most significant categories, survivors of torture. The policy uses a narrow definition which excludes survivors of torture perpetrated by non-State actors. This definition is currently subject to litigation, and the High Court has ordered that the Home Office revert back to the wider definition while the case is being heard.

- **Balancing the lives of vulnerable people**

The Adults at Risk policy sets out a balancing exercise, in which the potential harm that detention could cause to vulnerable people is balanced against immigration factors, including public protection and compliance with immigration control. The framing of this balancing act pays scant regard to the incommensurability of the factors: risk that the

person might abscond, against the likelihood of irreparable harm to their physical or mental health.

The policy normalises the detention of highly vulnerable people even where the Home Office accepts that detention is causing them serious harm. Negative indicators of non-compliance, including irregular presence in the UK for some time, failing to comply with voluntary return, or making a late asylum claim, can mean that a person continues to be detained unless they can provide independent evidence of a significant risk of harm. Independent evidence that is difficult for a highly vulnerable person in detention to obtain.

- **The lack of alternatives to detention**

The effectiveness of this balancing exercise is further hampered by the limited options available to case owners, who must choose between detention and release, with no available alternatives that support the compliance of vulnerable people. Where an adult at risk is likely to abscond, including for reasons related to their vulnerability, their detention is frequently considered necessary.

Alternatives to detention need to be developed that would specifically address the needs and risks of vulnerable people. One-to-one case management could support vulnerable people to comply with the conditions of release and explore case resolution, including options for sustainable return. While providing specialist support in the community would bring costs, they would be less than the cost of detention. This could be based on the model of the Status Resolution Support Services in Australia, which assist vulnerable people with complex needs to live in the community, engage with the immigration system and resolve their cases. The pilot had a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily. It cost AUD38 per day, compared to around AUD125 for detention.

Case study: H is a trafficking survivor, who was detained after being picked up by immigration officers. He has various health problems, and has started having seizures while in detention. He speaks little English, but he explained his story to the Home Office and claimed asylum. He did not understand the process and could not gather independent evidence. The Home Office held him in detention while they considered if there were reasonable grounds to believe he might be a victim of trafficking. Given the lack of evidence available, they decided against him and refused his asylum claim too. He continues to be detained.

Case study: A is a torture survivor with physical scars who suffers from flashbacks as a result of his traumatic experiences. He would tell us how his mental health was deteriorating in detention, and when we met him in detention, he described frequent panic attacks despite the anti-depressants he was prescribed. The only medical evidence he was able to access at the time was a short report from a GP in the detention centre. The report did not specifically state that he was unfit for detention, and he had previously been refused asylum after a short prison sentence, and so the Home Office refused to release him.

Case study: BA was detained for nine months, until the High Court released him in 2011, finding detention to be in breach of his Article 3 rights. There was ample evidence that his mental health would be significantly affected by detention as he already suffered from stress-induced psychosis, which clinicians agreed was caused by prison. He had spent the last two years of his sentence in hospital after being sectioned. When ill, he refused food and drink and would stop taking his medication. Before he was released by the High Court, doctors had prepared an end of life care plan for him. Despite this, the new Adults at Risk policy would allow for his detention as he was sentenced to more than four years in prison.

- **Lack of transparency**

Lack of transparency makes it very difficult to measure how the Adults at Risk policy is operating in practice. There is no provision for the person or their lawyer to be informed if the detention centre or Healthcare has alerted the Home Office that they are at risk, or for them to be informed of the Home Office response.

A similar lack of information prevents ongoing and timely assessment of how the policy is functioning overall. There is no baseline against which the number of vulnerable people being released from detention or not detained in the first place can be assessed. There is no indication that the Home Office will report back on the implementation of the new measures until Shaw has undertaken his second review, likely to begin in autumn 2017. Scrutiny cannot be put on hold for a year or more, particularly when anecdotal evidence suggests that vulnerable people are continuing to be detained in large numbers.

QUESTION: Given the urgency of the issue, can the Minister set out a clear and ongoing monitoring process to assess how the Adults at Risk policy is fulfilling the Government's commitment to safeguard the most vulnerable people?

QUESTION: In the light of the Government's commitment to the reduction of the detention estate and Shaw's recommendation that greater energy should be demonstrated in the consideration of alternatives, what plans does the Government have to explore and develop new community-based alternatives to detention for vulnerable people?

## Conclusion

The Shaw Review urged the Government to begin the process of reducing detention 'boldly and without delay'. However, to date only piecemeal changes have been introduced. Under parliamentary pressure, the Government used the Immigration Act 2016 to introduce limited changes in law: a time limit of 72 hours for pregnant women, and for the first time automatic judicial oversight of detention every four months for some categories of migrants. The Government should act urgently to reform the use of detention in line with the recommendations of the Parliamentary Inquiry and the Shaw Review.

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