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info@biduk.org

May 2005

Fit to be detained?

Challenging the detention of asylum seekers
and migrants with health needs

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Challenging the detention of asylum seekers and migrants with health needs

by Sarah Cutler

Based on the findings of a report
by Médecins Sans Frontières

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www.biduk.org

info@biduk.org

Bail for Immigration Detainees

28 Commercial St

London E1 6LS

Reg. Charity no. 1077187

Exempted by the OISC.

Ref. No. 200100147

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Annex 1

'The health and medical needs of immigration detainees in the UK: MSF's experiences',
Médecins Sans Frontières –UK, November 2004

1 About this report

During a ten week period in 2004, a general medical doctor employed by Médecins Sans Frontières - UK (MSF)¹ carried out free medical assessments of 13 adults and three children being detained under Immigration Act powers in the UK. These were done at the request of Bail for Immigration Detainees (BID)². All 16 detainees were being assisted by BID to exercise their right to challenge their detention. The medical reports prepared by MSF following the visits were used by BID in applications for release on bail by an Adjudicator, or temporary admission (TA).

MSF were concerned both about the health status of the individuals they medically examined, and the apparent lack of mechanisms in place to ensure that members of this vulnerable population are afforded the medical care and protection they need. In order to record their concerns, MSF wrote a report 'The health and medical needs of immigration detainees in the UK: MSF's experiences'. Annex 1 is a copy of the MSF report, including a summary of the number of detainees visited, issues of concern and areas requiring follow up. The MSF report was published in November 2004 and was written by Judith Cook and Sally Hargreaves. The content is the sole responsibility of MSF, and is reproduced here with their permission.

'Fit to be Detained? Challenging the detention of asylum seekers and migrants with health needs' describes BID's experiences of challenging the detention of the detainees with health needs who were assessed by MSF.

BID's report

- outlines BID's role in representing detainees and summarises the role of MSF in gathering medical evidence regarding individual detainees
- analyses what happened to the 16 detainees after MSF's medical assessments were received by BID, including an analysis of the broader context for their detention
- draws conclusions from this work and places the issue of the health of detainees in the broader context of developments in detention, asylum and immigration policy
- makes recommendations to government and to the courts about the changes needed to protect detained asylum seekers and migrants with mental or physical health issues

1) MSF is an independent humanitarian medical aid agency committed to two objectives: providing medical aid wherever needed, regardless of race, religion, politics or gender and raising awareness of the plight of the people helped by MSF. See: <http://www.msf.org>

2) BID is a small, independent charity that helps migrants and asylum seekers detained in the UK to exercise their right to challenge their detention. BID also campaigns against arbitrary detention. See <http://www.biduk.org/>

The experiences of BiD in trying to obtain release for people who have physical and/or mental health problems, including not only the 16 cases seen by MSF but also those of many other detainees seen over the past seven years, have led BiD to conclude that detention is being used inappropriately for vulnerable asylum seekers and migrants. BiD believes that 'Fit to be Detained?' highlights the need for changes to the legal framework that will safeguard against prolonged and unnecessary detention. Furthermore, the report demonstrates the need for all detainees to be able to access legal representation, and for those representatives to be able to obtain independent medical assessments, using public funding if necessary.

2 Introduction

Asylum seekers and migrants, including children in families, can be detained under Immigration Act powers in UK removal and reception centres, and in prisons. Official government figures for the end of 2004 showed that 1950 people were detained, 78% of whom had claimed asylum at some stage.³

The use of immigration detention is increasing and the government considers it to be central to asylum and immigration policy. The Five Year Strategy for asylum and immigration published by the Home Office on 7th February 2005 sets out plans to "... *move towards the point where it becomes the norm that those who fail can be detained.*"⁴ The strategy also announces plans to open a further 300 detention beds and to introduce fast tracking for cases of single women. The strategy projects that up to 30% of new asylum applicants will be put through a fast track detention process by the end of 2005.⁵

BID believes that if the sanction of deprivation of liberty is to be used, safeguards against prolonged and unnecessary detention should be in place, in line with international standards and human rights norms. The current policies and practices of detaining asylum seekers and migrants in the UK do not meet these standards; detention is neither sanctioned nor reviewed by a court and is not subject to a time limit.

The UK government's view is that detention is an essential mechanism within a broader system of immigration control. They argue that the UK's detention practices are in line with domestic and international legal and human rights norms, because there is an elective bail procedure that can be exercised and a right to challenge detention in the courts.⁶

BID's experience is that detainees with physical and mental health problems are detained for prolonged periods – for many months and even years in some cases. The government states that there are policies and procedures in place to protect more vulnerable groups from being detained. For example, the government's response to concerns raised by the Joint Committee on Human Rights into deaths in custody in March 2005 reiterates the position that people with health problems 'are not normally considered suitable for detention' and states that release is considered where health needs cannot be met:

3) IND quarterly statistics on immigration detention can be found at <http://www.homeoffice.gov.uk/rds/pdfs05/asylumq404.pdf>

4) 'Controlling our borders: making migration work for Britain' the Home Office five year strategy for asylum and immigration, 7 February 2005, see: <http://www.official-documents.co.uk/document/cm64/6472/6472.htm>

5) Ibid, p 36

6) "...it is open to a family at any time to challenge their continued detention through the courts or to seek their release on bail." Letter from Lord Bassam to Lord Avebury, 5 July 2004

“There remains a presumption in favour of granting temporary admission or release in all cases. Decisions to detain are taken on the basis of the individual circumstances of the person concerned, including their fitness to be detained. It remains the case that individuals who suffer from serious medical conditions or who are mentally ill are not normally considered suitable for detention.”

“Immigration Service staff at removal centres will pass on any concerns about an individual’s physical or mental health to the IND office responsible for that individual’s continued detention. The person’s continued detention will be reviewed in the light of such concerns. Where there are concerns about an individual’s fitness for detention, or the ability to provide the level of care that may be required in a removal centre, consideration will be given to the grant of temporary admission or release. In all cases, we are concerned to ensure that a person’s detention remains human rights compliant.”⁷

Where detention is deemed necessary, government officials have stated that there is adequate care and treatment available.⁸ In BID’s experience, this is not the case in all centres, and the health status of many of the detainees we have represented has deteriorated whilst in detention.

7) Government response to the Third Report from the Committee: Deaths in Custody, HL Paper 69, HC 416, Joint Committee on Human Rights, 10 March 2005, p 22 and p 36

8) Simon Barrett, Detention Services Policy Unit, Immigration and Nationality Directorate (IND), witness statement in the case of ID, Court of Appeal, 24 November 2004 (Case No. B2/2004/0847) “So far as individuals suffering from physical or mental illnesses are concerned, any decision to detain will take into account whether the person’s condition can be managed satisfactorily within the healthcare facilities available at removal centres. All removal centres have on-site healthcare teams and facilities which are at least equivalent to GP-level care in the community. All removal centres have visiting specialist healthcare professionals and access to secondary or specialist care and treatment at local hospitals. A number of centres also have excellent in-patient facilities.”

3 BID's role in challenging detention

BID provides free information, advice and representation to detainees who want to exercise their right to challenge their detention, but who are inhibited from doing so because they cannot find a legal representative willing or able to help them. Many of those contacting us say that they are unable to exercise their right to apply for bail to an Adjudicator (now called Immigration Judges) either because they are entirely without legal representation or because their legal representative is unwilling or unable to apply for release on their behalf. A significant number of those contacting us suffer from physical or mental health problems, and many report that their needs are not being met in detention.

BID is only able to assist a small percentage of those who contact us and we prioritise cases where a detainee appears to have serious physical or mental health problems.⁹ In order to challenge the detention of individuals suffering from health problems, it is necessary to obtain detailed medical evidence for use in a bail hearing before the courts, or in an application for release to the Immigration Service.¹⁰

BID does not receive public funding via the Legal Services Commission (LSC) and does not have funds to commission medical assessments. Even though medical evidence can be vital in obtaining release, we are often forced to rely on detailed accounts from detainees about their health and on copies of medical records obtained from the medical team at the removal centre, for which we are charged.

BID welcomed the availability of an independent medical doctor to carry out medical assessments, free of charge, albeit in a relatively small number of cases. The cases BID referred to MSF were selected from our caseload over a period of ten weeks in 2004. In each case, medical evidence was needed to support an application for release.

9) In an increasing number of cases, BID is recommending to detainees that they should represent themselves in bail applications as a last resort, faced with spending lengthy periods detained without independent scrutiny.

10) See p 54 and 55 of the BID/ILPA Challenging Detention; A Best Practice Guide for more information about the process required to obtain expert evidence in relation to mental or physical health problems.

4 Summary of the key findings

During a ten week period in 2004, a general medical doctor employed by MSF carried out free medical assessments of 13 adults and three children being detained under Immigration Act powers in the UK at the request of BiD. The 16 detainees had all claimed asylum in the UK. They were held at five Immigration Removal Centres, an Immigration Holding Centre, a Young Offenders Institution and two prisons. Ten adult men and three adult women were assessed. Two of the adults were detained with their children. At the time the assessment was conducted, the majority of the detainees had been held in more than one centre for total periods ranging from 32 days to 2 years.

4.1 MSF key findings (for full report see Annex 1)

MSF's key findings include:

- **Mental health problems:** MSF was concerned about the mental health of all the adult detainees visited; mental health problems ranged from anxiety to features of depressive illness (11 of 13 detainees) and features of post-traumatic stress (9 of 13 detainees), to more serious conditions such as self-harm and suicide attempts. In particular MSF was concerned that the detainees did not have access to adequate mental health support.
- **Deteriorating health in detention (including children):** In all 16 cases, the MSF doctor felt that the health of the detainees had deteriorated in detention and that continued detention would be likely to result in further deterioration of mental health status in particular. The three children had all experienced deterioration in their health since being detained.
- **Disrupted treatment:** Prior to detention five of the adults had been receiving or were awaiting treatment in the community for mental health problems and this was disrupted by detention.
- **Failure to facilitate access to external secondary health services:** MSF found that the system was failing to ensure that those detainees that required more than just a basic level of care had access to the same range and quality of health care as those in the community, as stipulated by the Detention Centre Rules. One detainee had been diagnosed with a symptomatic HIV infection and was being considered for anti-retroviral treatment at the time s/he was detained. MSF noted that despite an awareness of this detainee's condition, the detention health centre had not made a referral even after several months.

- **Unidentified health needs and lack of follow up:** The MSF doctor noted a variety of medical conditions among 12 of the 13 adult detainees that required attention. These included auditory hallucinations, a breast lump, a persistent cough possibly indicating TB, the need for an urgent referral back to a genito-urinary clinic and the need for a genito-urinary check for sexually transmitted infections post-rape. It was apparent from both medical notes and the description given by the individual detainee that health care staff were not addressing these conditions or appeared unaware of the health need.
- **Detention of torture victims:** Seven individuals reported severe ill treatment prior to coming to the UK. Despite documentation of these experiences in four of the detainee's medical notes, there was no evidence that the detention health care team had followed through with appropriate offers of referral, care and support. In three of the cases, it was unclear whether health care staff had notified the appropriate management as required by Detention Centre Rules.
- **Continuity of care and incomplete medical notes:** MSF found a clear problem in terms of the follow up of care from the community to the detention centre, the handover between the different health staff within an individual facility, and between staff in different facilities when a detainee is moved. MSF stresses that this problem is compounded by the fact that medical notes often do not follow a detainee as they are moved between centres and medical notes prior to detention are rarely obtained. Detention centre staff could not provide MSF with a full set of medical records for any of the detainees visited.
- **Interpreting services:** Detainees reported that interpreting services were rarely offered, impeding their ability to communicate with detention health care staff.

4.2 BID's key findings

Once the written reports of medical assessments had been received, BID was able to proceed with bail applications for ten detainees, plus their dependent children.¹¹ Eight detainees had their medical reports submitted as evidence at a total of twelve hearings, and four detainees were granted bail. The medical evidence MSF documented did not appear to be the determining factor in any of the bail decisions. In the twelve hearings only one adjudicator made significant reference to MSF's assessment. No other adjudicator appeared to give any weight to MSF's findings.

- Of the thirteen adult detainees assisted by BID and medically assessed by MSF, the majority (10) were not removed from the UK as a result of their detention.

- Six were released on Temporary Admission (including one woman with two children). In four cases, release on TA followed as a direct result of representations made by BID. Four detainees were successfully bailed by BID.
- Three detainees were removed from the UK directly from detention (including one adult with a child).
- The medical reports in all cases stated the opinion that continued detention would be likely to result in further deterioration of the individual detainees' health. However, the period of time between medical assessment and release on bail or temporary admission ranged between five and 168 days; one detainee remained in detention for 14 days after assessment, five for between 30 and 60 days, and three for between 70 and 170 days.
- In three cases, there was no independent review of detention at any stage, despite total lengths of detention of 50 days, 40 days, and 110 days.
- In five cases, BID made all the bail applications for that individual i.e. they were at no point able to exercise a bail application and so were reliant on free assistance from BID.
- Periods of time before first independent review of their detention by way of a bail application ranged from 66 days to 339 days.

11) In the remaining three cases, we were unable to list an application for bail. In one case, this was due to imminent removal, that was subsequently carried out. In this case, the detainee was provided with a copy of the MSF report to present to the Refugee Council in the European country to which he was returned. In the other two cases where bail was not applied for following the medical assessment, this was due to the clients being released on temporary admission shortly after the medical assessments (after periods of two weeks in one case, and five days in the other).

BID's key findings based on representing these detainees include:

- **Long periods of detention:** Despite instructions that those with serious illness “are not normally considered suitable for detention”, such people are detained for long periods.
- **Inadequate internal review mechanisms:** Internal mechanisms for reviewing the necessity and appropriateness of maintaining detention do not appear to be effective in ensuring that ill detainees are released, even in cases where detention is exacerbating their condition and resulting in deteriorating mental or physical health.
- **Inadequate rules:** The rules (Detention Centre Rules and Operating Standards) are not effective in protecting the needs and rights of detainees, in particular the more vulnerable: women, children, age-disputed children, those with serious mental and/or physical health problems.
- **Little weight is given to health factors:** The Immigration Service have stated that; “Evidence that a person has been a victim of torture, or has a history of physical or mental ill health, are clearly cited as negative factors influencing a decision to detain and would weigh against deciding to detain. There may, of course, be countervailing factors present in a case such as to justify detention.” It would appear that the ‘countervailing factors’ in these cases were given greater weight than the evidence of ill health. In some cases, even a medical assessment clearly stating that health would be likely to deteriorate further was not enough evidence to ‘weigh against’ maintaining detention.
- **Failure to employ alternatives to detention:** It appears that there is a presumption in favour of maintaining detention and a reluctance to actively consider alternatives to detention, such as reporting requirements, at an early stage. In BID's view, it is questionable whether asylum seekers and migrants who are dependent on medical treatment are likely to abscond if released from detention.
- **Restricted access to legal representation to challenge detention:** Detainees with health problems are struggling to access legal representation to challenge their detention, or to progress their substantive asylum or immigration case. They are remaining in detention for long periods without their detention being independently reviewed.

- **Detention on arrival and where no history of non-compliance with immigration control:** Detention is being used for people with health problems, who have claimed asylum either on arrival, or shortly afterwards, and have always maintained contact with the Immigration Service prior to being detained.
- **Maintaining contact on release:** The majority of detainees released from detention maintained contact with the Immigration Service calling into question the need to detain them in the first place.
- **Adjudicators disregarding health status in some bail applications:** In some bail applications, it would appear that Adjudicators are not taking medical evidence into account or are not being presented with relevant information regarding health status by the Immigration Service.

5 BID's use of the MSF medical assessments to challenge detention

In preparing an application for release, medical evidence is part of a range of information that is put before an Adjudicator or the Immigration Service. Other information includes length of detention, likelihood and imminence of removal, and the impact of maintaining detention on the detainee, and on his or her family. Considering an application for release requires the decision-maker to weigh up the various factors.

In using MSF's medical assessments as evidence to challenge detention, BID found that in some bail hearings, Adjudicators were apparently failing to take independent medical reports into account.¹² In other cases, problems accessing the courts and delays on the part of the Immigration Service resulted in detainees remaining in detention long after a medical assessment documented the risk of further deteriorating health.

5.1 Analysis of the cases

Once written reports of medical assessments were received, BID was able to proceed with bail applications for ten detainees, plus their dependent children.

In the remaining three cases, BID was unable to list an application for bail. In one case, this was due to an imminent removal action that was subsequently carried out. In this case, the detainee was provided with a copy of the MSF report to present to the Refugee Council in the European country to which s/he was returned. In the other two cases bail was not applied for as the clients were released on temporary admission shortly after the medical assessments (after periods of two weeks in one case, and five days in the other).

5.2 Outcome of detention

Of the 13 adult detainees assisted by BID and medically assessed by MSF, the majority (10) were not eventually removed from the UK.¹³

- Six were released on temporary admission (including one parent with two children). In four cases, release on TA followed as a direct result of representations made by BID.
- Four were successfully bailed by BID.
- Three were removed from the UK straight from detention (including a parent with a child).

12) The Guidance to Adjudicators requires them to balance the risk of absconding against other factors including "the effect of detention upon the applicant and his/her family" (2.6.2)

13) The Immigration Services Operation Manual states that 'in detaining a person it must be shown that he is being detained with a view to his removal (not necessarily deportation). Detention for other purposes (such as a deterrent to others), where detention is not necessary for the purposes of removal of the individual concerned is not compatible with Article 5: (38.1.1.1)

5.3 Total length of detention (approximate)¹⁴

The periods of detention for this group of detainees ranged from 40 days (shortest) to 720 days (longest).

- Of those released from detention, either on bail or by temporary admission, the periods of detention ranged from 40 days to 720 days.
- For those removed, periods of detention were 50 days, 50 days and 580 days.

Fig. 1 – detention outcome and duration

Detainee	Outcome	Approximate length of Immigration Act detention
1	Removed	50 days
2	Released on temporary admission (TA)	240 days
3	Released bail	720 days
4	Released TA	110 days
5	Released bail	400 days
6 (plus 2 children)	Released TA	40 days
7 (plus 1 child)	Removed	50 days
8	Released TA	130 days
9	Released bail	120 days
10	Released TA	230 days
11	Released TA	410 days
12	Released bail	180 days
13	Removed	580 days

14) In order to preserve anonymity of these cases, length of detention has been rounded down to the nearest five.

5.4 The asylum claim and arrival in the UK

All 13 adults had claimed asylum in the UK. In the majority of cases (ten people), the asylum claim had been made immediately on arrival or shortly afterwards. In six cases, an asylum claim had been made immediately and, in one of these cases, detention had been immediate on arrival under the Fast Track process. In a further four cases, an asylum claim was made within four days of arrival in the UK.

Of those who did not claim asylum on arrival or shortly afterwards, an asylum claim was made in a range of circumstances and varying periods of time in the UK (from a few months to several years in one case). These circumstances included; claiming asylum following refusal of an application to extend a visa; arrived as a minor to stay with relatives and was unaware of the asylum process until a year after arrival, by which time s/he was an adult; overstayed a visa and claimed asylum in detention following an attempt to remove him/her to country of origin.

5.5 Detention of children and young people

In two cases, the adult was detained with dependent children. Lengths of detention were approximately 40 days and 50 days.

In three cases, the individuals arrived in the UK as minors and were detained once they had become adults. In one case, the age of the detainee was disputed by the Immigration Service. This individual remained detained for three months and was removed from the UK. S/he was not referred to the Refugee Council Children's Panel (RCCP) by the Immigration Service, was never independently age-assessed by Social Services and was moved between several different criminal prisons and detention centres over a period of a month. S/he was moved, for the purpose of accessing health services, to a criminal prison following several suicide attempts.

5.6 The rationale for detention

In nine cases, detention was initiated for the purposes of removal from the UK (including one case where detention was first for the purpose of removal as an over-stayer, but then an asylum claim was made whilst detained and this claim was fast tracked). In three cases, detention was for the purpose of making a quick decision on an asylum claim in Fast Track processes.¹⁵ In one case, the individual served a sentence for a criminal offence and then detention was maintained under Immigration Act powers for the purposes of removal.

15) 'Fast track' detained processes operate at Harmondsworth, Yarl's Wood and Oakington IRCs.

5.7 Removal issues

Three of the 13 adult detainees were eventually removed from the UK, two to their countries of origin, one to another EU country. The Home Office attempted to remove a further seven adult detainees without success. Three of the seven were detained for over a year, one for two years, and three for six months or more. In one case six removal attempts failed. In a letter to Lord Avebury a Home Office minister stated that one reason “the period of detention may be prolonged” is that “removal is deliberately disrupted by resistant behaviour.” The Immigration Service argued that in each of the seven cases described above removal failure was the result of violent or disruptive behaviour on the part of the individual detainee. However, the version of events reported to BiD by detainees suggests that in at least four cases removal attempts were aborted as a result of administrative failures by UK Immigration Services. These include the issuing of inappropriate travel documents. Two detainees were returned to their country of origin only to be returned to the UK by officials there because they did not possess the correct or valid documentation. In both cases, an attempt was made to use an ‘European Union letter’ which is not recognised by some countries.

In one case, a detainee was issued with removal directions to a country of which s/he was not a national. This was a result of Immigration Services attempting to remove him/her while a dispute over nationality remained unresolved. The Home Office continued to detain this individual even after it was determined that s/he was a national of a country that they could not return individuals to for safety reasons.

In another case the removal was cancelled as the detainee was deemed unfit to travel by an Immigration Officer at the airport and was returned to detention.

In one case, the detainee refused to cooperate with re-documentation on the basis of fear of ill treatment on return to country of origin, where s/he alleged s/he had been imprisoned and tortured three times. In another case the detainee had repeatedly refused to cooperate with re-documentation.

In several cases, removal directions were set repeatedly but then cancelled, apparently without explanation. This was a particular problem when the issuing of removal directions served to block the forthcoming bail application, but then removal directions were deferred.

5.8 Independent review of detention

Of the 13 adult detainees, ten had a bail application at some point during their detention. In three cases, there was no independent review of detention at any stage, despite lengths of detention of 50 days, 40 days, and 110 days. Of the three that never had an independent review, two were released on TA and one was removed.

In five cases, BID made all the bail applications for that individual i.e. they were at no point able to exercise a bail application through a legal representative and so were reliant on free assistance from BID. Periods of time before first independent review of their detention by way of a bail application ranged from approximately 60 days to 340 days.

Of the four detainees who were bailed, all were bailed by BID, although three had previously been assisted in bail applications by other legal representatives. In one case bail was successful on the first attempt by BID. In the other three cases, the successful release on bail was following several applications; five in one case (two by BID), four in another (two by BID), and three in another (all by BID).

Of the six detainees released on temporary admission, two had never had an independent review of their detention by way of an application for bail. One had only had a bail application because s/he represented him/herself (the application failed, but s/he was subsequently released on TA).

Fig. 2 –ability to exercise right to challenge detention

Detainee	Total number of bail applications (no. made by BID)	Duration of detention prior to first bail application	Number of hearings post-assessment made using medical report (approximate)	Final outcome
1	0	N/A	0	Removed
2	2 (1)	140 days	1 (granted in principle but withdrawn due to problem regarding surety)	Released TA
3	6 (2)	90 days	2 (first withdrawn, second successful)	Released bail
4	0	N/A	0	Released TA
5	4 (2)	120 days	2	Released bail
6 (plus 2 children)	0	N/A	0	Released TA
7 (plus one child)	1 (1)	Not known	1 (unsuccessful)	Removed
8	2 (0)	60 days	2 (in the first of which s/he represented her/himself. Both unsuccessful)	Released TA
9	1 (1)	130 days	1 (successful)	Released bail
10	2 (2)	80 days	2 (unsuccessful)	Released TA
11	2 (2)	330 days	2 (unsuccessful)	Released TA
12	3 (3)	180 days	(2)	Released bail
13	2 (1)	210 days	0	Removed

5.9 Length of detention before independent medical assessment

Duration of detention before receiving an independent medical assessment ranged from approximately 30 to 670 days; four had been detained for over 30 days, two for over 60 days, one for over 90 days, one for over 200 days, three for over 300 days. One detainee was removed before the report of the independent medical assessment could be written up and used by BID.

5.10 Duration of detention after medical assessment conducted

The medical opinion was that for all detainees assessed continued detention would be likely to result in further deterioration of the individual detainee's health. MSF noted "In all 16 cases the opinion of the MSF doctor was that the health of the detainees seen had deteriorated in detention, considerably in the majority of cases, and that continued detention would be likely to result in further deterioration in health status, specifically mental health." However, release was not prompt in all cases. The period of time between medical assessment and release on bail or temporary admission ranged between five and 168 days; one detainee remained in detention for 14 days after assessment, five for between 30 and 60 days, and three for between 70 and 170 days.

5.11 Response to medical evidence presented by BID in requests to consider release ***Response of the Immigration Service***

In two cases BID provided the Immigration Service with a copy of MSF's report on an individual detainee and requested temporary admission on medical grounds. In the first case the MSF doctor had stated that if the detainee remained in detention his/her already poor mental state was likely to deteriorate further. In the second case MSF found that the detainee's detention was "continuing to deny him/her access to vital treatment." The MSF doctor went on to state that the detainee's "medical needs are being grossly neglected. S/he has been denied access to medical follow-up essential to ensuring the correct management of his/her condition." In both cases BID's application was refused only for the detainees to finally be released on TA after a further 30 and 98 days in detention respectively.

In preparation for a bail hearing the Immigration Service are required to produce a bail summary citing the reasons that justify continued detention. The bail summary forms the basis for the arguments that will be considered by the Adjudicator. An analysis of the bail summaries available on file at BID, for hearings that took place both before and after the assessment by MSF, showed that only one bail summary gave any consideration to the detainees' state of health.

Response of Adjudicators

Of the 13 adult detainees, nine had bail hearings after MSF had produced a report on them stating the opinion that continued detention would be likely to result in further deterioration of their health status. Eight detainees had their medical reports submitted as evidence at a total of fourteen hearings (six cases required repeat applications).

Of the eight detainees who submitted their reports to Adjudicators, four were granted bail. Whilst the medical evidence MSF documented arguably assisted in securing release, it did not appear to be the determining factor in any of the bail decisions. In the fourteen hearings, we believe that only one Adjudicator made significant reference to MSF's assessment; when citing his reasons for granting bail he stated that he had granted it in principle on the basis that the detainee had surrendered her/himself voluntarily to the police eight months previously, but went on to say that the MSF report had confirmed his decision. No other Adjudicator appeared to give significant weight to MSF's findings regarding health status. An observer at one hearing reported that when presented with the report, the Adjudicator declined to deal with the issues it raised and instead suggested that the detainee use it to facilitate medical treatment in the detention centre and base a fresh asylum claim on its contents. He did not appear to be familiar with how to use the report in the context of a bail hearing.

5.12 Current status of those released from detention

Of those ten detainees who were not removed as a result of detention, BID is aware that at 01/01/05 eight are still in the UK and are keeping in contact with the Immigration Service as required. (In the other cases it is not known if they are in contact).

6 Case by case summary of the response to medical evidence¹⁶

Released on bail

Case 3- Released on bail –720 days detained

A successful bail application was made by BID 43 days after MSF's report was completed. The central argument that won the case was that as a national of a country which the Home Office was at that time unable to remove people to, maintaining detention could not be justified. While the medical report prepared by MSF detailed the detainee's poor mental health, it also indicated that with medication s/he had recently improved. In discussion with the solicitors it was felt that the Court would seize on this to refuse bail, and the medical report prepared by MSF was for this reason not used in the application. The applicant was bailed subject to reporting conditions.

Case 5 - Released on bail – 400 days detained

The detainee had 4 bail hearings – the last 2 of which were made by BID. The fourth bail hearing was successful. The detainee's first three bail applications were refused on the grounds that the detainee was not cooperating with attempts to issue travel documents. The first bail application made by BID (which was refused) was submitted with MSF's report. In the form listing the reasons for refusing bail, the Adjudicator of this case made no reference to the medical evidence before him, and referred only to the risk of absconding due to failure to cooperate with travel documentation.

Case 9 – Released on bail – 120 days detained

BID made an application, based on medical grounds, for the detainee's release on temporary admission about five days after MSF's assessment. In a letter to BID, the Chief Immigration Officer (CIO) refused the request for TA; he did however suggest that an application for CIO bail might be considered. Several submissions by his solicitors challenging his continuing detention were similarly refused. BID finally listed a bail application around six weeks after the visit by MSF. The application for bail was successful.

16) All lengths of detention are rounded down to the nearest five days.

Released on temporary admission (TA)

Case 2 - Released on TA – 240 days detained

A bail application was made by BID five days after MSF's report was completed. The Adjudicator decided to grant bail in principle on the basis that the applicant had surrendered voluntarily to the police some months previously. The Adjudicator also clearly took into account the detainee's medical condition, as documented by MSF's report. This is of particular interest as key in the refusal of the detainee's first bail application was a lack of appropriate medical evidence. However, at the bail hearing, the Home Office raised an objection to the surety and accommodation provider which meant that the Adjudicator ultimately refused bail and the application was withdrawn. Subsequently the Home Office conceded that this allegation was erroneous and preparations were made for a further bail application. However, prior to that hearing the Home Office released the detainee on temporary admission. This was some five weeks after the detainee had been granted bail in principle.

Case 4 - Released on TA – 110 days detained

No bail applications made. BID was in the process of preparing a bail application including the MSF report, but before the case had been listed the detainee was released on temporary admission. This occurred 13 days after the MSF visit and assessment.

Case 6 – plus 2 children - Released on TA – 40 days detained

No bail applications made. Very shortly after the MSF visit and assessment, Immigration Officers asked the detainee if there was an address to which s/he could be released. Four days later the detainee and the children were released on temporary admission.

Case 8 – Released on TA – 130 days detained

BID was unable to assist this detainee in making a bail application due to a long waiting list and a lack of available listing dates. The detainee represented him/herself at a bail hearing five days after MSF's visit, using the medical report. According to the brother of the detainee, who was present at the hearing, the Adjudicator declined to deal with the issues raised in the report. Instead he suggested that the detainee should use the report to facilitate medical treatment in the detention centre and possibly base a fresh asylum claim on the contents of the report. The Adjudicator did not appear to know how to use the report in the context of a bail hearing. Bail was refused on the basis that removal was imminent, and because the Adjudicator was concerned that the detainee would not comply with conditions of release. The detainee had a further bail application with the assistance of a solicitor – this too was unsuccessful. Finally, 72 days after the medical assessment, the detainee was granted TA by the Immigration Service.

Case 10 – Released on TA – 230 days detained

BID conducted two unsuccessful bail applications – both included MSF’s report on the detainee. Three reasons were given for the refusal of bail. The first was a lack of accommodation. Prior to the first bail application the National Asylum Support Service (NASS) had refused to supply an emergency bail address under section 4 of the 1999 Act – policy at the time required an individual to be released before NASS would provide an address. The second reason was that s/he had overstayed his/her visa and lost contact with the Immigration Service. The detainee’s disruption of attempted removals was the final reason.

In preparation for the second bail application MSF provided an addendum to their initial report. This referred to the treatment that the detainee had received following the first bail application. It is striking that at both hearings the Adjudicators failed to consider the detainee’s medical condition – or make any reference to it at all – when listing their reasons for refusing bail. The detainee’s case was subsequently taken on by a new legal representative and the detainee was granted TA 168 days after MSF’s initial assessment.

Case 11 – Released on TA – 410 days detained

BID presented two unsuccessful bail applications; both were post MSF’s visit and both included the report of the medical assessment. The Home Office made no reference to the detainee’s physical and mental health problems in the bail summary. Bail was refused on both occasions. On both occasions, the Adjudicator focused on the detainee’s refusal to cooperate with the Immigration Services’ attempts to obtain travel documentation for him/her when stating their reasons for denying bail. A lack of accommodation was also a major problem on both occasions. NASS refused to grant the detainee accommodation on the grounds that s/he was not cooperating with re-documentation processes. The first Adjudicator made no reference to the MSF medical report and the second gave it no weight at all in his decision. The detainee was released on TA 55 days after MSF’s visit.

Removed

Case 1 - Removed – 50 days detained

No bail applications made. The detainee was removed from UK two weeks after the medical assessment was conducted.

Case 7 (plus one child)- Removed – 50 days detained

A bail application was made using MSF's medical report ten days after the assessment took place. The Adjudicator accepted that the detainee would abide by conditions and even attend the airport for removal but felt that the detainee would not board the plane. The Adjudicator indicated that bail would be granted if the Immigration Service were not able to remove the detainee to their country of origin. It is significant that the Adjudicator made no finding as to the MSF report. The detainee and child were removed shortly afterwards.

Case 13 – Removed – 580 days detained

The detainee was removed from the UK directly from the detention centre twelve days after MSF examined them, and before a medical report could be submitted or a bail application listed.

7 Responding to medical evidence – discussion and recommendations

An analysis of the cases in this report suggests that Adjudicators are not always following existing guidance. The *Bail Guidance Notes for Adjudicators from the Chief Adjudicator* state that “the risk of absconding, although the principal factor, is just one of the factors to be taken into account on an application for bail and has to be balanced against other factors.” (Section 2.6). These ‘other factors’ include “the effect of detention upon the applicant.” In the majority of the cases detailed above, the overriding factor given consideration by Adjudicators was the perceived risk of absconding. One possible conclusion to be drawn from this is that the guidance to Adjudicators does not give sufficient emphasis to the requirement to consider health status and impact of detention. Further, it would suggest that in some cases, Adjudicators are not placing the burden of proof on the Immigration Service to justify why maintaining detention is necessary. This contravenes revised guidance to Adjudicators that states: “the burden of proving that the presumption in favour of liberty does not apply lies with the Secretary of State. As detention is an infringement of the applicant’s human right to liberty, you [Adjudicator] have to be satisfied to a high standard that any infringement of that right is essential.”(2.5.1)

With regard to the consideration of health status by the Immigration Service or by Adjudicators in bail applications, BID recommend that:

- the recommendation of the Joint Committee on Human Rights be included in instructions to Immigration Service staff and in Guidelines to Adjudicators: “Decisions on continued detention under the Immigration Act must be fully informed by any relevant medical and in particular psychiatric information. Where detaining authorities know, or ought to know (given adequate information exchange) that an immigration detainee is at risk of suicide, serious self-harm or severe mental illness as a direct result of continued detention, they will need to clearly justify such continued detention as compliant with Articles 2, 3 and 8.”¹⁷
- the onus is clearly with the Immigration Service to ensure adequate information exchange, in order that where the detaining authorities ought to know that continued detention represents a health risk, they do. BID recommends that the Immigration and Nationality Directorate review and strengthen the mechanisms for information exchange.

17) Joint Committee on Human Rights, Inquiry into Deaths in Custody, p 63

- at every stage where detention is reviewed (internally by the Immigration Service, or externally by an Adjudicator) full written reasons should be given if it is decided that continued detention is necessary and compliant with Articles 2,3 and 8. Instructions to the Immigration Service and Guidance Notes to Adjudicators should be amended to make clear the need to *clearly justify* continued detention.

In reviewing detention, including for the purposes of preparing a bail summary, the onus is on Immigration Service to consider the impact of detention on the individual and give good reason for continuing to detain them. Under the subheading of *'against detention'* the Operation Enforcement Manual states that one of the factors that *"must be taken into account when considering the need for initial or continued detention"* is whether the detainee has *"a history of physical or mental ill health."* Based on BID's experience in these cases, it would appear that reviewing officers preparing the bail summaries are not taking health status into account, or if they are, they are not explaining their reasoning for discounting health status. As such, BID questions how Adjudicators are to gain a full picture of the individual in question, which takes all the relevant factors into account, if the Immigration Service disregard state of health as an issue which is included in the bail summary. The risk that the detainee's health status will not be considered in the hearing is exacerbated by the fact that most bail applications do not include an independent medical report¹⁸, and increasing numbers of detainees are going to bail hearing without a legal representative. There is no right of appeal against the decision of the Adjudicator in the bail hearing.

As a result of exchanges of correspondence with BID on the detention of people who are mentally ill, a representative of the Home Office Minister wrote the following on 27 January 2001:

"Every case is unique, and should be assessed as such on a case by case basis. The Immigration Service recognises the need to pay particular attention to considerations of physical and mental health – and in particular evidence of a history of torture – when making decisions about detention."

It would appear that the instructions of the Minister are not being followed in some cases as 'particular attention' is not being paid to considerations of mental and physical health. Furthermore, it seems there has been a lack of clarity over who is considered 'fit' to be detained and the duty of medical staff. The letter to BID from the Minister on 27 January 2001 states:

"There is no set of undisclosed guidelines to which medical staff in detention centres refer. Immigration Service staff should not ask medical staff whether detainees are 'fit to be detained', although officers may ask whether an individual is in suitable condition to travel."

18) Legal aid cuts mean that fewer medical reports are likely to be commissioned or prepared.

Since that time, the Detention Services Policy Unit at the Immigration and Nationality Directorate has circulated instructions spelling out the duties of medical staff, however it seems that these instructions are not being followed in all cases.

"In accordance with the medical bodies' ethics, medical practitioners will do the following:

- they will tell IS staff if they consider a detainee is not fit for detention/travel/interview /activity etc*
- for a detainee declared not fit for whatever purpose, they will tell IS staff when the detainee becomes fit again for that purpose*
- they will not tell IS staff whether a detainee is fit for a particular purpose*

*With regard to confidentiality, a detainee can be declared unfit without saying why and without obtaining consent. To disclose more details from the detainee requires informed and current consent. Medical staff will issue their own guidelines in due course."*¹⁹

19) March 2004, Detention Services Policy Unit, note on healthcare issues.

8 Broader context

BID is particularly concerned about the health and welfare of immigration detainees in the context of recent policy developments, which in our view render detained people even more vulnerable.

8.1 Legal aid restrictions and problems accessing legal representation

Changes to the public funding regime for immigration and asylum advice and representation were implemented by the Department for Constitutional Affairs and the Legal Services Commission in May 2004. BID is concerned these changes have exacerbated the problem of detainees being unable to access adequate legal representation in their substantive case or to challenge their detention. In addition, the revised funding arrangements allow a reduced amount of public funding for obtaining medical reports. As a result, even if a detainee is legally represented, funding restrictions may inhibit representatives from obtaining medical reports to assist their client's substantive case and any challenge to their detention on the basis of deteriorating health.

It is BID's experience that effective legal representation for detainees is also inhibited by the frequent movement of detainees between removal centres. This can lead to a detainee losing representation from his or her solicitor because of being moved to a distant detention centre and a lack of time and public funding to facilitate visits by the legal representative.²⁰

8.2 Increasing numbers detained, a new focus on removals, and the expansion of fast track processes

Although the government has failed to meet their target of expanding the number of detention places to 4000, there remains an intention to expand the numbers detained, which is closely linked to the desire to increase removals from the UK. BID are concerned that the emphasis on removal has contributed to a tendency to maintain detention and seek removal at any cost.

20) This issue was raised in the report of an unannounced inspection of Campsfield House by the Prisons Inspectorate who "reviewed the escort records of a fifth of detainees, and discovered that five had had journeys of over 18 hours before reaching the centre, with overnight stops at airports: one, indeed, had been in transit for nearly 36 hours. Others had had lengthy periods in transit. Many had been in over four different places of detention. These movements around the detention estate, and the wholly unacceptable lengths of time spent in transit, inevitably increase detainees' vulnerability and action should be taken to monitor and significantly reduce them."

In addition, there has been an increase in the number of people who are detained for the purposes of making a quick decision on their case. The use of Fast Track processes are predicated on detention and are resulting in some people spending months in detention because they cannot be removed after their case has been refused, for example because of delays in obtaining travel documents. BID is concerned that although detainees in the Fast Track are allocated legal representation under the duty list administered by the Legal Services Commission (LSC), these representatives are not challenging their client's detention at the end of the process even where there are considerable delays in enforcing removal. As such, there is a risk that people with serious health problems will remain detained, often from soon after arrival in the UK. BID are particularly concerned about the announcement on 7 February 2005 that the Super Fast Track process will be extended to include women's cases at Yarl's Wood.

8.3 The rising number of children in detention

A change in policy in October 2001 allowed for families with children to be detained for longer periods.²¹ On 27 January 2005, there was a significant expansion in the detention estate for families with a further 260 family beds opening at Yarl's Wood Immigration Removal Centre. There has also been a documented increase in the numbers of children who are detained as adults because the Immigration Service dispute their age.²²

There has been considerable opposition to the detention of children, not least because of the impact detention has on children's health and welfare. The findings of BID and MSF in relation to ill detainees are particularly alarming in the context of the increasing number of children in detention, both accompanied and in families.

BID's experiences of working with detained children are starkly at odds with the view of the government regarding children's welfare, as expressed by Baroness Scotland in April 2004.

*"The present position is that the welfare of the children concerned is monitored constantly by the excellent healthcare and other staff in removal centres. Where there are concerns, those are addressed either locally or by the Immigration Service. That includes consideration of whether detention should continue in appropriate cases."*²³

21) For further information, see BID policy update, Feb 2004

22) See 'No Place for a Child' by Save the Children, 28 Feb 2005

23) Baroness Scotland of Asthal: 27 Apr 2004 : Column 712

The government's view has also been seriously called into question by the Inspectorate of Prisons, whose report on an announced inspection of Oakington Immigration Reception Centre 21–25 June 2004, which was published on 9 November 2004, was damning of the failures of the additional review mechanisms that are supposedly in place to protect children from prolonged and unnecessary detention:

"We also found that the mechanisms for deciding to detain children, and reviewing their detention and developmental needs, were not sufficiently robust. Under IND's own instructions, the detention of children is always a sensitive matter and should be decided at senior level (by an Assistant Director). We saw no evidence of such authorisation, and indeed on-site staff appeared unaware of the need for it. The instructions also require regard to be given to Article 8 of the European Convention on Human Rights: again, we saw no evidence that a balancing exercise between the necessity of detention and the welfare of the child had been carried out. The centre made conscientious attempts to identify and support children at risk of harm; but residential staff lacked the necessary qualifications, or support from social services. The concerns they did raise about children underline the need for independent review of a child's welfare and development after seven days, as we have previously recommended."

8.4 Deaths in immigration detention and the concerns of the Joint Committee on Human Rights

There has been an increase in the number of suicides in immigration detention, with three self-inflicted deaths recorded in 2004.²⁴ The report of an inquiry into deaths in custody carried out by the Joint Committee on Human Rights (JCHR) published in December 2004, identifies serious concerns about the apparent rise in deaths in immigration detention and recommends an urgent review of the use of prisons for immigration detainees with a view to reducing the numbers of those at risk of suicide and self harm. The Committee also recommend that *"Information on the risk of suicide or self-harm should be used to inform decisions on whether an individual is detained in immigration detention, and how he or she is cared for in detention. We are concerned that, despite guidelines, this may not be happening effectively in practice."*²⁵

24) JCHR report , 28. para 82

25) JCHR report, p 45

The Committee go on to highlight the requirement to clearly justify continuing detention of those with serious mental health problems or those at risk of self harm or suicide:

“Decisions on continued detention under the Immigration Act must be fully informed by any relevant medical and in particular psychiatric information. Where detaining authorities know, or ought to know (given adequate information exchange) that an immigration detainee is at risk of suicide, serious self-harm or severe mental illness as a direct result of continued detention, they will need to clearly justify such continued detention as compliant with Articles 2, 3 and 8.”²⁶

The government’s response to the JCHR report was published on 10 March 2005.²⁷ No substantive changes were announced.

8.5 Inhumane treatment and assaults

The MSF and BID reports about health care in detention should be viewed in the context of the growing body of evidence about alleged ill treatment in detention and assaults during attempted removals. A BBC1 documentary screened on 2 March 2005 showed footage by undercover journalists at Oakington Reception Centre and escort staff taking people to the airport to be removed. The footage included allegations of violent treatment, racist and sexual abuse and allegations that the mental and physical health needs of detainees were not being met in some cases.

Harm on Removal: Excessive Force against Failed Asylum Seekers published by the Medical Foundation for the Care of Victims of Torture (the Medical Foundation) in October 2004 presents evidence of 14 individuals who claimed to have been subjected to excessive or gratuitous use of force during an attempt to remove them from the UK. Following medical examination by the Medical Foundation, analysis of the cases suggests that this was the case in 12 of the 14 cases, and medical evidence supports the detainee’s allegations of the injury method. The Medical Foundation states *“although our sample is small, the patterns that emerge are repeated in many of the cases, raising concern that there may be a systemic problem of abuse, rather than a number of isolated incidents.”²⁸*

26) Ibid, p 63

27) Government Response to the Third Report from the Committee: Deaths in Custody, Joint Committee on Human Rights, HL Paper 69, HC 416, 10 March 2005

28) Ibid, p 6

The report notes:

"It is not the focus of this project to comment on the availability or quality of medical attention received by these detainees after the removal attempts. It is important to note, however, that medical check-ups following the use of control and restraint are not routine, and that the quality of documentation of injuries by detention health care staff in the cases considered was poor. It is not known whether health care staff in detention facilities are raising concern in cases where injury suggests more than reasonable force. There are strong professional ethical arguments for doctors to consider such reporting duties as their moral responsibility."

A further issue regarding the treatment of detainees referred to secondary health services has been raised in several newspaper articles, including the Sunday Herald on 30 January 2005

"Asylum seekers from the Dungavel detention centre have been degraded and humiliated in a series of "horrific" incidences while receiving treatment at Scottish NHS hospitals, according to a dossier compiled by staff. Medical workers at Wishaw General Hospital and Hairmyres Hospital in East Kilbride have raised concerns about a number of cases including that of a woman being shackled to her bed while awaiting surgery and a man who was escorted from a psychiatric unit by armed guards following treatment for mental health problems..."

"There were three members of detention staff on the doors and another was co-ordinating. The staff removing him were armed and the patient was unsure what was happening. He did not speak English and there was nobody there to translate. He was practically dragged out. Staff on duty were horrified."²⁹

29) NHS staff angry at use of armed guards and handcuffs for asylum seekers, <http://www.sundayherald.com/47406>, Liam McDougall

9 Conclusion

The evidence presented in the reports by MSF and BID contributes to a growing body of material from varying sources that calls into question the UK government's detention policies and practices. BID believes it is not acceptable for the government to ignore demands for change in the use of detention. In particular, urgent action is needed to make fundamental changes to the detention regime so that mechanisms of review are accessible and effective in protecting the rights of detainees, in particular the seriously ill.

10 Recommendations for action

In relation to the treatment of detainees with health needs, BID urge the government and the Immigration Service to carefully consider the information in this report, the concerns identified by MSF and the areas they identify as requiring follow up.

Areas requiring follow up, identified by MSF

(i) Mechanisms to ensure that all detainees receive full medical assessments on arrival to facilities need to be established. The Immigration Service should then consider whether those with serious illnesses, the mentally ill, and those who disclose torture are 'suitable for detention' according to existing guidelines.

(ii) A system for regular assessments of a detainee's health by a medical doctor with an understanding of the medical needs of this group should be built into the monthly detention reviews. MSF believes that where serious health concerns arise, there must be a presumption in favour of release.

(iii) MSF was extremely concerned to note that in most cases bail adjudicators give little weight to independent medical evidence documenting potential risk of harm to health from continued detention.

(iv) Where there are insufficient facilities and resources to ensure that a detainee with a particular medical condition receives appropriate care, the individual should not be detained.

(v) Continuity of care needs to be reviewed. This includes procedures to ensure follow-up appointments in the community are kept, that medical records follow the detainee from the community and from centre to centre, and that recommendations for referral made by doctors are followed through.

With regard to the consideration of health status by the Immigration Service or by Adjudicators in bail applications, BID recommend that:

1. The recommendation of the Joint Committee on Human Rights be included in instructions to Immigration Service staff and in Guidelines to Adjudicators: *“Decisions on continued detention under the Immigration Act must be fully informed by any relevant medical and in particular psychiatric information. Where detaining authorities know, or ought to know (given adequate information exchange) that an immigration detainee is at risk of suicide, serious self-harm or severe mental illness as a direct result of continued detention, they will need to clearly justify such continued detention as compliant with Articles 2, 3 and 8.”*
2. The onus is clearly on the Immigration Service to ensure adequate information exchange, in order that where the detaining authorities ought to know that continued detention represents a health risk, they do. BID recommend that the Immigration and Nationality Directorate review and strengthen the mechanisms for information exchange.
3. At every stage where detention is reviewed (internally by the Immigration Service, or externally by an Adjudicator) full written reasons should be given for the decision that continued detention is necessary and compliant with Articles 2, 3 and 8. Instructions to the Immigration Service and Guidance Notes to Adjudicators should be amended to make clear the need to clearly justify continued detention.

With regard to the accessibility of legal safeguards for immigration detainees to protect against prolonged and damaging detention, BID recommend that fundamental changes are made to the legal framework for detention:

1. A statutory maximum length of detention be introduced
2. Quality, publicly-funded legal representation be provided to all detainees
3. Statutory provision is made for all those who are detained under the Immigration Acts to be brought promptly and automatically before a court for an independent review of their detention. If refused, further reviews of this nature must take place at regular intervals
4. The detention of children under 18 be prohibited
5. The detention of the mentally ill, those with serious medical conditions, those who have been tortured, and pregnant women, be prohibited

Annex 1

Médecins Sans Frontières-UK, November 2004

The health and medical needs of immigration detainees in the UK: MSF's experiences

Background to MSF's involvement in the UK

In April 2003, MSF-UK began a broad assessment of the health and medical needs of various vulnerable immigrant groups residing in the UK. These included asylum seekers, refugees, undocumented migrants, and trafficked women: both those living within the community and those in detention facilities. MSF's initial research highlighted that a proportion of individuals within these groups appear to have problems accessing an appropriate level of health care to meet their needs. Organisations working with asylum seekers expressed particular concern for the health and wellbeing of detainees in UK detention facilities. Furthermore, we found that various aspects of the UK's immigration process was having additional impact on the health status of certain groups, and that future legislative change could exacerbate this.

As a result of this initial assessment, MSF recruited a GMC-registered general medical doctor, with experience in General Practice and in provision of health care to various asylum seeking groups in the UK, to run a free medical assessment service for legal representatives of asylum seekers and migrants held in nine detention facilities in the UK. For a limited period of 10 weeks in 2004 MSF took referrals from the charity Bail for Immigration Detainees (BID). BID is an independent charity that provides free assistance to detainees by making applications for release on temporary admission to the Immigration Service and applications for bail to the Immigration Appellate Authority. The MSF doctor carried out independent medical assessments and wrote reports to accompany applications for release for detainees, prepared and presented by BID. The MSF doctor visited detainees in the facilities, with the co-operation of the health care providers based there. Each assessment took on average two hours to carry out, in most cases in the presence of an interpreter.

Through MSF's work, a number of concerns were raised around detainee's health and health care provision within UK detention facilities. In order to document our experiences for BID, a brief summary of this work is outlined below. Data have been anonymised to protect the individual's identity; in each case consent was sought to use the patient's data in this format.

Summary of detainees visited

(i) Profile of the detainee

- The detainees were held solely under immigration powers at five Home Office Immigration Removal Centres, an Immigration Holding Centre, a Young Offenders Institution and two prisons. Several of these facilities and their healthcare centres were operated under contract by private companies, the others by the Prison Service. The MSF doctor visited nine different facilities during the ten-week period. All these facilities are run subject to Home Office Detention Centre Rules and Operating Standards.^{1,2}

- 13 detainees were adults- ten were men and three were women between the ages of 16 and 40 years. Three individuals visited were children detained with their parents- two female aged two and 12 and one male aged 10. Detainees were from Afghanistan, Cameroon, Iraq, Nigeria, Rwanda, Sierra Leone, Somalia, South Africa, Sri Lanka and Uganda.

- All the adults, except one who was not aware of the decision on his claim, were asylum seekers who had been refused asylum. It was unclear to MSF as to whether all detainees refused asylum had exhausted all appeal rights or not. Certainly, three detainees were considering making an appeal against their refusal.

- The majority of the detainees had been held in more than one place of detention; one man had been moved six times between four centres; another man had been moved between five different centres or prisons in one month.

- The detainees had been held for periods ranging from 32 days up to two years, with four adults having been detained for a year or more and an average length of detention for children of 35 days.

- Six of 13 detainees had experienced removal attempts which in most cases they had resisted and in some cases had been aborted, for example due to a detainee's health condition or the intervention of an MP. One experienced six removal attempts and one three, and two detainees each experienced two attempts at removal.

(ii) Vulnerability

- The majority of detainees reported that they were alone in the UK; however some had established relative stability in their life in the UK before their detention, for example attending college, having been registered with a GP, or receiving on-going hospital care.

- 12 of 13 adult detainees reported traumatic experiences in their country of origin, which included being detained, imprisoned, burnt with cigarettes, being subjected to electrical torture, rape and other forms of sexual assault, having dogs set on them, and witnessing the murder of family members. The remaining detainee reported threats of beating. Seven reported experiences of ill treatment which in some, if not all, cases would be likely to amount to torture.

- 9 of 13 detainees visited required a professional interpreter during the assessment. Lack of language was a concern for some detainees. Several expressed a need for an interpreter to facilitate communication with detention health care staff. Some reported that other detainees had been used to translate for them at the detention health centre.

(iii) Health and medical needs**(a) Mental health**

- All the adult detainees reported deterioration in their health status since being in detention, in particular with respect to their mental health and wellbeing. Many of the detainees reported during the assessment that they felt isolated and alone, hopeless and afraid. Detainees told MSF they felt:

'helpless'

'I feel I have no future'

'I cannot make myself fully understood to health staff'

'I thought people would think I am a robber' [This detainee reported he was handcuffed and escorted by uniformed staff for a hospital appointment].

'I feel an invasion of privacy by immigration officers. I need personal space'

'I used to have hopes about my future but not now'

'I feel as though I am dead - no one cares'

'I am hoping I don't go mad'

- MSF was concerned about the mental health status of all adult detainees visited. Mental health problems ranged from anxiety over their health to features of depressive illness (11 of 13 detainees), features of post traumatic stress (nine of 13 detainees), to more serious conditions such as self harm and suicide attempts. One detainee had made a near successful suicide attempt. There was considerable illness noted, associated with stress and anxiety including headaches and gastro-intestinal problems. Detainees had experienced multiple moves between centres, being held in prisons or prison-like conditions, removal attempts, uncertainty about length of detention and fear of removal. From discussing their experience of detention with the detainees and from their health status when seen by the MSF doctor, MSF formed the opinion that these experiences exacerbated the impact of trauma experienced in their home countries.

- In all 16 cases, the opinion of the MSF doctor was that the health of the detainees seen had deteriorated in detention, considerably in the majority of cases, and that continued detention would be likely to result in further deterioration in health status, specifically mental health.

- Of five detainees with serious mental health problems one had received counselling in a previous detention facility and he/she had found this helpful; one had recently been seen whilst in detention by a psychologist for an assessment of current mental state and risk of self harm/suicide. Prior to detention five of the adult detainees seen had been receiving or were awaiting treatment for their mental health problems and this was disrupted by their detention.

- The child aged two years showed regressive behaviour and some apparent weight loss on assessment. The two older children had experienced deterioration of their health since being detained on their own and their parent's report. Prior to detention the parents of these children reported stability in their home and school situations.

(b) Access to external secondary health services

- One detainee we visited had been diagnosed with symptomatic HIV infection and was being considered for antiretroviral treatment at the time he/she was detained. However, we noted that despite awareness of his/her condition and need for referral by a variety of detention health care staff (as documented in the medical notes), referral back to his/her local hospital outpatient department had not been made by the detention health centre even after several months. MSF assisted in facilitating this referral.

- One detainee had been in hospital prior to detention with a serious infection and because he/she was detained had missed important follow up. It appeared from the medical records that after many requests from him/her, a referral to hospital was made, but he/she was then moved to another detention facility where at the time of MSF's assessment three months after his/her discharge from hospital he/she still had no hospital follow up appointment.

(c) Unidentified health needs and lack of follow up

- We were concerned that for 12 of 13 detainees, despite full primary healthcare cover in the facilities visited, the MSF doctor noted a variety of medical conditions among detainees that required attention. It was apparent from both the medical notes and the description given by the detainee that the conditions either did not appear to be being addressed by health care staff at the time of MSF's assessment or in some cases staff appeared unaware of the health need.

- For some detainees referral to secondary care services was required. Health issues included:

- detainees suicidal intent or attempts requiring urgent assessment
- auditory hallucinations likely to require assessment by a psychiatrist
- urgent referral back to a genito-urinary clinic for symptomatic HIV positive detainee
- genito-urinary check for sexually transmitted infections post rape
- persistent cough possibly indicating tuberculosis, requiring investigation at a chest clinic
- referral for investigation of a breast lump

- In all cases, the MSF doctor alerted detention health care staff to these health issues and followed up on the cases causing concern. The health staff were also informed of the need of two detainees for an interpreter to facilitate communication of their health needs.

(d) Detention of torture victims

- Seven individuals reported to the MSF doctor that they had experienced severe ill treatment prior to coming to the UK. Despite documentation of these experiences in four of the detainee's medical notes there was no evidence that the detention health care team had followed through with, for example, referrals to the Medical Foundation for the Care of Victims of Torture, nor offered follow up with any form of care and support. From the medical notes, it was unclear as to whether health care staff had notified the appropriate management in three of these cases, as required in the detention centre rules, for those detainees who disclose torture (rule 35 (3)).¹ 'Torture Report Forms' are now available in all removal centres for use by health care staff. For only one of these four detainees was it clear that notification had been made by medical staff; however, there was no information on the outcome.

- In light of this, MSF liaised with BID to initiate formal referrals for assessment to the Medical Foundation for the Care of Victims of Torture for each of the seven detainees who had reported severe ill treatment to MSF.

(iv) Other issues

(a) Incomplete medical notes

- MSF could not be provided with a full set of medical records for any of the detainees visited. At the time of the assessment inside the facilities, despite formal request with consent for copies of medical records nine of 16 detainees had no previous medical records (only those from the centre they were now in) and for the remaining seven the medical records available were incomplete. Only four of 16 detainees had any medical records for their time in the UK prior to their detention.

- This difficulty in acquiring full medical records was no doubt exacerbated by the fact that the detainees visited had been moved around considerably between centres throughout the UK. It is understood that the Department of Health share these concerns and have proposed a single database across the detention estate.

(b) Interpreting services

- From the experience of the detainees we visited, we noted that interpreting services were rarely offered, impeding the ability of detainees to communicate with the detention health care team. In the absence of interpreters those with mental health issues were unable to communicate effectively, which goes some way to explaining why the problems remained unaddressed.

Identified concerns

- We acknowledge that the number of detainees seen by MSF was small and our concerns rest on the testimony of detainees and the medical and legal records we were given. However among the detainees we visited in the nine different facilities a number of strong recurring themes in terms of health and medical needs became apparent.

- We feel that the issues we identified were symptomatic of a degree of failure in the system; in many instances adequate systems were not in place to respond to the various and often particular health and medical needs of a potentially vulnerable group who may require more than just the basic level of healthcare provision provided inside these facilities. These concerns echo those of the HM Inspectorate of Prisons in their 2003 summary of inspection of Immigration Service establishments.³

(i) Fitness to detain

- Existing Immigration and Nationality Directorate operational guidelines state that detention is considered unsuitable, unless there are exceptional circumstances, for those 'suffering from serious medical conditions or the mentally ill: those where there is independent evidence that they have been tortured' (Chapter 38.8).⁴ MSF was concerned to have received referrals from BID regarding detainees in all such categories.

Five of 13 adult detainees were categorised by the MSF doctor as having serious mental health problems; two had serious medical conditions. Seven reported to the MSF doctor that they had experienced ill treatment prior to coming to the UK: such traumatic experiences are among those likely to be reactivated by the trauma of detention.⁵

- It appears that there is no systematic process of identifying and ensuring the release of detainees who are suffering from serious medical conditions or the mentally ill, in accordance with the guidance issued to detention staff. Detention centre operating standards for healthcare require that all detainees are medically screened within two hours of admission including for risk of self harm and suicide (Health care 5. 6.).² Detention centre rules require that a detainee has 'a physical and mental examination by the medical practitioner within 24 hours of his admission to a detention centre' (rule 34 (1)).¹

We found that initial health assessments of detainees on arrival to the facility were not carried out in all cases and even where they were, concerns were not followed up in a systematic way. For example, we noted one detainee suffering from symptomatic HIV infection, for which the appropriate treatment was not available in the facility, yet he/she was continuously detained with no apparent review of his/her case. MSF considered that initial assessments made on detainees transferred to prisons were inappropriate for asylum seekers.

- MSF noted deterioration of the health status, in particular mental health, of detainees during detention. A deterioration in mental health status during detention has been extensively documented in the medical literature.^{5,6,7} In the period since January 2000 six detained asylum seekers have hanged themselves in detention.⁸

- Despite it being acknowledged that health status deteriorates during prolonged detention, there was no regular review during the detainee's detention by the authorities responsible for maintaining detention of fitness to detain, which in many cases was for lengthy time periods. It is the role of the medical practitioner to report to the manager on the case of any detainee 'whose health is likely to be injuriously affected by continued detention or any conditions of detention' (rule 35 (1))¹ but in our experience this was not taking place. For example, in the serious case of a detainee who had made repeated suicide attempts, though the Immigration Service were aware of this, detention was continued despite it being obvious that detention was impacting detrimentally on the detainee's health status. There was no indication that medical staff had registered their concern over the impact of continuing detention on the detainee's mental state.

- There appear to be failures in the system to identify torture victims in the detention population. We noted that for only half of the detainees had initial health assessments been made; however in some centres where an initial health assessment had been made, it did not always include a question on torture. Subsequently, if notification of individuals who disclose torture by medical staff is not done and referrals for independent documentation are not made, it is unclear as to how immigration staff and detention health staff acquire the independent evidence needed to ensure torture victims are not detained, in accordance with the guidelines. HMIP has pointed to the need for the exchange of such information between health care professionals and the Immigration Service.³

(ii) Health care provision in the facilities MSF visited

- Detention guidelines require that detainees have available to them the same range and quality of services as the general public receives from the National Health Service.²

- Of the detainees we saw, there was evidence to suggest that not all individuals were receiving such care, particularly in terms of referral outside of facilities to secondary care services, or referral to services that are not generally available in the health facility. For example, we documented examples of detainees not getting appropriate referrals to: a psychiatrist; a genito-urinary clinic; a tuberculosis clinic; and HIV services.

- In some cases, there appeared to be a reluctance of health care staff to facilitate these referrals, particularly for detainees requiring long-term treatment, which may reflect the perception of staff that the removal of detainees from the UK is inevitable and imminent. Yet, we noted that of the detainees we visited, some were still within the asylum process, possibly going on to appeal a negative decision. This can be a lengthy process, after which they may well receive leave to remain in the UK. In addition, four of the detainees we visited had been detained for more than one year and two detainees we visited could not currently be returned to their country of origin as enforced returns were not, at the time MSF visited, being carried out (eg, Iraq, Somalia).

- In light of the fact that the detention health centre was clearly not able to provide appropriate care for symptomatic HIV positive detainees, MSF felt strongly that it was inappropriate to detain such an individual. This echoes the findings of a recent All-Party Parliamentary Group on AIDS who concluded that *'the UK government should not detain, solely for immigration purposes, individuals with serious communicable diseases such as HIV, if it cannot provide for their care inside detention centres'*.⁹

- Despite the over-riding health issue among the detainees we visited being mental health - an issue well documented by others^{6,5,7} - the detainees visited did not have access to any mental health support or therapeutic services. According to the guidance given in detention centre rules to medical staff working in these facilities, special attention should be paid to any detained person whose mental condition appears to require it and any special arrangements necessary made for his supervision and care, including counselling (rule 35 (5)).¹ Most facilities had no such services available, and even in the very serious cases we documented there had been no attempt to refer to outside specialist help nor any indication that medical staff had registered their concern over the impact of continuing detention on the detainee's mental state. One seriously mentally ill detainee MSF visited had been in detention for two years without any access to services of any kind other than medication, according to his/her medical notes and the detainee's verbal account.

- From these findings MSF is concerned to note that there were serious failures to ensure that detainees accessed the same range and quality of health care as those in the community as stipulated in detention centre guidelines.

(iii) Continuity of care

- There is clearly a problem with continuity of care for detainees in terms of: follow up care from the community to the detention centre; handover between the different health staff within an individual facility; and handover between staff in different facilities as detainees are moved between them.

- For two detainees MSF visited with serious medical concerns, for example, although many different staff in the same and different facilities did acknowledge in the notes over a period of months the detainee's condition and need for urgent external follow up, nothing actually got done by health centre staff to secure an external hospital appointment. Detainees had vital appointments arranged during their time in the community, which were subsequently missed and not rescheduled when the individual was detained. This problem is no doubt compounded by the fact that medical notes often do not follow the detainee as he/she is moved between centres, or are substantially delayed in their arrival, and that medical notes prior to detention are rarely obtained; a system that needs to be reviewed.

(iv) The detaining of asylum seeking groups

- All but one of the detainees we saw were individuals who had been refused asylum/or refused on their initial claim. We note from our experiences gained through the work described above, and through our work with the same group in the community that these are often an extremely vulnerable group of individuals with unique health needs.¹⁰ They may be particularly affected by prolonged periods of detention.

- Whereas many failed asylum seekers may not be recognised as a refugee under the international conventions, they may still have suffered traumatic events in their home country and remain vulnerable. In addition, Home Office initial decision making has been widely criticised for its inaccuracy in determining asylum claims and initial refusals are often subsequently overturned.^{11,12} Of the appeals determined in 2003 for individuals who were initially refused asylum, 16,070 (20 per cent) were subsequently allowed, 63,810 (78 per cent) were dismissed and the remainder were withdrawn or abandoned.¹³ Legal provision is often extremely poor inside facilities, making it even harder for such individuals to be afforded the protection they are entitled to as they claim political asylum in the UK.³

Areas requiring follow-up

- Mechanisms to ensure that all detainees receive full medical assessments on arrival to facilities need to be established. These assessments are necessary to ensure that those with serious medical illnesses, those who are mentally ill, and those who disclose torture are notified to the Immigration Service. The Immigration Service should then consider whether the detainee falls into the categories set out in the Operational Enforcement Manual of those '*normally considered suitable for detention only in very exceptional circumstances*' (Chapter 38.8).⁴

- In addition, MSF recommends that a system for regular assessments of a detainee's health by a medical doctor with an understanding of the health and medical needs of this client group be built into the regular monthly detention reviews. Detainees may face long periods of detention, during which time their health status in particular mental health can deteriorate; a system of regular health reviews would enable the Immigration Service to properly identify detainees whose health has deteriorated and take action accordingly. Identification of detainees with serious health concerns should not have to be facilitated by voluntary organisations such as BID in the presence of 24 hour health care facilities in each detention facility. Systems should be put in place to ensure that this role is carried out by the detention centre itself. Where serious health concerns arise, there must be a presumption in favour of release and on release arrangements need to be made for appropriate health care in the community.

- In cases where BID went on to make applications for release on bail, MSF were extremely concerned to note that in a number of serious cases, despite independent medical evidence documenting potential risk of harm to health from continued detention being put before adjudicators, little weight was given to such medical evidence in most instances, and the application for bail was refused.

- Appropriate procedures must be put in place to ensure that those detainees who disclose torture on arrival to facilities or during their detention are referred for independent medical assessment and released in cases in which torture is documented.

- MSF felt that basic health care provision inside the facilities was adequate for the majority of detainees. However, for those individuals who required more than just a basic level of care, weaknesses were clearly apparent in the system to ensure an appropriate level of care and follow up. Where there are insufficient facilities and resources to ensure that a detainee with a particular medical condition receives appropriate care, for example HIV care and treatment, the individual should not be detained.

- The issue of ensuring continuity of care for detainees needs to be reviewed. This includes procedures to ensure follow-up appointments in the community are kept, ensuring full medical records follow the detainee from the community and from centre to centre, and ensuring that recommendations for referral made by doctors are followed through.

Authors

Judith Cook – Médecins Sans Frontières-UK

Sally Hargreaves – Médecins Sans Frontières-UK

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Contact person

Jane Shenton - Médecins Sans Frontières-UK

Email: jane.shenton@london.msf.org

Telephone: 020 7404 6600

Address: MSF-UK, 3rd Floor, 67-74 Saffron Hill, London EC1N 8QX

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