

KEY FINDINGS

Adults at Risk: the ongoing struggle for vulnerable adults in detention

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BID's research report 'Adults at Risk: the ongoing struggle for vulnerable adults in detention' examined the Adults at Risk policy, based on evidence from our casework. The Adults at Risk ("AAR") policy was implemented by the Home Office in September 2016 to address the multiple failings identified by Stephen Shaw's review of the welfare of vulnerable people in detention. The government's AAR policy response aimed to "lead to a reduction in the number of vulnerable people detained and a reduction in the duration of detention before removal."¹

The research analysed the operation of the new AAR policy and found that the policy does not achieve its stated aims. The number of vulnerable people detained remains unacceptably high, and Home Office decision makers are routinely failing to identify and respond to worrying cases of vulnerability. BID considers that there are serious problems with both the design and the implementation of the AAR policy.

BID's study consisted of an analysis of 30 of BID's detained casework files. There were two separate sample groups, an Immigration Removal Centres (IRC) sample and a prison sample, to highlight the differences in application of the AAR policy in prisons and IRCs. All the cases examined involved an indicator of vulnerability that should have triggered the application of the AAR policy.

Key Findings

We found that vulnerable adults are being detained inappropriately for long periods of time in both IRCs and prisons. Detainees were detained for an average of 286 days in the IRC sample and 442 days in the prison sample. The gatekeeper process, which was introduced to prevent vulnerable detainees from being detained, failed to identify our client's vulnerabilities and prevent their

¹ James Brokenshire, Minister of State for Immigration, HC Deb 14 January 2016 HCWS470
<<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>>

detention. Many of the indicators of vulnerabilities present in both samples could have been identified with only minimal investigation. Moreover, for some clients in the study, there was already evidence of their vulnerability on the Home Office file.

The key findings in relation to the IRC sample were:

- Vulnerable adults are being detained inappropriately for long periods of time before and after assessments take place under the AAR policy. Detainees in the IRC sample spent an average of 158 days in detention before a rule 35 report² was submitted to the Home Office which triggered assessment under the AAR policy (if such occurred at all).
- Initial medical assessments in IRCs under Detention Centre Rule 34³ are not leading to assessments under the AAR policy even where indicators of vulnerability are identified. The AAR policy's ongoing assessment process is also failing to trigger AAR assessments.
- Medical practitioners as well as Home Office decision makers are failing to consider certain indicators of vulnerability under the AAR policy, particularly those that do not fit within the definition of torture.
- Rule 35(1) and rule 35(2) reports⁴ are not being submitted when they should be. For 17 out of the 23 in the IRC sample, there was evidence that detention was having an injurious impact on the detainee's health and/or evidence of suicidal ideation. And yet no rule 35(1) or rule 35(2) reports were submitted to the Home Office.
- Level 3 risk is rarely designated even to the most vulnerable of clients. There was only one detainee who was designated level 3 at risk in the IRC sample. This can be attributed to policy design, but also implementation through poor completion of rule 35 reports by medical practitioners, as well as inadequate Home Office responses to rule 35 reports and subsequent AAR assessments.
- The quality of evidence available of risk is often conflated with actual risk by Home Office decision makers when making an AAR assessment. Where detainees exhibited indicators of risk for which they did not have independent evidence, such as cases of sexual violence, their vulnerability was dismissed. And yet these detainees were some of the most vulnerable detainees in the sample.
- The balancing of well-being against immigration control factors is a superficial exercise. In this regard we found that:
 - Home Office decision makers consistently provided inaccurate removal predictions to justify maintaining detention; and
 - Home Office decision makers relied upon public protection concerns without meaningfully considering the particular facts at hand. Previous offending tended to

²Rule 35 of the Detention Centre Rules 2001 states: An IRC medical practitioner shall report to the manager and Secretary of State for the Home Department "on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention"(rule35(1)); "on the case of any detained person he suspects of having suicidal intentions"(r35(2)) and "on the case of any detained person who he is concerned may have been the victim of torture"(r35(3)) without delay.

³ Rule 34 states that, provided the detainee consents, "every detained person shall be given a physical and mental examination by the medical practitioner (or another registered medical practitioner in accordance with rules 33(7) or (10)) within 24 hours of his admission to the detention centre."

⁴ Rule 35(1) reports concern detainees "whose health is likely to be injuriously affected by continued detention or any conditions of detention" and rule 35(2) reports concern detainees who are, or may be having, "suicidal intentions".

automatically outweigh any well-being concerns, regardless of the seriousness of the offending or the risk to the detainee's health if detention was maintained.

- Contrary to Shaw's recommendation, vulnerability was treated as fixed rather than dynamic. Once Home Office decision makers had decided to maintain a detainee's detention following an AAR assessment, the issue was not meaningfully revisited in any of the cases in the sample, even where there was a change in the client's health. This was also so for the immigration control factors which had been used to justify detention. When immigration control factors changed (such as where new barriers to removal emerged) this did not trigger another AAR assessment.

The key findings in relation to the prison sample were:

- The detainees held in prisons were some of the most vulnerable in the study and suffered from a number of different and complex conditions.
- There was no equivalent rule 35 mechanism which was capable of triggering an AAR assessment.
- Even where there was independent evidence of an indicator of risk and evidence that detention was having an injurious impact on the detainee's health, Home Office decision makers generally failed to apply the AAR policy (6 of the 7 cases). Furthermore, in the one case within the sample where the detainee was categorised as level 2 risk under the AAR policy, the AAR was only applied partially. The appropriateness of their continued detention was not considered.

Recommendations

While detention continues to be used for immigration purposes, BID makes the following recommendations):

1. The categorisation of vulnerability based on evidence levels should cease. There should be a very low threshold required to demonstrate that an individual exhibits an indicator of vulnerability.
2. Once an indicator of vulnerability has been identified, the Home Office should not detain the individual or should release the individual from detention if they are already detained. It is unacceptable that release should be predicated on whether or not the individual is likely to suffer future harm in detention.
3. Individuals' wellbeing should take primacy over immigration enforcement or control interests of the Home Office.
4. The current indicators of vulnerability - "torture" and "victims of sexual or gender-based violence" - should be replaced with a more inclusive category based on the UNHCR detention guidelines, namely "victims of torture or other serious, physical, psychological, sexual or gender-based violence or ill-treatment".
5. The detention gatekeeper should be required to make reasonable investigations prior to detention to confirm that an individual does not exhibit an indicator of vulnerability.
6. There should be judicial oversight of all decisions to detain with vulnerability central to an assessment of the overall necessity of detention.
7. Home Office decision makers should undertake regular, meaningful reviews of decisions to detain, which take into account vulnerability and its dynamic nature. Reviews should occur regularly through monthly progress reviews, but also whenever circumstances change.

Home Office internal monthly reviews and Gatekeeper reviews of suitability or maintenance of detention should always be disclosed to detainees and their representatives.

8. Medical practitioners and Home Office staff should receive comprehensive training regarding the identification of indicators of vulnerability (including staff and practitioners who operate within prisons).
9. While prisons continue to be used for immigration detention, there should be equivalent regimes applied in prisons to those held there under immigration powers as apply to those in IRCs.

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