

## Stephen Shaw’s “Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons” published 24 July 2018: BID’s full response

### Introduction

Stephen Shaw’s long-awaited follow-up to his 2015 report on vulnerable adults in immigration detention was published on 24<sup>th</sup> July 2018. His [260-page report](#) (PDF) raises a number of concerns about the policies and practices of immigration detention, including questioning the necessity of detention itself that should lead to prompt action. He bemoans the lack of strategy or logic to the detention system, however his recommendations do not go far enough in calling for a radical overhaul of a process which is fundamentally unjust and ineffective.

### Adults at Risk

Shaw points to a range of evidence which highlights the failings of the Home Office’s Adults at Risk (AAR) policy. *‘many NGOs felt that AAR had made matters worse’... ‘Every centre manager told me they had seen no difference in number of vulnerable detainees and in some cases it had increased’... ‘it was said that AAR had weakened safeguards’... Doctors felt there was a ‘culture of disbelief’ and that ‘their clinical views were not being taken seriously by Home Office caseworkers’... ‘that caseworkers ignore rule 35 reports and challenge medical views on fitness for detention’.*

Shaw found that “Home Office staff felt significant pressure to maximise removals and there may be tension between this and dealing appropriately with vulnerable people.”

[BID’s research on AAR](#) reveals that vulnerable adults are detained too often and for too long. Not one person in our study was released as a result of the AAR policy. This corresponds with Home Office statistics, which Shaw also cites, which show a decline in the proportion of rule 35 reports that lead to release.

BID’s research argues that, in addition to procedural failings, specific features of the policy design have weakened protections for vulnerable adults: the fact that the Home Office no longer has to show that there are ‘very exceptional circumstances’ which justify continued detention; or the fact that vulnerability is balanced against immigration factors in an assessment process skewed heavily in favour of maintaining detention.

We were disappointed that Shaw did not address these points, instead calling the AAR policy a *‘work in progress... best thought of as an exercise in cultural change’*. We welcome his recommendation to subject decisions taken under the AAR to openness and external scrutiny, but we are extremely concerned that in the meantime more vulnerable people will be needlessly subjected to the harm of detention.

## Caseworking processes

Recent public focus on the Home Office as a result of the “Windrush” scandal has laid bare the lack of transparency and independent oversight of Home Office decision-making. Shaw uses his unique access to provide an insight into chaotic and opaque caseworking processes, which help to explain the poor quality of decision-making that BID encounters on a daily basis.

Shaw was *‘struck by what caseworking means within the immigration system’*: unlike in most organisations where casework is based on a single case owner who has personal responsibility for an individual until the case is concluded, Home Office cases are handed around from one department to the next.

Caseworkers do not meet the people about whom they are making life-changing decisions and very few Home Office staff have seen inside an IRC – *‘those who I met who had seen inside an IRC were clearly affected by the experience. One caseworker said, somewhat ruefully, that her job had been easier before the visit as it had been possible to consider detainees just as case files rather than as people’*.

The “detention gatekeeper” function (which has the somewhat contradictory aim of bringing “internal independence” to initial detention decision-making) also came in for criticism. Shaw cites a number of factors which combine to result in poor decision-making: limited resources, lack of information, confusion, panels not understanding what might constitute a barrier to removal, and the failure to consider the AAR policy. He also criticises the extent to which the gatekeeper must rely on information provided (or not provided) by Home Office colleagues. Unsurprisingly Shaw *“saw many people where it appeared that detention was not suitable, but the gatekeeper function had not prevented entry to the detention estate”*. This chimes with [BID’s recent research](#) which repeatedly found extremely vulnerable adults not being screened by the gatekeeper, and a response to our recent FOI which found that in 2017 just 141 people were prevented from entering detention by the gatekeeper (0.5% of detainees entering the detention estate).

Shaw also finds that the Home Office’s ‘case progression panels’ (set up in response to Shaw’s first report) are similarly chaotic. They are meant to review detention at designated periods, but panels are constituted entirely by Home Office officials, and are beset by lack of resources and poor organisation. Shaw notes that *‘these failings were leading to detainees being detained for longer periods than was necessary’*. Particularly shocking was his assertion that on the 3-month case progression panels, *‘the presumption of liberty seemed in practice to have been replaced by a presumption to maintain detention on the basis that more information was needed’*. Furthermore, the panels *‘can only make recommendations’* and their recommendations for release can be rejected, but the Home Office was unable to provide Shaw with the information on how frequently this occurs.

Where deprivation of liberty is involved and a “presumption to maintain detention” seems to be the default position of the Home Office, we are very disappointed that Shaw does not recommend that all decisions to detain, and to maintain detention, be subject to independent (preferably judicial) oversight.

## Necessity of detention

Shaw says that “despite much criticism of its reliance on immigration detention, the Home Office does, for most, follow its own guidelines that detention should be used as a last resort”. However, this is not borne out by his findings which call into question the purpose or necessity of detention: “It is apparent that more than half of those subject to immigration detention are eventually released back into the community. I remain of the view that, very frequently, detention is not fulfilling its stated aims”. Shaw cites Home Office statistics which show that only 45% of those leaving detention were removed from the country. In the case of asylum seekers in detention, 80% are released back into the community at the end of their detention. Shaw suggests that such figures “continue to call into question the extent to which the current use of detention is cost effective or necessary”.

BID does not believe that people subject to immigration control should be deprived of their liberty and has long argued for meaningful safeguards to protect against arbitrary detention. In our view, no case has yet been made about the necessity of detention.

## Use of prisons for immigration detention

As in his first report, Shaw draws attention to the many disadvantages faced by those detained in prisons under immigration powers. ‘It is unsatisfactory that the rights and regime of time-served FNOs are so different from those held in IRCs (access to phones, internet, fax machines, legal advice)’. He also criticises the lack of a rule 35 process- ‘Prisoners held under immigration powers may well be subject to wider vulnerability issues, and I do not believe the current system is likely to pick this up.’

Rightly, in our view, he argues forcefully for an equivalent policy to be developed for people held under immigration powers in prisons. Despite these concerns however, he stopped short of recommending an end to the use of prisons for immigration detention. We do not believe that immigration detainees should ever be held in prisons.

## Accommodation and release from detention

The report raises a number of concerns around accommodation problems post-release. These are shared by Home Office Criminal Caseworkers: ‘the anxiety of many CC caseworkers and managers regarding the risk of re-offending derives in part from FNOs’ inability to access support upon release from detention. Those who are beyond the period of post-sentence supervision, are not able to access support that would assist in helping to prevent re-offending. This is in contrast to those released directly from a custodial sentence, who have statutory probation supervision in the community. Moreover, the provisions of the Immigration Act 2016... mean that those with no lawful basis in the UK cannot rent, drive, be employed, have a bank account, access secondary health care without paying, or access the benefits system. I am aware that some detainees are released to street homelessness. All in all, it would be difficult to think of circumstances more likely to lead an offender back into crime.’

It is frustrating that Shaw did not use this as a springboard to draw attention to the problems with the new bail accommodation regime. BID has found that the abolition of section 4(1)c accommodation on the 15<sup>th</sup> of January 2018 has led to a reduction in grants of Home Office

accommodation, with the result that homeless detainees now face the option of remaining in detention or being released by the Home Office into destitution. BID recently received a response to an FOI which revealed the scale of the issue: In 2017 there were 2,824 grants of section 4(1)c bail accommodation, while there were just 24 grants of schedule 10 bail accommodation from the start of the new regime on 15<sup>th</sup> January until the end of May 2018.

Given the serious repercussions of precarious release from detention, this would have been an opportune moment to make a recommendation relating to the Home Office's failure to provide post-release accommodation.

## “Those criminals who are more British than foreign”

We welcome the trenchant language Shaw uses in relation to the detention and deportation of “foreign national offenders” following a criminal sentence of 12 months or longer. BID has been working with this group of people for many years and since 2014 has been assisting with their deportation as well as their detention matters. We have also long called for the restoration of legal aid for people facing deportation. We share Shaw's concerns: *“In short, I find the policy of removing individuals brought up here from infancy to be deeply troubling. For low-risk offenders, it seems entirely disproportionate to tear them away from their lives, families and friends in the UK, and send them to countries where they may not speak the language or have any ties. For those who have committed serious crimes, there is also a further question of whether it is right to send high-risk offenders to another country when their offending follows an upbringing in the UK.”*

Shaw highlighted a number of problems faced by those facing possible deportation: the break-up of families; the risks faced from being deported to countries of which they have little or no awareness; the burden we as ‘one of the richest nations on earth’ place on developing countries through this practice; the lack of legal aid for those challenging deportation; the fact that *‘the twelve month sentence criterion for deportation in the UK Borders Act is not a very good guide to criminality’*.

We share these concerns and his recommendation that the Home Office no longer ‘routinely’ seek to remove these individuals. We hope that this will be the beginning of further external scrutiny on the rights of this minority within a minority.

## Alternatives to detention (ATDs)

For BID, the alternative to detention is freedom. If the purpose of detention is to prevent people absconding, then regular reporting can allow the Home Office to “keep track” of someone subject to immigration control.

Professor Mary Bosworth's literature review (commissioned by Shaw) of ATDs across different countries highlight a number of problems with ATDs. Among these, the biggest issue is that ATDs can have a *‘net-widening effect... a greater number of people being subject to systems of state control’*. They expand the state's options for control and surveillance, but there is no evidence that their use reduces the use of detention (except in those cases where they are accompanied by explicit commitments to curb immigration detention). While we are in favour of practical and emotional

support for people who have been detained, we are concerned about the idea that this be linked to any form of control and surveillance.

Shaw notes that the Home Office takes the view that it is already using alternatives to detention. They refer to tagging, reporting and electronic monitoring, but also “*limiting access to essential services such as banking, private housing and driving licenses (the compliant environment), and supporting NHS trusts to ensure those who are not entitled to free healthcare are charged to pay upfront*”. We are extremely concerned that the authority responsible for implementing ‘alternatives to detention’ sees the hostile environment as one such example.

## Conclusion

Shaw’s report highlights many of the injustices that BID’s clients face on a daily basis. He criticises serious failures to protect vulnerable adults; the failure to prevent long term detention; poor case-working processes; the use of prisons for immigration detention; precarity of release accommodation; and the blanket deportation of ‘FNOs’ who have grown up in the UK. He even calls into question the very necessity of immigration detention. However although the report draws attention to the many problems with immigration detention, it falls short of recommending the wholesale change that is so desperately needed.

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