Association of Visitors to Immigration Detainees

Response to: *Review into the welfare in detention of vulnerable people*

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About AVID:

AVID is the national network of volunteer visitors to immigration detainees in the UK. Established in 1994, AVID has over 20 years experience in supporting immigration detainees wherever they are held; our 20 member groups visit in immigration removal centres (IRCs), short term holding facilities (STHFs) and prisons. AVID provides advice, training, resources, information and advocacy support to all those who visit immigration detainees. Working with and through our membership, AVID collates evidence of the daily realities of immigration detention and uses this to present a collective voice for change, working to reduce the negative impacts of detention.

Introduction: Key concerns

- **Terms of reference: 'decision to detain':**

AVID welcomes the review into the welfare in detention of vulnerable people, which we feel is long overdue. However, we are concerned by the decision taken by the Secretary of State to exclude from the terms of this review the decision to detain. This exclusion demonstrates yet again a failure to acknowledge the current crisis in UK detention. The initial decision to detain is paramount to protecting the welfare of the most vulnerable, whose needs cannot adequately be met in detention. This has been demonstrated time and again in case law, in parliament, in evidence from expert NGOS, in the reports of statutory monitoring bodies and professional experts. On no less than six occasions the UK has breached the rights of mentally ill detainees under Article 3 of the European Convention on Human Rights[1]. Last year, a young man took his own life in detention just days after receiving removal directions. He died while locked in his room overnight despite statutory recommendations that this practice cease[2]. An 84-year-old Canadian man with dementia died in handcuffs in Harmondsworth IRC, despite a doctors Rule 35 report declaring him unfit for detention or deportation and requiring social care[3]. These are serious cases, which have come to light through tragic consequences; yet for many in detention their experiences remain hidden and their vulnerabilities overlooked.

The premise of this review is therefore that detainees are appropriately held in detention and that welfare needs can be met in detention. Yet according to the Home Office's own statistics around 40% of those detained are eventually released into the community, calling into question the rationale for their detention in the first place. The recent Parliamentary Inquiry into the use of immigration detention in the UK conducted by the All Party Parliamentary Group on Refugees and All Parliamentary Group on Migration concluded that detention is used *'disproportionately frequently, resulting in too many instances of detention'*[4]. Their report recommends a substantive overhaul of the immigration detention system including the introduction of a time limit and the consideration of community alternatives, both steps which, once implemented, would reduce at a stroke the detention of the most vulnerable. Yet neither is within the remit of this review.

It is our view that as such, this review is of insufficient scope to be able to adequately address the welfare needs of vulnerable detainees or the important findings of the Parliamentary Inquiry. Without considering the decision to detain, its impact will be limited, and the vulnerable will remain at risk of harm.

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[1] *R (S) v SSHD (2011), R (BA) v SSHD (2011), R (HA) v SSHD (2012), R(D) v SSHD (2012), R (S) v SSHD (2014), R (MD) v SSHD (2014).*

[2] http://www.inquest.org.uk/media/pr/jury-returns-critical-narrative-in-the-inquest-of-rubel-ahmed

[3] HMIP (2014) Report of unannounced inspection of Harmondsworth IRC (2014) paragraph 1.86 http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/harmondsworth-2014.pdf

[4] https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf

AVID's response to the Review*:*

- **The Home Office repeatedly fails to follow its own policy guidance and continues to detain individuals they have recognised as 'vulnerable groups':**

The Home Office's own policy guidance - the Enforcement Instructions and Guidance Manual (EIG), chapter 55.10 - provides a list of specific categories of person that should be considered suitable for detention 'only in very exceptional circumstances'. Yet many individuals who demonstrate these characteristics or who meet these criteria are detained or remain in detention, often with devastating consequences:

- **Elderly:** Alois Dvorzac was 84 years old when he was detained at Harmondsworth in 2014. He died in restraints, despite a doctor's report declaring him unfit for detention and in need of social care[5]
- **Pregnant Women:** During an inspection of Yarl's Wood IRC, Her Majesty's Inspectorate of Prisons (HMIP) found eight pregnant women detained[6]. They reported *'Pregnant women had been detained without evidence of the exceptional circumstances required to justify this. One of these women had been hospitalised twice because of pregnancy related complications'.*[7]
- **Those suffering from serious mental illness**: Perhaps the most shocking and now well documented examples of the Home Office failing the most vulnerable is demonstrated in the findings by the High Court on no less than six occasions that the Home Office breached its responsibilities under Article 3 of the European Convention on Human Rights (freedom from torture, cruel and inhuman or degrading treatment) in relation to the detention of people with mental health needs, over a period of three years[8].
- **Those with independent evidence of a history of torture**: A series of court cases have found that detainees have been held in breach of the policy, i.e they have remained in detention despite independent evidence of torture[9].
- **Persons with serious disabilities**: In 2011, the High Court considered the lawfulness of the detention of an Iranian man, BE[10], an amputee who was detained in progressively unsuitable conditions. The High Court found his detention to have been unlawful and that the Home Office had failed to have due regard to his needs because it had not ensured that he was held in suitable accommodation.

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[5] http://www.theguardian.com/uk-news/2014/jan/16/harmondsworth-elderly-man-died-handcuffs
[6] HMIP (2014) Unannounced inspection of Yarl's Wood Immigration Removal Centre (17–28 June 2013, 30 Sept – 1 Oct 2013) http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/Yarls-Wood-2013.pdf
[7] ibid
[8] See footnote 1 above
[9] R (D and K) v SSHD (2001) EWHC 980 (Admin); R(B) v SSHD (2008) EWHC 364 (Admin); R(RT) v SSHD (2011) EWHC 1792 (Admin); R (AM) v SSHD (2012) EWCA Civ 521; R (EO and others)v SSHD (2013) EWHC 1236 (Admin)
[10] *BE, R (on the application of) v Secretary of State for the Home Department* **(**2011) EWHC 690 (Admin)

- **Persons identified as victims of trafficking:** In 2012 a joint thematic inspection by HMIP and the Independent Chief Inspector of UK Borders and Immigration (ICIUKBI)[11] found that screening processes were inadequate to identify and respond appropriately to victims of human trafficking. Their report describes one case where a detainee was held for 15 months despite his having been trafficked as a child and the confirmation of this by a competent authority[12]

Research by detention NGOs, visitors groups and others supporting detainees on the ground also substantiates this. Volunteer visitors regularly tell us of the mental distress and anguish of those that they are visiting in detention, often meeting individuals who have suffered trauma, have survived torture or who have a mental illness. A forthcoming report, based on research undertaken by the Detention Forum's Vulnerable People Working Group[13], of which AVID is a co-convenor, is based on 31 cases of detainees in contact with visitors groups and detention NGOs and includes a number who, by the Home Office's own definitions would constitute a vulnerable group[14]. 77% (24 people) told us they'd experienced mental ill health in detention. 30% (9 people) were detainees with a history of torture. Four detainees had serious disabilities (three physical, and one a learning disability). In all three cases involving physical disability, detainees were held for over seven months despite having little to no possibility of imminent removal and limited liability as a flight risk.

- **EIG Chapter 55.10 is inadequate, lacks clarity and leaves many at risk:**

The policy guidance itself lacks clarity; its current terms are ambiguous and the staff responsible are neither adequately trained nor qualified medically to identify such risk factors. Significant changes were made to the policy in August 2010 - without any prior consultation with stakeholders – which has increased the numbers of vulnerable people who may now be deemed 'suitable' for detention. To take the example of mental health, from August 2010 a person must be 'suffering from' (i.e. be symptomatic) and would need to have a 'serious' mental illness, before they would be deemed unsuitable for detention. The qualifier 'satisfactorily managed' was also introduced in 2010, setting out that certain vulnerable groups could be detained if the nature of this vulnerability could be 'satisfactorily managed' in a detention setting. Yet this has never been defined, and guidance has never been issued on what this management may consist of or look like. The result is that the guidance is often interpreted arbitrarily.

Unfortunately the satisfactory management criteria has resulted in a 'watch and wait' approach where detention is maintained until the individual deteriorates to the point where she/he can no longer be satisfactorily managed. The policy is not engaged until the detainee is at a point of suffering deemed significant enough to merit external intervention. In the case of detainees with mental health needs, this has involved a deterioration in mental health to the point of requiring

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[11] ICIUKBI and HMIP (2012) The effectiveness and impact of immigration detention casework http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf

[12] ibid

[13] The Detention Forum is a network of over 30 organisations working to challenge the UK's use of immigration detention. The Vulnerable People's Working Group is convened by AVID and the Gatwick Detainees Welfare Group. Other members are the UK Lesbian and Gay Immigration Group and Yarl's Wood Befrienders. See www.detentionforum.org.uk

[14] Report of the Vulnerable People's Working Group of the Detention Forum, forthcoming.

sectioning under the Mental Health Act. Where the fact of detention is itself a trigger for mental distress, it is impossible to see how such an individual can be 'satisfactorily managed' in detention. It is no coincidence that prior to the policy amendment in 2010 there had never been an Article 3 breach in UK detention and yet since this time there have been six such breaches. There have also been several other high profile cases of unlawful detention involving victims of trafficking and survivors of torture.

A further flaw in the policy guidance is that it relies on pre-defined categories of vulnerability, an approach to vulnerability that is static and does not allow the consideration of individual characteristics or changes over time. This creates a system where vulnerable detainees who do not fit these definitions or categories remain invisible and at risk. In our aforementioned research for the Detention Forum we found evidence of detainees who were extremely vulnerable but who did not meet the predetermined categories at the point of entry to detention[15]. Several detainees in our sample discussed the impact of their treatment in detention and the conditions in which they were held and the impact on their physical health. Other factors such as language, literacy, learning ability, knowledge of English language and access to familial support networks will also impact on an individuals ability to find information, to take steps towards progressing their immigration cases, or to engage with social activities. All of these will impact upon how well someone copes with their detention and to how vulnerable they are. Left unchecked these issues can develop into more complex mental health needs. It is a significant gap in the current policy framework that there is no mechanism to make this type of holistic assessment of how someone will cope with detention and to assess how this may change over time.

- **Once detained, the reporting systems and safeguards in place to identify vulnerable detainees have repeatedly been found lacking:**

Once a person has been routed through detention, which can be anywhere in the UK, their access to family, friends, resources, outside organisations and legal advice are severely curtailed. This increases their level of vulnerability. There are various policy safeguards in place which in theory enable this to be monitored but our experience is that once detained, it is extremely unlikely that release will be enabled by these safeguards.

For example, the statutory provisions governing immigration detention, the Detention Centre Rules 2001, provide rules and safeguards relevant to vulnerable people in detention. This includes Rule 35, which applies to those whose health may be 'injuriously affected' by continued detention. This includes any detained person suspected of suicidal intentions or who may have been a victim of torture. The stated purpose of Rule 35 is to *'ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention'*[16]. However, Rule 35 has been widely criticised at a range of levels including in case law, in the reports of statutory monitoring bodies and in parliament because it rarely secures release regardless of how vulnerable the person is, leaving them in detention and at risk. The Home Affairs Select Committee (HASC) has asked specific questions about vulnerable groups in detention and has also questioned the Home Office repeatedly about the detention of torture survivors. The aforementioned ICIUKBI and HMIP joint report concluded that the Rule 35 process was not providing

[15] Report of the Detention Forum Vulnerable People Working Group, forthcoming.
[16] Detention Centre Rules (2001) Rule 35

the necessary safeguard, noting that *'the Rule 35 reports are often perfunctory and contain no objective assessment of the illness, condition or alleged torture. The replies are often cursory and dismissive'.* They note that *'it is extremely rare for a Rule 35 report to lead to release'*[17]. NGOs such as Medical Justice have highlighted the lack of training of health staff, poor communication between healthcare and case worker and gaps in the information chains throughout detention which mean that many vulnerable detainees are left, inappropriately and sometimes unlawfully, in detention.

There are also flaws in the process to maintain detention, the detention review process. Rule 9 of the Detention Centre Rules requires the monthly review of every detainee, to evaluate whether their detention is still justifiable. In theory this would provide a means through which mental health concerns and the appropriateness or otherwise of continued detention could be raised. However in our experience this information is rarely include. This is a consequence of the contracted-out system where healthcare staff, detention custody officers or immigration officials have devolved responsibilities in a complex information chain. Frequently this means that where there may be information on file about a detainees' vulnerability, this is not communicated or considered in decisions about ongoing detention, particularly when detainees are moved frequently. The aforementioned ICIUKBI and HMIP joint report found that – in respect of detention reviews – "*many reviews did not consider all factors relevant to the case, including family ties and health problems. Factors that might support a detainees case for release were regularly under-recorded, while detrimental information was recorded in detail" (1.9, 1.11, 4.1).* We have also seen that these monthly detention reports very rarely contain information which may be pertinent to the appropriateness or otherwise of someone's continued detention for example whether they have been placed on 'suicide watch' (known as the ACDT process, Accelerated Care in Detention and Teamwork) or any developing mental health concerns. We have found many cases where mental or physical illnesses were not included in the monthly report or detention review, even when well-known or very serious.

- **Detention is itself a contributing factor to vulnerability, particularly in the context of indefinite detention and the impact on mental health:**

The impact of detention on mental health is now well documented[18]. Statutory Monitoring Bodies have identified numerous failings in respect of vulnerable detainees particularly those with mental health needs. Lessons are not learned from these reports and the recommendations are often ignored. In 2012, for example, Harmondsworth IMB reported *'We have seen no evidence in 2012 that the review of mental health provision in IRCs is underway. We continue to be shocked by the detention of those who are mentally ill.'*[19]. Sadly their report for 2014 reveals little progress on this: '*Harmondsworth IRC is in large parts a depressing, dirty place and in some cases has a destructive effect on the welfare of detainees. Issues that contribute to this include: the poor maintenance of the Centre detaining vulnerable detainees in unsuitable conditions, the continued detention of those*

[17] See footnote 10 above

[18] See for example **Robjant et al** (2009) in *British Journal of Psychiatry, 194 (306-12)* Mental Health Implications of Detaining Asylum Seekers **Royal College of Psychiatrists** (2013) Position Statement on detention of people with mental disorders in Immigration Removal Centres, **McGinley, A. and Trude, A** (2012) Positive Duty of Care? The Mental Health Crisis in Immigration Detention

[19] Independent Monitoring Board for Harmondsworth, Annual Report 2012, at http://www.imb.org.uk/wp-content/uploads/2015/01/harmondsworth-2012.pdf

"unfit to be detained".[20] Expert bodies such as the Royal College of Psychiatrists have also argued that detention will exacerbate existing conditions, and that it is not possible to treat or manage these in detention: '*we believe it is likely that any person with mental disorder would deteriorate to a level of 'serious mental illness' …….the very faction of detention (which, unlike imprisonment, has no punitive or retributive function) mitigates against successful treatment of mental illness'*[21]*.* The Home Affairs Select Committee (HASC) has also raised concerns time and again regarding the immigration detention of those with mental health needs and has referred to 'systemic failures in relation to the treatment of mentally ill immigration detainees'[22].

Again, our own experience and those of detention NGOs and visitors groups bears this out. In the Detention Forum's forthcoming research into vulnerability in detention, an overwhelming majority of the detainees in our case studies (24, or 77%) had experienced a mental health issue. Eight (26%) of the detainees expressed suicidal ideations, and four of those were on ACDT (Accelerated Care in Detention and Teamwork), a form of self-harm prevention plan used in detention. In all cases, mental health worsened as detention continued. Detainees in this study who had previously considered their mental health to be good reported increasing symptoms of depression and in some cases more serious diagnoses, suggesting that detention may both exacerbate and *cause* mental health problems. Our evidence suggests that far from being 'satisfactorily managed', detainees' mental health issues are often ignored, up until the point that they become unmanageable. This may manifest in suicide attempts, hunger strike, or in some cases violence.

In the joint thematic report of ICIUKBI and HMIP into immigration casework, 67% of detainees said they had health problems with 53% describing mental health problems such as depression, stress and anxiety[23]. Those held more than six months were far more likely to describe such symptoms. The report also recommended the introduction of a panel to oversee cases of long term detention. This recommendation, critical in the context of the increasing detention of the most vulnerable since 2010, was rejected by the Home Office, who have repeatedly rejected the suggestion of a time limit on immigration detention. Most recently this was recommended by the Parliamentary Inquiry into immigration detention, and their report acknowledged that many of the problems in immigration detention would be significantly reduced by the introduction of a time limit. Time limit was also recommended by the CAT in 2013[24], the CPT following its visit in 2012, and the UNHCR in 2014[25] and 2011[26]. The UNHCR's Detention Guidelines also state that maximum periods of immigration detention should be set by law[27]. The UK is unique in Europe in the absence of a time limit on

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[20] Independent Monitoring Board for Harmondsworth Annual Report 2014 at http://www.imb.org.uk/wp-content/uploads/2015/04/Harmondsworth-IMB-Annual-Report-2014.pdf

[21] **Royal College of Psychiatrists** (2013) Position Statement on detention of people with mental disorders in Immigration Removal Centres,

[22] HASC, 8th Report, Report into the Work of the UKBA, November 2012

[23] ICIUKBI and HMIP (2012) The effectiveness and impact of immigration detention casework http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf

[24] UN Report of the Committee Against Torture 49th Session (29 October – 23 November 2012) and 50th Session (6-31 May 2013) Supplement No. 44 (A/68/44) 6th august 2013

[25] UNHCR (2014) Inquiry into the Use of Immigration Detention: Written Evidence to the Parliamentary Joint Committee

[26] Office of the High Commissioner of Human Rights Compilation Report, Universal Periodic Review, UK November 2011

[27] UNHCR Detention Guidelines Guideline 6

immigration detention, it is also one of the most prolific users of immigration detention in Europe. This leads to situations of prolonged and damaging detention, entrenched cases which are increasingly difficult to resolve and which ultimately lead to the release of the individuals. It is clear that the introduction of a time limit would reduce these severe cases of long term immigration detention which are extremely damaging to mental health and which make every detainee vulnerable.

- **Current processes to monitor and audit self harm in immigration detention are inadequate, and self harm is often seen as behavioural rather than a mental health issue:**

While deaths including suicides and instances of self harm are recorded in detention, accurate monitoring of this is problematic. Figures are only recorded if they result in medical attention: there are no figures for self harm not requiring medical attention, and so the figures that do exist are likely a vast underestimation of the extent of self harm across the detention estate. In 2014 figures show that 2,335 detainees were deemed to be at risk of self harm ('suicide watch') and there were 353 instances of self harm requiring medical treatment[28], an increase of 28 on 2013. This includes a dramatic increase in Brook House, where self harm figures are particularly high, from 39 in 2010 to 64 in 2014. Further, the definition of 'requiring medical attention' has been interpreted differently across the detention estate resulting in different recording practices, with some IRCs recording instances which required hospitalisation and others recording treatment for self harm in the healthcare unit.

Visitors tell us often that they meet people in detention who have harmed themselves[29]. In 2011, the Home Office reported only one instance of self harm in Yarl's Wood, yet Yarl's Wood Befrienders told us their experience suggested this figure was a vast underestimate, even amongst the detainees that they had visited. The figure was revised to sixty in a letter to the *NO Deportations* campaign group. These levels of self harm are particularly concerning in light of the shortcomings in mental health provision and the absence of a thorough mental health assessment during initial screening.

There have also been a high number of self inflicted deaths in detention. This includes the recent tragic suicide of a 26 year old in Morton Hall IRC who was found hanged just days after receiving removal directions. At Morton Hall IRC detainees are locked in their rooms every evening, a practice criticised by HMIP[30] yet remained standard procedure over two years after the recommendations were made. Morton Hall's centre managed accepted in her evidence that this was a risk factor for detainees and that there were lessons to be learned[31]. During the inquest staff at Morton Hall stated that they knew that detainees in their care were vulnerable but that there was no protocol to check on Rubel's mental state after removal directions were served. Staff also told the jury that they had

[28] https://www.gov.uk/government/publications/incidents-of-self-harm-in-immigration-detention-in-2014&sa=U&ei=-q9pVbe-NeH9ygOU0oHYAQ&ved=0CBQQFjAA&usg=AFQjCNGHxFD0pDNm4GW38nOrm_0_DYH6cA

[29] http://www.crawleynews.co.uk/Self-harming-detainees-rises-dramatically-years/story-26366818-detail/story.html

[30] Announced inspection of Morton Hall Immigration Removal Centre (4–8 March 2013)http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/morton-hall-2013.pdf HE.10

[31] See footnote 2 above

'not been trained in resuscitation techniques for several years and could not remember being trained in emergency responses to someone having been found hanging'[32]. This is despite the need for better responses to fatal incident emergencies being recommended by the Prison and Probation Ombudsman in March of that year[33].

The underlying mental health issues behind these figures may not be identified, as initial mental health screenings are inadequate, and self harm is often viewed as an attention seeking behaviour rather than a mental health concern. Research undertaken by AVID and BID in 2010-2011 found that self harming behaviour is often viewed as 'profile raising' or attention seeking behaviour by staff. In the words of one senior healthcare official, "*Cutting, self strangulation, food refusal, hair pulling, head banging….any of these can be a tool to raise profile*"[34].This is another example of the, now widely acknowledged, 'culture of disbelief'. The outcome is often that self harm is viewed as something to be managed and is treated as behavioural. Segregation under Rule 40 is used to manage detainees at risk of self harm. In 2014, the handcuffing and placing in segregation of a detainee who was self harming was found to breach their rights under Article 3 and to amount to cruel, inhuman or degrading treatment[35]

Very few quantitative studies are undertaken in immigration detention, but one such piece of research looks at quality of life in detention[36] through MQLD questionnaire data. In 2012, Bosworth et al found very high levels of distress amongst their population sample at Morton Hall, with 81.8% being classified with depression. Their study recommends further research into this area, particularly in light of the discrepancy they found between those detainees who reported thinking about suicide 'a lot' or 'very much' and those who were on the 'Assessment Care in Detention and Teamwork' (ACDT) process, which is the process for identifying and monitoring those deemed to be at risk of self harm. Bosworth et al also found that many detainees who feel suicidal do not report it, as they find the constant watch of ACDT intrusive and distressing. In detention, the ACDT process is led by Detention Custody Officers, rather than healthcare staff, and as these healthcare staff don't always attend the ACDT meetings, they may not be aware of this as a symptom of underlying mental ill health. The lines of communication in this contracted-out system, means that information is sometimes lost in the information chain between healthcare, custody staff, and Home Office case owners. This was recently highlighted by Harmondsworth IMB who reported that staff have difficulties in preventing self harm 'even when detainees are identified as vulnerable'. Their report notes 'the IMB believes that further works need to be undertaken to reduce self harm'[37].

- **Detainees in prisons are particularly vulnerable, prisons are inappropriate places to hold immigration detainees:**

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[32] Press Release by INQUEST, see footnote 2 above.

[33] http://www.ppo.gov.uk/wp-content/uploads/2014/07/LLB_Cross_Office_IRC__final_web.pdf

[34] Healthcare contractor to AVID and BID, 2011, in McGinley, A. and Trude, A. Positive Duty of Care? The mental health crisis in immigration detention (2012) p6

[35] MD v SSHD, 2014

[36] See for example Bosworth et al (2012): Quality of life in detention: results from MQLD questionnaire data gathered in IRC Morton Hall during May 2012 and Bosworth et al (2012) Quality of Life in detention: results from MQLD questionnaire data collected in IRC Yarl's Wood, IRC Tinsley House and IRC Brook House

[37] Harmondsworth IMB Annual Report 2014 http://www.imb.org.uk/wp-content/uploads/2015/04/Harmondsworth-IMB-Annual-Report-2014.pdf

The Detention Centre Rules (2001) do not apply in prisons, so around 20% of immigration detainees are not protected by, for example, Rule 35. Foreign nationals held post sentence in prison are also at risk of longer detention than other immigration detainees. HMIP and ICIUKBI, for example, note that in 2012 58% of foreign national offenders had been held for three months or more compared to 18% of other detainees who had not offended. It is also important to note that some offences are relatively minor. The same report notes that one detainee was held for nearly five years, despite his sentence being only eight months for burglary[38]. Our visitors groups who visit in prison have told us that access to supports, access to information, and ability to progress one's cases are curtailed in prison. Levels of anxiety and distress are high. In the words of one visitor: *'detainees in prison have worse living conditions than in most detention centres. They also have fewer freedoms. Most in my experience cannot understand why they continue to be held indefinitely in prison, rather than being transferred to a detention centre. The serious effects of indefinite detention are more so for detainees in prison, including the likelihood of mental illness, moreover the quality of mental health services in prison has suffered from cuts in staffing. The number of suicides has risen to a serious level'*[39]*.* We would draw the attention of the review panel to the extensive documentation of the issues facing detainees in prisons undertaken by Bail for Immigration Detainees[40]. It is a concern to us that detainees continue to be held in such high numbers in prisons when they are not protected by the same safeguards and nor do they have equity of access to information, support or resources particular to their status as immigration detainees. We receive several letters each month from detainees in prison who are feeling lost, isolated, confused and frustrated by their situation. They are arguably the most vulnerable of all detainees.

- **Those detained in short term holding facilities are particularly vulnerable as a result of the protection gap:**

Some 7,000 people every year pass through the Home Office's short term holding facilities. The lack of legislative framework governing the operation of these facilities is a huge protection gap which leaves many at risk. AVID, along with other NGOs such as ILPA, have lobbied since 2009 for the publication of equivalent Detention Centre Rules to govern these facilities. It is not clear to us why they have been delayed for so long. In the interim, there are very serious protection gaps, not least in relation to the detention of women alongside men, to the identification and screening for vulnerability, the provision of healthcare, the access to legal advice or the provision of meaningful activities. Some of the most vulnerable people we have met in detention are in short term holding facilities, and we hope that the review team will include recommendations for change not least that the statutory guidance that is long overdue is published as a matter of urgency.

- **Vulnerability needs to be reconceptualised in the immigration detention context:**

Sadly the current system is failing to do what it is supposed to do to protect those in need. However, the system is also failing to take into account other factors which may affect a person's vulnerability, or enable this to be monitored over time. This is particularly concerning in the current system of

[38] ICIUKBI and HMIP (2012) The effectiveness and impact of immigration detention casework http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf Page 10.
[39] Volunteer prison visitor email to AVID, 2nd April 2015.
[40] http://www.biduk.org/sites/default/files/media/docs/2014-09-16%20FINAL%20version%20prisons%20report%20Denial%20of%20Justice.pdf

indefinite detention. There is a growing body of research on vulnerability which moves away from the use of pre-determined conceptualisation of vulnerability to acknowledge that vulnerability is complex and multi-layered, and falls outside predetermined categories. For example, international research by the Jesuit Refugee Service conceptualises vulnerability as a concentric circle of personal, social and environmental factors[41] that may strengthen or weaken an individual's personal integrity.

The *Enhancing Vulnerable Asylum Seekers Protection* (EVASP) research project is another international example. This study was conducted across four European countries to investigate how vulnerability in asylum seekers is understood and acted upon. The outcome was the establishment of a framework for ascertaining vulnerability and a training package for all those who work with vulnerable asylum seekers. This research recommends that any screening for vulnerability should be focused on ascertaining vulnerability, rather than defining or measuring it. They propose *'a new understanding of vulnerability in asylum seekers that is not locating it exclusively within the coping mechanisms of one person or entirely within the adverse conditions that asylum seekers face, but it is a combination of both external factors and the way asylum seekers experience and respond to them; also it is proposed that we understand vulnerability as an interaction between the asylum seekers and the services available to them.*' Similar to the JRS research, EVASP focuses on the specific circumstances of the individual and takes a holistic and fluid approach similar to the DEVAS concentric model, rather than a static or category-based approach.

This international research, and our evidence on the ground, suggests that the current approach to vulnerability is flawed. Detention can and does make anyone potentially vulnerable. As such, vulnerability must be viewed as a complex and dynamic combination of personal, social and environmental factors which are reviewed in an ongoing manner. AVID believes that vulnerable people with complex needs should never be detained. However, where detention is to continue, we propose that the Home Office should implement a vulnerability tool which enables a more thorough approach to screening before detention but is also adaptable to changes over time in detention. Many of the problems outlined in this submission would be reduced if an effective process of evaluation of harm was introduced, which assesses individuals on an ongoing basis in the detention context and does not rely on predetermined categories and definitions of vulnerability based on damage already caused.

[41] Jesuit Refugee Service Europe (2009) The Devas Project: Becoming Vulnerable in Detention at http://detention-in-europe.org/images/stories/DEVAS/jrs-