

The Detention of Vulnerable People: Human Rights Breaches in the UK
Briefing by the Vulnerable People Working Group of the Detention Forum (VPWG), Dec
2012

Background

In August 2011, in a landmark first, the High Court found that the detention of a mentally unwell man by the UK Border Agency amounted to cruel, inhuman or degrading treatment under Article 3 of the ECHR¹. Rather than being an isolated incident, this was soon followed by three further cases, all involving mentally ill men and all of which crossed the Article 3 threshold². These cases form a pattern of systemic failings within the immigration detention system which is leaving the most vulnerable at risk. Despite calls from NGOs, legal practitioners, and the Home Affairs Select Committee, the UKBA has not told us what lessons have been learnt to ensure the vulnerable are protected and this does not happen again.

The policy guidance given to UKBA decision makers on groups that should normally be excluded from immigration detention³ was amended without consultation in August 2010. Previously, the policy outlined specific categories of person - including pregnant women; people with disabilities; those with serious medical conditions; the elderly; victims of trafficking or torture, and those suffering from mental illness- who should be considered suitable for detention '*only in exceptional circumstances*'. The new guidance states that these groups will only now be deemed unsuitable if their specific vulnerability "cannot be satisfactorily managed in detention". This effectively broadens the scope for decision makers, rendering certain categories of people 'suitable' for detention that were previously 'unsuitable'. To date the UKBA has not defined satisfactory management. The VPWG of the Detention Forum is concerned that greater numbers of vulnerable people are being detained as a result.

Human Rights Breaches: Article 3

The four cases where a breach of Article 3 was found by the High Court are shocking examples of what we believe reflects a wider pattern of systemic failings which are leaving the vulnerable at risk:

- Mr 'S' who suffered psychosis, was moved from prison to a detention centre despite evidence that detention caused a deterioration in his mental state. By making decisions to continue S's detention, the High Court found in August 2011 that the UKBA breached this man's human rights.
- Three months later in October, 'BA's detention was also found to breach Article 3. The UKBA continued BA's detention despite a report from the Healthcare manager that he was not fit to be detained and could die imminently due to his refusal of fluids. In its summary, the High Court described "*callous indifference*" on the part of UKBA, alongside "*a deplorable failure....to recognise the nature and extent of BA's illness*".
- In April 2012, 'HA', a man with paranoid schizophrenia, was also found to have suffered cruel, inhuman or degrading treatment. In its judgment, the Court also found that the

¹ *R (S) v Secretary of State of State for the Home Department* [2011] EWHC 2120 (Admin) (5 August 2011)

² *R (BA) v Secretary of State of State for the Home Department* [2011] EWHC 2748 (Admin) (26 October 2011);
R (HA) v Secretary of State of State for the Home Department [2012] EWHC 979 (Admin) (17 April 2012), *D v Secretary of State for the Home Department* (2012) EWHC 2501 (Admin)

³ UKBA, Enforcement Instructions and Guidance available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/>

changes to the above policy regarding the detention of the vulnerable were unlawful. The UKBA is currently appealing this case.

- ‘D’ was detained for 14 months despite having previously been detained under the Mental Health Act and having a history of paranoid schizophrenia. Although the UKBA was aware of this medical history, D was held without access to medication or a psychiatrist. The High Court found the absence of proper medical care constituted ‘inhuman treatment’ (August 2012).

Reaction

While criticism over these four cases has been widespread amongst organisations who work with detainees, many in the NGO sector feel that they have not attracted the wider coverage they deserve, and that the UK Border Agency is still resisting the Court’s findings by failing to do anything to remedy the issues these cases raise. When questioned by NGO stakeholders, a senior UKBA official with responsibility for detention policy told us he was ‘not aware’ of the cases in question and could not comment on lessons learnt⁴. Further, by appealing HA and challenging the Court’s assertion that the change in policy was unlawful, it appears that they remain committed to detaining vulnerable people, even those with serious mental health problems, and seemingly without regard to the UK’s obligations under International Human Rights law.

The Home Affairs Committee stated that: *‘We are concerned that the cases outlined above may not be isolated incidents but may reflect more systemic failures in relation to the treatment of mentally ill immigration detainees.’*⁵ They also criticised Rob Whiteman, UKBA Chief Executive, for claiming during questioning that two of the claimants above had received apologies from the Agency for their treatment, which was not true. Furthermore they recommended that an immediate and independent review of the medical screening processes which are supposed to identify and lead to the release of those medically unfit for detention (Detention Centre Rule 35) be conducted, something that the NGO sector has been demanding for several years, and expressed serious concern that the medical opinion of a doctor over fitness to detain can be overruled by a non-medically trained UKBA case owner.

The Equality and Human Rights Commission, in its Human Rights Review 2012, identified immigration procedures and detention as one of its top ten areas of concern, noting that *‘The government does not always follow its own procedures around assessing and removing people who are particularly vulnerable, such as survivors of torture and people with serious mental illness.’*⁶

What can you do?

- The Vulnerable People Working Group of the Detention Forum urges Parliamentarians to contact the Minister of State for Immigration, Mark Harper, to express concern about the Human Rights breaches as outlined above, and to request that the UK Border Agency conducts a full and independent review of the processes whereby immigration detainees are screened for fitness to be detained, both at the point of detention and on an ongoing basis, as recommended by the Home Affairs Committee and many NGOs.
- We urge Parliamentarians to write to the Joint Committee on Human Rights, to ask them to revisit the recommendations around detention in their 2007 report ‘The

⁴ Minutes of the DUG Medical Sub Group, UKBA stakeholding mechanism, 18th November 2011

⁵ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/603/60305.htm>

⁶ <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review/key-areas-for-improvement/immigration-procedures-and-detention/>

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Treatment of Asylum Seekers', which amongst other things expressed concern over the government's track record of detaining mentally ill people. Little progress has been made on any of the recommendations in the report, and in fact in many ways the situation is worse today than it was then.

For more information, please contact Nic Eadie (neadie@gdwg.org.uk) or Ali McGinley (ali.mcginley@aviddetention.org.uk), Co-convenors of the Vulnerable People Working Group. The group comprises: Association of Visitors to Immigration Detainees (AVID), Gatwick Detainees Welfare Group, the Poppy Project, UK Lesbian and Gay Immigration Group, and Yarl's Wood Befrienders.

The Detention Forum is a network of NGOs who are working together to challenge immigration detention. We want to build momentum to question the legitimacy of immigration detention which has become such a normal part of the British immigration system. Our key advocacy areas are detention of vulnerable people, indefinite detention and judicial oversight of detention.