Freedom from Torture submission to the Brook House Inquiry

Freedom from Torture is opposed to immigration detention because we believe that the safeguards in place are incapable of preventing harm to vulnerable people, including torture survivors. We are a UK-based human rights organisation and one of the largest torture rehabilitation centres in the world. Each year we provide clinical services to more than 1,000 survivors of torture in the UK, the vast majority of whom are asylum seekers or refugees. We also have a Legal Advice and Welfare Service that provides support to torture survivors in treatment at a Freedom from Torture centre.

We are pleased to share our reflections and evidence on the treatment of vulnerable individuals in the Brook House Immigration Removal Centre (IRC) for the period between April 2017 to August 2017. We welcome the inquiry's decision to investigate and report on the decisions, actions and circumstances surrounding the mistreatment of detainees broadcast in the BBC Panorama programme 'Undercover: Britain's Immigration Secrets' on 4 September 2017.

Format

This submission presents conclusions and recommendations drawn from our interaction with the Home Office on the treatment of vulnerable detainees and our extensive clinical experience of documenting the effect of immigration detention on survivors of torture. These conclusions and recommendations are illustrated by the two cases presented, which explore the lack of effective safeguards in detention, looking in particular at the following sources where they were available:

- Rule 35 reports;
- Home Office response to Rule 35 reports;
- Letters submitted by our clinicians to the Home Office outlining individuals' vulnerability/risk of harm in detention;
- and; all other available information relating to the clinical impact of the period of time in detention on the individual's mental health.

Introduction

Clinically, it is well understood that torture survivors are particularly vulnerable to harm in detention.[1][2] Faced with even a brief period in detention, many will experience re-traumatisation, including powerful intrusive recall of torture experiences and a deterioration of pre-existing trauma symptoms.[3] To inform this submission, Freedom from Torture has reviewed the cases of two survivors of torture who have accessed our services, were detained between April 2017 to August 2017 in Brook House IRC, and gave consent for their information to be used for research purposes. These two cases are illustrative of the systematic problems faced by individuals, including survivors of torture, who have been held in immigration detention across various IRCs and over a long period of time.

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[1] Literature from across all the different bodies of work and jurisdictions consistently finds evidence of a negative impact of detention on the mental health of detainees' - Bosworth M., Appendix 5: The Mental Health Literature Survey Sub-Review, Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office, January 2016

[2] M.von Werthern M, Robjant K, Chui Z, Schon R, Ottisova L, Mason C, Katona C, 'The impact of immigration detention on mental health: a systematic review', BMC Psychiatry, 2018 Dec 6;18(1):382. doi: 10.1186/s12888-018-1945-y

3 Steel Z, Silove D, Brooks R, et al. Impact of immigration detention and temporary protection on the mental health of refugees. Br J Psychiatry 2006; 188: 58–64.

Key Recommendations

1. The vulnerability and risk assessment safeguards used in immigration detention are inadequate in identifying and protecting vulnerable people from the harm caused by detention. Therefore, no asylum seekers or refused asylum seekers should be detained for administrative purposes.
2. The Home Office should ensure that all healthcare staff at IRCs are familiar with and use the Faculty of Forensic and Legal Medicine's Quality Standards for Healthcare Professionals working with victims of torture in detention[4].
3. While immigration detention of asylum seekers and refused asylum seekers continues, the following operational changes are required under the existing Adults at Risk (AAR) framework. The Level 3 requirement for evidence that detention will likely cause harm should be reduced. The Home Office should amend the AAR policy so that anyone with professional evidence of torture, including a Rule 35 report, should be designated as Level 3.

Reflections and recommendations

Failures in the current safeguards, including screening, AAR policy and process, Rule 35, and healthcare provision within IRCs all contributed to the absence of protection for the vulnerable people in the case studies outlined above. In our opinion, these failures create a very real risk of a breach of Article 3 of the European Convention on Human Rights. We list below some proposals on how this risk could be reduced.

Case Summary 1

Introduction

In this case summary we present evidence of a client, henceforth named as 'Alex', who was detained in Brook House IRC for a 28-day period from early April to early May 2017, and afterwards detained in Harmondsworth IRC.

1. Rule 35 report

The Asylum Policy Instruction on the Rule 35 process explains that: *'Shortly after their arrival at an IRC all detainees are, as part of the admissions process, given a healthcare screening, which includes being asked whether they have been tortured.'*[5] This healthcare screening should happen within two hours of arriving in detention.[6] Although individuals should be asked about whether they have been tortured, it is unclear from Home Office policy whether any definition of torture is provided to IRC staff, it is also often unclear if an interpreter has been used for this assessment. Any individual who discloses that they have experienced torture must be provided with a

[4] The Faculty of Forensic and Legal Medicine of the Royal College of Physicians, 'Summary – Quality standards for healthcare professionals working with victims of torture in detention, 2019, found here.
[5] Asylum Policy Instruction, Asylum Policy Instruction, *Detention services order 09/2016 Detention centre rule 35 and Short-term Holding Facility rule 32,* V 7.0, found here
[6] Detention Services Order 06/2013, Reception, Induction and Discharge Checklist and Supplementary Guidance, Page 9, Annex A, Reception Checklist, found here

follow-up appointment with a doctor *'as quickly as possible'*, during which the doctor will assess whether there are concerns that the individual is a victim of torture.[7]

Health records from Alex's time in Brook House were unavailable for review. However, it is clear that he was in detention for at least 42 days, 28 of which were spent in Brook House, before he was eventually provided with a Rule 35 report. This suggests a failure on the part of Brook House staff to identify him as a potential victim of torture in the initial health screening, and to subsequently provide a timely report, in line with Home Office policy.

The mechanisms in place to safeguard vulnerable adults in detention appear to have failed Alex during his time in Brook House in April 2017. Clinical records following his eventual release from detention indicate that his experiences in Brook House and Harmondsworth had a harmful impact on his mental health (detailed below), which may have been significantly mitigated, had Brook House staff identified this individual as a torture survivor and released him from immigration detention immediately.

2. Home Office response letter

Alex was provided with a Rule 35 report while in Harmondsworth detention centre. The Home Office categorised the evidence in the Rule 35 report as level 2, according to the evidence levels in the Adults at Risk policy. However, this did not lead to Alex's release as the Home Office claimed that his *'immigration history clearly shows that you cannot be relied upon to comply with immigration requirements.'*

3. Any available information relating to the clinical impact of the period of time in detention on the individual's mental health

Clinical evidence produced after Alex was released from detention, including an independent psychiatric report, a letter from a Freedom from Torture clinician, and a Freedom from Torture medico-legal report, each show that his detention had a highly negative impact on his mental health.

An extract from the independent psychiatric report produced in late 2017 states:

"...He reported that the trauma of detention centres brought back his traumatic memories of ... detention, torture, physical and emotional abuse by police in the prison [in his country of origin]... During his detention here in removal centres, he reported that he felt as if he was treated as a criminal, he had no rights and authorities dictated about when to sleep, wake or eat etc. He lived in the constant fear of being deported...and that triggered his recalling and reliving of his memories of previous traumas..."

A Freedom from Torture clinician wrote to Alex's GP in 2018, stating that "*[his] symptoms worsened during a period of immigration detention..."*

A medico-legal report produced in late 2018 further states: *"When he was detained in the UK he said being in a cell 'brought back bad memories.' His nightmares worsened and he could not sleep. He was prescribed Mirtazapine..."*

[7] Asylum Policy Instruction, *Detention services order 09/2016 Detention centre rule 35 and Short-term Holding Facility rule 32,* V 7.0, found here

The references to detention in each of these reports do not distinguish between Alex's experiences in Brook House and Harmondsworth respectively, but it is clear that the period of time he spent overall in detention had a harmful effect on him. The failure to identify his vulnerability early on in Brook House, and provide him with a Rule 35 report soon after he entered detention highlights the failures of safeguarding mechanisms, such as the Rule 34 assessment, to protect vulnerable individuals in detention.

Case Summary 2

Introduction

In this case summary we will present evidence of a client, henceforth named as 'Alan', who was detained in Brook House IRC from late February to mid-April 2017, for a total of 46 days.

1. Rule 35 report

Whilst detained in Brook House IRC Alan underwent a Rule 34 assessment in late February that resulted in a Rule 35 report. In the Rule 35 report the doctor commented that they had '*concerns that the detainee may have been a victim of torture.*' It is noted that the client disclosed the details of his torture to a previous doctor and that he was under the care of Freedom from Torture and stated that he had undergone months' worth of psychological treatment. In their report, the doctor concluded that the client '*may be a victim of torture and does present with physical and apparent psychological evidence of this. Since he is due for removal, I think it is unnecessary to comment on impact of ongoing detention.*'

2. Home Office response letter

The Home Office responded to the client's Rule 35 report two days after the report had been completed. In the response letter the Home Office acknowledges the doctor's comments that the client seemed:

> '*[...] to be very agitated by sound and movements that is prompted by others. [...] You claim to have been raped twice on two separate occasions by men from ISIS [...] You showed the Doctor 3 large linear scars on the knees. You stated that you have scars on the face, which you attribute to beating. [...] You stated that they beheaded people in front of you but you do not know why.*
>
> *The GP has stated that you have multiple scars on your forearms, face and knee particularly which are consistent with the account given. The GP has noted that you have a history of self-harm and you are currently on ACDT. You are under the care of mental health team.*
>
> *The GP has also noted that you present odd behaviour with periods of paranoia and hyper vigilance. At other times you appear fearful and distressed.*'

In balancing the risk factors of continued detention against immigration control factors, the Home Office speculated that although the client had been compliant when released on reporting restrictions, future compliance was unlikely in light of set removal directions. They accepted that the client was a level two adult at risk but noted that '*the doctor has not indicated that a period of detention is likely to cause you harm.*'

While the Rule 35 report did not comment on the risk of harm caused by detention, it is noted that the client's Freedom from Torture clinician had in fact identified this risk in a letter addressed to the Home Office prior to the issue of their response. In the letter, the clinician states that they were '*concerned that [the client's] current situation in detention will considerably raise [his] anxiety, and so will raise his level of risk.*' The Rule 35 report doctor didn't comment on the impact of detention due to the client's imminent removal. Imminent removal should not have prevented the doctor from assessing the impact of detention nor the Home Office from going back to the doctor and asking them to nonetheless comment on the impact of continued detention.

3. Letters submitted by Freedom from Torture clinicians to the Home Office outlining individuals' vulnerability/risk of harm in detention

Three days after Alan had been detained in Brook House IRC, a Freedom from Torture clinician sent an urgent letter to the Duty Medical Officer at Brook House IRC informing them that Alan was a client of Freedom from Torture. The letter stated that he was receiving ongoing and regular psychotherapeutic treatment from the clinician, as he had been identified as a survivor of torture. The clinician went on to describe Alan as a *'very vulnerable young man with psychological symptoms associated with Post Traumatic Stress Disorder resulting from his experiences of detention and torture in [his country of origin].'* The clinician reported that she had spoken to Alan, and that he was very scared and had requested that he be allowed some fresh air.

12 days after Alan had been detained in Brook House IRC, the clinician sent another urgent letter to the Duty Medical Officer at Brook House IRC. The letter again described Alan as a '*very vulnerable young man with psychological symptoms associated with Post Traumatic Stress Disorder resulting from his experiences of detention and torture in [his country of origin]* and that they continued being *'extremely concerned about the detrimental impact his continued detention is having on his mental health.'*

This letter also referenced difficult conditions in Brook House, including:

- Lack of secure doors and the presence of other men in the showering areas, causing Alan fear and anxiety. He was therefore unable to use the showers.
- Crowds and queues at mealtimes, leaving Alan feeling alarmed and afraid of using the canteen during these periods, and meaning he would avoid the canteen and would buy food at other times.

The clinician requested that the Duty Medical Officer take note of these concerns and consider moving him to the healthcare unit in order to help him cope better with detention and to reduce his anxiety. There is no indication in Freedom from Torture's records that any of these areas of concern were noted or acted upon by any staff at Brook House IRC.

We believe that the evidence provided by the Freedom from Torture clinician should have been sufficient to lead to immediate release from Brook House IRC. The failure to release this vulnerable man despite significant evidence of his vulnerability and risk of harm in detention shows that the current Home Office safeguarding procedures fail to protect vulnerable people in immigration detention.

4. Any available information relating to the clinical impact of the period of time in detention on the individual's mental health.

Three days after Alan had been detained in Brook House IRC, a Freedom from Torture clinician provided Alan's solicitor with a letter detailing their professional opinion on him. This letter expanded upon the letter sent to the Brook House IRC Duty Medical Officer and stated that:

> '*Since his detention in the UK I have had phone contact with him to offer psychological support. He is tearful and afraid and preoccupied with fears of being [deported] and the prospects of being alone and unsupported there.* ***His detention in the UK is detrimental to his health and prevents him from attending for the psychological help he urgently needs and exacerbates his already vulnerable mental health.'*** (emphasis added)

In addition, the clinician also commented:

> '*I consider that he requires safe and consistent accommodation, health, welfare and therapeutic support and care to enable him to start to overcome the difficulties he faces. His level of psychological fragility and fear make it hard for him to see how he would cope if removed from the links with safety which he has begun to find here in the form of his father's friend and Freedom from Torture's services.'*

In late February 2017 Alan's solicitor emailed the Home Office with an urgent request for copies of all relevant documentation, cancellation of any removal directions, release from detention and a response by the Home Office by 5pm on the same date. In the letter, the solicitor submitted that Alan's detention was unlawful and unreasonable. Evidence was provided to the Home Office regarding the severity of Alan's mental health problems and that he was under the care of the Medical Foundation (now Freedom from Torture).

In this letter, the solicitor went on to note that under Chapter 60, paragraph 2.1.1 of the Enforcement Instructions and Guidance for Third Country cases:

> *2.1.1 Persons not suitable for removal window*
>
> *The policy described here in paragraph 2.1 may not be used to give notice of removal to:*
>
> - *Family cases*
> - *Where the person has no leave but has made a protection (asylum or humanitarian protections) or human rights claim, or appeal, pending*
> - ***Where the Home Office has evidence (beyond a self declaration) that a person is suffering from a condition listed as a risk factor in***

the Adults at risk in immigration detention policy or other condition that would result in the person being regarded as an adult at risk under that policy.[8] (emphasis added)

The solicitor highlighted that clear evidence had been provided, including a Rule 35 report providing evidence that Alan was an adult at risk and therefore not suitable for removal. The solicitor argued that there had been no consideration by the Home Office concerning Alan's mental health before he was detained, during his detention or when a removal window was being set.

Comments on the proposed reform of the Adults at Risk guidance

In August 2020 Freedom from Torture became aware that the Home Office is considering a number of Adults at Risk policy reforms. Some of these reforms were paused at the end of 2020 and the Home Office has so far failed to respond in detail to the initial comments made by Freedom from Torture and other organisations. We are extremely concerned about the direction of travel implied in a number of areas, which could lead to reduced protection from harm for vulnerable people.

New levels of AAR: Under the existing policy, individuals who self-declare as being vulnerable to harm if they remain in detention are classed as a 'level 1' adult at risk; whereas under the new policy it appears they would not be classified as being an adult at risk unless they have a professional assessment to support this. We are concerned this may result in individuals who identify as vulnerable not being brought to the attention of healthcare professionals within IRCs, in a way that they currently are under the existing policy. This may result in evidence that they are at risk of harm from detention being missed or not acted on as early as possible.

As well as downgrading of protection for those who self-declare, these new levels also represent a downgrading of those who would have previously been considered level 2 to now be considered level 1. Previously any professional evidence that an individual is an adult at risk would have been classed as level 2. Under the proposed reforms, if the risk of harm in detention is deemed low this evidence could now be classified at level 1 and therefore carry less weight in the balance against immigration factors than under the previous policy.

New assessments of risk rely on predicting future harm: We are also concerned by the greater emphasis on medical professionals having to predict future harm in every case for individuals to be classified as an adult at risk at all levels (1, 2 and 3). It is extremely difficult to predict if harm is highly likely to occur in every individual circumstance. Given this, we are concerned that the system may require harm to actually have been caused to provide the necessary evidence to confidently predict that individuals are at *future* risk of harm.

[8] Enforcement Instructions and Guidance, Chapter 60 – Judicial reviews and injunctions, page 5, found here

Moreover, we are concerned that the new system will fail to take into account the existing body of evidence that certain categories of individual (e.g. torture survivors, trafficking survivors, victims of domestic and gender based violence, etc.) based on their previous experiences/current circumstances are very likely to suffer harm from detention, regardless of how they present in an assessment so should be classified as an AAR without having to fulfil any further criteria.

Proposed Rule 35 process: We welcome the planned expansion of the Rule 35 process to take account of all vulnerabilities. However, we have concerns about how the new Rule 35 process will work in practice, and whether it will ensure the existing separate functions of Rule 35 (1), (2) and (3) continue to operate. We are particularly concerned about the risk this could have to the requirement to identify torture survivors given their specific needs, in line with the Mandela rules[9] which dictate that health professionals have an obligation to identify and report torture.

We are also concerned about how this process will be resourced and quality assured. We have concerns that reconfiguring the role medical professionals play in this process, specifically the increased role they might play in detention decisions has the potential to compromise their clinical relationship with patients as well as their ethical duties under the profession.

Regularity of assessment: Assessments should be carried out frequently to take account of the fact that vulnerability is dynamic in nature and may change throughout the time spent in detention. In particular, those identified as being at potential risk should be regularly assessed to ensure people are not deteriorating, particularly given those who are detained for longer may be more likely to be harmed by further detention. This has been seen to happen to a number of Freedom from Torture clients.

A frequent assessment/welfare process is necessary to ensure that the system does not rely upon detainees to self-advocate, as those who are least well are often unable to effectively self-advocate, and therefore such a system would be fundamentally flawed. In order for a system like that proposed to work it would require significant resourcing beyond what is currently the case and would need to be monitored and audited for quality, ensuring that the Faculty of Forensic & Legal Medicine quality standards[10] are fully implemented.

Pre-detention screening: We have concerns about the lack of screening for vulnerability prior to detention and believe that greater effort should be made to identify torture survivors before detaining them. In 2020 the Home Office introduced a pilot titled the Enhanced Screening Tool, a pre-detention screening toll created to address a Home Affairs Committee recommendation made in their Immigration Detention report from March 2019 suggesting that there be a thorough pre-detention screening to facilitate the disclosure of vulnerability.[11] The tool contained a brief and poorly drafted set of questions on medical history, demonstrating an excessive focus on diagnosis and evidence. It then goes well beyond vulnerability and the additional factors that must be

[9] https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

[10] https://fflm.ac.uk/publications/quality-standards-for-healthcare-professionals-working-with-victims-of-torture-in-detention-complete-document/

[11] Home Affairs Select Committee, 'Immigration Detention', recommendation 13, found here

considered in a case progression assessment by, for example, seemingly encouraging voluntary return. The pilot has since been put on hold and with no indication form the Home Office as to when, or if, it will be re-started. We recommend that the Home Office consult with the immigration detention sector to develop a pre-detention screening tool. We believe that the UNHCR's Vulnerability Screening Tool is an appropriate tool that the Home Office could use to help guide them in this process.

Overarching recommendations

1. The vulnerability and risk assessment safeguards used in immigration detention are inadequate in identifying and protecting vulnerable people from the harm caused by detention. Therefore, no asylum seekers or refused asylum seekers should be detained for administrative purposes.

Lack of pre-detention vulnerability screening

While immigration detention of asylum seekers and refused asylum seekers continues, the following operational changes are required:

2. The Home Office must redouble its efforts to develop a mechanism for identifying vulnerability prior to detention. Given the harmful impact of any length of stay in detention for many vulnerable groups the evidentiary threshold to indicate risk must be low to ensure that someone at risk is highly unlikely to enter detention.
3. The Home Office must consult widely with stakeholders across sectors who have expertise in identifying vulnerability on this mechanism. The Home Office must ensure that those officers responsible for identifying vulnerability are adequately trained and that work in this area is monitored and quality checked.

Assessing and monitoring the wellbeing of individuals suspected to be/categorised as at risk

While immigration detention of asylum seekers and refused asylum seekers continues, the following operational changes are required:

4. Required medication must always be made available and individuals' medical needs thoroughly assessed on induction to ascertain whether there are any medical appointments or medication that will be missed through a stay in detention. IRC healthcare teams should be adequately resourced, such that when an individual requests to see a GP about an urgent need for medication or health concern, including mental health, this can be escalated to avoid people waiting long periods without the support they need. An individual in immigration detention has a right to healthcare, equivalent to that which they would receive if they were in the community. This is not currently available to detainees in IRCs, especially in respect of mental healthcare.
5. The Home Office should ensure that all healthcare staff at IRCs are familiar with and use the Faculty of Forensic and Legal Medicine's Quality Standards for Healthcare Professionals working with victims of torture in detention[12]. In particular, the guidance on the use of interpreters within the document should be followed so that the need for interpreting is identified on reception and if necessary, an interpreter is then used for all healthcare appointments.
6. The Home Office must review what resourcing is available for mental health support and services in IRCs and what people's experience of accessing these services is.

[12] The Faculty of Forensic and Legal Medicine of the Royal College of Physicians, 'Summary – Quality standards for healthcare professionals working with victims of torture in detention, 2019, found here.

7. The Home should record, assess and publish the time that individuals who are detained wait to get physical and mental health assessments.

Rule 35

While immigration detention of asylum seekers and refused asylum seekers continues, the following operational changes are required:

8. Under the existing Adults at Risk (AAR) framework the Level 3 requirement for evidence that detention will likely cause harm should be reduced. The Home Office should amend the AAR policy so that anyone with professional evidence of torture, including a Rule 35 report, should be designated as Level 3.
9. The Home Office should remove the requirement to comment on the likely impact of ongoing detention so that Rule 35 reports can be afforded the appropriate weight.
10. An independent review of the Rule 35 process should be carried out by the Independent Chief Inspector of Borders and Immigration (ICIBI), including publishing a full evaluation of the dedicated central team for responding to Rule 35 reports.
11. The Home Office must increase their compliance with the two working day timescale for Rule 35 reports to be responded to.
12. The Home Office must ensure IRC doctors are given the necessary resources to enable them to document torture effectively. This includes training, time and consistent usage of high-quality interpreters in order to facilitate more effective identification of torture survivors and improved Rule 35 reporting.

Please do not hesitate to contact us should you require further information.

Sile Reynolds
Senior Policy Advisor
Administrator
Freedom from Torture
DPA

Zoe Cross
Policy & Advocacy
Freedom from Torture
DPA