Bruges Place, 15-20 Baynes Street, London, NW1 0TF (Entrance via Randolph St)
T: 020 3058 2020 | F: 020 3058 2050
helenbamber.org | @HelenBamber

Helen Bamber Foundation
working with survivors of human cruelty

Helen Bamber Foundation
Response to HM Inspectorate of Prisons Immigration Detention Expectations for consultation
July 2017

The Helen Bamber Foundation (HBF) is a UK registered human rights charity. Its clients are survivors of state-sponsored torture, human trafficking, slavery, war, and domestic, gender or sexuality-based violence. HBF works with survivors from all over the world, including Afghanistan, Albania, Eritrea, Iraq, Nigeria, Sri Lanka and Syria.
HBF delivers a specialist Model of Integrated Care, which deals with the complex needs caused by trauma resulting from atrocity. The charity is widely regarded as a leading authority in the treatment and documentation of the physical and psychological impact of interpersonal violence, and is considered by the Home Office as the foremost respected body in the field related to extreme human cruelty.

HBF is seriously concerned that members of its client group are being inappropriately held in immigration detention, despite the findings of the Shaw Review into the Welfare in Detention of Vulnerable Persons, and the Home Office's stated intention of its policy on Adults at Risk In Immigration Detention to reduce the number of vulnerable people detained and the duration of detention before removal.

HBF regularly receives and considers referrals from legal representatives of detainees who have a history of torture, cruel inhuman and degrading treatment (CIDT), human trafficking, slavery, war, and/or domestic, gender or sexuality-based violence. Many of the detainees referred to us have mental health symptoms including post-traumatic stress disorder; anxiety and depressive disorders; suicidal ideation and self-harming behaviours and psychotic illness documented in the IRC or prior to their detention. As Professor Mary Bosworth's research for the Shaw Review found, detention has a consistently negative impact on the mental health of detainees, particularly those with a history of mental illness and/or trauma. Detention is particularly harmful to those with a history of trauma, both because they are likely to suffer from post-traumatic stress disorder (PTSD) and other severe mental health symptoms and because detention may replicate the conditions of confinement and/or loss of autonomy that characterised their trauma and therefore frequently retraumatises. However, we have observed that individuals may inappropriately remain in detention because:

- Detainees do not have adequate access to healthcare and in particular to Rule 35 reports;
- Rule 35 reports are not compliant with the Istanbul Protocol
- Rule 35 reports frequently fail to identify when a person has been a victim of torture and/or when a person's health is likely to be injuriously affected by continued detention or any conditions of detention
- It is difficult for detainees to access independent medico-legal reporting. The concession whereby detainees were released for appointments with HBF or Freedom from Torture has been ended. HBF do not have capacity to visit detention settings and the capacity of the other NGOs working with similar client groups (Freedom from Torture and Medical Justice) is limited.
- Without an independent medico-legal report, it is difficult for a detainee to obtain release on the grounds that they are a victim of torture or ill-treatment: HBF's letters stating that on consideration of the papers we regard a detainee as falling with our remit are not regarded as level 3 evidence of vulnerability by the Home Office under its Adults at Risk policy;
- Even where it is accepted by the Home Office that a detainee is an adult at risk, this is frequently outweighed under the Adults at Risk policy by immigration/compliance factors.

While we are aware that the decision to detain does not fall within HM Inspectorate of Prison's inspection remit, we believe that the Immigration Detention expectations can assist the identification of adults at risk who have nonetheless been placed in immigration detention and in ensuring their ability to obtain access to medical and legal services. We therefore offer the following comments on the draft Expectations:

We agree that there is no universal definition of vulnerability and that all detainees are inherently vulnerable because of the fact of their detention. However, we believe that the Expectations should make particular provision for those detainees falling within HBF's remit (as identified above) and those with pre-existing mental illness. In particular, we recommend that they should refer to paragraphs 7 and 11 of the Adults at Risk policy – who is an adult at risk and indicators of risk – since the presumption is that adults at risk should not be detained and therefore they should be identified (and their release considered) as soon as possible. Medical screening on reception should therefore include an assessment of whether the detainee is an adult at risk and wherever appropriate (i.e. where a detainee fulfils the criteria of Rule 35(1), (2) or (3)) this should include the making of a Rule 35 report.

Expectations on arrival

The indicators include that "*[d]etainees arrive in sufficient time to allow reception and first night procedures to be conducted effectively."* Where Rule 34 medical examinations are conducted upon admission and admissions are late at night, vulnerable individuals run the risk that questions asked about torture may not be understood or the detainee may be too disorientated to respond fully. The efficacy of procedures should bear this in mind.

The indicators refer to "*[d]etainees who may be vulnerable receive appropriate priority*." This is problematic because it begs the question of how "*[d]etainees who may be vulnerable*" should be identified. Among new arrivals will be survivors of torture and CIDT, and victims of trafficking as well as people with pre-existing mental health problems. In the experience of HBF a significant proportion of those persons will not have self-identified when detained or screened away from the IRC. In our experience some, but by no means all, will self-identify during the Rule 34 examination. That being the case, the inherent vulnerability of all detainees should be noted and an assumption that any cohort of new arrivals will include detainees with more specific vulnerabilities should be in place.

Section 5 of the section on Expectations on Arrival makes no direct reference to torture, CIDT or human trafficking. The indicators should establish criteria for the earliest identification of survivors and should give consideration to the training needs of those carrying out Rule 34 examinations in relation to trafficking indicators and the identification of survivors of torture and CIDT, beyond asking the question "Have you been a victim of torture?" which is asked at that stage. We are particularly concerned that the "torture" question is too narrow, and (more fundamentally) that many victims of torture or CIDT will not feel ready to disclose in full what has happened to them. Pre-existing mental illness (which may itself be difficult to identify and be an indicator of vulnerability) may further impede full disclosure of past torture or CIDT.

Section 6 of the section on Expectations on Arrival should include reference to ensuring comprehension. While "*a comprehensive and multidisciplinary induction"* is of course welcome, in the experience of HBF many of those who fall within our client base may lack the capacity to fully understand and retain the information that they have been given. In our clinical experience, the induction process should be sufficiently interactive that comprehension can be assessed and its absence acted upon. We welcome the expectation that "*[i]nformation is reinforced as needed over the course of the detention"* for the same reason.

Safeguarding of vulnerable adults

Section 7 refers to the need for there to be in place "*a joint local safeguarding strategy that recognises risks of harm to detainees arising from, for example: … past or possible future experience of torture, trafficking or trauma, including sexual or gender based violence*". This is welcome. HBF recommends that this expectation includes input from specialist agencies (including HBF) with particular experience in these areas. Input should not be limited to "*the local authority.*"

Section 8 refers to the identification of adults at risk. Please see comments above in relation to screening.
We agree that it should be an expectation that "*[p]otential victims of trafficking are referred under the National Referral Mechanism".* In this respect HBF also welcomes, under section 52, that "*[h]ealth staff recognise and report any signs of trauma, torture or other health issues that affect fitness to detain promptly and make all necessary referrals including referral under the National Referral Mechanism*. " However, these expectations should be amplified. Training of all staff should include the identification of victims of trafficking and the role of staff in referring detainees whom they suspect

(but cannot prove) to be victims of trafficking into the National Referral Mechanism via the IRC's designated Competent Authority. The Competent Authority should, in turn, routinely liaise with staff in these matters.

The identification of emerging vulnerabilities among the IRC's population is welcome. It should be noted that survivors of torture, CIDT and trafficking who do not self-identify on arrival may do so later. Preconceptions about early/late disclosure (particularly in detention settings) and their relationship to "credibility" should be recognised and avoided.

Section 9 states the expectation that "*[d]etention of people who may be at particular risk of harm is only maintained in very exceptional circumstances, and the reasons for maintaining detention are clearly documented and explained to the detainee*." HBF also welcomes section 55, which says that "*[d]etainees who have specific vulnerabilities, such as a history of torture or trauma, that indicate detention would be harmful, receive a prompt, comprehensive assessment from suitably competent health professionals which clearly states the impact of detention on their wellbeing".* However, these expectations make no mention of the Home Office's Adults at Risk policy and the fact that (as above) even where it is accepted by the Home Office that a detainee is an adult at risk, this is (in our experience) frequently deemed by the Home Office to be outweighed under the Adults at Risk policy by immigration/compliance factors.

In these circumstances HBF welcomes the expectation that "*[a]ll [the impact of detention on the detainee] reports are comprehensive and provide an assessment of the impact of detention on the detainee."* The expectation should include an element to provide a prognosis and a timetable for review of such reports. It may be that survivors of torture and CIDT and victims of trafficking who are identified at some stage but for whom detention is maintained do not show signs of the impact of detention upon them when assessed, but as Mary Boswell points out, the literature shows that they are more likely to be affected by prolonged detention and this should be considered and recognised in assessments.

We welcome the expectation that "*[t]he Home Office takes full account of the information provided when reviewing the decision to detain.*" In HBF's experience this is often not the case. We recommend that the expectations include a requirement that IRC staff - and healthcare staff in particular - respond to Home Office reviews and that merely filing the review (and in our experience such reviews are often not filed with the healthcare notes) may not be an adequate action where detention is maintained in the face of a Rule 35 (1) and/or (2) and/or (3) report.
The above would also apply to section 8: "*Processes are in place to identify women who may have specific vulnerabilities to harm in detention, and to share information about risk*" under the heading "*2. Centres for Adult Women*".

Mental Health
Section 58 refers to the prompt identification of persons with mental health problems. HBF recommends that the link between trauma and mental health be properly established in this section as identified by Mary Boswell.
HBF welcomes the expectations that "*[p]atients with severe and enduring mental illness are supported within the Care Programme Approach and where clinically indicated, release to treatment in the community is arranged expeditiously"* and *"[p]atients with serious and enduring mental health problems who require treatment under the Mental Health Act are assessed and transferred promptly."*

The efficacy or otherwise of treatment of patients with mental illness (whether or not severe and enduring) in IRCs is an issue outside the remit of HBF. However, as above, there is an association between trauma and mental illness. HBF is concerned that the detention setting is likely to worsen pre-existing mental illness and that (as the Royal College of Psychiatrists has pointed out)[1] - the IRC setting is inappropriate for the treatment of mental illness. Detainees with serious mental illness may lack capacity to consent to treatment and may also lack capacity to challenge their detention and/or to participate meaningfully in their immigration case. As recommended above, the expectations on mental health generally

[1] Position Statement on Detention of People with Mental Disorders in Immigration Removal Centres, https://www.rcpsych.ac.uk/pdf/Satisfactory%20Treatment%20in%20Detention%20document%20December%202015%20edit.pdf

and in particular on the mental health of traumatised individuals should include reference to the impact of continued detention on the ability to access mental health treatment and on mental health prognosis.

Women

In Section 6, HBF welcomes the expectation that "[i]*nduction informs women of sources of support such as the multi-faith team, peer support workers and welfare staff, and enables them to meet them. This includes information for women who are pregnant, or* ***women who have been trafficked and/or experienced sexual or gender-based violence****" (emphasis added).* HBF recommends that this expectation be elaborated upon: in broad terms, what information should be supplied and how will it be delivered?

Section 7 makes reference to "*… a joint local safeguarding strategy that recognises risks of harm to women arising from, for example: health and/or social support needs; past or possible future experience of torture, female genital mutilation, trafficking or trauma, including sexual or gender-based abuse …".* HBF welcomes this expectation, but as above, would recommend that external expertise be represented in the preparation of the strategy and on the "*multidisciplinary committee*" which is expected to provide *"effective oversight and quality assurance of safeguarding practice, policies and procedures."*

Sections 10 and 11 of the expectations on women in detention are welcome. However, in the experience of HBF, much of what is said here should be restated in relation to men. In respect of section 10, in our experience human trafficking of men for exploitation of all kinds is a very under-reported phenomenon and, by focussing recommendations on women, there is a real risk that this ignorance is reinforced. Similarly, for example, section 11 should be replicated with regards to, for example, gay men.

LGBT detainees

HBF notes with concern that expectations in respect of LGBT detainees are limited to welfare matters at sections 45 and 46. IN HBF's experience, LGBT detainees are more likely to be victims of trauma than others. The enhanced and overlapping vulnerability of LGBT detainees should be met through specific expectations as is successfully achieved elsewhere in the document for women.

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