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SUBMISSION TO THE 2017 STEPHEN SHAW REVIEW OF WELFARE IN **DETENTION OF VULNERABLE PERSONS**

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PART I

1. Who we are

The Helen Bamber Foundation is a UK registered human rights charity. Its remit includes survivors of torture, cruel, inhuman or degrading treatment (CIDT), human trafficking, slavery, war, and interpersonal violence, including domestic, gender or sexuality-based violence. HBF delivers a specialist Model of Integrated Care, which deals with the complex needs of its clients as a result of trauma suffered. HBF is known for its expertise in producing medico-legal evidence in accordance with the 'Istanbul Protocol: The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.' 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 and Courts and Tribunal Service as the foremost respected body in the field related to extreme human cruelty.

2. Executive Summary

The focus of this submission is the effect of the Adults at Risk Policy on the client base of the Helen Bamber Foundation (HBF). We collated data from a sample of referrals sent to us for immigration detainees during the period September 2016 and June 2017. This provides an illustration for our concerns. Upon analysing data collected during the ten-month period, the findings reveal that detention, often for lengthy periods, is still being maintained by the Home Office in the cases of vulnerable adults who qualify under the Adults at Risk Policy. There is a lack of transparency in the Adults at Risk Policy in the assessment and treatment of evidence which document that a person held in detention is at risk and that continued detention is likely to cause further harm. This means that the introduction of the Adults at Risk policy has failed to either prevent or reduce the detention of vulnerable people in UK Immigration Removal Centres (IRCs). We are concerned that those who fall within the Foundation's remit are being held in detention on the basis of "immigration factors" assessed as outweighing our clients' identified and accepted vulnerabilities. It is clear that the Adults at Risk policy is not acting as a sufficient safeguard. As a result despite being assessed as an Adult at Risk under the Policy, our clients' are continuing to be detained.

PART II

3. Recommendations

For an improved system overall:

1. A 'presumption of vulnerability' should be established, so that the onus is upon the Home Office to demonstrate the absence of a risk of harm for each detainee.
2. There should be a review of all related secondary legislation, including the Detention Centre Rules, most specifically Rule 35, 10, (2) & (3) to create a system that is 'fit for purpose'.

Meanwhile under the current system:

3. There should be published guidance and training in order to bring transparency to the current exercise of weighing specific 'immigration factors' against the vulnerability of a detainee.
4. Assessment of vulnerability of a person should be 'fit for purpose' and methods of assessment agreed with partners/stakeholders and experts in the sector.
5. A full review should be commissioned to examine the work of the Safeguarding Team, including an independent audit of its output to date. This should consider every case in which a detainee has been identified as vulnerable and then released, as well as those considered under the Adults at Risk Policy whose detention is maintained.
6. In its current format Rule 35 is not fit for purpose and should be replaced by a vulnerability-focused assessment. The Rule 35 process should be entirely reviewed with the objective of reform.

With regard to detainees who are potential victims of trafficking HBF supports the recommendations in the recent report by Detention Action's recent report, '*Trafficked into detention: How victims of trafficking are missed in detention*' (November 2017):

7. More effective screening should ensure that potential victims of trafficking are not detained, and instead are given support and advice;
8. A referral to the NRM should trigger immediate release from detention, since it is only made when there are indicators of trafficking;
9. Also, that full consultation should be carried out with the specialist trafficking sector and the adoption in detention of the Trafficking Survivor Care Standards (Human Trafficking Foundation) which has now been endorsed for incorporation into all victim-care contracts in the UK.

4. Introduction

Following Shaw Review I (January 2016) HBF continues to be concerned that people who are highly vulnerable adults at risk, and who potentially fall within the remit of our client base continue to be held in immigration detention despite the safeguarding measure of the Adults At Risk Policy. This is in spite of the clear conclusions and recommendations of Shaw Review I and the Home Office's stated intention to reduce the detention of people identified as vulnerable prior to removal, and restrict the duration of detention.

Since the suspension of Detained Fast Track (DFT) in 2015, scrutiny of the detention of vulnerable people has increased. However, safeguards within detention have effectively decreased, despite additional parliamentary reports, debates, Home Office assurances and litigation.

HBF regularly receives and considers referrals from the legal representatives of detainees who fall within the remit of its client base. Many of the detainees who are referred to us have physical conditions or injuries and/or mental health diagnoses or symptoms which are documented, either in the IRC or prior to their detention. For example there is a high incidence in HBF referrals of: post-traumatic stress disorder (PTSD), anxiety and depressive disorders, suicidal ideation and self-harming behaviours and psychotic illness. Even where there is no formal diagnosis due to lack of prior clinical assessment, in many cases that we receive, sufficient mental health indicators show that such conditions are likely to exist.

In HBF's experience individuals' vulnerabilities, even when known, are routinely disregarded under the Adults at Risk Policy because they are considered to be and 'outweighed' by immigration factors. However these 'immigration factors' do not constitute the '*very exceptional circumstances*' which were previously required by Chapter 55 of the Enforcement Instructions and Guidance (EIG) to justify detention. As the Shaw Panel is aware, the EIG was replaced by the Adults at Risk Policy in September 2016, with the intention that the policy served as a stronger safeguard.

The Adults at Risk policy relies on two mechanisms to identify vulnerability:

- a. *The Safeguarding team* – however our understanding of this role is that it does not have the authority *prevent* detention;
- b. *The Rule 35 process* – however, in HBF's experience this is designed to answer specific questions regarding history of torture or CIDT, suicide risk and potential harm from detention, but **not** necessarily to identify vulnerability.

The Adults at Risk policy is fundamentally flawed in two ways. First it equates the perceived *strength* of evidence of vulnerability, with the individual detainee's *degree* of vulnerability, therefore denying fair consideration to the many adults at risk in IRCs who are unable to obtain evidence of vulnerability. Secondly, it allows "immigration factors" to disproportionately outweigh any vulnerability factors, therefore underestimating the significant impact of detention upon vulnerable people and abiding by the intended practice of the Adults at Risk policy.

5. Background to HBF client referrals from IRCs

By the end of 2017 HBF expects to have received approximately 180 referrals from detention. We are concerned that despite a drop in HBF client referrals since 2015 (884 referrals), the number of cases referred to HBF from IRCs remains high.

From an HBF study of collated data from referrals (detailed below), we are concerned that the drop in referrals from 2015 does not indicate that fewer people are being detained, but rather that fewer detainees who may be vulnerable are being referred to HBF since the Adults at Risk policy came into force. We believe this is due to the removal of the concession, following the Adults at Risk policy coming into force that underpinned the HBF's and Freedom from Torture's essential safeguarding role. This concession was that once a detainee was provided by a letter of concern from the Foundations, following assessment of their documents and circumstances, they would usually be released. Unfortunately, without being able to obtain an independent medico-legal report, it is extremely difficult for detainees to obtain release on the grounds that they are a victim of torture or ill-treatment. Rule 35 reports rarely result in release on that basis so they are not operating as a sufficient safeguard. The Adults at Risk policy sets out three levels of evidence that are to be considered in assessing whether a person's detention should be maintained:

Under the Adults at Risk Policy, evidence documenting vulnerability is assessed at three levels:

- Level 1 is a self-declaration of an adult being at risk and is afforded limited weight;
- Level 2 is professional evidence which indicates that an adult is at risk and is afforded greater weight; and
- Level 3 is professional evidence stating that the individual is at risk and that a period of detention would be likely to cause harm, such evidence is afforded significant weight.

It is not clear from the Policy's guidance however, how these levels are determined for each case considered, specifically why HBF's evidence is deemed to be Level 2, and what effect that has on the consideration for release. It is particularly helpful to understand how a combination of evidence is considered, and how evidence that arrives cumulatively over time for a detainee, is treated by the Home Office. We believe the methods of assessment should be transparent and therefore they should be published to ensure a fair system that is truly 'fit for purpose'

In HBF's experience, even in cases where it is accepted by the Home Office that a detainee is a torture survivor and therefore qualifies as an adult at risk, detention is often maintained on the basis that 'immigration factors' outweigh the detainee's identified and accepted vulnerability. These are set out at section 4.5 below. In the long term collective experience of HBF's multi-disciplinary team, most of these immigration factors may be related to traumatic or vulnerable histories and therefore should not be considered to 'outweigh' vulnerability factors.

HBF's data shows that the majority of highly vulnerable people who are referred to us, are provided with HBF Concern letters and should therefore be identified as Adults at Risk under the policy, can only secure Temporary Admission with judicial intervention in the form of a bail hearing or a claim for judicial review. This is costly in terms of its impact

upon individual people held in detention and also the unnecessary waste and expense in terms of resources from the public purse.

Details of the HBF Study

5.1. Provision of HBF Concern Letters for Adults at Risk

Each case that is referred to HBF is fully considered at our multi-disciplinary team meeting and HBF Concern letters can only be sent to solicitors for those cases which fit HBF's remit. All HBF Concern letters are case specific and highlight the relevant information to be taken into consideration for each case. HBF Concern letters are provided in cases where there appears to be a prima facie case of torture or other cruel, inhuman or degrading treatment, including in the cases of human trafficking. In each case the detainee will have reported, or been identified as suffering, psychological and/or physical health symptoms.

A template for HBF Concern letter is provided in full at Appendix 4, however it is useful to explain here that each letter states that in HBF's clinical opinion the person concerned is an adult at risk, for whom continued detention is likely to cause harm. The Concern letter also state that the detainee concerned should be provided with a medico-legal report. Following the recommendations from Shaw Review I, each letter explicitly refers to the findings of Shaw Review and to the 'Asylum Policy Instruction on Medico Legal Reports which are authored by the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service.'

For each case that is referred to HBF, the following documents are collated and considered:

- HBF's online referral form data;
- Screening interview;
- Asylum Interview;
- Rule 35 report (where applicable);
- Home Office response to the Rule 35 report;
- Adult at Risk decision (where not contained in the Rule 35 response); and
- Healthcare records (where available).

5.2. Rationale for data study by HBF, September 2016 to June 2017:

We collated data from a sample of referrals sent to us for immigration detainees during the period September 2016 and June 2017. This helps to provide an illustration for our concerns.

During this period, HBF received **118** referrals for people who were held in UK IRCs. These were each considered by our multi-disciplinary team and HBF provided **44** HBF Concern Letters.

In order to ascertain the impact of these letters, HBF contacted the legal representatives in each case, in order to find out whether detainees had been subsequently released from detention. Responses were received in **31** of the **44** cases for which HBF Concern letters had been provided. The findings reveal that detention, often for lengthy periods, is still being maintained by the Home Office in the cases of vulnerable adults who qualify under the Adults at Risk Policy. This means that the introduction of the Adults at Risk policy has failed to either prevent or reduce the detention of vulnerable people in IRCs.

6. Findings from the 31 cases on which HBF Concern letters were provided and follow-up information was obtained:

6.1. Release of detainees

- Of the 31 cases for which we received follow-up information, **19** (61%) detainees were released.
- Of the 19 who were released, **14** were refused their subsequent application for temporary admission further to an application which was based upon the HBF concern letter together with Rule 35 reports and/or other evidence submitted and therefore remained in detention until judicial intervention (in the form of an application for bail or judicial review) resulted in their release.
- Of these 14 detainees, **4** (28.5%) were released due to a Judicial Review was lodged, **6** (43%) due to a bail hearing and the basis of the release of the remaining **4** (28.5%) is unknown.
- Of the **9** detainees who had been provided with a Concern Letter but not released, **6** had been remained in detention following the refusal of their temporary admission applications with no further legal intervention pursued; in the remaining **3** cases – **1** was deported, **1** was hospitalised and there was no information available in the final case.

6.2. Duration of detention

- The range of duration of detention across all of the 31 cases was **2.5** months to **9.6** months.
- The average duration of detention for the 31 cases was **120** days.
- The average number of days from the date of transfer into detention to a Rule 35 Report being provided was **43** days.
- Detainees spent an average of **45** days spent in detention after an HBF Concern letter was provided.

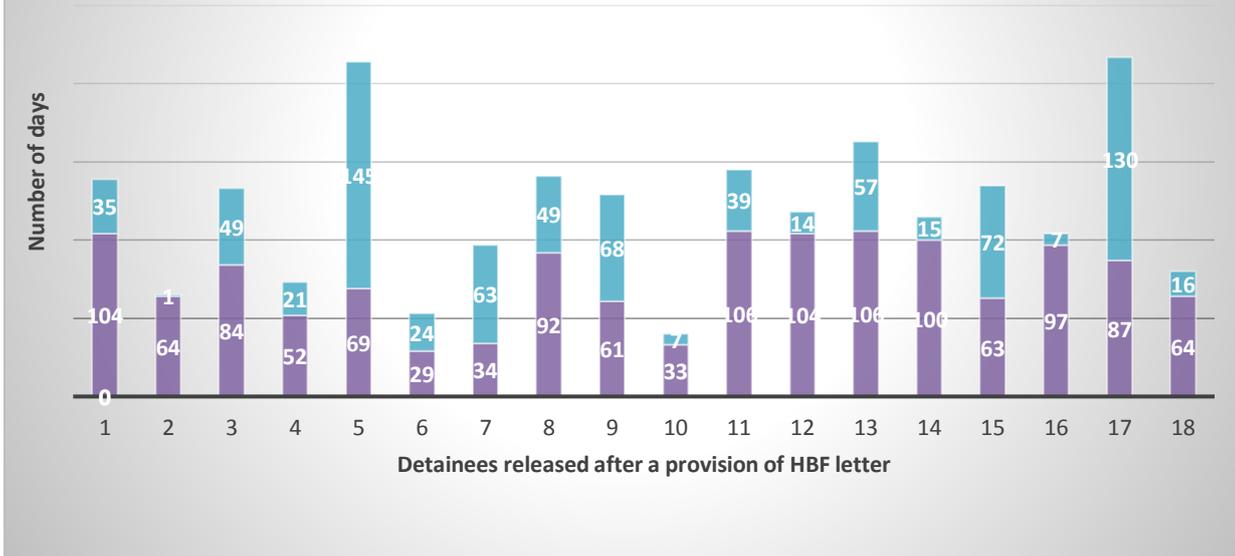
Case examples, at Appendix 2, have been provided from the data obtained to demonstrate the levels of vulnerability of adults who were provided with an HBF Concern letter but for whom detention was nonetheless maintained.

6.3. Length of time between provision of letter of concern and release from detention

In the graph below, the purple bar shows the number of days detainees spent in detention prior to the HBF concern letter being provided. The light blue bars show the number of days the detainee spent in the IRC after a Concern letter was issued (bearing in mind that prior to introduction of the Adults at Risk policy, the letter would ordinarily have resulted in release).

HBF's consideration of cases continued to result in the release of vulnerable detainees until the Adults at Risk Policy came into force even though the DFT had been suspended in July 2015. The removal of the concession upon the introduction of the Adults at Risk Policy has **removed a key safeguard for vulnerable people** in detention. The graph below shows the total number of days that the detainees spent in detention centres before they were released, in 18 cases out of 31 cases analysed.

Graph showing number of days in detention before and after provision of Helen Bamber Foundation Letter of Concern



The data shows that in cases where the relevant information was available, Rule 35s were also not provided within a reasonable timeframe to a person being detained who had disclosed accounts of traumatic experiences.

6.4. Assessment of independent medical evidence (Levels 2 and 3) under the Policy

In refusing Temporary Admission in cases where an HBF Concern letter has been provided, the Home Office invariably states that detention is being maintained because of immigration factors (see below). HBF’s Concern letters are considered by the Home Office to constitute Level 2 evidence. This is despite HBF’s Concern letter expressing that the individual is at risk and that continued detention is “likely to cause harm”.

It is not clear from the Policy why detention is maintained in the face of Level 2 evidence and how Level 3 evidence would be treated differently. Furthermore, there is a lack of transparency as to how evidence is assessed at each level including the balancing exercise conducted and the effect of cumulative evidence. For example, in the case examples at Appendix 2, there existed an HBF Concern letter **and** a Rule 35 doctor’s report both of which are considered as Level 2 evidence. It appears from the cases we have considered that Rule 35 reports and HBF Concern letters are considered and discounted on a mutually exclusive basis.

6.5. Immigration factors used to outweigh vulnerability despite the individual being accepted as an adult at risk (Rule 35 responses)

In addition to the delay in the provision of Rule 35 reports to individuals (see above), HBF have noticed from the sample of cases considered that the Home Office have been increasingly using ‘immigration factors’ to outweigh an

individual's vulnerability in order to maintain detention *despite* accepting that the detainee is vulnerable and thus an adult at risk.

We considered 31 Rule 35 responses and set out below the percentage of cases in which a specific immigration factor was used to outweigh an individual's vulnerability and therefore maintain detention. In most cases where detention was maintained despite the individual being accepted as an adult at risk, **several** reasons were cited (numbers in round parenthesis relate to the number of cases).

• Failed to claim asylum before detention	77% (27)
• No 'serious' diagnosis recorded	71% (25)
• Overstayer	54% (19)
• No close ties	54% (19)
• Failure to report	40% (14)
• Fraudulent travel document	37% (13)
• Illegal working	29% (10)
• Previous criminal offences	20% (7)
• Trafficking claim refused	9% (3)
• Absconding risk	3% (1)

The above figures show that, 'failure to claim asylum prior to detention' was used as the **primary reason** to maintain detention in 27 of the 35 cases analysed. Similarly '*[n]o serious diagnosis of physical/mental condition to inhibit your ability to cope within the detained environment during the short duration necessary to affect your removal*' was used as a reason in 25 cases, and we do not consider that this relates to an immigration factor.

In HBF's clinical perspective and in our experience there are many reasons why victims of torture and/or CIDT may not claim asylum immediately on arrival, or only do so when faced with imminent removal. Factors such as a poor immigration history or non-compliance may be indicators of significant vulnerability and should not be presumed to reflect wilful "immigration control abuse." A poor immigration history (over-staying duration of visa) or immigration offences (for example, entering the UK with a false passport) cannot be a basis for assuming that a person does not have a genuine claim for international protection. There are many reasons why a person may feel unable to come forward and give an account to the UK authorities; this is well documented. For further information see OSCE 2013 Report '*Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment*' (pg 66) and research by Bogner, D., Herlihy, J., Brewin, C.R. (2007) which indicates that PTSD symptoms and high feelings of shame often

contribute to so called ‘late-disclosure’ of abuse and this should not be considered an attempt to mislead or frustrate immigration procedures.

Any blanket assumption about the supposed credibility/mendacity of an asylum seeker’s behaviour is inappropriate and must not be allowed to negate consideration of an individual who has been accepted as an adult at risk. We provide case examples in Appendix 2 in support of the above considerations, and in particular where immigration factors have been found to outweigh an individual’s (documented) vulnerability.

6.6. Consideration of Trafficking Cases in Immigration Detention

We find that the identification and protection of potential victims of trafficking in accordance with the UK’s obligations under the Council of Europe Convention on Action Against Trafficking in Human Beings, is undermined by the potential victim’s detention. The experience of immigration detention:

- compounds victims’ psychological and physical traumatising;
- constitutes an anti-therapeutic setting for exploration of the claim;
- affects the ability of the victim to fully disclose their trafficking history;
- obstructs a full investigation which could potentially assist the police; and
- reinforces the view of victims that public officials are to be feared and avoided.

In HBF’s experience, detention is used frequently, both in cases where there has been a failure to identify a potential victim at their asylum screening interview, and also in cases where a potential victim has been identified, but is nonetheless routed into detention.

We find that in practice, in order to qualify under the criteria for the Adults at Risk Policy, a potential victim of trafficking must be identified by the UK Competent Authority issuing a positive Reasonable Grounds decision. The qualification in the former EIG, which required ‘*exceptional circumstances*’ to justify detention for potential victims of trafficking is no longer available to act as a safeguard.

HBF supports the recommendation in Detention Action’s recent report, ‘*Trafficked into detention: How victims of trafficking are missed in detention*’ (November 2017), that effective screening should ensure that potential victims of trafficking are not detained, and instead that they are given support and advice. Also that referral to the NRM by itself, should trigger immediate release from detention, since this referral is only made when there are indicators of trafficking present.

Potential victims of trafficking (Modern Slavery) are particularly vulnerable persons, but they are required to meet the additional threshold of obtaining a Reasonable Grounds decision under the National Referral Mechanism in order to evidence their vulnerability. HBF is extremely concerned that victims of trafficking who are undergoing NRM procedures, may continue to be held in detention and therefore have to pursue their trafficking matter through the NRM within the confinement of the detention setting, and under its associated procedures and timescales. This is inappropriate in all cases and a detention setting inhibits any hope of ‘recovery and reflection’ for victims of trafficking.

The use of detention for any potential victims of trafficking represents a failure to appropriately identify and protect victims of trafficking. From the data that HBF collected, nearly 10% of case referrals from IRCs had indicators of trafficking. In relation to the 'weighing' of 'immigration factors' against 'vulnerability', it is important to understand that for trafficking cases, factors such as use of a false document, a 'failure' to report to the immigration authorities and previous criminal offences are, in HBF's collective experience, often indicative of a potential trafficking history.

The Victims of Modern Slavery Competent Authority Guidance states the following:

*"If the potential victim of trafficking or modern slavery is in immigration detention they will normally need to be released on TA or TR by the Home Office **unless in the particular circumstances, their detention can be justified on grounds of public order.***

We believe that the grounds of public order are of far higher significance than the 'immigration factors' which are used to justify the transfer into IRCs and the continuation of detention for potential victims of trafficking. Nonetheless immigration factors seem to be used disproportionately to 'outweigh' the vulnerability of detainees who are adults at risk.

As detailed above, detention has profound psychological effect on vulnerable individuals, including the exacerbation of existing trauma. This can, of course, affect their ability to cope with official interviews and procedures, including providing witness testimony to the police. Research has consistently shown that people who are detained under immigration powers experience more mental health problems than comparable groups who are not detained.¹

7. Conclusions

As a result of our data study, despite being assessed as an Adult at Risk under the Policy, and having been found to be vulnerable, HBF's clients' are nonetheless continuing to be held in detention in IRCs. This means the Policy is not an effective safeguard for vulnerable individuals who are detained, and therefore that the Policy is failing in its purpose: to strike a balance between protecting the individual and maintaining effective immigration control.

There is a lack of transparency in the assessment of the various levels of evidence under the Adults at Risk Policy. It is not clear how evidence is categorised within levels 1, 2 or 3 and there is no guidance published or provided as to how cumulative evidence is treated, in particular where there is both an HBF Concern letter as well as a Rule 35 report.

It is clear that despite vulnerable detainees being identified in accordance with the Adults at Risk Policy, the Home Office continues to rely disproportionately upon 'immigration factors' which are considered to outweigh evidenced vulnerability. The consideration of "immigration factors" (as shown at 5.5) indicates that in most cases the immigration factors which are identified do not outweigh the vulnerability of individual detainees and in fact may be an indicator

¹ Robjant K, Hassan R, Katona C. 'Mental health implications of detaining asylum seekers: systematic review.' *The British Journal of Psychiatry* Mar 2009, 194 (4) 306-312.

of vulnerability and/or human trafficking. It is not clear what the item '*no serious diagnosis*' means nor why it is considered to be an 'immigration factor'.

It is clear from HBF's considerations above that many of the recommendations from Shaw's Review of January 2016 have not been implemented. Those that have (i.e. the Gatekeeper and Safeguarding team) and the Adults at Risk policy, lack transparency as to how assessments are carried out and are restricted in the evidence considered (for example reviews of an individual's detention is limited to Home Office papers).

APPENDIX 1

BACKGROUND

In July 2015, as a result of the litigation known as “*The Helen Bamber Cases*” the Detained Fast Track (DFT) was suspended. HBF’s data at that time showed that 92% of referrals from detention were cases of individuals who were identified as vulnerable, where the safeguards then in place (the screening interview, Rule 35 and asylum interview) were ineffective leading to detention being maintained despite Home Office’s policies and guidelines that there were no exceptional circumstances which warranted detention. In those cases, the only effective safeguard was the long-standing concession granted by the Home Office that vulnerable detainees identified in letters of concern by Freedom from Torture (FFT) or HBF as falling within their remit would be released.

In a response to Stephen Shaw’s report in 2016 by The Minister of State for Immigration, James Brokenshire, stated:

“Depriving someone of their liberty will always be subject to careful consideration and scrutiny, and will take account of individual circumstances, it is vital that the system is not only efficient and effective but also treats those within it with dignity and respect, and take account of the *vulnerability* of those detained”.²

The suspension of the DFT led to the Home Office terminating the concession which led to release where an individual was identified as vulnerable and subject to HBF or FFT’s interventions. Notwithstanding the termination of the concession in HBF’s experience, where we highlighted vulnerabilities as a result of torture or CIDT, detainees were usually released until September 2016 when the Adults at Risk Policy came into force. The safeguard previously recognised by the courts as being provided by the Foundations (HBF and FFT) now no longer results in release by the Home Office without more.

Prior to September 2016 detention referrals to HBF rose more than tenfold from 2012 (83) to 2015 (884), we consider as a result of the lack of safeguards identified in litigation and the findings of the Shaw Review.

APPENDIX 2

CASE 1:

This person was detained on 3rd April 2017. The Rule 35 report is dated 4th May 2017 and his screening interview took place on 22nd May 2017. He has been a homosexual since 2001 and a cross-dresser since 2002. He was attacked in 2004 by the Nigerian Army, who mocked him and held him at gun point while forcing him to strip naked. He was repeatedly tortured and left for dead on the side of the road. A similar occurrence happened a couple of years later, and he was stabbed with a fork in the right shoulder. In 2007, a neighbour smashed glass onto his right wrist and forced the glass into his wrist. His Rule 35 report shows multiple scars, and a referral to the Mental Health Team at Morton Hall due to the identification of mental health issues. His body map shows scars all over his body, consistent with torture. He also stated in his Rule 35 report that being in detention is making him feel ‘depressed, down and causing him to not be able to sleep properly’. The Home Office refused Temporary Admission, and he was only released after 4.5 months when his asylum appeal was allowed.

² <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470>

CASE 2:

This person was detained on 25th December 2016. His Rule 35 report was only completed on 4th June 2017, 5.3 months after his date of detention. The screening interview only took place on 29th March 2017, three months after the date of detention. The screening interview is extremely simplistic, with only vague questions being asked by the interviewer. The asylum interview, which took place on 21st April 2017 shows clear signs of trafficking and possible torture. It was at this stage that this individual should have been referred for a Rule 35 report. However, the Rule 35 report was carried out two months *after* the asylum interview. The Rule 35 report outlines that a gang came to his house and cut his face and abdomen. This individual was then imprisoned in the house and forced to cultivate cannabis for approximately two months; he was too scared to inform the police. He was tortured whenever he tried to escape, ended up with scars all over his body, including a cruciform scar on his abdomen. The doctor in his Rule 35 detailed “[t]his account makes me concerned that the individual was a victim of slavery”. The individual had still not released (at time of writing), he has been in detention for 8.2 months.

CASE 3:

This person was detained on 12th November 2016, a Rule 35 report was only completed three months later. There are clear indications in the Rule 35 that this person is a victim of torture and of sex trafficking. She was raised by her auntie and her boyfriend in a brothel in China, where she was regularly beaten from the age of five and from the age of seven or eight her auntie’s boyfriend started forcing her to have sex with him. She was forced to work in the brothel and if she refused she was beaten. She was sometimes beaten with a broomstick, sometimes a chair and sometimes burnt with a cigarette. On one occasion, the boyfriend burnt her face with his cigarette. The body map demonstrates cigarette burns, lacerations and scars. The doctor also identified some mental health issues, including poor sleep and intrusive thoughts, and also referred her to the Mental Health Team. She is still in detention, and has been detained for over 12 months.

CASE 4:

This individual was detained on 3rd January 2017, and a Rule 35 report was undertaken on 20th January 2017. He states in his Rule 35 that he was hanged with his mother in Nigeria, and ran away to Libya at the age of 15. He spent eight years in Libya, working as a brick layer and was raped by the Chadians who lived there and was also forced to have sex with other men for money. He was beaten and cut with a blade whenever he refused to sleep with a man. He has pigmented strangulation scars on both sides of his neck, a scar on his lower arm from being cut with a blade and a pigmented scar on the back of his right knee from being stabbed with a knife. He also has several other scars and cigarette burns on his legs. He left Libya because he was forced into prostitution. He reports poor memory, poor sleep with low mood and low confidence, he states he feels “isolated” with no friends in the detention centre. He states that ‘he feels more sad since he has been in detention in Brook House with poor appetite and poor sleep’. The IRC doctor also referred the detainee to the Mental Health Team. He was refused Temporary Admission from the Home Office and was at last released on bail, after being in detention for seven months. His Rule 35 response from the Home Office states that **“[t]here is no evidence to suggest however that your health needs cannot be managed whilst you**

remain in detention without any significant detriment to your wellbeing". However, his Rule 35 stated that he felt increasingly depressed being in detention.

CASE 7:

This individual was transported from London to Leicester for the purposes of forced work. He was slapped/kicked/burnt on multiple occasions and was locked in a room for two years. The Home Office refused him Temporary Admission submission, and he was only released after a Judicial Review was lodged by his solicitor. This meant he was detained for 5.4 months.

APPENDIX 3 *Trafficking Case example - Immigration Detention*

In a recent case (March 2017), indicators of trafficking and abuse from an early age prior to being trafficked to the UK were apparent. A marked deterioration in mental health and suicidal ideation was recorded. A Rule 35 report from a detention centre doctor noted extensive scarring that was in keeping with a history of torture. A negative reasonable grounds decision was issued prior to the Rule 35 report, and turned on the credibility of the applicant as the trafficking claim was not raised when first questioned in the UK. Threats by the trafficker not to tell anyone of the exploitation at the time of initial questioning, were not given any weight. Indicators existed that the individual had been re-trafficked after coming into contact with the UK authorities initially.

Detention had been maintained for four months on the following basis (quotes in present tense as in the original):

- entry into the UK occurred *"in a clandestine manner"* (back of a lorry);
- *"you have no close ties in the UK to ensure your compliance"* (indicators were present that the individual had been trafficked);
- *"given the clear evidence of non-compliance with immigration rules, it is considered that you are highly unlikely to be removable unless detained"* (indicators of re-exploitation in the UK were not considered against the failure to report previously);
- *"Whilst it is noted that you have encountered physical torture and are suffering poor mental health as a result of this, the doctor has not diagnosed any serious physical or mental health conditions that are likely to worsen within the detained environment during the duration necessary to affect your removal. ("Together the literature, which spans a 25-year period and a number of legal systems, tells a consistent story of the harmful effects of detention on mental health." (Shaw Review, page 306);*
- *"when balancing your vulnerability against your negative immigration factors, the negative factors outweigh the risks"; and*
- *You are removable on an emergency travel document which can be arranged while your asylum process is being concluding, depending on available flights and escorts your removal is likely to be effected within 14 weeks".*

At the time the above Home Office decision was made, the individual had been in immigration detention under the Adults at Risk Policy for four months.

APPENDIX 4

Please see attached PDF enclosing our template HBF Concern Letter.