

Briefing: Immigration Bill Lords' amendment 85 'Guidance on the Detention of Vulnerable Persons' Adults at Risk

Freedom from Torture is the only UK-based human rights organisation dedicated to the treatment and rehabilitation of torture survivors. We do this by offering services across England and Scotland to around 1000 torture survivors a year including psychological and physical therapies, forensic documentation of torture, legal and welfare advice, and creative projects.

Questions to ask the Minister

- **Can the Minister give an assurance that any new policy will increase and not reduce the current levels of protection available to survivors of torture and other vulnerable groups?**
- **Can the Minister confirm that he will preserve the safeguard requiring release from detained asylum processes of those accepted for assessment by Freedom from Torture's medico-legal report service?**
- **Will the Minister confirm that he will consult with Freedom from Torture and other relevant organisations before and during the development of the 'Adults at Risk' policy?**

Key points

- **Freedom from Torture has concerns about the proposed 'Adults at Risk' policy published alongside the Clause that is now Lords' Amendment 85.**
- **No matter how well-intentioned, the proposed 'Adults at Risk' policy may actually weaken the principles in current guidance and reduce protection for vulnerable groups. This creates greater risk that torture survivors will be held in detention and harmed as a result, which would be at odds with both the spirit and specific findings of the Shaw Review.**
- **Freedom from Torture is not mentioned in the draft 'Adults at Risk' policy but it is vital that we and other relevant organisations including the Helen Bamber Foundation are consulted in the development of this policy and that the safeguard requiring release of those accepted for assessment by our medico-legal report service is preserved.**

Impact of detention on survivors of torture

Clinically, it is well understood that detention *per se* is harmful to torture survivors. Most will have been tortured in detention settings and will experience re-traumatisation, including powerful intrusive recall of torture experiences and a deterioration of pre-existing trauma symptoms, if detained subsequently. Detention is therefore unsuitable for vulnerable people because it adversely affects their mental health and is likely to cause further harm. Despite this evidence, significant numbers of torture survivors are detained. In January to June 2015 alone, our medico-legal report service received 202 referrals for suspected torture survivors in the Detained Fast Track (DFT) with a further 32 suspected survivors of torture referred to us in the remainder of 2015 after DFT was suspended. Clients in therapy with Freedom from Torture are also regularly detained with 17 of our treatment clients detained in 2015.

Existing Home Office policy and practice

At a policy level, the Home Office recognises that detention is harmful for torture survivors, as indicated by various current rules against the detention of torture survivors except in ‘very exceptional circumstances’¹. One of the most important safeguards, established in 2006, requires release from the DFT of those successfully referred to Freedom from Torture (and the Helen Bamber Foundation) for assessment by our medico-legal report service. Since the suspension of the DFT, the Home Office has applied this safeguard to detainees in the Detained Asylum Casework process. It has also indicated, however, that it might scrap this safeguard despite the importance placed on it by the judiciary in the context of a long history of other safeguards operating with an “unacceptable risk of failure”.²

It is well understood that Rule 35 (3) of the Detention Centre Rules is chronically dysfunctional *in practice*. Ensuring its proper implementation has been an uphill battle for Freedom from Torture and other groups mainly because Home Office decision-makers refuse to accept the low evidential threshold it requires. Shaw recommended that it be replaced with a system involving forensic medical examiners but this would heighten the evidential threshold, almost certainly making it even harder to secure release of wrongly detained torture survivors. Against the backdrop of these proposals to make Rule 35 a harder hurdle to surmount, the safeguard involving our medico-legal report service will remain essential and it should form part of any new ‘Adults at Risk’ policy.

Concerns about proposed ‘Adults at Risk’ policy

Freedom from Torture is concerned that rather than initiating the increased protections recommended by the Shaw Review, this new policy could reduce the protection afforded to persons at particular risk because it appears to dispense with the ‘very exceptional circumstances’ test in favour of a balancing approach pivoting on an assumption that it is acceptable to prioritise the risk of absconding over the well-being of the detainee. The ‘Draft principles of the policy’ section states that: *‘An assessment will be made of whether compelling immigration considerations, starting with the imminence of removal, but also taking into account compliance history and likelihood of absconding, and risk to the public, outweigh the risk level, based on guidance provided to decision makers and safeguarding teams. Until the immigration considerations outweigh the ‘at risk’ factors, the individual should not be detained.’*

A poor immigration history such as being an over-stayer - following legal entry with a visa - or because of criminality involving immigration offences such as entering the UK with a false passport, cannot be a basis for assuming that a person does not have a genuine claim, including because of past torture. In our extensive clinical experience, there are many reasons why a torture survivor may not claim asylum immediately on arrival. For example, a torture survivor may avoid a process requiring them to describe their past traumatic experiences, because this may be re-traumatising, and they may also be distrustful of the authorities as a result of the abuse they suffered in their home country.

The Shaw review makes clear that safeguards for vulnerable people should be increased. It would be a tragic irony if the proposed ‘Adults at Risk’ policy does the opposite and instead reduces them. The proposed policy does not currently refer to the safeguard involving Freedom from Torture’s medico-legal report service; it is vital that this safeguard is preserved.

For further information, please contact:

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¹ See for example [section 55.10 of the Enforcement Instructions and Guidance](#) (‘EIG’)

² R (JM and Ors) v SSHD (CO/499/2015, CO/377/2015, CO/624/2015, CO/625/2015)