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Executive summary

May 2005

Fit to be detained?

Challenging the detention of asylum seekers
and migrants with health needs

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by Sarah Cutler

Based on the findings of a report
by Médecins Sans Frontières

Fit to be detained?

Asylum seekers and migrants with mental or physical health needs are particularly vulnerable if they are detained by the UK Immigration Service. Bail for Immigration Detainees (BID), a charity that provides free legal assistance to enable detainees to challenge their detention, is concerned that people with health needs are being detained for long periods, in contravention of stated policy, and that whilst detained their health needs are not met.

In April and May 2004, a general medical doctor employed by Médecins Sans Frontières -UK (MSF)¹ carried out free medical assessments of 13 adults and three children being detained under Immigration Act powers in the UK at the request of BID. The medical reports prepared by MSF following the visits were submitted to BID for use in applications for release on bail by an Adjudicator, or release on temporary admission (TA).

MSF were concerned about the health status of the individuals they medically examined, and the apparent lack of mechanisms in place to ensure that members of this vulnerable population are afforded the medical care and protection they need. In order to record these concerns, MSF wrote a report 'The health and medical needs of immigration detainees in the UK: MSF's experiences'. A copy of the MSF report is included as an Annex to BID's report.²

'Fit to be Detained? Challenging the detention of asylum seekers and migrants with health needs' describes BID's experiences of challenging the detention of those assessed by MSF. BID's report analyses what happened to the 16 detainees after MSF's medical assessment and draws conclusions from this work. It places the issue of the health of detainees in the broader context of recent developments in detention and asylum and immigration policy and makes recommendations for action.

- 1) MSF is an independent humanitarian medical aid agency committed to two objectives: providing medical aid wherever needed, regardless of race, religion, politics or gender and raising awareness of the plight of the people helped by MSF. See: <http://www.msf.org>
- 2) The report includes a summary of detainees visited, issues of concern and areas requiring follow up. The MSF report was published in November 2004 and was written by Judith Cook and Sally Hargreaves. The content is the sole responsibility of MSF, and is reproduced with their permission.

Profile of the detainees assessed by MSF

The 16 detainees had all claimed asylum in the UK. They were held at five Immigration Removal Centres, an Immigration Holding Centre, a Young Offenders Institution and two prisons. Ten adult men and three adult women were assessed over a ten-week period in 2004. Two of the adults were detained with their children. At the time the assessment was conducted, the majority of the detainees had been held in more than one centre for total periods ranging from 32 days to 2 years.

MSF's key findings

- **Mental health problems:** MSF was concerned about the mental health of all the adult detainees visited; mental health problems ranged from anxiety to features of depressive illness (11 of 13 detainees) and features of post-traumatic stress (9 of 13 detainees), to more serious conditions such as self-harm and suicide attempts. In particular MSF was concerned that the detainees did not have access to adequate mental health support.
- **Deteriorating health in detention (including children):** In all 16 cases, the MSF doctor felt that the health of the detainees had deteriorated in detention and that continued detention would be likely to result in further deterioration of mental health status in particular. The three children had all experienced deterioration in their health since being detained.
- **Disrupted treatment:** Prior to detention five of the adults had been receiving or were awaiting treatment in the community for mental health problems and this was disrupted by detention.
- **Failure to facilitate access to external secondary health services:** MSF found that the system was failing to ensure that those detainees whom required more than just a basic level of care had access to the same range and quality of health care as those in the community, as stipulated by the Detention Centre Rules. One detainee had been diagnosed with a symptomatic HIV infection and was being considered for anti-retroviral treatment at the time s/he was detained. MSF noted that despite an awareness of this detainee's condition, the detention health centre had not made a referral even after several months.
- **Unidentified health needs and lack of follow up:** The MSF doctor noted a variety of medical conditions among 12 of the 13 adult detainees that required attention. These included auditory hallucinations, a breast lump, a persistent cough possibly indicating TB, the need for an urgent referral back to a genito-urinary clinic and the need for a genito-urinary check for sexually transmitted infections post-rape. It was apparent from both medical notes and the description given by the individual detainee that health care staff were either not addressing these conditions or were unaware of the health need.

- **Detention of torture victims:** Seven individuals reported severe ill treatment prior to coming to the UK. Despite documentation of these experiences in four of the detainee's medical notes, there was no evidence that the detention health care team had followed through with appropriate offers of referral, care and support. In three of the cases, it was unclear whether health care staff had notified the appropriate management as required by Detention Centre Rules.
- **Continuity of care and incomplete medical notes:** MSF found a clear problem in terms of the follow up of care from the community to the detention centre, the handover between the different health staff within an individual facility, and between staff in different facilities when a detainee is moved. MSF stresses that this problem is compounded by the fact that medical notes often do not follow a detainee as they are moved between centres and medical notes prior to detention are rarely obtained. Detention centre staff could not provide MSF with a full set of medical records for any of the detainees visited.
- **Interpreting services:** Detainees reported that interpreting services were rarely offered, impeding their ability to communicate with detention health care staff.

MSF's conclusions

- **'Fitness to detain':** Existing Immigration and Nationality Directorate operational guidelines state that detention is only considered suitable in very exceptional circumstances for those 'suffering from serious medical conditions or the mentally ill: those where there is independent evidence that they have been tortured.' MSF found no systematic process in place to identify and release such individuals.
- **No system of regular review of detainee's health status:** MSF observed that initial health assessments of detainees were not carried out in all cases and that identified health concerns were not followed up in a systematic way. They noted that the system was failing to identify torture victims in the detention population, and that despite it being acknowledged by detention centre rules that health status deteriorates during prolonged detention, there was no system of regular review of detainee's health status in place. In these circumstances MSF were unclear as to how immigration staff acquire the evidence needed to ensure that torture victims, and the seriously or mentally ill are not detained.

Using the medical reports to challenge detention:

What happened after the assessments?

- Of the thirteen adult detainees assisted by BID and medically assessed by MSF, the majority (10) were not removed from the UK as a result of their detention, despite periods of detention ranging from 40 days to 410 days.
- In these 13 cases, BID was able to proceed with bail applications for ten detainees, plus their dependent children. Eight detainees had their medical reports submitted as evidence at a total of twelve hearings, and four detainees were granted bail. The medical evidence MSF documented did not appear to be the determining factor in any of the bail decisions. In the twelve hearings only one Adjudicator made significant reference to MSF's assessment. No other Adjudicator appeared to give any weight to MSF's findings.
- Six detainees were released on temporary admission (including one woman with two children). In four cases, release on TA followed as a direct result of representations made by BID. Four detainees were successfully bailed by BID. Three were removed from the UK straight from detention (including one adult with a child).
- The medical reports in all cases stated the opinion that continued detention would be likely to result in further deterioration of the individual detainees health. However, the period of time between medical assessment and release on bail or temporary admission ranged between five and 168 days; one detainee remained in detention for 14 days after assessment, five for between 30 and 60 days, and three for between 70 and 170 days.
- In three cases, there was no independent review of detention at any stage, despite lengths of detention of 52 days, 41 days, and 111 days. In five cases, BID made all the bail applications for that individual i.e. they were at no point able to exercise a bail application through a legal representative and so were reliant on free assistance from BID. Periods of time before first independent review of their detention by way of a bail application ranged from 66 days to 339 days.

BID's key findings

- **Long periods of detention:** Despite instructions that those with serious illness “are not normally considered suitable for detention”, such people are detained for long periods.
- **Inadequate internal review mechanisms:** Internal mechanisms for reviewing the necessity and appropriateness of maintaining detention do not appear to be effective in ensuring that ill detainees are released, even in cases where detention is exacerbating their condition and resulting in deteriorating mental or physical health.
- **Inadequate rules:** The rules (Detention Centre Rules and Operating Standards) are not effective in protecting the needs and rights of detainees, in particular the more vulnerable: women, children, age-dispute children, those with serious mental and/or physical health problems.
- **Little weight given to health factors:** The Immigration Service have stated that; “Evidence that a person has been a victim of torture, or has a history of physical or mental ill health, are clearly cited as negative factors influencing a decision to detain and would weigh against deciding to detain. There may, of course, be countervailing factors present in a case such as to justify detention.” It would appear that the ‘countervailing factors’ in these cases were given greater weight than the evidence of ill health. In some cases, even a medical assessment clearly stating that health would be likely to deteriorate further was not enough evidence to ‘weigh against’ maintaining detention.
- **Failure to employ alternatives to detention:** It appears that there is a presumption in favour of maintaining detention and a reluctance to actively consider alternatives to detention, such as reporting requirements, at an early stage. In BID's view, it is questionable whether asylum seekers and migrants who are dependent on medical treatment are likely to abscond if released from detention.
- **Restricted access to legal representation to challenge detention:** Detainees with health problems are struggling to access legal representation to challenge their detention. They are remaining in detention for long periods without their detention being independently reviewed.
- **Detention on arrival and where there is no history of non-compliance with immigration control:** Detention is being used for people with health problems, who have claimed asylum either on arrival, or shortly afterwards, and have always maintained contact with the Immigration Service prior to being detained.

- **Maintaining contact on release:** The majority of detainees released from detention maintained contact with the Immigration Service, calling into question the need to detain them in the first place.
- **Adjudicators disregarding health status in some bail applications:** In some bail applications, it would appear that Adjudicators are not taking medical evidence into account or are not being presented with relevant information regarding health status by the Immigration Service.

With regard to the medical care and treatment of immigration detainees, MSF recommend that:

1. Mechanisms to ensure that all detainees receive full medical assessments on arrival to facilities need to be established. The Immigration Service should then consider whether those with serious illnesses, the mentally ill, and those who disclose torture are 'suitable for detention' according to existing guidelines.
2. A system for regular assessments of a detainee's health by a medical doctor with an understanding of the medical needs of this group needs to be built into the monthly detention reviews. MSF believes that where serious health concerns arise, there must be a presumption in favour of release.
3. Where there are insufficient facilities and resources to ensure that a detainee with a particular medical condition receives appropriate care, the individual should not be detained.
4. Continuity of care needs to be reviewed. This includes procedures to ensure follow-up appointments in the community are kept, that medical records follow the detainee from and community and from centre to centre, and that recommendations for referral made by doctors are followed through.

With regard to the consideration of health status by the Immigration Service (IS) or by Adjudicators in bail applications, BID recommend that:

1. The recommendation of the Joint Committee on Human Rights be included in instructions to Immigration Service staff and in Guidelines to Adjudicators:

"Decisions on continued detention under the Immigration Act must be fully informed by any relevant medical and in particular psychiatric information. Where detaining authorities know, or ought to know (given adequate information exchange) that an immigration detainee is at risk of suicide, serious self-harm or severe mental illness as a direct result of continued detention, they will need to clearly justify such continued detention as compliant with Articles 2, 3 and 8."

2. The onus is clearly with the IS in ensuring adequate information exchange, in order that where the detaining authorities ought to know that continued detention represents a health risk, they do. BID recommend that the Immigration and Nationality Directorate (IND) review and strengthen the mechanisms for information exchange.
3. At every stage where detention is reviewed (internally by the IS, or externally by an Adjudicator) full written reasons should be given for the decision that continued detention is necessary and compliant with Articles 2,3 and 8. Instructions to the Immigration Service and Guidance Notes to Adjudicators should be amended to make clear the need to clearly justify continued detention.

With regard to the accessibility of legal safeguards for immigration detainees to protect against prolonged and damaging detention, BID recommend that fundamental changes are made to the legal framework for detention:

1. A statutory maximum length of detention be introduced
2. Quality, publicly-funded legal representation be provided to all detainees
3. Statutory provision is made for all those who are detained under the Immigration Acts to be brought promptly and automatically before a court for an independent review of their detention. If refused, further reviews of this nature must take place at regular intervals
4. The detention of children under 18 be prohibited
5. The detention of the mentally ill, those with serious medical conditions, those who have been tortured, and pregnant women, be prohibited

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Annex

The health and medical needs of immigration detainees in the UK: MSF's experiences,
November 2004

Bail for Immigration Detainees

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Exempted by the OISC. Ref. No. 200100147

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