

SUBMISSION FROM THE BRITISH MEDICAL ASSOCIATION TO THE PARLIAMENTARY INQUIRY INTO THE USE OF IMMIGRATION DETENTION

Executive Summary

- The BMA believes that the detention of people who have not been convicted of a criminal offence should be used only as a measure of last resort, in exceptional circumstances.
- As long as individuals are held in immigration detention, they are entitled to the same range and quality of NHS services as in the community.
- The BMA has concerns about access to healthcare services by the detained population and welcomes the opportunities for improvements created by the recent transfer of commissioning responsibility to the NHS. However, in order to take advantage of these opportunities, NHS England must have a clear plan in place as to how to engage with and address the specific needs of the detained population.
- The BMA has particular concerns about the ability of the immigration detention estate to meet the health needs of more vulnerable individuals, and questions the appropriateness of detention for victims of torture, the seriously mentally ill, pregnant women, and children.
- The indefinite nature of immigration detention is a matter of concern, due both to the deleterious effect it can have on health and wellbeing, and the problems it poses for health care professionals in assessing, planning, and providing appropriate care.

1. Introduction

- 1.1. The British Medical Association (BMA) is the voice of doctors and medical students in the UK. We are an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 153,000, which continues to grow every year.
- 1.2. As part of our work in maintaining the honour and interests of the profession, the BMA has worked for many years to promote fundamental human rights in the context of healthcare. This has included drawing attention to abuses of such rights involving doctors and health professionals, both as victims and perpetrators, and advocating for individuals and marginalised populations experiencing infringements of their health related rights in the UK and internationally.
- 1.3. In the BMA's view, the detention of people who are not convicted of a criminal offence should be a measure of last resort, used only in exceptional circumstances. The Association has particular concerns regarding the use of detention for asylum seekers, many of whom will have been the victims of abuse or violence in detention in their home countries. Policy passed at the 2001 Annual Representative Meeting (ARM), the BMA's main policy making body, deplored Government policy on the treatment of asylum seekers, and called for an end to the use of voucher schemes, forced dispersal, and detention of asylum seekers.
- 1.4. It is in this context that the BMA submits evidence to this Inquiry. The BMA's remit and breadth of knowledge means that our response will be limited to addressing the health needs of, and access to health care services, by detainees. Accordingly, our response will not address the legal processes behind immigration detention; the wider social impact of immigration detention; or alternatives to detention.

- 1.5. Further information about the ethical and professional duties of doctors working in immigration detention can be found in *Medical Ethics Today*, 3rd Ed, copies of which are available in the House of Lords library. The BMA is also producing more in depth guidance and support for practitioners working in immigration detention which is due for publication next year.

2. Health in immigration detention

- 2.1. Individuals in immigration detention have the same basic health needs as the wider population. Additionally, there are a number of conditions which are more prevalent amongst the population in detention, including tropical diseases; communicable diseases such as TB or HIV/AIDS; and chronic conditions such as diabetes or hypertension which may have gone either undetected or untreated due to a lack of interaction with, or failings of health services both in the UK and in countries of origin.¹
- 2.2. As a result of the high numbers of asylum seekers held in detention who may have experienced traumatic events, doctors may also be required to treat the physical effects of torture and organised violence, including musculo-skeletal and oral and maxillofacial injuries, as well as the physical consequences of sexual violence.²
- 2.3. Combined with the specific physical health needs are the high rates of mental health and wellbeing problems of the detained population. Many asylum seekers and displaced persons worldwide have experienced multiple traumatic events, and there is clear evidence that demonstrates that asylum seekers and refugees have higher rates of mental health problems than usually found in the general population³, including a number of trauma-related mental health problems, such as depression, psychosis, and Post Traumatic Stress Disorder (PTSD.)⁴
- 2.4. In addition to the evidence on the pre-existing health needs of this group, there is evidence to suggest that detention has a deleterious impact on both physical and mental health. The stress of the detention centre environment can manifest itself in physical symptoms, including gastrointestinal, respiratory, and sleep disorders.⁵
- 2.5. It is also well-documented that detention is known to cause mental distress; to exacerbate existing mental health problems; and increase the risk of self harm and suicide.⁶ Numerous

¹ Burnett A & Fassil Y (2002) *Meeting the health needs of refugee and asylum seekers in the UK: an information and resource pack for health workers*. London: Department of Health; British Medical Association (2002) *Asylum seekers: meeting their healthcare needs*. London: BMA; Health Protection Agency (2006) *Migrant health: infectious diseases in non-UK born populations in England, Wales and Northern Ireland. A baseline report*. London: HPA

² Burnett A & Fassil Y (2002) *Meeting the health needs of refugee and asylum seekers in the UK: an information and resource pack for health workers*. London: Department of Health; Burnett A and Peel M (2001) *The health of survivors of torture and organised violence*. *BMJ*, Mar 10, 2001; 322(7286): 608-609.

³ McGinley A and Trude A (2012) *Positive duty of care? The mental health crisis in immigration detention*. London: Association of Visitors to Immigration Detention/Bail for Immigration Detainees; Robjant K et al (2009) "Mental health implications of detaining asylum seekers: systematic review." *British Journal of Psychiatry* 194; 306-12.

⁴ Bail for Immigration Detainees (2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with health needs*. London: BiD; Fazel M and Silvoe D (2006) *Detention of refugees*. *BMJ* 332, 251-2.

⁵ British Medical Association (2002) *Asylum seekers: meeting their healthcare needs*. London: BMA; HM Inspectorate of Prisons and Independent Chief Inspector of Borders and Immigration (2012) *The effectiveness and impact of immigration detention casework*. London: HMIP/CIBI.

⁶ Robjant K et al (2009) "Psychological Distress amongst Immigration Detainees: A cross-sectional questionnaire study." *British Journal of Psychology* 48:275-86; Pourgourides C (1997) "The mental health implications of detention of asylum seekers in the UK" *Psychiatric Bulletin* 21:673-4.

national and international studies of detained populations have shown that detained asylum seekers experience far higher levels of depression, anxiety, and PTSD than those living in the community.⁷

3. Access to healthcare services in immigration detention

- 3.1. All detainees are entitled to receive the same range of services and quality of care as those in the community. However, the standard of care provided in immigration removal centres (IRCs) has frequently been criticised as sub-standard. The Tenth Report from the Joint Committee on Human Rights in 2007 drew attention to the concerns of various organisations, which ranged from routine failures of investigation – particularly as regards the identification of victims of torture; a lack of appropriate care for detainees with HIV/AIDS and mental health problems; and a shortage of female medical staff in female IRCs. They concluded that the quality of healthcare provided to asylum seekers in detention may not be “fully compliant with international human rights obligations, in particular, the rights to freedom from inhuman and degrading treatment and to the enjoyment of the highest attainable standard of physical and mental health.”⁸
- 3.2. In addition to the basic health service provision required in a detention setting, there will be a need for access to additional services to address the health problems specific to the detained population. However, the BMA has received anecdotal reports of access to hospital being denied or postponed due to the costs of providing escorts for patients in immigration detention. Access to specialist services should be available on the basis of the criteria used in the community and should never be delayed merely for administrative convenience. Management priorities should not dictate access.
- 3.3. Systemic failures aside, there are a number of other barriers to accessing healthcare on a day-to-day basis. Detainees struggle to access healthcare services for various reasons, including language and cultural issues, particularly access to appropriate interpretation services; a lack of knowledge about rights to healthcare and how to access services; and negative perceptions of healthcare depending on their previous experiences and interactions with healthcare professionals.⁹
- 3.4. From April 2013, commissioning healthcare in immigration detention has been the responsibility of the NHS, creating an opportunity to overcome many of the problems previously associated with the provision of care. Few longitudinal studies have been carried out to assess whether the changes in commissioning arrangements have made a material difference to healthcare provision, although a similar transfer of responsibility for healthcare in prisons has yielded, at least anecdotally, positive results.¹⁰ Detainees should hopefully benefit from a standardised approach to health care across the immigration detention estate; with greater equivalence of care with the community, ring-fenced NHS budgets, and more robust clinical governance and accountability processes.
- 3.5. The opportunities created by the recent transfer in commissioning responsibilities will only yield positive results if NHS England understand and engage with the specific health needs and problems of access of the detained population, and develop services in line with those needs.

⁷ Cleveland J, et al (2012) “The impact of detention and temporary status on asylum seekers’ mental health.” *Canadian Medical Association v.184(15)*; Oct 16, 2012; Robjant K et al (2009) “Psychological Distress amongst Immigration Detainees: A cross-sectional questionnaire study.” *BJPsych* 48: 275-86.

⁸ Joint Committee on Human Rights – Tenth Report (2007) London: House of Lords/House of Commons.

⁹ British Medical Association (2002) *Asylum seekers: meeting their healthcare needs*. London: BMA.

¹⁰ Ginn S (2012) “Prison Environment and Health” *BMJ* 2012; 354:e5921.

- 3.6. Similarly, if individual practitioners are to be able to fulfil their responsibilities to detained patients, they must also be supported in developing a greater understanding of the specific health needs of the detained population, as well as the cultural, social and other issues relating to them. This must be done in conjunction with education and training for other centre staff on the health needs and problems of access to healthcare, in order to ensure changes are properly implemented.

4. Appropriateness of detention for vulnerable individuals

- 4.1. The immigration detention estate, by virtue of its function to detain, means that the environment is not conducive to health and wellbeing. Various studies have demonstrated that detention can cause mental health to deteriorate.¹¹ Accordingly, the BMA has concerns about the appropriateness of detention for certain vulnerable individuals.
- 4.2. The BMA has serious concerns about the immigration detention estate's failure to meet the needs of detainees with mental health problems. Inspections of IRCs carried out by Her Majesty's Chief Inspector of Prisons have identified various problems with mental health care provision ranging from the under-identification and poor management of detainees with mental health needs to a lack of timely access to community mental health services.¹²
- 4.3. The BMA is concerned that the immigration detention estate lacks the resources required to adequately support those with severe mental health needs. This is due to the difficulties in accessing specialist services combined with the fact that the detention environment in and of itself is not conducive to good mental health and wellbeing, and in fact mitigates against successful treatment.
- 4.4. The BMA would also draw the Inquiry's attention to a number of recent High Court judgments which have found breaches of the Article 3 right to freedom from inhuman and degrading treatment in relation to the treatment of detainees with mental illness.¹³
- 4.5. Similar to our concerns about the lack of access to specialist mental health services in the community is our concern about the lack of timely access to ante-natal services by pregnant detainees. Pregnant women being held in immigration detention are entitled to receive the same NHS care as pregnant women in the community.
- 4.6. The BMA has concerns about the appropriateness of detention for pregnant women due to the difficulties in accessing appropriate ante-natal care, and the increased likelihood of stress as the result of detention, and the risks this poses to the health of both the mother and the

¹¹ Steel Z et al. (2006) "Impact of immigration detention and temporary protection on the mental health of refugees" *British Journal of Psychiatry* 188: 58-64; Robjant K et al (2009) "Mental health implications of detaining asylum seekers: systematic review" *British Journal of Psychiatry* 194: 306-312; Coffey G et al. (2010) "The meaning and mental health consequences of long-term immigration detention for people seeking asylum" *Social Science and Medicine*. Volume 70, Issue 12, pp. 2070-2079.

¹² See for example the most recent reports on inspections of Yarl's Wood, Harmondsworth and Haslar IRCs, available at http://www.justiceinspectors.gov.uk/hmiprison/inspections/?post_type=inspection&s&prison-inspection-type=immigration-removal-centre-inspections#.U_xNAfldWm5

¹³ *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin); *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin); *R (HA (Nigeria)) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin); *R (Das) v Secretary of State for the Home Department* [2013] EWHC 682 (Admin).

unborn child.¹⁴ The BMA welcomes Home Office policy which states that pregnant women should only be detained in exceptional circumstances and calls for this to be implemented uniformly.¹⁵

4.7. The BMA supports the principles of good practice documented in the Detention Centre Rules 2001 and the existence of Rule 35 which should provide safeguards for vulnerable detainees, in particular, the significant number of detainees who have experienced torture and other organised violence prior to their detention.¹⁶ However we are concerned that this process is not always implemented correctly, something that is due in part to the lack of specialist knowledge amongst health care staff in identifying, treating and documenting the effects of torture.

4.8. The BMA is concerned about the involvement of General Practitioners in Rule 35 processes, a process which they are completely unqualified and untrained to perform. Many GPs do not possess the necessary skills or training to document injuries and provide medico-legal reports of a standard required by the Home Office. Detainees who are being assessed for the purposes of Rule 35 should benefit from examination by expert forensic physicians.

5. Impact of indefinite detention

5.1. There is clear evidence, both nationally and internationally, that the indefinite nature of detention can have an injurious effect on health and wellbeing.¹⁷

5.2. The use of indefinite detention also poses challenges for the provision of healthcare in the immigration detention estate. Without a clear idea of timescales, it can be incredibly difficult for the health care team to assess and plan for appropriate interventions and treatment.

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¹⁴ Lewis G (ed.) (2004) *Why Mothers Die 2000-2002, The Sixth Report of the Confidential Enquiries into Maternal Deaths in the United Kingdom*. London: CEMACH.

¹⁵ UK Border Agency (2014) *Enforcement Instructions and Guidance* Chapter 55.9.1

¹⁶ Burnett A and Peel M (2001) "The health of survivors of torture and organised violence" *BMJ*, 322, pp.606-609.

¹⁷ Mayor S (2005) "Holding people indefinitely causes mental health problems" *BMJ*, 2005;330(7482): 60; Amnesty International (2005) *The Impact of Indefinite Detention: The Case to Change Australia's Mandatory Detention Regime*; Triggs G (2013) "Mental health and immigration detention" *Medical Journal of Australia* 2013; 199(11): 721-722.