

## Appendix 1 – case studies by theme

The case studies included below cover the period since the introduction of the Adults at Risk policy. Some of these were included in Medical Justice's submission to the second Shaw review – but since this is the first annual review of the AAR policy from the ICIBI we felt it was appropriate to include these as they illustrate the on-going issues with the AAR policy.

Some of the (ex-) detainees who have agreed to be case studies here, are also willing to speak to the Chief Inspector's team. If that would be helpful, please let us know and we can arrange to pass on contact details.

### **1. Case studies illustrating failures to identify/take account of vulnerability prior to detention**

#### **1.1. S – detained in 2017 (1 ½ months), 2018 (1 month) and 2019 (10 days).**

Mr S reports a history of torture in Iraq, including being beaten with various items and his scalp being burnt with hot metal. He suffered scarring and broken ribs. During his detention in 2017 a Rule 35 report was completed, finding his '*[s]cars seems consistent with description of injuries, Clearly has addition (sic) and more significant psychological scarring causing him to be distressed and suffer depression. Detention is undoubtedly exacerbating his negative emotional state. He has been separated from his usual comforting factors (his family)*'. He was released as a result of the Rule 35 report.

He was then subsequently re-detained twice despite complying with his reporting requirements without fail. It appears his vulnerability, as identified during his previous detention, was not considered. When he was detained most recently, his house was raided by a large number of officers who he reports acted in an extremely heavy handed manner, he was immediately placed in handcuffs and refused permission to hug his wife goodbye. He was served a removal window notice on being detained. Mr S was then kept in a police station for 2 ½ days with limited telephone contact with his family. He had no access to his regular medication for the first week of his detention. He reports he felt suicidal and experienced an aggravation of his psychological symptoms.

*(This case study also illustrates our concerns regarding the use of removal windows)*

#### **1.2. Q. Detained in 2008, 2011 and 2017. Most recently detained for 1 month in autumn 2017**

Q survived torture in his country of origin. He came to the UK where he was diagnosed with depression and Post Traumatic Stress Disorder. His asylum claim was refused in 2011 and he was detained. While in detention his mental health deteriorated and he attempted suicide. A medico-legal report and a psychiatric report were completed. Eventually he was released from detention. He was granted a period of discretionary leave to remain based on his poor mental health and risk of suicide. When this leave expired he made no further applications and blames this on his mental illness. In autumn 2017, a few months after his leave expired, he was encountered by immigration enforcement and detained. It appears that, despite there being extensive medical evidence on his Home Office file (including a medico-legal report documenting his physical and psychological sequelae of torture and a psychiatric report), he was not identified as an Adult at Risk. On being detained he was served a 3 months' removal window, meaning that he could be removed at any point thereafter (the form is undated and so it is not clear which day the removal window opened). Q did not at the time understand the significance of the form and did not understand that he could be removed from the UK without further notice. He reports his psychological symptoms again deteriorated in detention. A rule 35 report was completed but detention

maintained on the basis of immigration factors including two instances of absconding. Q did not have legal representation when he was detained, but on being detained, he contacted Medical Justice, who realised the significance of the removal window and were able to refer him to legal representative who had previously dealt with his case and who therefore already had his documents on file and so was able to act quickly. He was released following legal representatives challenging his detention and his removal window in court.

*(This case study also illustrates our concern regarding the use of 'removal windows'.)*

**1.3. J- detained for 10 ½ months in 2015 and 3 1/2 months in 2018-2019**

Ms J has a history of childhood abuse, including physical, sexual and ritual abuse. She was detained in 2015 following a prison sentence. At the time a Rule 35(3) report and a psychiatric report by Medical Justice were completed. She was diagnosed with depression with psychotic features and features of PTSD with further assessment being needed to confirm whether an additional diagnosis of PTSD would be warranted. Her mental health had deteriorated in detention. She was eventually released from detention. In September 2018 she was again detained in immigration detention following having been recalled to prison. Whilst at Yarl's Wood IRC she reported hearing voices and stopped taking her anti-coagulants and anti-psychotic medication as a result. In October 2018 a Rule 35(3) report was completed, concluding that she was likely to deteriorate in detention, although had not yet deteriorated. The report also noted *"It is a concern regarding her mental and physical health that she is non-compliant. This means her health is adversely affected by her detention, if she is refusing to take her medication because of her detention. There is certainly an increasing danger to her life if she continues to refuse her medication. It is not possible to quantify this risk but there is a very real risk. In this instance, I do not feel on-going detention without a definitive date of removal is advocated. This must be taken in the context that without taking her anticoagulant, she would not be deemed to be fit to fly anyway."* The Rule 35 report was only responded to 2 months later because it was done on the incorrect form (on a Rule 35(3) form rather than on a Rule 35(1) form.) When it was responded to she was deemed to be an AAR at level 2 based on the information contained in the report. The response letter then goes on to say that since the report was completed information had been received that J had been referred to a psychiatric hospital to be transferred under the Mental Health Act - as a result she was deemed level 3 as of that date. Detention was maintained to enable transfer to hospital. However, transfer to hospital did not go ahead because of J's physical health problems (she had in fact already been refused by the hospital at the time of the Rule 35 response). She was eventually released from detention in January 2019 on bail by the Tribunal after Medical Justice referred her to community mental health services to enable to access care swiftly on her release. *(This case study also illustrates a failure to identify her vulnerability prior to her second detention and the risk of detainees remaining in detention because of a lack of care planning on release).*

**2. Failures in the Rule 34/35 process, including:**

- **delays;**

**2.1. Z- detained 3 ½ months in 2018/2019**

Z was detained in October 2018 having been encountered by immigration after he overstayed a visa and was detained. Shortly after entering detention, he claimed asylum.

In his screening interview he disclosed a history of having been trafficked and forced to work. He was referred into the National Referral Mechanism as a Potential Victim of Trafficking. This disclosure did not trigger any further investigations into his vulnerability. He received negative decisions in his asylum and trafficking claim. He was given a removal window which opened on 11th January 2019. The same day he cut himself and was placed on constant watch (which is intended to manage a suicidal crisis<sup>1</sup>). There is no evidence that a Rule 35(2) report or IS91 RA Part C were completed at that point. He was referred for a mental health assessment. He first requested a rule 35(3) appointment around 22/01/19 and was placed on a waiting list. After Medical Justice contacting the IRC healthcare unit an appointment was allocated for him to have a Rule 35 report on 07/02/2019. The report identified evidence of torture and found he was likely to be harmed by continued detention. He was released a few days later.

*(This case study also illustrates the failure to investigate further any potential vulnerability disclosed in the screening interview or NRM interview for example by referring for a Rule 35 report, the underuse of Rule 35(2), and our concerns regarding vulnerable detainees being given Removal Window notices.)*

**2.2. T – detained for one month in 2016 and 23 days in summer 2017.**

T was subjected to prolonged physical and sexual abuse during her childhood and adolescence. Eventually she came to the UK as a student. She overstayed her visa and was detained. At that point she claimed asylum. A Rule 35 report was prepared during her detention in 2016, setting out her scarring and mental health problems which were the effect of her long history of abuse. As a result, she was released from detention. In the summer of 2017 she was re-detained. It appears no consideration was given to the risk identified when she was previously released following a Rule 35 report. On arrival at Yarl's Wood IRC a nurse recorded in her healthcare records that she has a history of torture, is currently 'hopeless, tearful, low mood'. Has a history of attempting suicide and has been receiving frequent input by a mental health team for PTSD and severe depressive disorder while in the community. T was placed on ACDT. However due to there being a waiting list for Rule 35 reports, 20 days passed before a further 35 report was completed, stating 'given her significant psychiatric history and worsening of symptoms whilst in detention it is likely that her symptoms will worsen further still (...) I therefore do not deem this lady fit to be fit for detention'. T was released again the following day. She reports her repeated detention has caused her a significant deteriorating of her symptoms.

*(This case study also illustrates the failure to take account of vulnerabilities known to the Home Office prior to detention.)*

**2.3. A – detained for 6 months in 2017 (not counting time spent on transfer at hospital)  
Further details on the case given on page 6**

A reports having been arrested and tortured on suspicion of supporting a separatist group. Her asylum claim was refused and she was detained. During her initial healthcare screening she disclosed a history of torture, but 'then changed her mind and said she needed to speak to her husband first'. The records do not show whether the purpose of a rule 35 report was explained to her. She is recorded as being 'tearful but compliant'. She is described a sleeping tablet. About a month later a Rule 35 report is completed by the detention centre GP recording a history of rape by police."

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<sup>1</sup> See Heathrow IRC Safeguarding policy.

- **poor quality reports;**

2.4. **Q** – *detained for 7 months on 2018*

Q reported a history of torture and trafficking and had a rule 35 report completed while detained at Yarl's Wood. The report twice stated '*There are no scars on her body*' but found she was '*likely a victim of sexual abuse and torture*'. The report concluded '*She is settled at the present time and I have no immediate concerns pertaining to her detention at the moment. I will be referring her to both wellbeing and mental health team for additional support.*' In response to the Rule 35 report she was found to be level 2 AAR but detention was maintained on immigration factors (overstaying and having initially given a false name) and that her removal '*would be anticipated within a reasonable timescale*', despite her not having had her substantive asylum interview or a decision through the NRM at this point. Three months later (after her asylum claim and appeal had been refused and she had received a negative reasonable grounds decision – all whilst detained) an additional body map was produced noting that she did have multiple scarring including 3 cigarette burns on her thighs. She had also been referred to the psychologist and started on anti-depressants. Three months after that she was visited by a Medical Justice volunteer clinician who documented her scarring (including an additional scar from self-harm where she had cut herself in detention), and symptoms of PTSD and depression as well as her significant distress during the assessment. The assessment was frequently interrupted by uncontrollable sobbing and episodes of retching and vomiting. At several points the assessment had to be paused to allow her to recover from recalling a difficult episode. The doctor concluded that detention had re-triggered her trauma and worsened her depression – specifically her loss of freedom and loss of ability to control the most basics of her environment (such as lights being switched on in the middle of the night). Q was released just over a month after the clinician's visit, having spent 7 months in detention.

- **failure to report on categories of vulnerability other than torture in the AAR policy / failure to complete reports for victims of torture not deemed to meet a restrictive torture definition**

2.5. **QL** – *detained in September 2016 and held for 8 months*

QL reported a history of trafficking for labour exploitation and having been mistreated by his traffickers, including by being beaten, strangled and burned with hot oil. He was seen by a doctor in the healthcare unit for a rule 35 assessment in December 2016 but no Rule 35 was completed as he was informed he did not fall within UNCAT definition of torture. He was later assessed by an independent doctor arranged by Medical Justice who found that he had scarring at least consistent with his account, and symptoms suggestive of PTSD. His mental health deteriorated while in detention. There is no evidence in the healthcare records that the medical practitioner considered whether his vulnerability could be reported to the Home Office using another means, for example Rule 35(1). (*This case study also illustrates the underuse of Rule 35(1)*).

2.6. **N** – *detained for 5 months in 2018*

N reports having been physically and sexually abused as a child and later suffered homophobic abuse in community. The doctor at the IRC noted in his medical records that he '*does not qualify for Rule 35*' without offering further explanation. Following a

complaint by his solicitor, a rule 35 was completed 4 months after he first entered detention. This report documented a history of physical and sexual abuse ("*... at the orphanage he was attacked with metal rods and burnt and anally raped on many occasions (...)*") and concluding *'On examination he has scars which may be due to the history given. He is having difficulty sleeping and suffering with headaches since being detained – he is constantly thinking about what happened to him and has found detention makes his symptoms increase. He has suicidal thoughts. He is depressed. My opinion is that continued detention may lead to deterioration to his mental health due to the history given and the nature of being detained with an uncertain status.'* In response he was deemed level 2 and detention maintained on immigration factors (risk of absconding). He was later released following his solicitor issuing proceedings challenging his detention.

*(This case study also illustrates detention continuing despite level 2 evidence of risk in circumstances that are far from 'very exceptional').*

#### **2.7. X – detained for 3 months in 2018**

X reported having been physically ill-treated by loan sharks. The doctor at the IRC assessed that she was *'not helpless'* and did therefore not qualify for a rule 35. A rule 35 was eventually done almost two months later and it was accepted that she was an adult at risk. She was deemed to be level 2 risk and detention maintained on immigration factors (risk of absconding). She was later released following a an assessment by a volunteer clinician from Medical Justice and representations by her solicitor based on her disclosing a history of trafficking and her mental health having deteriorated during detention.

#### **2.8. L – detained for 2 months in 2018**

L reported being a victim of sexual abuse, trafficking and forced prostitution in the UK; her drug dealer/abuser/boyfriend forced her to her have sex with men in exchange for drugs. Again, the doctor in the IRC did not consider her to qualify for a rule 35 report as she had later run away from her abuser thus supposedly demonstrating that she was not powerless. L remained in detention for two months without receiving a rule 35 report. During this time she self-harmed and tied a ligature around her neck. No Rule 35(1) or (2) reports were completed either. L was eventually released on bail by the Tribunal.

Further, the Home Office has in some cases undertaken a review of existing Rule 35(3) reports that were made prior to the new torture definition coming into force and considering whether the detainee now meets the new torture definition. In several of these cases, even though the detainee had previously been accepted to be a victim of torture, the review concluded they no longer met the new definition e.g.

**S – detained for 3 months in 2017, detained for 1 week in April 2018, detained in August 2018 and released on bail after three weeks.**

S reported being repeatedly attacked and ill-treated by community members for being gay, including by being ill-treated with sticks, knives and a gun. In detention he reported symptoms of anxiety, panic attacks, insomnia and flashbacks. In the previous Home Office response the Rule 35 (3) in April 2017, he was accepted as fulfilling the criteria for being a victim of torture and assessed as being an Adult at Risk level 2. The same Rule 35 (3) report was then re-evaluated in August 2018 following the introduction of the new definition of torture and it was determined that he no longer met the definition of torture and was therefore no longer considered and adult at risk. No explanation was

given as to why he did not fulfil the definition of torture. Further, there was no apparent effort to consider if he fell under any other ARR indicator despite the doctor reporting symptoms of anxiety, insomnia, flashbacks and panic attacks. Following legal intervention the Home Office have recanted and now state that he falls under definition. S was later released on bail.

**H - detained in 2018**

H reported that his father worked as a security guard to a senior politician and was killed by a terrorist group during election. The terrorist group targeted his family and the detainee reports being tortured and shot when his house was attacked. In the Rule 35 (3) report the doctor reports symptoms of anxiety, panic attacks, insomnia and flashbacks in detention. Despite having been initially accepted as a victim of torture and adult at risk under the EO definition in the original Home Office response. When the new definition came into effect the case was re-evaluated and the Home Office found that "it is not accepted that [his], as set out in the report, meets the above definition. Accordingly, [he] is no longer considered to satisfy the Adult at Risk in Immigration Detention Policy as a potential victim of torture." There was no explanation of why he no longer qualifies or any evidence of consideration under another AAR indicator despite the clear reference to on-going mental health issues. His solicitors issued unlawful detention proceedings which included a challenge to the decision not to accept him as a person in respect of whom there is evidence of a history of torture. The Home Office then agreed to release him from detention.

- **failure or delay in completing Rule 35(1) reports where there is the risk of deterioration and Rule 35(2) reports for suicidal detainees:**

**2.9. A – detained for 6 months in 2017 (not counting time spent on transfer at hospital)**

A reports being arrested and tortured on suspicion of supporting a separatist group. Her asylum claim was refused and she was detained. A Rule 35 report is completed by the detention centre GP recording a history of rape by police. The report goes on to state that 'She is very distressed and having flashbacks, she has expressed suicidal ideation. This is mostly related to being told that she will be removed from the UK. She says the stress of the situation is causing her to relive the rape she suffered. No further details are given as she is described as too distressed to give further details. In response she is recognised as an Adult at Risk (evidence level not specified). Detention is maintained due to immigration factors (previous non-compliance with conditions) and removal being envisaged within 4 weeks. She is not removed within this timeframe. Instead she witnesses an event which causes her condition to deteriorate. Two months later a medico-legal report is completed for her which finds her 'manifestly unfit for detention' and 'presents with symptoms of severe mental ill-health, poorly functioning in terms of daily activities and self-care, and a particularly high level of visible distress. She does not seem to have received sufficient treatment so far'. She is not released and her condition continues to deteriorate and she is seen by a psychiatrist who concludes: "A's treatment in [the detention centre] is, in my opinion, markedly inadequate (...) her mental health continues to deteriorate. I was unable to assess her risk of self-harm; she would only say she wanted to be dead." A remained at the detention centre for a further 2 months. Medication recommended by the detention centre-contracted psychiatrist is not commenced for over 6 weeks. At one point she is not seen by mental health professionals or well-being staff for several weeks. She is eventually transferred to an

inpatient psychiatric unit under section 48 of the mental health act. No Rule 35 (1) report is ever completed despite her clearly deteriorating mental health.”

**2.10. MB – detained for 3 months in 2018/2019**

MB is an Algerian national who suffers from depression since 2004 and has had one leg amputated. He lived in the UK since 2001 and was diagnosed with cancer of the kidneys in 2015 for which he was treated with one – two year intensive treatment and five years follow-up. He was detained under immigration powers on 10 October 2018. He cannot mobilise without a wheelchair and was street homeless prior to being detained. He was not provided with proper facilities in detention, not even his own wheelchair until at a late stage. On 16 October 2018 the SSHD served notice of a 3 month removal window, which was subsequently cancelled when the Home Office became aware that he came within its ‘adults at risk in immigration detention’ policy. He was unable to get legal support and so was forced to submit applications for judicial review by himself without guidance. He remained in detention despite being an Adult at Risk. While in detention he requested a scan on his shoulder after experiencing symptoms synonymous with cancer such as severe pain in his shoulder and sweats and was anxious that could be a recurrence of the cancer however the scan wasn’t provided.

His health situation has deteriorated due to the fact that he was not provided with a wheelchair for the first few weeks of his detention and was using crutches. Due to his mobility needs, he did not have regular access to medication and other facilities and needed to be escorted to healthcare three times every day to obtain his medication. He had difficulty using the shower and detention facilities are not adequate for his disability.

On 6 December 2018 a Rule 35 (1) assessment was done and the Dr found that being without his wheelchair had exacerbated his conditions and made him develop new conditions. He had experienced increased pain and had developed forearm strain to the extent his presentation was consistent with tearing and inflammation on the outside of the elbow. This meant he was unable to wash or dry himself, take regular showers or bathe; there was a risk to skin integrity, risk of anxiety, low mood and social isolation.

The doctor said: *“It is the view of this service that MB’s health is likely to be injuriously affected by continued detention or the conditions of detention, due to an unmet social care need”*. Commenting on what treatment MB was receiving, the doctor noted: *“This is an unmet social care need and cannot be resolved by health services”*. The Home Office in its reply to the Rule 35 report found MB to be a level 2 Adult at Risk but refused to release him.

On 27 December a doctor in healthcare found him not fit for detention but he was not released. The doctor found that it has resulted in an increased social care need and his health is likely to be injuriously affected by continued detention. DPG are seeking a stay to his removal window and his immediate release from detention as he is not fit to fly. On 8 January 2019 he was notified that he would be removed without further notice during a removal ‘window’ from 5pm on 11 January 2019 until 29 January 2019. His solicitors issued an urgent judicial review however this was refused because of his previous JR which he did not have legal advice for. He was removed from the UK to Algeria on 13 January 2019.

**2.11. V – detained in May 2017 and held for 5 months**

V was detained having been given a deportation order and following the refusal of his human rights claim. He had previously received an 18 month prison sentence for a deception offence. The rule 35(3) report documented his reported history of torture and

symptoms of anxiety, insomnia, panic attacks and flashbacks. Further information was requested from healthcare and the information provided included: reported history and symptoms consistent with PTSD, history of self harm, on ACDT, and acknowledge it was possible his mental health could deteriorate in detention. The rule 35 response acknowledged that he was an adult at risk level 2, but that he could be managed within detention. It stated that the doctor had not indicated on-going detention was likely to cause him harm and no formal diagnosis had been made of any severe mental health condition. Negative immigration factors were also stated to outweigh the risks in his case. Four months after the rule 35(3) report, a rule 35(1) report was completed. This included: diagnoses of severe depression with psychotic symptoms and PTSD; that remaining in detention was causing his depression and anxiety to worsen to the point of becoming a high risk of suicide and experiencing psychotic symptoms; that remedial action to minimise risks to his health in detention could not be taken because the stress of detention was causing deterioration, and that being detained was causing a major deterioration in his mental health and that the risks to his health were already serious. The response to this rule 35 acknowledged that he was a level 3 adult at risk. However, detention was considered *'proportionate to [his] circumstances, taking into account [his] immigration history and criminal record'* and that his removal could be enforced within a reasonable timescale. He was eventually released from detention the week following the response to his rule 35(1) report.

**2.12. C – detained for 11 months in 2017/2018**

C is a Bangladeshi national who arrived in the UK in 2009 on a student visa valid to 2013. C has no criminal convictions in the UK. In March 2017 C was encountered working and was detained. In April 2017, an IRC GP prepared a Rule 35(3) report on C indicating that C had scars consistent with C's account of having been tortured, but that there were no signs of mental illness. The Home Office characterized this as AAR Level 2 evidence and the Home Office response to the report was that C was highly likely to evade immigration control unless detained, and so maintained detention. For about the last 6 months of C's detention, C was exhibiting symptoms of serious mental health disorder and was deteriorating. In November 2017 his behaviour was noted to be very odd and he was placed on ACDT. By December an IRC psychiatrist noted that C was completely mute, was self-harming by slapping his head and banging his head against a wall. A diagnosis was made that he 'appears to be catatonic, secondary to severe depression'. Despite this no Rule 35(1) or Rule 35(2) reports were prepared because (as his medical records show) IRC healthcare mistakenly believe they cannot do a Rule 35 report on mental health grounds as C had previously had a Rule 35(3) report prepared. In January 2018 a GP saw him on behalf of Medical Justice and considered him to be seriously mentally unwell – he had been refusing food for 1 month, was not fit for detention and needed an admission to a psychiatric unit for a period of observation and assessment by a multidisciplinary team. It was also recommended that C's mental capacity be urgently determined. At the end of January 2018 he was admitted to healthcare. It was not until 14 February 2018 that the IRC psychiatrist determined C was unfit to fly and needed to be transferred to psychiatric hospital. As a result of difficulties in obtaining a bed for C, he was not transferred to psychiatric hospital until April 2018. At no point was there a Rule 35(1) or (2) report to the Home Office. C has since been released from detention and been diagnosed with paranoid schizophrenia."

**2.13. B – detained for 1 year and 9 months in 2017/2018**

B is a Somali national who has lived in the UK since age 12 and who was detained for a period of around 1 year 9 months. B had been diagnosed with severe depression for

which B is prescribed anti-depressants, and beta-blockers for panic-attacks and post-traumatic symptoms. In a Rule 35(1) report of November 2017, a consultant psychiatrist gave his opinion that continued detention is likely to make B's severe depression worse and increase the risk of suicide, and that their health will improve if released. He stated there is a "Significant risk that [B] may develop full-blown psychotic symptoms; [B] is already showing sign of paranoid thinking." And, "No remedial action to minimise the risks in detention is available." The Home Office's response in December 2017 accepted the Rule 35(1) report was AAR Level 3 evidence but maintained detention on the basis that the "Doctor has not indicated in the report that continued detention is not possible." And, "Your condition is currently being managed.... And he has started you on further medication." These comments are difficult to align with the very clearly expressed comments of the consultant psychiatrist's Rule 35(1) report that stated that detention is adversely affecting B's health and that "No remedial action to minimise the risks in detention is available." The Home Office failed to give adequate weight to the detailed strongly worded evidence of the Rule 35(1) report and failed to carry out any proper individual assessment of the risk factors which apply to B, such as the likely duration of detention and the level of risk of harm to B if detention continues for that period. Following the rule 35 report, B self-harmed by cutting his wrist with a razor blade and stopped taking his medication. B was eventually released from detention in February 2018, 3 months following the Rule 35(1) report, after we sent a letter before claim.

2.14. **LT – detained for 9 months in 2018/19**

LT was tortured in Vietnam and on his journey to the UK and then forced to cultivate cannabis in the UK. He was arrested on suspicion of production of cannabis and received a 12 month sentence. He was referred into the NRM but received a negative conclusive grounds decision. Following the conclusion of his sentence he was moved to an IRC and claimed asylum. A Rule 35 (3) report was completed for him documenting the ill-treatment he had suffered and the doctor noted in the report that "He feels depressed and anxious and has flashbacks and nightmares - he cannot sleep. He has reported increasing symptoms while in detention." He did not receive a response until a month later and then he was considered to be an AAR level 2 despite the concerns raised by the doctor. He was assessed by an independent doctor who found that he was deteriorating and continued detention was injurious to his health. He applied for bail but was refused due to his lack of a release address. He eventually received a positive conclusive grounds decision and was released after 6 months in detention. No Rule 35(1) report was ever completed nor was he released despite a medico-legal report stating that his health was injuriously affected by detention.

**3. Ineffectiveness of other mechanisms in identifying and communicating information about vulnerability, including the IS91RA Part C and ACDT processes.**

3.1. **Ms V- detained for 3 months in 2018/2019**

V reported long history of severe domestic violence by partner. She was referred to Medical Justice by another charity because of concerns about her mental health and self harming. The IRC doctor did not fill in a rule 35 report as she was 'not powerless to leave'. An IS91 RA Part C was completed. The detainee was not given a copy of this and there is no evidence that the Part C led to a review of her detention. It took more than a month before she, following the intervention of her legal representative, finally received a rule 35 report and was recognised as an adult at risk level 2. She was diagnosed with

depression in detention and placed on ACDT due to self-harming and suicide risk. A week before her removal it was deemed necessary to place her in segregation to safeguard her and the centre's safety. No Rule 35(2) report was ever completed.

### 3.2. **AK- detained for 3 months in 2018/2019**

AK came to the UK in 2002, aged 15 and claimed asylum. He was an unaccompanied child. He was refused asylum, but was given 4 years leave to remain and then Indefinite Leave to Remain. In 2012 he received a 12 month sentence for fighting. He had a deport order, which he appealed but it was refused. He has a British wife and they have a small baby together. He also has a 7 year old from a previous relationship. He has a history of trauma - his father was killed and he was shot 3 times. He then had to hide in his uncle's basement for 2 years before they could arrange for his escape out of Iraq. He has PTSD and was seeing a counsellor for 2 years before being detained. He was also on antidepressants for 6 years before being detained, but was not given them in detention. He was detained November 2018 and had a rule 35 in December – the report documented scarring and 'significant mental distress' (we don't have a copy of the response). He was released on bail on 31/12/18 but then detained again on 8th January 2019 following the rejection of his fresh representations. He sewed his lips together in January and refused to eat or drink for 4 days and made a suicide attempt. He was put on removal window. Medical Justice arranged for him to be assessed by an independent doctor who found that he had significantly deteriorated in detention, that he was suicidal, not fit to fly and not fit for continued detention. The doctor wrote a letter setting out her concerns and removal was cancelled. To the best of our knowledge he did not receive a Rule 35 (1) report. He was bailed in middle of February 2019.

### 3.3. **NK - detained for 2 weeks in October 2018**

NK received a copy of an IS 91 RA Part C form that was completed regarding his epilepsy in detention. It is not known if this led to any response as detainees are not provided with a copy of any response to Part C forms. He was assessed by an independent psychiatrist who found him unfit to fly and unfit for detention. The assessment helped to get an injunction to stop his removal and he was released shortly after. He was never informed that he was considered to be an Adult at Risk and it is unclear if the Part C led to his consideration under the Adult at Risk policy.

## **4. Failures to identify vulnerability in detainees held in prisons.**

*Medical Justice does not see many clients in prisons and the communication difficulties means that have not been able to get consent for inclusion in case studies in time. However, the lack of mechanisms for reporting vulnerable people held under immigration powers continues to be a concern.*

## **5. The detention of detainees with independent evidence of torture:**

- **On the basis that credibility findings mean that they fall outside of the AAR policy altogether;**

### 5.1. **H- detained for 5 months in 2018/2019**

H was in the UK on a valid visa. Prior to the leave expiring she claimed asylum but her claim was refused as the account she had given was not believed. At that stage, she had

not disclosed that she had been raped. She complied with reporting conditions and was detained upon reporting. In detention the doctor filled in a rule 35 report documenting how her family were attacked due to her father’s religious affiliation and she was raped by multiple perpetrators. The doctor stated that she was “very tearful during the consultation and she is currently receiving counselling” and went on to find that “Her injuries are consistent with her account. She may be a victim of torture. She is not currently on any medications for any mental health issues but is receiving counselling. She is currently stable in detention.” However, the medical records from the same time show that healthcare staff found that she had low mood, appeared tearful, was experiencing flashbacks and these issues had intensified since coming to Yarl’s Wood. The healthcare staff were also concerned about risk of self-harm and suicide and made changes to her ACDT plan. The Home Office response to the rule 35 found that because she had not disclosed that she had been raped in her asylum claim, it was not credible and that this meant that the Rule 35(3) report was not evidence of vulnerability under the AAR policy (it appears that the report was not even considered to be level 1 evidence). The response stated that: “The account and the timeline you have provided [in the Rule 35] is substantially different to the version of events you provided to the Home office and to the First-tier (Immigration and Asylum Chamber) Tribunal. There is no reasonable explanation for these new discrepancies, which are not compatible with your earlier accounts.” H had provided healthcare with a clear explanation why she had not disclosed the rape earlier and Home Office guidance recognises that there may be delays in disclosure and this is not a reason to exclude the individual from consideration under the Adults at Risk policy. She should have been considered at east level 2 and released as the immigration factors in her case would not outweigh the risk of continued detention (removal would not be possible for at least 2 months, no past compliance issues, no history of offending or public protection concerns and a failure not to return voluntarily once her asylum claim was refused, are not sufficient to justify continued detention). She spent 5 months in detention prior to release following a pre action protocol letter from her legal representatives.

- **On the basis that Rule 35(3) or other medical reports are treated as level 2 evidence and outweighed by immigration factors;**

See below a compilation of quotes from Rule 35 reports and responses:

Doctor’s statement in rule 35	Caseworker response
<i>"I think that the abuses and rapes causing him mental illness forever. I think that being in immigration centre may worsen his mental health condition. we are unable to provide him with regular counselling services here."</i>	<i>"Although it is accepted that you are an Adult at Risk, the Doctor who examined you has not indicated in the report that continued detention is not advisable or possible"</i>
<i>"He reports increasing symptoms of anxiety – particularly on being detained and the doors being shut. He has difficulty sleeping (...) My opinion is that the subjective symptoms he is experiencing mean that continued detention may be deleterious to his mental health"</i>	<i>"healthcare has not raised any concerns that you may be unfit for detention at this time. In this regard, careful note has been taken of the doctor's comment that 'the subjective symptoms that he describes, the impact of future detention may be deleterious to his mental health'. it is not accepted that the term 'may be deleterious' can be equated to</i>

	<i>'would be likely to cause harm', the actual test within the policy."</i>
<i>"He suffers from flashbacks and nightmares. He has insomnia and depression. This has been worse in detention."</i>	<i>"whilst it is noted that you have stated that you have encountered physical torture, the doctor has diagnosed no serious physical conditions that are likely to inhibit your ability to cope within the detained environment during the short duration necessary to effect your removal"</i>
<i>"has been commenced on an antidepressant and referred to the mental health team. Ongoing detention and the stress related to this is likely to worsen his depression"</i>	<i>"Whilst it is noted that you have stated that you have encountered physical torture and are suffering from mental health issues and have been referred to the mental health team in the IRC, and the doctor has advised that continued detention may worsen your depression, the doctor has not raised concerns that these health conditions are likely to inhibit your ability to cope with the detained environment at the present"</i>
<i>"in my opinion prolonged detention can tip her into clinical depression"</i>	<i>"the GP has not stated that currently your detention will be detrimental to your health and you will be able to approach them at any time should you require their assistance"</i>
<i>flashbacks, sleep disturbance, hearing voices, low mood and history of suicide attempts. "These symptoms were present previously but appear to be increasing in severity. She has been reviewed by our mental health team the outcome of which was severe depression. it is likely her symptoms will continue to worsen in detention (despite her having support from mental health team). I will be referring her back to psychiatry for a further review. I do not feel she is fit for detention as continued detention will tip her in to having suicidal thoughts which will likely lead in to actions given her past"</i>	<i>"The Medical Practitioners has indicated that detention is likely to impact negatively on your symptoms and that this could lead to a risk of significant harm or detriment to you" - also has MLR from reputable provider. still only considered Level 2.</i>
<i>anxiety, flashbacks and nightmares. He is depressed and feels like his symptoms are getting worse in detention</i>	<i>"While it is noted that you have complained of having flashbacks, anxiety and nightmares, Healthcare have not raised any concerns that you may be unfit for detention at this time"</i>
<i>nightmares, lots of memories evoked since detention. struggling with being locked away at night. Difficulty sleeping. Very few marks to demonstrate injuries he sustained. "the impact of detention is currently affecting his mental health wellbeing and sleeping. he is not currently seeing a mental health professional nor is he</i>	<i>"The medical practitioner has stated that they have no concerns in regards to the impact of detention on your physical or mental health and has indicated that a period of detention will not cause you harm"</i>

*medicated. there is a risk that ongoing detention will exacerbate his mental distress and poor sleep."*

Rule 35 reports frequently use wording such as ‘I have no concerns that there is *severe* mental health issues’ or ‘I have no concerns there are *acute* mental health issues’ or ‘has significant mental distress but I have referred to mental health team as per protocol’. Where concern is expressed about detention this is often expressed as concern about ‘*prolonged*’ detention. As no clear concern is expressed about *imminent* deterioration, these reports are treated as level 2 evidence.

One Rule 35 report stated that detention had caused the detainee to experience flashbacks to her trauma and therefore “*her symptoms are unlikely to improve whilst she remains in detention*”. The response does not specify a level of risk and states: “*Although the doctor has indicated that your symptoms are unlikely to get better in detention, they have diagnosed no serious physical or mental conditions that are likely to inhibit your ability to cope within the detained environment for the duration necessary effect your removal*”.

Where a number of symptoms are given but no explicit statement made we see very little evidence of caseworkers going back to doctors for further explanation – in only 3 out of 194 cases reviewed there was evidence of caseworkers writing back to doctors in response to Rule 35 reports asking for further assessment of the likely impact of continued detention.

A number of the Rule 35(3) reports state that the detainee has psychological symptoms or a referral has been made to the mental health team. In these cases there is no evidence that the Home Office has followed up with specific requests for information about the impact of detention on the detainee’s health.

#### 5.2. AR – detained in 2017/2018

AR was taken from his home at 10 years old, held against his will and used as a sex slave by the Taliban. He reports being raped again in the camp in Calais aged 13 and again after coming to the UK. He did not disclose the history of sexual assault in his asylum claim but was given refugee status on other grounds. AR has been convicted of several criminal offences including a 4 year sentence for drug charges. Following this conviction AR’s refugee status was ceased and the judge found that he had a history of escalating criminal offences and that he was no longer a child and did not require the protection. AR finally disclosed his history of torture and sexual assault. A medico-legal assessment was carried out and the doctor identified scarring that is highly consistent with his account of torture and diagnosed him with severe depression and symptoms of PTSD. AR has had 3 Rule 35 reports since being in detention; it was concluded that he is a Level 2 adult at risk, but that his removal could be enforced within a reasonable timeframe, so his detention was maintained. When seen by the Medical Justice doctor, AR had not yet had a formal mental health assessment in detention (despite the Rule 35 reports and self-harming on several occasions and being on ACDT).

### **Balancing risk and immigration factors**

- **Unexceptional non-compliance (illegal entry as an asylum applicant, non-compliance with reporting, non-compliance with offers of voluntary return) is treated as sufficient to outweigh professional evidence of vulnerability (i.e. level 2);**

#### **5.3. W- detained for 2 months in 2016/17**

W had a Rule 35(3) reporting that he had been tortured by a number of groups in his country of origin, including the police. Scars were documented and assessed as consistent with his account and it was documented that he had suffered flashbacks since being held in immigration detention. The doctor stated that the detainee's presentation was consistent with his account of torture. The Home Office's response to the Rule 35(3) report accepted that the adults at risk policy was engaged, but no level of evidence was specified. The letter then set out his history of having come to the UK on a visit visa, claiming asylum shortly before the visa expired and subsequently making several unsuccessful applications. It was stated that he was considered not to be credible by an immigration judge and had declined voluntary return. There was no mention of a history of absconding or criminality, but the response stated that the immigration factors outweighed the evidence of risk and detention was maintained. The detainee was later released on bail by the First-Tier Tribunal and was later granted asylum.

#### **5.4. M – detained for 8 months 2016/2017**

M reports a long history of sexual and physical abuse starting when she was about 10 years old. As a child she was abused by male family members and beaten by her mother who would call her 'a slut'. As a young adult she was abused by a partner. She became pregnant as the result of rape. Then she was offered the opportunity to come to the UK and felt it was a way out. In the UK she felt she was finally free and safe. She overstayed her visa. However there were times when she had no food and no money. A friend arranged for her to do sex work. She felt she had no other options. One day she was raped by a friend's boyfriend. At some point she met her husband and they were married. Initially it was a happy time and they had a daughter. Later he also became violent towards her. One day her husband was arrested and convicted of a crime and sent to prison. She was also arrested and questioned. She was charged with an offence and sentenced to 12 months in prison. At the end of her sentence she was transferred into immigration detention. While in detention, her mental health deteriorated. 3 months after she was detained the GP in the detention centre prepared a rule 35(1) report regarding her indicating that detention was injuriously affecting her health. The report states: 'this patient has a significant history of abuse including rape and being locked in closed spaces. This is causing her to have anxiety, panic attacks and flashbacks. She also wakes up in the night screaming with night terrors. (...) she is struggling at present and is likely to become a significant suicide risk in the next few weeks with continued detention'. Soon after she had a mental health assessment which found no concerns about self-neglect or self-harm or current suicidal ideation. The Home Office responded to her Rule 35 report and assessed her an Adult at Risk, evidence level 2. Since there were no current concerns about self-harm or self-neglect it was deemed that 'at this time there is no evidence of a vulnerability that would require [her] release from detention'. Her past criminal conviction and past overstaying were considered to outweigh the risk. Following the Rule 35 Report she remained in detention for several more months, until eventually being released by the Home Office. During those months her mental health continued to deteriorate and an independent psychologist who assessed her diagnosed her with PTSD, depression and anxiety.

#### 5.5. D – detained for 4 months in 2018

D was intercepted at Heathrow Airport in March 2018 whilst travelling on a false passport in transit to Dublin. When he landed in the UK, he was approached by the Border Force Agency who told him that they suspected that he was travelling to the U.K. with illegal drugs in his possession due the route he had taken. He was taken away to be interviewed. He then told them of his intention to seek asylum in Ireland, or that if he was stopped earlier than expected to seek asylum in the UK. He was subject to invasive examinations but no drugs were found. He was then taken to a detention centre. One month after being detained a Rule 35 report was completed. It recounts a history of being beaten by military police following a demonstration and being pushed out of a moving vehicle by members of Boko Haram. The doctor found the account plausible and noted that he has a number of scars which may be due to the history of ill-treatment given. The response to the Rule 35 accepts that he is a victim of torture and an adult at risk level 2. However, detention is maintained due to immigration factors: “given you only claimed asylum after being detained, your asylum claim is considered to be late and opportunistic to frustrate removal. Given the circumstances you are considered to be a significant absconder risk.” D was seen by an independent doctor arranged by Medical Justice in July 2018 who found that he was presenting with symptoms of anxiety, depression and PTSD and that his mental health had deteriorated in detention. He was released from detention in August 2018. *(D was recognised as a victims of torture and doctor documented scaring which may be due to the history given. Still he was detained on the balance of immigration factors which were certainly not ‘exceptional’.)*

- **Focus on static factors (immigration history, fact of offending) rather than conducting a dynamic assessment of the risks of absconding, harm or re-offending (e.g. by reference to probation OASYS assessments or pre-sentence reports);**

#### 5.6. N – detained for 8 months in 2016/2017

N was trafficked in a number of countries over a period of more than 10 years, since he was a minor. This included being kept locked up, beaten and cut with knives, and forced to work long hours for no pay. He was eventually brought to the UK and kept in a house where cannabis was being grown. He was arrested from the house and received a short prison sentence for production of cannabis. A decision was taken to deport him and he was detained under immigration powers at the end of his sentence. He claimed asylum, was referred to the National Referral Mechanism and was recognised as a victim of human slavery. Despite this, he continued to be detained. In detention he received rule 35(3) report and was accepted as an adult at risk. However, his detention was maintained because he was considered to pose a risk of harm to the public because of his conviction (despite the fact that his criminal activity was a direct result of his exploitation by traffickers) and because it was considered that his removal could be enforced within a reasonable time scale (said to be 16 weeks!). He was visited in detention by an independent Clinical Psychologist who diagnosed PTSD and depression, and concluded that his mental health was being ‘significantly negatively impacted by his detention’.

**6. Detainees who lack or may lack capacity not being identified and detention processes not being adjusted to take account of their lack of capacity (e.g. when reasons for detention are served, in relation to bail requests, segregation, the use of force etc).**

*We do see these cases whoever getting consent is often an issue and in many cases the individual does not have insight into their mental health situation.*

**7. Cases agreed to be unsuited for detention but who are not released because of a lack of aftercare planning**

**7.1. AA – detained in 2018 /2019 for over 4 months**

AA is a Polish national suffering from Bipolar Disorder and ADHD who has a history of self-harm and suicidal thoughts. He has lived in the UK since 2005 and had been detained under immigration powers since 4 September 2018 following the end of a short custodial sentence. His convictions were for 'low-level' offences connected with his mental ill health and he is subject to the lowest level of MAPPA monitoring (MAPPA Level 1).

On 29 October 2018 the IRC doctor issued a Rule 35 (1) report finding that the risks of him remaining in detention were serious including to his own health, vulnerability and safety. The doctor found that AA had "an established diagnosis of major mental illness... BPAD is a severe relapsing and remitting disorder associated with episodes of mania psychosis and depression. In order to control the disorder powerful psychotropic medications which require associated physical health monitoring owing to the propensity to cause side effects...These disorders are susceptible to deterioration and stress associated with detention in a non-therapeutic environment...".

The doctor further found that his conditions were susceptible to deterioration through the stress associated with detention with at least one severe and enduring mental illness being detrimentally affected by detention. The doctor notes: "*The detention environment is a significant stressor on mental health conditions, and leads to the individual being under additional stress which both precipitates relapse and impairs recovery. He is currently relapsing and demonstrating signs of mental illness...The risks are already serious including to his own health, vulnerability and safety.*" The doctor recommended that he should be released to an address.

From early as 1 November 2018 the Home Office agreed that he should be released from detention but nonetheless failed to release him after accepting that he is an Adult at Risk Level 3 within the meaning of the published policy guidance 'Adults at Risk in Immigration Detention'. On 9 November 2018 the decision was taken by the SSHD to release AA due to his mental health. However, he was not released due to lack of suitable accommodation.

On 13 November 2018 the SSHD issued removal directions and AA was referred to Deighton Pierce Glynn. DPG sent a LBA to the Defendant on 13 December and issued an urgent judicial review on 20 December 2018 which stayed his removal. The SSHD refused AA Schedule 10 accommodation on the basis that he was ineligible for it as he was eligible for Local Authority accommodation under the Housing Act 1996. DPG successfully challenged this decision and order was made by the Court for the Home Office to provide him with Schedule 10 accommodation to enable him to be released by 16 January 2019. AA was released by the SSHD to Schedule 10 accommodation on 17 January 2019, over four months since he was detained and over two months after the SSHD agreed he should not be detained.

**7.2. CC – detained for 6 months 2018/2019**

CC is a 23 year old Iraqi asylum seeker. On or about 20 October 2014 he was forced to flee his home following an invasion by ISIS who murdered the residents of the village, which he believes included his parents. He has not heard from any member of his family since. He fled Iraq and arrived in the UK on 17 December 2015, promptly applying for asylum that same day. His claim was refused and an appeal dismissed by the First-tier Tribunal on 07 October 2016. He was given permission to appeal due to the judge's failure to apply the correct test to assess the safety of return in the context of recent country guidance.

He turned to drugs to cope with the trauma he had experienced and was convicted on 14 March 2018 of drug related offences and sentenced to one year imprisonment. He was detained under immigration powers on 25 May 2018 and spent some time in prison under immigration detention before he was transferred to IRC Morton Hall.

On 06 November 2018, he applied for accommodation pursuant to Schedule 10, in advance of a bail hearing. On 15 November 2018, he was granted provisional immigration bail, with the Secretary of State compelled to provide accommodation by 30 November 2018 he was not released due to the SSHD's failure to provide him with accommodation. His claim for accommodation had been rejected by the Asylum Support Team on the basis that C was still in detention so would not be left destitute.

A Rule 35 (3) report found that detention had affected him psychologically, made him increasingly fearful, stressed and anxious however he was not receiving adequate care in detention. The doctor had concerns that he may have been a victim of torture

On 21 December 2018 Deighton Pierce Glynn issued an urgent judicial review of the SSHD's ongoing failure to release him into accommodation. The Court ordered the SSHD to release him from detention and provide him with suitable accommodation. He was then released from detention on or about 1 January 2019 and provided with Home Office accommodation.

*See also the case of J at 1.3.*

## **Appendix 2 – Useful statistics and other evidence**

The AAR policy is particularly opaque and lacking in transparency. When introducing a major reform to the identification and wellbeing of vulnerable people in detention we would expect there to be stringent monitoring and evaluation plus a commitment to transparency, especially as these were issues identified as problematic in the Shaw review.

However, since the introduction of the policy NGOs, parliamentarians and official inspectorates have struggled to access data on the operation of the policy. We have repeatedly been told that the computer system simply does not allow for the level of reporting that we would expect. We find this to be a particularly unconvincing justification for failing to monitor the treatment of the most vulnerable in detention.

We have repeatedly FOI'ed data on how, when, where and the numbers of people identified as adults at risk under the policy.

Below we include some of the data we have been able to ascertain on the operation of the policy and our interpretation of this.

### **The Gatekeeper Team and identification of those at increased risk of harm in detention**

There is no transparency in the Gatekeeper processes. However, the Home Office recently provided statistics in response to a FOI request we made for data in relation to the Detention Gatekeeper process. The data provided covers the period from September 2016 to March 2018. The statistics show a consistent picture of low numbers of individuals referred to the Gatekeeper who are not detained as a result of their identified vulnerability.

For the year 2017:

- There were 26,478 individuals referred to the Detention Gatekeeper.
- 2843 were identified as vulnerable under the AAR policy.
- 265 were not detained because of their identified vulnerability.

*So, only 1% of cases considered by the Detention Gatekeeper were not detained because of their identified vulnerability; and 9.74% of individuals identified as vulnerable under the AAR policy by the Detention Gatekeeper were detained despite their acknowledged vulnerability.*

The statistics also breaks down the numbers of individuals identified as vulnerable by the Detention Gatekeeper under the AAR policy by evidence level (i.e. 1, 2 or 3). So for 2017:

- 1365 were identified as level 1.
- 1450 were identified as level 2.
- 28 were identified as level 3.

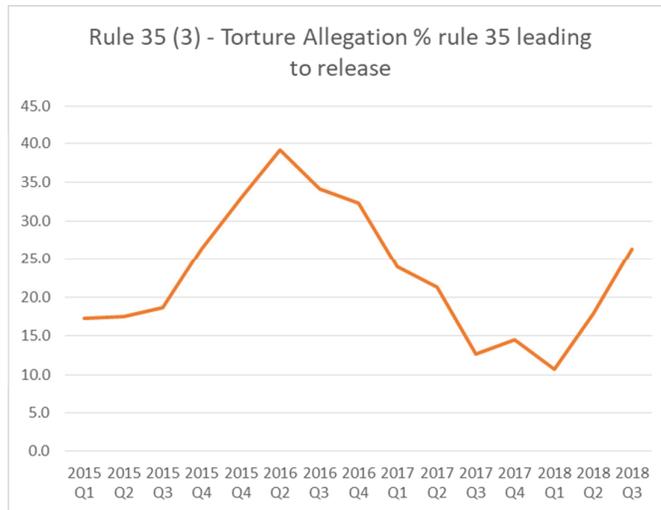
**b. Failures in the Rule 34/35 process.**

The numbers of Rule 35(3) reports have remained at a fairly consistent level, save that there was a dip in Q4 2016 (which is when, for part of the period, 1 October to 6 December 2016, the Home Office’s restrictive UNCAT-style definition of torture was operated). However, there has been a significant drop in the numbers of detainees who receive a Rule 35(3) report who are released from detention. Home Office data shows that following a slow but steady increase resulting from targeted training of doctors and case workers the introduction of the AAR policy brought about a catastrophic decline in release rates following a rule 35 report. In the last two full quarters immediately before the AAR policy was implemented in September 2016 (Q1 and Q2 2016) there were, respectively, 622 and 802 Rule 35(3) reports and 205 and 314 Rule 35(3) releases (32% and 39%). Following the introduction of AAR the release rate following rule 35 fell dramatically, to as low as 10.7% in Q1 2018. Q2 (17.8%) and Q3 (26.3%) 2018 have seen a very welcome improvement in release rates but it remains to be seen if this signals a change in handling of rule 35 reports or some other change in the system. The fact that less people are being released following a Rule 35 report means that more vulnerable people are being detained for longer.

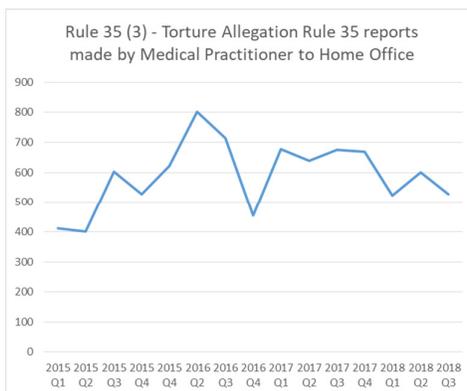
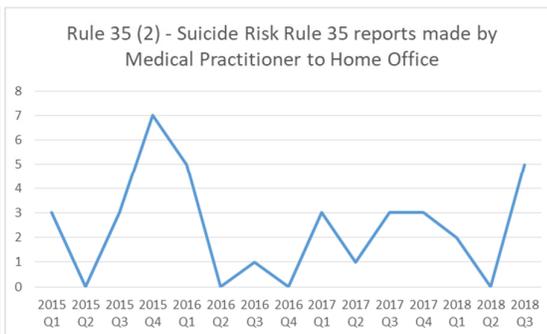
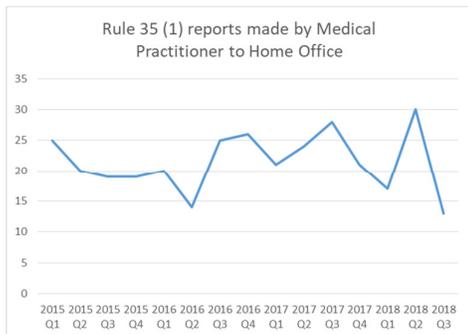
Comparing the Rule 35 data for the year immediately prior to the introduction of the Adult at Risk policy and the year from September 2017 to September 2018 it is clear that there has been a significant shift in the treatment of Rule 35 reports, particularly Rule 35(3) reports leading to release.

	<b>01/09/2015 to 31/08/2016</b>	<b>01/09/2017 to 31/08/2018</b>
Rule 35 (1) – reports	72	86
Rule 35 (1) - detainees related to	69	85
Rule 35 (1) - releases	26	44
% Rule 35 (1) leading to release	36.11%	51.16%
Rule 35 (2) - reports	14	8
Rule 35 (2) - detainees related to	13	8
Rule 35 (2) - releases	3	2
% Rule 35 (2) leading to release	21.43%	25.00%
Rule 35 (3) - reports	2640	2352
Rule 35 (3) - detainees related to	2601	2328
Rule 35 (3) - releases	885	370
% Rule 35 (3) leading to release	33.52%	15.73%

The above data is estimated based on quarterly data released by the Home Office as we are awaiting an answer to FOI request 52416 but we estimate there should only be very minor discrepancies as a result of this estimation.



There has been no significant increase in either Rule 35 (1) or Rule 35 (2) reports since the introduction of the AAR policy. We would have expected to see an increase if these were being used as alternative reporting mechanisms under the AAR policy but the number of Rule 35(2) reports has been constant at less than 5 reports filed each quarter. The number of Rule 35(1) reports completed has also remained relatively constant between 20-30 reports in most quarters.



### Rule 35 reports and responses - Evidence of the impact of the AAR policy on the ground

We carried out an analysis of the Rule 35 reports and responses of 200 individuals referred to Medical Justice who had rule 35 reports and responses between March 2017 and June

2018. This is not a representative sample as Medical Justice clients constitute a particular subset of detainees. E.g. we are less likely to see clients who have been released as a result of their Rule 35 report as we assist those who are currently detained and this group would no longer be in detention however, our sample is likely to include some of the most vulnerable detainees.

Of the 200 reports reviewed 5 were Rule 35 (1) reports, 1 was a Rule 35 (2) report, 194 were Rule 35 (3) reports. 2.5% of reports led to release and in 97.5% of cases the decision was taken to maintain detention.

144 were assessed to be level 2, 3 were assessed as level 3 and in 51 cases no level was specified or otherwise unknown. In almost all Rule 35 (3) reports the doctor completing the report explicitly stated that the clinical presentation was or may be consistent with the account given by the detainee.

In 50% of cases where victims of torture accepted by the Home Office to be adults at risk had their detention maintained, there was no indication of what the Home Office considered a 'reasonable timeframe' for the person to remain in detention until their removal could be effected. However, responses frequently used words like 'shortly', 'imminent' and 'within a reasonable timescale' to describe the likely timeframe of removal.

In the remaining 50 % there was a wide range of timeframes given, with the shortest being less than 1 week and the longest 6 months. The average time frame considered 'reasonable' in the sample was 10 weeks. This is a very long time for someone who is accepted as a victim of torture to linger in detention in light of the fact that they are recognised to be at increased risk of harm in detention.

### **Reporting and transparency**

Medical Justice and other NGOs have been trying to obtain quantitative evidence of the operation of the Adults at Risk policy through FOI requests, Parliamentary Questions and regular stakeholder forums but have repeatedly been told that this evidence is not centrally available and is only available without going through individual records at disproportionate cost. We believe that any system needs to have effective and transparent monitoring and evaluation. We therefore hope that one of the consequences of the annual inspection will be the increased reporting and monitoring of the implementation of the Adults at Risk policy.

It would be helpful to have more detailed and reliable data published quarterly on e.g.

- Number of people identified as adults at risk in the community and in detention;
- The route by which they were identified (Rule 35 (broken down by type and level), Part Cs, MLRs etc);
- How long after they are detained they are identified as AAR;
- Once identified how quickly they were released and why they were released (bail/TA/legal intervention/Rule 35etc)
- Which indicator of risk are they identified under
- How many detainees have had a change in AAR level classification and by which mechanisms was this reclassification prompted.

If the computer system is not currently up to the task, then interim measures for monitoring and evaluation should be put in place.