Landmark CHAMBERS

Detention of Vulnerable Adults
18 April 2018

Alex Goodman
Landmark Chambers

Scope

- The Idea of the Vulnerable Adult
- Historical Background to Detention of Vulnerable Adults under Immigration Powers
- Detention Centre Rules 2001
- Background to New Adults At Risk Policy:
  - Former Policy - categories of vulnerable persons
  - Leading cases pre Shaw Review
  - Section 59 of Immigration Act 2016
  - Sir Stephen Shaw's Review
- Games with the Definition of Torture following Shaw
- New Draft Adults At Risk Policy (July 2018)
- Getting Vulnerable people out of detention- bail and interim relief
- Hardial Singh Challenges
- Breach of Policy Challenges
- Interim Applications; Expedition and Habeas Corpus
- Damages (briefly)
- Article 3 issues (inhuman and degrading treatment)

Who is a Vulnerable Adult?

The **Association for the Prevention of Torture/UN High Commission for Refugees** document, *Monitoring Immigration Detention: Practical Manual*, 2014, says:

"Immigration detainees are vulnerable at many levels. In general, immigration detainees are deprived of their liberty for periods of non--specific duration as a result of a lack of or unclear immigration status. This lack of information about their individual situation increases their vulnerability. They are outside their country of origin or former habitual residence; they often do not speak the language and may not have a strong family or community support network available to them. Quite apart from feeling unsafe in the immigration detention environment, their sense of insecurity is often exacerbated by fear of what the future holds and where that future will be. They may also believe, rightly or wrongly, that those who exercise power over them be detaining them also hold the key to their future. There is a real risk that those on the upside of the power equation may misuse the real or perceived implications of such a power imbalance … Immigration detainees are already in a vulnerable situation and this can be further exacerbated for persons with special needs or risk categories (such as women, children, including unaccompanied or separated children, members of different ethnic/tribal groups detained together, victims of torture or trauma, persons with disabilities, the elderly, LGBTI individuals, or those with urgent medical needs.)"

Historical Background to Detention of Vulnerable Adults under Immigration Powers

- Small facility at Harmondsworth IRC opened in 1970
- 1980s- around 100 immigration detainees at any time (now 3,500)
- Now ten designated immigration removal centres (Dover, Morton Hall, and The Verne, run by NOMS, and Brook House, Campsfield House, Colnbrook, Dungavel, Harmondsworth, Tinsley House, and Yarl's Wood, run by private contractors), plus two short term holding facilities, port detention facilities, and a residual reliance upon prison places
- System dramatically expanded following Immigration and Asylum Act 1999

Detention Centre Rules 2001

The Detention Centre Rules 2001 were made pursuant to section 153 of the Immigration and Asylum Act 1999, and were approved by Parliament under the negative resolution procedure. They remain in force.

3.— Purpose of detention centres

(1) The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression.

(2) Due recognition will be given at detention centres to the need for awareness of the particular anxieties to which detained persons may be subject and the sensitivity that this will require, especially when handling issues of cultural diversity.

Detention Centre Rules 2001, Rules 33-5

"Rule 33 — Medical Practitioner and Health Care Team

(1) Every detention centre shall have a medical practitioner who shall be vocationally trained as a general practitioner.

(2) Every detention centre shall have a healthcare team (of which the medical practitioner will be a member)…

Rule 34 requires every detained person to have a physical and mental examination within 24 hours of admission to the detention centre.

35 Special illnesses and conditions (including torture claims)

"(1) The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention."

(2) The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions…

"(3) The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.

"(4) The manager shall send a copy of any report under paragraphs (1), (2) or (3) to the Secretary of State without delay."

Background (1): Former Paragraph 55.10 of Enforcement Instructions and Guidance

"The following are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration detention accommodation or prisons:

- Unaccompanied children and young persons under the age of 18.
- The elderly, especially where significant or constant supervision is required which cannot be satisfactorily managed within detention.
- Pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this
- Those suffering from serious medical conditions which cannot be satisfactorily managed within detention.
- Those suffering from serious mental illness which cannot be satisfactorily managed within detention.
- In exceptional cases it may be necessary for detention at a removal centre or prison to continue while individuals are being or waiting to be assessed, or are awaiting transfer under the Mental Health Act.
- Those where there is independent evidence that they have been tortured.
- People with serious disabilities which cannot be satisfactorily managed within detention.
- Persons identified by the competent authorities as victims of trafficking."

Background (2): *R (D) v SSHD [2006] EWHC 980 (Admin)*

- Paras 50 and 53, Davis J concluded that both rules 34 and 35(3) were important safeguards in relation to the application of government policy on detention. That was because they could provide independent evidence of torture. The rule 35(3) report was distinct from reports under rule 35(1) , and indeed rule 35(2) on suicide risk.

- Approved in ***HK (Turkey) v Secretary of State for the Home Department*** [2007] EWCA Civ 1357

Background (3):
R (B) v SSHD [2008] EWHC 364 (Admin)

- Held that a six month detention subsequent to a failure to undertake a medical examination on arrival pursuant to rule 34 of the DCR 2001 led to a failure to prepare a rule 35 report which would probably have led to the release of the Claimant if policy had been applied.

- PB was falsely imprisoned from the second day of detention and she was awarded substantial damages.

- The measure of damages in the case has been seen subsequently as a suitable benchmark.

Section 59 of the Immigration Act 2016

Section 59 of the Immigration Act 2016 provided a statutory duty to publish policy on the detention of vulnerable people:

59 Guidance on detention of vulnerable persons

(1) The Secretary of State must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—

(a) whether a person ("P") would be particularly vulnerable to harm if P were to be detained or to remain in detention, and

(b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention

Sir Stephen Shaw's *Review into the Welfare in Detention of Vulnerable Persons (2016)*

"I believe the notion of 'vulnerability' is best understood as a dynamic term. The Home Office recognises through its own guidance that particular individuals – pregnant women, elderly people, victims of torture, among them – have special needs (however inapt that term in the context of torture and other abuse), and should only be detained in exceptional circumstances, and there are international protocols to this effect. I have proposed that victims of rape and other sexual violence, those with Learning Difficulties, and some others, should be added to the list. However, vulnerability is intrinsic to the very fact of detention, and an individual's degree of vulnerability is not constant but changes as circumstances change."

Sir Stephen Shaw's *Review into the Welfare in Detention of Vulnerable Persons*

Shaw recommended that there be included within the categories:

- transsexual people,
- those with PTSD,
- people with learning difficulties,
- an absolute exemption for pregnant women,
- an upper age limit for detention and
- provision for others to be identified as vulnerable outside

Adults At Risk Policy
Section 59(4) of the Immigration Act 2016

- Section 59(4) of the Immigration Act 2016 requires the draft policy to be laid before parliament.

- First iteration of the policy came into effect on 2 September 2016 and purported to respond to the *Shaw Review*, although opportunistically it brought in some far stricter tests for those claiming to be vulnerable to meet in attempting to define reasons to be released.

Games with the Definition of Torture - Common Law Definition

In ***R (EO) v SSHD*** [2013] EWHC 1236 (Admin) Burnett J held at paragraph 82 that the following was the correct interpretation of the meaning of "torture" in rule 35 of the Detention Centre Rules 2001:

> "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based upon discrimination of any kind."

Home Office used Shaw review as opportunity to apply a narrower definition of torture in the August 2016 AAR Policy.

R (Medical Justice) v SSHD [2017] 4 W.L.R. 198

Challenge was that the definition of "torture" to be found in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT") and as used in the August 2016 AAR policy document was not apt to describe the meaning of the term "torture" in rule 35(3) of the DCR 2001. This had the effect, it was said, of excluding those who are victims of torture by non-state actors, from those whose circumstances indicate vulnerability to harm in detention.

Para 126 of Ouseley J's judgment held:

> "The decision in *R (EO) v Secretary of State for the Home Department [2013] EWHC 1236 (Admin)* was about the meaning of "torture" in rule 35(3) , as well as in policy documents; see para 98 where that is made explicit. This decision was not appealed; the DCR were not amended. Their meaning has thus been authoritatively decided by a court. It is not open to the SSHD by issuing policy statements to alter the meaning of a statutory instrument, whether expressly or by necessary implication."

Definition of Torture- Statute
New DCR 2001 Rule 35(6)

Detention Centre (Amendment) Rules 2018/411 to take effect on 2 July 2018 so that the definition is now states as follows:

2.— Amendment to rule 35 of the Detention Centre Rules

(1) Rule 35 of the Detention Centre Rules 2001 is amended as follows.

(2) After paragraph (5), insert—

"(6) For the purposes of paragraph (3), *"torture"* means any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which—

(a) the perpetrator has control (whether mental or physical) over the victim, and

(b) as a result of that control, the victim is powerless to resist."

New Draft AAR Policy (1)

A revised policy has been laid before parliament on 21 March 2018. Unless amended it will come into effect on 2 July 2018.

Paragraph 1 states:

This guidance specifies the matters to be taken into account in accordance with section 59 of the Immigration Act 2016 when determining whether a person would be particularly vulnerable to harm if they were detained, or if they remained in detention, and, if they were particularly vulnerable in those circumstances, whether they should be detained or should remain in detention. This approach emerges from the Government's response in a Written Ministerial Statement of 14 January 2016) to the report by Stephen Shaw of his review of the welfare of vulnerable people in detention. The intention is that the guidance will, in conjunction with other reforms referred to in the Government's response, lead to a reduction in the number of vulnerable people detained and a reduction in the duration of detention before removal. It aims to introduce a more holistic approach to the consideration of individual circumstances, ensuring that genuine cases of vulnerability are consistently identified, in order to ensure that vulnerable people are not detained inappropriately. The guidance aims to strike the right balance between protecting the vulnerable and ensuring the maintenance of legitimate immigration control.

New Draft AAR Policy (2)

Paragraph 3 states:

The **clear presumption** is that detention will not be appropriate if a person is considered to be "at risk". However, it will not mean that no one at risk will ever be detained. Instead, detention will only become appropriate at the point at which immigration control considerations outweigh this presumption. Within this context it will remain appropriate to detain individuals at risk if it is necessary in order to remove them. This builds on the existing guidance and sits alongside the general presumption of liberty.

Draft AAR Policy (3)

Paragraph 6 states in part:

The main principles underpinning this guidance are:

- the intention is that fewer people with a confirmed vulnerability will be detained in fewer instances and that, where detention becomes necessary, it will be for the shortest period necessary
- there will be a clearer understanding of how the Government defines „at risk" and how those considerations are weighed against legitimate immigration control factors to ensure greater transparency about who is detained and why…
- detention will not be appropriate if an individual is considered to be at risk in the terms of this guidance unless and until there are overriding immigration considerations
- in each case, the evidence of risk to the individual will be considered against any immigration factors to establish whether these factors outweigh the risk
- the greater the weight of evidence in support of the contention that the individual is at risk, the weightier the immigration factors need to be in order to justify detention.

New Draft AAR Policy (4)
Who is At Risk

The structure of the Draft AAR Policy is as follows.

First, it identifies who may be at risk of harm from detention (paragraphs 7 and 11).

Paragraph 7 adopts a broad idea of vulnerability:

"For the purposes of this guidance, an individual will be regarded as being an adult at risk if:

- they declare that they are suffering from a condition, or have experienced a traumatic event (such as trafficking, torture or sexual violence), that would be likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention

- Those considering or reviewing detention are aware of medical or other professional evidence, or observational evidence, which indicates that an individual is suffering from a condition, or has experienced a traumatic event (such as trafficking, torture or sexual violence), that would be likely to render them particularly vulnerable to harm if they are placed in detention or remain in detention – whether or not the individual has highlighted this themselves."

New Draft AAR Policy (5): Who is At Risk

11. The following is a list of conditions or experiences which will indicate that a person may be particularly vulnerable to harm in detention.

- suffering from a mental health condition or impairment (this may include more serious learning difficulties, psychiatric illness or clinical depression, depending on the nature and seriousness of the condition)
- having been a victim of torture (individuals with a completed Medico Legal Report from reputable providers will be regarded as meeting level 3 evidence, provided the report meets the required standards)
- having been a victim of sexual or gender based violence, including female genital mutilation
- having been a victim of human trafficking or modern slavery (see paragraph 20 below)
- suffering from post traumatic stress disorder (which may or may not be related to one of the above experiences)
- being pregnant (pregnant women will automatically be regarded as meeting level 3 evidence)
- suffering from a serious physical disability
- suffering from other serious physical health conditions or illnesses
- being aged 70 or over
- being a transsexual or intersex person.

12. The above list is not intended to be exhaustive.

New Draft AAR Policy (6)

Second, it identifies levels of evidence of risk of harm.

Level 1 is a self-declaration of risk (limited weight). Level 2 is professional evidence or official documentary evidence which indicates that the person may be at risk. Level 3 is professional evidence that a period of detention would be likely to harm the individual.

A caveat at paragraph 10 is that a court determination of credibility can affect the weight that should be afforded to evidence of risk.

New Draft AAR Policy (7)

Third, it establishes a presumption against detention of persons at risk of harm. It says this at paragraph 13:

> "The presumption will be that, once an individual is regarded as being at risk in the terms of this guidance, they should not be detained. However, any risk factors identified and evidence in support, will then need to be balanced against any immigration control factors in deciding whether they should be detained"

Immigration factors against release include risk of absconding, protection issues and likely length of detention.

Obtaining Orders for Release of Vulnerable: Bail

- Typical advantages: quick and cheap
- Disadvantages: random outcomes, mostly refused; legal aid funding rare; can prejudice JR; repeat bail applications difficult
- Generally speaking for FNPs weight will be given to past offending and abscond risk over length of detention
- *Bail Guidance for Judges* June 2012: recommends regard to the reasons for detention ; length of detention; effect of detention on the person
- Bail not an alternative remedy to JR: *Konan* [2004] EWHC 22 (Admin) [30] – distinction between bail and JR- latter challenges legality, former assumes legality.
- *R (Turkoglu) v Secretary of State for the Home Department* [1988] QB 398: High Court has power to grant bail

Hardial Singh (1)

- *Hardial Singh* principle (iii) per *Lumba* at [103]. Eg. in travel document cases is the single strongest and most successful ground. Keep it simple if possible. Two questions involved here:
  - Is there a realistic prospect of removal? Only if so,
  - Can that be achieved in a reasonable period of time?
- *Hardial Singh p*rinciple (ii): Unreasonable Length- Difficult:
  - In FNP cases because offending and absconding are of paramount importance
  - In reality if removal is a realistic prospect: unlikely Ct. will accede on grounds of length.
  - But reasonable period can be determined heavily by the likely impact on the Claimant's mental health (see ***R (M) v SSHD*** **[**2008] EWCA Civ 307 at paragraph 39

Hardial Singh (2): Adjournment

- *Hardial Singh* [1984] 1 WLR 704 has spawned more than 200 cases, but was in fact a case about adjournment
- Woolf J did not in fact direct the release of Hardial Singh, but adjourned the hearing for three days to allow the Secretary of State a further opportunity of putting material relating to prospects of removal before the Court which might justify the detention.
- Same approach in other *Hardial Singh* cases see also eg. *Dahmani* [1998] EWHC Admin 245 (4 week adjournment); *Singh* [2002] EWHC 1519 (10 weeks); *Chen* [2002] EWHC 2797 (QB) (8 weeks); *Lubana* [2003] EWHC 410 (Admin) (7 weeks); *Kumar* [2003] EWHC 846 (Admin) (6 weeks); *ME* [2009] EWHC 629 (Admin) (3 weeks).

Failure to Apply Policy as Ground of Challenge

A failure to consider or to properly apply a published policy which bears on and is material to a decision to detain is a public law error which vitiates the decision to detain and renders the detention unlawful (***Lumba*** [2012] AC 245 at [26], [68]). As explained by the Court of Appeal at paragraph 15 of its judgment in ***R (Das) v SSHD*** [2014] 1 W.L.R. 3538:

> "… in *Lumba's case [2012] 1 AC 245* Lord Dyson JSC went further than stating that published policy must be adhered to. He stated (at para 34) that "immigration detention powers *need* to be transparently identified through formulated policy statements" (emphasis added). Such policies are therefore required and operate as restrictions on the broad language of the 1971 Act over and above the Hardial Singh principles. Failure by the Secretary of State to have regard to a material policy concerning detention would, it was held, render the detention unlawful and a false imprisonment, even where it is certain or inevitable that the person detained could and would have been detained had the power been exercised lawfully [2012] 1 AC 245, paras 26, 34, 64–66, 88, 175, 208, 221, 239. But, if detention was certain or inevitable, while the Secretary of State will have committed the tort of false imprisonment, the person detained will only be entitled to nominal damages: see paras 95, 169, 237, 256, 335."

Interim Applications

R (Adams) v SSHD [2014] EWHC 3506 1 August 2014.Singh J

Claimant born on 23 January 1965. Her mother was a British citizen and her father is South African. She was brought to the United Kingdom at the age of five months and has never left the country since. It does not appear that any application to regularise her status was made when she was a child, but the claimant was unaware of her lack of status. She married in 1986. Her husband is a British citizen. They have four children and six grandchildren, all of whom are British citizens.

Sentence expired in July; not released. Immigration appeal against deport decision was to be heard in November. *Hardial Singh* challenge brought v. quickly. Before the defendant had an opportunity to file an acknowledgement of service with summary grounds of resistance, she applied for interim relief. Singh J said two issues:

The first is whether there is a prima facie case, a serious issue to be tried.

Second question was the balance of convenience in essence raises a question of the balance of the risk of injustice.

Granted bail with weekly reporting

Interim relief should presumably not be the same as final relief

Interim Applications: Terms of Order

In cases of inappropriate detention of a vulnerable person, especially where level 3 evidence is available and genuinely urgent, something like the following terms:

- There shall be an interim hearing to consider the Claimant's application for release ordered into the list on [eg. 3 days after filing] or the first available date thereafter, to be listed for 45 minutes.
- The Defendant file any points of defence at least 24 hours before the listed hearing.
- The Defendant is by 2pm the day before to serve the following documentation by way of disclosure:

  [Eg. detention centre health records and any other documents and papers held in respect of the Claimant's health; the file held by the Defendant on the Claimant, including all detention reviews; monthly progress reports, internal notes and all records from the computerised immigration database.]
- Liberty to apply upon notice.

Achieving Expedition – slightly less urgent

- N463, 2 draft orders- Ask for consideration within days
- First order:
  - Directs the SSHD has full 21 days for AoS but directing further expedition be considered within 7 days thereafter
  - Second draft order directs a hearing within eg. 8 weeks.
- Alternative: abridging time for AoS- pitfall that can end up taking longer than just allowing the 21 days (eg. if SSHD contests the abridgment).
- Exclude damages claim? Abuse of process?

Habeas Corpus (1)

- Can be a highly effective and swift route to obtaining release.
- Probably reserve it for straightforward cases.
- Eg. following judicial review in ***R (Raki) v SSHD*** [2011] EWHC 2142 High Court had said that detention was self evidently overlong and that there was no realistic prospect of deporting him; non-cooperation was not the cause. Nothing had changed when, following a further minor conviction, the SSHD re- detained again, so there was a straightforward argument why detention was unlawful. Released within no more than a week following an initial hearing of the application for HC.

Habeas Corpus (2)

- *R (A (Somalia)) v Secretary of State for the Home Department* [2007] EWCA Civ 804, Keene L.J. *habeas corpus* a "classical" remedy in this jurisdiction [71].
- Applications for writs of *Habeas Corpus: Hardial Singh* [1984] 1 W.L.R. 704; *Mahmod* [1995] Imm A.R. 311; and *R (I) v Secretary of State for the Home Department* [2003] I.N.L.R. 196 (CA) (now approved in SC)
- *Lumba* [2011] 2 WLR 671 at § 66 Lord Dyson clarified no distinction between unlawfulness on basis of existence and exercise of jurisdiction
- Accordingly, there is no basis for restricting the availability of the remedy of an application for the writ to cases challenging a detainer acting (in a narrow sense) excess of jurisdiction rather than wrongly exercising his power of detention.
- *Khawaja [1984] AC 74* Lord Wilberforce held that it was inappropriate to distinguish between the remedies available in respect of an unlawful detention under judicial review and *habeas corpus*- see also *Rahmatullah v SSFCA [2013] 1 AC 614* at §72.

Habeas Corpus Procedure

- Now set out in CPR Part 87. Application may be made *ex parte* on a Part 8 claim form supported by a witness statement and attached evidence (and sensible if further supported by skeleton argument). Judge may dispense with formalities in case of urgency.
- Reflects ***Rahmatullah v SSFCA*** at [93]:

"The application for a writ of habeas corpus is made without notice, and is supported by evidence setting out the applicant's case. If the judge is satisfied that the applicant has made out an arguable case, notice of the application will be given to the respondent and to other interested parties. The hearing of the application will then normally become the substantive hearing. If the applicant succeeds, the prisoner's release will normally be ordered without more ado. In exceptional circumstances the court can, however, issue the writ so that a formal return is required. This is such an exceptional case."

Damages for False Imprisonment/ Breach of Human Rights

- Tag on to application for release or plead separately as a county court/HC case?
- No right answer.
  - Many judges are sympathetic to releasing but not to compensation. JR is settled more efficiently if no damages
  - But costs considerations- might not be able to justify a small damages claim, but might be possible to run a simple damages point without extra cost in the JR

- If you combine damages and release in one claim- do you nevertheless hold off the damages questions till later? Pros and Cons

Nominal Damages

NS v SSHD [2014] CSIH 9 Inner House of the Court of Session in Scotland explained why compensatory damages must follow for a breach of the *Hardial Singh* principles at paragraph 35-8 of its judgment:

"If a breach of the Hardial Singh principles is established, the resulting detention is *ex hypothesi* unlawful and that detention itself amounts to a loss, for which compensatory damages must be awarded."

Not so with policy breaches and also a mere failure to apply policy is unlikely to result in release unless there is substance in the point.

Detention amounting to breach of Article 3 ECHR

- The High Court has found there to be breaches of article 3 in the treatment of vulnerable detainees in five cases: (*R (BA) v SSHD* [2011] EWHC 2748 (Admin); *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin)*; R (HA) v SSHD* ([2012] EWHC 979*, R (D) v SSHD* [2012] EWHC 2501 (Admin) and *R (MD) v SSHD* ([2014] EWHC 2249).
- Investigative Duty arising from article 3
  - *DSD v Commissioner of the Police of the Metropolis* [2018] 2 W.L.R. 895
  - *R (AM) v SSHD* [2009] EWCA Civ 219
  - *D v SSHD* [2006] EWCA Civ 143

Sir Stephen Shaw Report on Article 3 Breaches in Detention of Mentally Ill

Sir Stephen Shaw's 2016 review includes Jeremy Johnson QC's report (at Appendix 4) summarised at page 108 of Sir Stephen's report

- The nature and pattern of the findings "tend to suggest that these cases may be symptomatic of underlying systemic failings (as opposed to being wholly attributable to individual failings on the part of the clinicians or public servants who were involved in the particular cases)".
- None of the findings was attributed to a failing in the legislative framework or policy. Nor was there any finding of a deliberate intention to cause harm.
- The findings focus upon a lack of healthcare assessment and treatment: "The nature and pattern of findings are such that they are more likely to be a reflection of a systemic problem (i.e. insufficient medical – particularly psychiatric – provision) rather than individual failings."
- Explicitly in two cases, and implicitly in others, there are findings relating to a failure in communication between the immigration removal centre and the Home Office: "An important example concerns the compilation and use of rule 35 reports …"
- In each of the cases the detention of the vulnerable and mentally ill claimant was unlawful as chapter 55 of the policy had not been properly applied. This related to a number of detention reviews over long periods of time.