HOUSE OF COMMONS LIBRARY

DEBATE PACK

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UK policy on torture and the treatment of asylum claims

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Backbench Business Debate Westminster Hall, 2 March 2017, 3.00pm

A backbench business debate on a motion relating to UK policy on torture and the treatment of asylum claims will be held in Westminster Hall on Thursday 2 March 2017 at 3.00pm.

Dr Tania Mathias, Alistair Carmichael, Dr Lisa Cameron and Kate Green will open and lead the debate.

Their bid to the Backbench Business Committee may be heard on parliamentlive.tv

The text of the motion is:

> That this House has considered UK policy on torture and the treatment of asylum claims

Contents

1. The UK's policy on torture

Torture has long been prohibited by the common law, as Lord Bingham described in a 2005 House of Lords judgment:

> It is … clear that from its earliest days the common law of England set its face firmly against the use of torture. Its rejection of this practice was indeed hailed as a distinguishing feature of the common law … .
>
> …
>
> In rejecting the use of torture, whether applied to potential defendants or potential witnesses, the common law was moved by the cruelty of the practice as applied to those not convicted of crime, by the inherent unreliability of confessions or evidence so procured and by the belief that it degraded all those who lent themselves to the practice.
>
> (*A v Secretary of State for the Home Department* [2005] UKHL 71 [11])

The English Bill of Rights of 1688 provided that "cruell and unusuall punishments" should not be inflicted, and in Scotland torture was prohibited under the *Treason Act* of 1708.

The contemporary legal framework prohibiting torture is set out in a number of different international treaties and instruments and in domestic legislation.

Article 3 of the European Convention on Human Rights (ECHR) states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". The ECHR is given effect in domestic law by the *Human Rights Act 1998*, which places an obligation on public authorities to act in compliance with the ECHR.

Unlike other Convention rights, the prohibition on torture is absolute, meaning that it is not limited by exceptions, and derogations from article 3 are not permitted, even in times of war or public emergency.

The prohibition in article 3 is closely modelled on article 5 of the Universal Declaration of Human Rights.

The UK has also ratified the 1984 UN Convention Against Torture and Other Cruel Inhuman or Degrading Punishment (UNCAT). UNCAT defines torture as:

> 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 is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

As a matter of domestic criminal law, torture is prohibited by section 134 of the *Criminal Justice Act 1988*, which defines it as the infliction of severe pain or suffering by a public official in the performance of his public duties.

In practice, these legal principles tend to arise in certain specific contexts, such as intelligence cooperation with regimes that use torture; the admissibility of evidence obtained through torture in legal proceedings; the extradition or deportation of individuals to jurisdictions that practice torture; and, asylum applications.

2. The treatment of asylum claims

The Home Office Asylum Policy Instructions guide asylum caseworkers in making decisions on asylum applications. Of particular relevance to cases of torture are:

- *Assessing credibility and refugee status*, January 2015

  This guidance assists caseworkers responsible for deciding asylum claims in accordance with the UK's obligations under the 1951 Refugee Convention and the European Convention on Human Rights.

- *Medico-legal reports from the Helen Bamber Foundation and the Medical Foundation Medico Legal Report Service*, July 2015

  This guidance explains how caseworkers should process and consider asylum claims involving allegations of torture or serious harm where a medico-legal report from the 'Medical Foundation Medico-Legal Report Service' at Freedom from Torture or the Helen Bamber Foundation forms part of the evidence.

Country policy and information notes (previously known as country information and guidance reports) provide asylum caseworkers with information specific to applicants' countries of origin. Notes will document reports of torture.

In November 2016 Freedom from Torture published a report entitled *Proving Torture: Demanding the impossible*. It presented an analysis of how 50 expert medico-legal reports documenting physical and psychological evidence of torture were treated by the Home Office's asylum caseworkers. It concluded that existing Home Office policy is not being followed and that such expert reports are poorly handled by caseworkers.

Such medico-legal reports often form critical evidence in asylum applications. As such they must meet the standards required of reports provided by independent experts: authors must be objective and unbiased, assessing claims of torture in line with their clinical experience and the standards that apply to clinical documentation of evidence of torture. The Home Office guidance on consideration of medico-legal reports recognises the particular expertise of Freedom from Torture and the Helen Bamber Foundation:

> Both Foundations are accepted by the Home Office as having recognised expertise in the assessment of the physical, psychological, psychiatric and social effects of torture. Clinicians and other health care professionals from the Foundations are objective and unbiased. Reports prepared by the Foundations should be accepted as having been compiled by qualified, experienced and suitably trained clinicians and health care professionals.[1]

Freedom from Torture made the following findings:

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[1] Home Office, Asylum Policy Instruction: Medico-Legal Reports from Freedom from Torture and Helen Bamber Foundation, July 2015

- Survivors seeking asylum in the UK can find it almost impossible to prove to the Home Office that they were tortured
- Asylum caseworkers fail to apply the correct standard of proof for asylum claims
- Asylum caseworkers replace the expert opinion of a clinician with their own opinion on clinical matters or make clinical judgments beyond their qualifications
- Asylum caseworkers wrongly question the clinical expert's qualifications and expertise in the documentation of torture
- Asylum caseworkers take the wrong approach to medical evidence when assessing the credibility of the asylum claim
- Asylum caseworkers misunderstand the internationally agreed torture documentation methodology and/or the clinical interpretation of findings

The recommendations made in the report included:

- The Home Secretary should order immediate measures to improve decision-making in asylum cases involving medical evidence of torture, starting with the roll-out to all asylum caseworkers of the full day training module which the Home Office developed but never launched
- An independent public audit should be undertaken by a body with the requisite legal expertise, such as the UN High Commissioner for Refugees, into the application in practice of the standard of proof in asylum claims in the UK, including cases involving expert medical evidence of torture.[2]

Responding to a Parliamentary Question seeking the Secretary of State's response to the report, the Minister for Immigration said:

> The underlying policy objective when processing claims involving allegations of torture or serious harm and when considering medical evidence in the context of an asylum claim is to ensure that all relevant medico-legal (and any other) evidence provided in support of the claim is properly considered and given appropriate weight.
>
> We consider all asylum claims in a sensitive manner on an individual, objective and impartial basis ensuring that all cases are managed effectively throughout the asylum process to avoid unnecessary delay.
>
> The policy guidance sets out how to properly consider, and afford appropriate weight to, medico-legal evidence as part of a claim for protection. It states explicitly that it is not the role of decision makers to dispute clinical findings in the medico-legal reports or make clinical judgments of their own about medical evidence or medical matters generally and all decision makers are trained in the application of this policy.
>
> Officials will review the cases that are referred to in the report and will continue to work closely with Freedom from Torture and others to review and develop further our policy and training.[3]

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2 Freedom from Torture, *Proving Torture: Demanding the impossible*, November 2016, page 51

3 PQ 54220, 30 November 2016

The Minister confirmed on 6 February 2017 that the review of cases referred to in the report had taken place.[4]

[4] PQ 62671, 6 February 2017

3. Media: articles and blogs

Freedom from Torture

Torture is never justified

1 February 2017

The Conversation

If Trump brings back torture, can the UK be trusted not to collude in it?

27 January 2017

Independent

I specialise in the psychology of torture, so I know the truth behind Trump's claims that waterboarding works

Coral Dando 26 January 2017

The Ferret

Hundreds of vulnerable asylum seekers held despite doctors' fears

2 December 2016

Freedom from Torture

MPs show support for Proving Torture campaign

22 November 2016

Conservative Home

The Home Office must stop ignoring the experts in torture cases

Tania Mathias 21 November 2016

BMJ

Proving torture - Home Office mistreatment of expert medical evidence

Juliet Cohen 21 November 2016

Juliet Cohen is the head of doctors at Freedom from Torture and an independent forensic physician

BBC online

Torture evidence ignored by Home Office, says charity

Catrin Nye 21 November 2016

Times [Registration required]

Doctors furious at rejection of torture evidence

21 November 2016

RT.com

Torture victims seeking UK asylum wait 2yrs for medical exam - watchdog

5 February 2016

Electronic Immigration Network

Chief Inspector of Borders and Immigration examines Home Office's asylum casework

5 February 2016

Refugee Council

Independent inspector calls for improvements in Home Office decision making

4 February 2016

Guardian

Torture victims face two-year delays in UK asylum claims

Alan Travis 4 February 2016

Helen Bamber Foundation

Helen Bamber Foundation welcomes suspension of Detained Fast Track

8 July 2015

UK Human Rights Blog

When does an expert report constitute "independent evidence" of torture?

2 May 2012

4. Parliamentary Business

4.1 Ministerial Statements

Optional Protocol to the Convention Against Torture (OPCAT)

Sam Gyimah (The Parliamentary Under-Secretary of State for Justice, Minister for Prisons and Probation):

The Optional Protocol to the Convention Against Torture (OPCAT), which the UK ratified in December 2003, requires States Parties to establish a "National Preventive Mechanism" (NPM) to carry out visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The Government established the UK NPM in March 2009 (Hansard 31 March 2009, Vol. 490, Part No. 57, Column 56WS).

I am informing the House that the following is formally designated as an additional member of the UK NPM:

The Independent Reviewer of Terrorism Legislation (IRTL)

12 January 2017 | Written statements | HCWS 408

Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons

James Brokenshire (The Minister of State for Immigration):

The Government is committed to an immigration system that works in Britain's national interest, and commands the confidence of the British people. Coming to the United Kingdom to work, study or visit is a privilege, not an unqualified right. Accordingly, the Government expects anyone who comes to the UK to comply with their visa conditions and, if they do not, to return home voluntarily at the first opportunity.

We have put in place a robust legal framework, which prevents the abuse of appeals procedures and encourages timely and voluntary departures by denying access to services, such as bank accounts, rental property, the labour market and driving licences, to those with no right to be here. Where individuals nonetheless fail to comply with immigration law, and refuse to leave, we will take enforcement action to remove them from the UK. Where it is necessary for the purposes of removal, and taking into account any risk that an individual may abscond, this will involve a period of detention (which of course can be avoided if the individual departs voluntarily). The Government is clear that in these circumstances it is in the public interest to detain and remove such individuals, and the vast majority of those in detention are, accordingly, those who have made their way to the United Kingdom unlawfully or breached their conditions of entry, have failed to make their case for asylum, or are foreign criminals.

It is a long-established principle, however, that where an individual is detained pending removal there must be a realistic prospect of removal within a reasonable time. Depriving someone of their liberty will always be subject to careful consideration and scrutiny, and will take account of individual circumstances. It is vital that the system is not only efficient and effective but also treats those within it with dignity and respect, and takes account of the vulnerability of those detained.

It is against this background that in February last year the Home Secretary asked Stephen Shaw to conduct a review of the welfare of vulnerable individuals in detention. His review is being published today (Cmd 9186). It makes recommendations for operational improvements, for changes to the policy on detaining vulnerable people, and for changes to the provision of healthcare services in detention. Copies have been laid in the House. The Government is grateful to Mr Shaw for his review, welcomes this important contribution to the debate about effective detention, and accepts the broad thrust of his recommendations. Consistent with our policies, we will now take forward three key reforms, working across Government and the National Health Service and with private sector providers.

First, the Government accepts Mr Shaw's recommendations to adopt a wider definition of those at risk, including victims of sexual violence, individuals with mental health issues, pregnant women, those with learning difficulties, post-traumatic stress disorder and elderly people, and to recognise the dynamic nature of vulnerabilities. It will introduce a new "adult at risk" concept into decision-making on immigration detention with a clear presumption that people who are at risk should not be detained, building on the existing legal framework. This will strengthen the approach to those whose care and support needs make it particularly likely that they would suffer disproportionate detriment from being detained, and will therefore be considered generally unsuitable for immigration detention unless there is compelling evidence that other factors which relate to immigration abuse and the integrity of the immigration system, such as matters of criminality, compliance history and the imminence of removal, are of such significance as to outweigh the vulnerability factors. Each case will be considered on its individual facts, supported by a new vulnerable persons team. We will also strengthen our processes for dealing with those cases of torture, health issues and self-harm threats that are first notified after the point of detention, including bespoke training to GPs on reporting concerns about the welfare of individuals in detention and how to identify potential victims of torture.

Second, building on the transfer of healthcare commissioning in Immigration Removal Centres to the NHS, and taking account of the concerns expressed by Mr Shaw about mental healthcare provision in detention, the Government will carry out a more detailed mental health needs assessment in Immigration Removal Centres, using the expertise of the Centre for Mental Health. This will report in March 2016, and NHS commissioners will use that assessment to consider and revisit current provision. In the light of the review the Government will also

publish a joint Department of Health, NHS and Home Office mental health action plan in April 2016.

Third, to maximise the efficiency and effectiveness of the detention estate, and in response to Mr Shaw's recommendation that the Home Office should examine its processes for carrying out detention reviews, the Government will implement a new approach to the case management of those detained, replacing the existing detention review process with a clear removal plan for all those in detention. A stronger focus on and momentum towards removal, combined with a more rigorous assessment of who enters detention through a new gate-keeping function, will ensure that the minimum possible time is spent in detention before people leave the country without the potential abuse of the system that arbitrary time limits would create.

The Government expects these reforms, and broader changes in legislation, policy and operational approaches, to lead to a reduction in the number of those detained, and the duration of detention before removal, in turn improving the welfare of those detained. Immigration Enforcement's Business Plan for 2016/17 will say more about the Government's plans for the future shape and size of the detention estate.

More effective detention, complemented by increased voluntary departures and removing without detention, will safeguard the most vulnerable while helping control immigration abuse and reducing costs.

14 January 2016 | Written statements | HCWS 470

Asylum

James Brokenshire (The Minister of State for Immigration):

The United Kingdom has a long and proud tradition of providing safe haven to those who genuinely need our protection and this Government takes that commitment very seriously. But for an asylum system to offer help to those who genuinely need it, it must be capable of managing a high volume of applications by making quick decisions wherever possible.

The UK has operated a detained fast track policy for cases that can be decided quickly, including those that have very weak claims, since 2000. The decision to detain a person seeking asylum is never taken lightly, but the courts have been clear over the past decade in upholding the principle that an accelerated process for asylum seekers while detained, operated with certain safeguards, is entirely lawful.

Just over 30,000 asylum claims were made in the UK last year – close to the average for the last 10 years. The majority of applicants are provided with accommodation and support by the Home Office or find their own accommodation. Most decisions on asylum claims are made within 3-6 months. Many, including from countries such as Syria, are accepted as refugees and granted permission to stay.

But a fast track process, including for those that have very weak or spurious claims, with decisions normally made within a matter of weeks and subject to an accelerated appeals process, is an important part of our immigration system and ensuring that our help is rightly focused on those who truly need it.

It is vital that we deal robustly with unfounded or abusive claims in the asylum system. It is also vital, however, that we can identify vulnerable applicants, including victims of trafficking or torture, to ensure that they can receive a fair hearing.

The Government is committed to the underlying principles of the Detained Fast Track (DFT) and believes that for the most part it is operating well and is removing back to their own countries those whose asylum claims are clearly unfounded. But we must be satisfied that our safeguards for dealing with vulnerable applicants throughout the system are working well enough to minimise any risk of unfairness – as we have always striven to do.

Recently the system has come under significant legal challenge, including on the appeals stage of the process. Risks surrounding the safeguards within the system for particularly vulnerable applicants have also been identified to the extent that we cannot be certain of the level of risk of unfairness to certain vulnerable applicants who may enter DFT.

In light of these issues, I have decided to temporarily suspend the operation of the detained fast track policy. I hope this pause to **be** short in duration, perhaps only a matter of weeks, but I will only resume operation of this policy when I am sure the right structures are in place to minimise any risk of unfairness.

This decision does not mean that we will cease to detain people for immigration reasons. Immigration powers and policies relating to detention remain in place and we will continue to use them across the immigration system, including for removing illegal immigrants and protecting the public, wherever necessary.

We will continue to exercise the right to detain or keep in detention illegal migrants who have claimed asylum, where their specific circumstances warrant it.

In the meantime, every individual who was detained under the DFT policy and remains detained will have their detention urgently reviewed at senior level. Those who meet the general criteria for detention will not be directly affected by the decision to suspend DFT. Many are already detained under these powers, for example because they are at risk of absconding and face imminent removal. Only if detention can no longer be justified outside a DFT process will applicants be released to continue their asylum claim in the regular asylum system.

Asylum seekers who face removal to a safe third country or who come from a country designated as being generally safe; those who pose a risk to the public; who are foreign national offenders; or those who otherwise face the likely prospect of removal are still liable to be

detained or remain detained. Their cases will be prioritised under existing general rules.

We will urgently review all the evidence we have about any possible unfairness in the DFT system and address any shortcomings identified. In the meantime, we will continue to consider all asylum cases very carefully, granting protection to those that need it and refusing and removing those that do not. Asylum must not be used as a means to avoid legitimate immigration control and we will continue to be robust in ensuring that it is not.

This decision is in keeping with the Government's wider work to ensure that we are doing everything we can to safeguard the welfare of those whom we detain. In February this year, the Home Secretary asked Stephen Shaw, the former Prisons and Probation Ombudsman, to conduct a review into the welfare of people detained for immigration purposes, including those detained under the DFT policy. When he reports we will take his findings seriously and use them to continue to improve whatever processes are in place.

It is vital that our asylum policy ensures that safe haven is provided to refugees and that our systems are fair and offer good value to the tax payer. It is also important that if a case can be determined quickly, it should be so determined, and that no immigration advantage can be obtained by making a spurious or opportunistic claim. That is why the Government remains committed to the principles of a detained fast track system and will re-introduce one as soon as we are satisfied the right structures are in place to ensure it operates as it is supposed to.

2 July 2015 | Written statements | HCWS 83

4.2 Parliamentary Questions

Torture

Asked by: Roger Godsiff

To ask the Secretary of State for Foreign and Commonwealth Affairs, whether he plans to make representations to the US President on the UK's policy on torture.

Answered by: Alok Sharma | Department: Foreign and Commonwealth Office

I refer the honourable gentleman to the statement made on the issue by the Prime Minister, my Rt Hon Friend the Member for Maidenhead (Mrs May), at Prime Minister's Questions on 25 January: our position on torture is clear. We do not sanction torture and do not get involved in it, and that will continue to be our position. The UK stands firmly against the use of torture and cruel, inhuman or degrading treatment or punishment. We do not participate in, solicit, encourage or condone such practices for any purpose. The UK has been - and is - at the forefront of international efforts to develop a global system of torture

prevention and calls on all states to follow our example by ratifying and implementing the UN's Protocol to the Convention Against Torture.

9 February 2017 | Written questions | 63304

Asylum

Asked by: Dr Alasdair McDonnell

To ask the Secretary of State for the Home Department, if she will respond to the report from Freedom From Torture, Proving Torture, on its findings on the level of certainty required by her Department for asylum seekers to prove that they have experienced torture.

Answered by: Robert Goodwill | Department: Home Office

Officials have reviewed the cases that are referred to in the report and have engaged with, and will continue to work closely with, Freedom from Torture to review and develop further our policy and training.

The underlying policy objective when processing claims involving allegations of torture or serious harm and when considering medical evidence in the context of an asylum claim is to ensure that all relevant medico-legal (and any other) evidence provided in support of the claim is properly considered and given appropriate weight. We consider all asylum claims in a sensitive manner on an individual, objective and impartial basis ensuring that all cases are managed effectively throughout the asylum process to avoid unnecessary delay.

The policy guidance sets out how to properly consider, and afford appropriate weight to, medico-legal evidence as part of a claim for protection. It states explicitly that it is not the role of decision makers to dispute clinical findings in the medico-legal reports or make clinical judgments of their own about medical evidence or medical matters generally and all decision makers are trained in the application of this policy.

6 February 2017 | Written questions | 62671

Asylum

Asked by: Dr Alasdair McDonnell

To ask the Secretary of State for the Home Department, how many Home Office torture evidence assessments were judicially appealed by asylum seekers in 2016; and how many such appeals overturned a Home Office assessment on whether an asylum seeker had experienced torture.

Answered by: Robert Goodwill | Department: Home Office

I am sorry but the data requested could only be provided at disproportionate cost by examination of individual records.

3 February 2017 | Written questions | 62612

Asylum

Asked by: Tulip Siddiq

To ask the Secretary of State for the Home Department, how many asylum applications which included medical evidence of torture were received in each of the last three years; how many asylum applications which included medical evidence of torture were rejected in each of the last three years; how many rejected asylum applications which included medical evidence of torture were subsequently overturned on appeal in each of the last three years.

Answered by: Robert Goodwill | Department: Home Office

I am sorry but the data requested could only be provided at disproportionate cost by examination of individual records.

1 February 2017 | Department: Home Office | 61999; 61997; 61998

Business Questions

Asked by: David Winnick

Arising from what has been said, should it not be made clear not only that the UK does not sanction torture, as stated yesterday, but that it will condemn its use by the United States if waterboarding is brought back? Would it not be absolutely wrong if this Government became an apologist for a totally bigoted and wrong-headed US President?

Answered by: David Lidington | Department: Leader of the House of Commons

There is absolutely no question of this country endorsing or supporting torture. The rejection of torture is written into various international agreements to which we are party and has been integral to numerous statements on the subject by the Prime Minister, the Foreign Secretary and many other members of the Government.

HC Deb 26 January 2017 c462

Business Questions

Asked by: Pete Wishart [Extract]

May we have a debate about special relationships, and, in particular, about how you are supposed to behave when you are in one of those special relationships? When a United States President backs torture as an instrument of policy, when particular religions are picked out for exclusion and when women's rights are set back decades, should this country not be a little bit more cautious before accepting a Trumpian embrace?

Answered by: David Lidington | Department: Leader of the House of Commons [extract]

On the very important question the hon. Gentleman asked about torture, the Prime Minister said very clearly yesterday that the United

Kingdom remains resolutely opposed to torture on grounds of moral principle, on grounds of our participation in the UN convention against torture and other such international legal instruments, and on the grounds that it does not work because we cannot place much value on information or evidence extracted by means of torture. That continues to be, and will continue to be, the Government's position.

HC Deb 26 January 2017 c458-9

Prime Minister: Engagements

Asked by: Andrew Tyrie

President Trump has repeatedly said that he will bring back torture as an instrument of policy. When she sees him on Friday, will the Prime Minister make it clear that in no circumstances will she permit Britain to be dragged into facilitating that torture, as we were after 11 September?

Answered by: Theresa May | Department: Prime Minister

I assure my right hon. Friend that our position on torture is clear: we do not sanction torture and do not get involved in it. That will continue to be our position.

HC Deb 25 January 2017 c291

5. Organisations and further reading

Freedom from Torture (Medical Foundation for the Care of Victims of Torture)

UK-based human rights organisation dedicated to the treatment and rehabilitation of torture survivors

Freedom from Torture, Proving torture: demanding the impossible: Home Office mistreatment of expert medical evidence , November 2016

Rosalyn Akar Grams, Proving torture , New Law Journal, 20 October 2015

Rosalyn Akar Grams is the head of legal services at Freedom from Torture

Helen Bamber Foundation

Supports refugees and asylum seekers who have experiences extreme human cruelty, such as torture and human trafficking

Medical Justice

"Working for health rights for detainees"; an organisation which offers essential medical help to the most powerless in society

Natasha Tsangarides, "The second torture": the immigration detention of torture survivors , Medical Justice, 2012

Stephen Shaw, Review into the Welfare in Detention of Vulnerable Persons: a report to the Home Office , Cm 9186, January 2016

Home Office, The Home Office response to the Independent Chief Inspector's report: an inspection of asylum casework March – July 2015 , 2016

Independent Chief Inspector of Borders and Immigration, An inspection of asylum casework March-July 2015 , February 2016

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