



Home Office

Interim Guidance: Requesting a second opinion for an external medical report/Medico-Legal Report

Version 2.0

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About this guidance

This guidance outlines the process for referring external medical reports, sometimes referred to as medico legal reports (MLRs), about people detained under immigration powers, for a second opinion. This guidance sets out how the second opinion should be considered in determining whether detention is appropriate in line with the adults at risk in immigration detention policy. It should be read and applied by all staff who deal with detained casework and Home Office staff working onsite in immigration removal centres and prisons.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you, or you think that the guidance has factual errors then email Detention Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **12 September 2022**

Changes from last version of this guidance

This is new guidance

Related content

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Introduction

This guidance outlines the process for referring external medical reports for a second clinical opinion for those detained under immigration powers, and how this should be used in line with the Adults at Risk in Immigration Detention (AAR) policy.

The AAR policy guidance contains a set of quality standards with which to evaluate external medical reports as evidence of vulnerability. This guidance is designed to work in conjunction with the standards and introduce an additional, clinical input to assist decision making for those who may be vulnerable in immigration detention.

This guidance is introduced on an interim basis and will be reviewed after 12 months. The maximum number of external reports that will be referred for a second opinion under this interim policy is set at up to 10 reports per week. The referral criteria are listed below under the section [‘when to refer an external medical report for a second opinion’](#).

When to use this guidance

This guidance should be used in conjunction with the AAR policy when an external medical report has been received and an assessment of the detained individual’s vulnerability is required under that policy. The guidance applies only to reports which are submitted on behalf of an individual detained under immigration powers. Where medical evidence is submitted for asylum claims in non-detained cases, the Medical evidence in asylum claims guidance should be followed.

This guidance and process only applies to external medical reports contemporaneous with the current period of detention. Any report which pre-dates this period should be considered on its merits in light of the evidence which was relevant at the time it was written. It is possible that this evidence will already have been considered during a previous detention period, or under a different set of circumstances. Where this is the case, the previous evidence should be considered in view of the impact that it may continue to have on the current detention decision, with reference to the AAR policy.

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The second opinion process

When to refer an external medical report for a second opinion

All external medical reports requiring consideration under the Adults at Risk in Immigration Detention (AAR) policy received while a person is detained under immigration powers should be referred into the second opinion process, **except** for cases in which:

- a decision has already been made to release the person from detention - the decision to release may or may not be linked to the external medical report
- removal is set to take effect within 10 working days when the external medical report is received - this is due to there being insufficient time to complete the process before removal action takes place
- the external medical report has already been rejected on the basis that the baseline standard, as set out in the AAR policy, which requires that the author of the external medical report be regulated, has not been met

As noted above in [‘when to use this guidance’](#), external medical reports received prior to the person’s current period of detention should not be referred to the second opinion process.

The maximum number of external reports that will be referred for second opinions under this interim policy is set at up to 10 reports per week. Referrals which are received above that capacity will not receive a second opinion, regardless of case background or profile.

Referring the external medical report into the second opinion process

Where an external medical report is received, the responsible detained casework team must email the Detained Medical Reports team (DMRT) inbox attaching the report. The email must be marked OFFICIAL SENSITIVE. This must be completed within one working day of receiving the external medical report, whether or not the external medical report meets the criteria for being referred into the second opinion process. Where the baseline regulation standard has been met and a decision to release the detained individual has not already been made, the detained caseworker must request that the external medical report be referred for a second opinion. The detained casework manager of higher executive officer grade, or above, should be copied on the email.

It is important that all external reports are referred to the DMRT regardless of whether a second opinion is being requested.

In line with the AAR caseworker guidance, the responsible detained caseworker must also send the external medical report to the resident healthcare team at the

IRC or prison, immediately on receipt of the report. It is important that this step is taken to ensure that the relevant Healthcare team has all necessary up to date information relating to the health of the person in detention and can undertake any action required for the care or management of that individual in line with their processes and published Detention Services Orders, where appropriate.

Arranging an assessment

Assessments will be arranged according to the detention location.

Process for those detained in an IRC

Upon receipt of the referral, the Detained Medical Reports team (DMRT) will confirm the availability of a Home Office contracted doctor to conduct the second opinion. In liaison with the relevant Detention Engagement team (DET), the DMRT will set the date for an assessment to be held. This appointment must take place within 7 working days of the referral of the external medical report. The DMRT will notify the detained caseworker of the assessment date and record this information on Case Information Database (CID) and ATLAS. If it is not possible to book an assessment with the Home Office contracted doctor within 7 working days from the referral to DMRT for a second opinion, DMRT must respond to the detained casework team and explain that consideration of that report must be undertaken with reference to the standards listed in the AAR guidance without the use of a second opinion.

Following confirmation of an assessment date, the DMRT will send the external medical report to the Home Office contracted doctor (to their secure NHS email address), together with any further supporting information (where relevant) to assist the assessment. Such information may include immigration records relating to the detained individual's previous statements or evidence submitted to the Home Office or Immigration Tribunal which is relevant for the consideration of their state of health. The email must be marked OFFICIAL SENSITIVE and appropriate handling instructions provided.

The DMRT must also book an interpreter for every case where a language barrier has been identified in line with [Detention Services Order 02/2022 Interpretation Services and use of Translation Devices](#).

The DMRT will book a room for the assessment to take place.

Process for those detained in prison

Upon receipt of the referral, the DMRT will confirm the availability of a Home Office contracted doctor to conduct the second opinion. In liaison with the relevant Operational Support team (OST), the DMRT will set the date for an assessment to be held. This appointment must take place within 7 working days of the referral of the external medical report. The DMRT will notify the detained caseworker of the assessment date and record this information on CID and ATLAS.

If it is not possible to book an assessment with the Home Office contracted doctor within 7 working days from the referral to DMRT for a second opinion, DMRT must return the external medical report immediately to the casework team. Consideration of that report must be undertaken with reference to the standards listed in the AAR guidance without the use of a second opinion.

Following confirmation of that assessment date, the DMRT will send the external medical report to the Home Office contracted doctor (to their secure NHS email address), together with any further supporting information (where relevant), to assist the assessment. Such information may include immigration records relating to the detained individual's previous statements or evidence submitted to the Home Office or Immigration Tribunal. The email must be marked OFFICIAL SENSITIVE and appropriate handling instructions provided.

The OST must also book an interpreter for every case where a language barrier has been identified in line with [Detention Services Order 02/2022 Interpretation Services and use of Translation Devices](#).

The OST will book a room for the assessment to take place, where the individual is detained in a prison.

Process for those detained under immigration powers in other places of detention

If a detained casework team receives an external medical report concerning an individual who is temporarily detained in another location, such as a short-term holding facility (STHF), the report should be referred to the DMRT as normal. Due to the short period of detention in facilities such as STHFs, it is impractical for the DMRT to arrange a second assessment there. Therefore, if the individual is subsequently moved to an IRC, the detained casework team must notify the DMRT of which IRC the detained individual will be placed. The DMRT must then make arrangements for an assessment to be held there. The assessment appointment must be arranged to take place within 7 working days of their transfer to the IRC.

If it is not possible to book an assessment with the Home Office contracted doctor within 7 working days from transfer to the IRC, DMRT must return the external medical report immediately to the detained casework team to give consideration to that evidence with reference to the standards listed in the AAR guidance, without a second opinion.

What happens if there is no capacity to conduct the second opinion?

If the maximum number of external reports that can be referred for a second opinion has been reached, the DMRT will notify the detained caseworker immediately and consideration of the external medical report will proceed without that input. In such cases, the responsible detained casework team will proceed to assess the evidence by using the External Medical Report standards as directed in the AAR caseworker guidance.

Notifying the detained individual of the assessment

Upon confirmation of the date and method of assessment, the DMRT must notify the detained individual of the Home Office's intention to obtain a second opinion. This must be communicated using the [Invitation to Assessment Letter](#) at Annex A, which contains details of the appointment, a request for the detained individual to attend and a request for their permission to allow the Home Office contracted doctor access to their medical records. The Invitation to Assessment Letter at Annex A will be completed by the DMRT and sent to the relevant DET (in IRC cases) or OST (in prison cases) for service in person to the detained individual. In prison cases, the OST will notify the relevant Immigration Prison team (IPT) to effect service of the Invitation to Assessment Letter in person. The DMRT will notify the detained individual's legal representative by sending the invitation letter directly by email.

The role of the Detained Engagement team and Immigration Prison team: serving the Invitation to assessment letter

IPT and DET will provide face to face facilitation for the second opinion process, acting as a liaison between the DMRT and individuals in detention. IPT and DET colleagues will need to serve the Invitation to Assessment Letter on the detained individual as soon as possible and by the deadline set by DMRT or within 3 working days of receipt from the DMRT (whichever is sooner), in order to allow at least 2 working days for the detained individual to respond to the invitation before the date of the assessment. The response deadline will be clearly noted on the Invitation to Assessment Letter. The IPT or DET should answer any questions the individual may have about the second opinion assessment, referring back to the DMRT for further guidance if required. IPT and DET must pass on any relevant information from the discussion with the individual to the DMRT and record service of the letter on CID and Atlas.

In the event that service of the Invitation to Assessment Letter cannot be completed with sufficient time to allow 2 working days to respond before the date of the assessment, the IPT or DET must inform the DMRT immediately. The DMRT must then notify the detained casework team that consideration of the external medical report must be undertaken with reference to the standards listed in the AAR guidance without the use of a second opinion.

The response to the Invitation to assessment letter

The deadline for the detained individual to respond to the invitation letter will be clearly noted on the letter and must allow at least 2 working days between the date the letter was served and the date of the appointment. The response may be accepted in person from the individual at the place of detention and communicated to the DMRT by the relevant DET/IPT officer, or sent by email from the legal representative to the DMRT. Should the DMRT receive opposite responses to the invitation from the detained individual and their representative, particularly where the individual accepts and their representative declines, priority should initially be given to the decision received from the detained individual. In such cases, the DMRT

should contact the representative to inform them that the Home Office will honour their client's agreement to attend the assessment if they wish. Whilst the representative may wish to discuss this further with their client in the interim, the ultimate matter of attendance and access to medical records must be considered the choice of the individual.

If no response is received by the deadline stated on the letter of invitation, or if the individual declines the invitation to attend the assessment, the second opinion will be based upon consideration of the papers alone, including the external medical report/ medico legal report, and (where relevant) other immigration records relating to the detained individual's previous statements or evidence submitted to the Home Office or Immigration Tribunal.

The second opinion assessment

For the purposes of this interim policy, the assessment will be conducted by video-link between the Home Office contracted doctor and the detained individual. The assessment will take place in an 'allocated room', which should be a private room, out of sight and earshot of other staff and residents, with appropriate video calling facilities and practical equipment (including a desk and chair) to enable a reasonable level of comfort during the virtual assessment. An interpreter will also be present, either in person or through video-link, for every case where a language barrier has been identified, in line with [Detention Services Order 02/2022 Interpretation Services and use of Translation Devices](#).

Role of Immigration Prison teams and Detention Engagement teams: overseeing the appointment

On the day of the appointment IPT and DET colleagues must be available to oversee the process, answering any questions from the individual and or Home Office contracted doctor. They will assist with any issues arising during the appointment, remaining in contact with the DMRT to report any issues or concerns that arise and request additional guidance where necessary.

If the assessment does not go ahead, IPT or DET must notify the DMRT of the reasons why. The IPT or DET must also update CID/Atlas following the appointment to confirm whether it was completed, together with reasons in the event that it failed to go ahead.

What if the second opinion assessment is delayed or cancelled?

In the event that the appointment cannot proceed, the following guidance should be followed:

- if the person states that they are too ill to attend, or that they are unfit to be interviewed by the Home Office, the external medical report will be assessed on

the papers by the Home Office contracted doctor, as explained within the Invitation to Assessment Letter

- if the person simply fails to attend, or refuses to undergo the assessment, the external medical report will be assessed on papers only by the Home Office contracted doctor, as explained in the letter
- if the Home Office needs to cancel the assessment because the DET or IPT is unavailable to facilitate the appointment and a member of IRC or prison staff is unable to assist in their absence, the DET or IPT must notify the DMRT immediately - if the assessment cannot be re-booked to take place within the next 5 working days, the DMRT must instruct the detained casework team to consider the external medical report with reference to the standards listed in the AAR guidance
- if the Home Office needs to cancel the appointment for reasons beyond its control, for example, technical issues or availability of an interpreter – this should be re-booked at the earliest possible opportunity and within 5 working days from the date of the assessment which was cancelled
- the DMRT must notify the detained individual, via the IPT or DET and their legal representative - if it is not possible to re-book, or successfully conduct an assessment with the Home Office contracted doctor within 5 working days from the date of the assessment which was cancelled, the DMRT will instruct the Home Office contracted doctor to assess the external medical report on papers only

The second opinion report

The second opinion report will be completed by the Home Office contracted doctor within 5 working days from the date of the assessment appointment. This deadline will apply regardless of whether the second opinion assessment is conducted by video-link, or on papers alone. The second opinion report will be sent from the Home Office contracted doctor to the DMRT (to the secure Home Office/DMRT email address). On receipt of the report, the DMRT will forward this by email to the responsible case working team. This report should be sent with appropriate handling instructions and marked OFFICIAL SENSITIVE. The DMRT will also send a copy of the second opinion report to the relevant healthcare team in order that they can update their records and adjust any care plan as necessary.

Statutory detained casework actions must continue as normal whilst the second opinion report is outstanding, but there will be no requirement to change the AAR level based on the external medical report at this point, since the vulnerability evidence level continues to be under consideration. Ongoing consideration of the vulnerability evidence level must not impede appropriate medical care or treatment for the individual. Onsite healthcare teams should make decisions or referrals in relation to the individual's care as appropriate on the basis of the information that they have available to them (including the external medical report where appropriate).

It is also important that consideration is given to the individual's potential vulnerability whilst the second opinion report is pending and particularly when preparing scheduled detention decisions in the interim (if any). Should a decision be

subsequently made to release the person from detention, or effect their removal from the UK before the second opinion has been concluded, the detained caseworker must inform the DMRT immediately and update CID/Atlas accordingly. The DMRT must immediately notify the Home Office contracted doctor and cancel the appointment. In instances where the individual has been released from detention following a video assessment, or decision to draft a second opinion report on papers, the Home Office contracted doctor will still complete the second opinion report, which will be retained on file. In instances where the individual has been released from detention, or removed prior to the video assessment, or decision to draft a second opinion report on papers, the Home Office contracted doctor will not complete the second opinion report.

In cases where removal action is set to take place before the second opinion process has been completed, the detained casework team must still draft and arrange service of a response to the external medical report before removal takes place. Where necessary, the response must be drafted with reference to the standards listed in the AAR guidance without the input of the Home Office contracted doctor.

Where removal action has failed

Where removal action has failed due to disruption, or the submission of representations which cause removal action to be cancelled, and where the detained casework team decides to maintain detention, the external medical report may be referred to the DMRT for a second opinion in line with the referral criteria of [when to refer an external medical report for a second opinion](#). This applies equally where the second opinion process has previously been excluded, or cancelled, owing to an imminent removal which then failed.

Where an assessment has already taken place in such cases, or where the case was to be considered on the papers, the DMRT will instruct the Home Office contracted doctor to conclude their consideration of the evidence. If the process was cancelled before an assessment took place, the DMRT must arrange an assessment and send an Invitation to Assessment letter in accordance with the section above on [arranging an assessment](#).

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Considering the external medical report and second opinion report

Following receipt of the second opinion report, the detained caseworker should notify their senior caseworker, or detained casework team leader, so that a decision can be made on the appropriateness of the person's continued detention in line with the Adults at Risk in Immigration Detention (AAR) policy.

Considering the evidence

The standards set out in the AAR caseworker guidance apply to all external medical reports commissioned by an immigration advisor, or solicitor, resulting from an assessment between an external healthcare professional and their client whilst their client is detained under immigration powers. The baseline standard of regulation will have already been considered prior to referring the external medical report into the second opinion process.

As noted above under ['when to refer an external medical report for a second opinion'](#), reports which do not pass the regulation baseline standard will not be suitable for the second opinion process. Reports that do not meet that baseline standard will be rejected and will not be considered as evidence under the AAR policy. These reports will therefore not require a second assessment.

Consideration must then be given to the remaining standards, in order to determine the vulnerability level under the AAR policy. Content from the second opinion report should be used to help determine the overall weight attributable to the external medical report. The second opinion report acts as an additional factor in arriving at the vulnerability evidence level: AAR1, AAR2 or AAR3. For instance, in cases where the second opinion expresses concerns regarding the evidence or methodology presented, this may mean downgrading the evidence level which might have (on face value) otherwise resulted from the content of the external medical report. Similarly, in cases where the second opinion echoes the concerns in the external medical report regarding the vulnerability of the person and potential impact of detention upon them, this serves to strengthen the evidence of the vulnerability.

In each case, the clinical expertise presented in the second opinion report assists the responsible casework/barrier team in reaching a balanced and justifiable assessment of the vulnerability of the person in question within the scope of the AAR policy.

Balancing the evidence: in person, virtual and paper-based assessments

The standards embedded within the AAR casework guidance require that medical assessments conducted by external healthcare professionals for the purpose of submitting an external medical report are conducted face to face, in person, unless exceptional circumstances beyond the healthcare professional's control dictate

otherwise. However, notwithstanding this standard requirement, external medical reports derived from virtual assessments conducted by video-link or telephone are acceptable and given appropriate evidential weight, providing that the report clearly sets out the limitations associated with such methods of virtual assessment.

Likewise, where the method of assessment, by virtual means or on papers alone, has presented limits to what the Home Office contracted doctor can state with confidence, this limitation must be clearly stated within the second opinion report. The weight attributable to those points should then be treated accordingly, similar to external medical reports deriving from remote assessments under the published standards.

Following the receipt of a second opinion report, the responsible detained casework team/barrier team member must evaluate the evidence from the 2 sources (external medical report and second opinion report). It is possible that the 2 pieces of evidence will be based upon different types of assessment: in person, virtual, or on papers alone. Where the decision maker is assessing evidence gathered from an assessment in person compared to that gathered through virtual means, or on papers alone, the greater evidential weight should normally be given to the more direct source (for example, the in-person assessment over the video assessment; the video assessment over that done on the papers). However, this does not prevent evidential weight being attributed to a second opinion based on a virtual assessment, or on papers. This may be particularly relevant where concerns are raised relating to issues of methodology, or findings made in the external medical report/medico legal report, if the Home Office contracted doctor writing the second opinion report considers them not to be well-founded.

Examples of this may be where the reported symptoms are not necessarily consistent with the presented condition, or where there is insufficient evidence to make a clear diagnosis using the methods presented in the external medical report that was submitted. Where present, such issues will be clearly featured within the second opinion report.

Conflicting evidence

When evaluating the 2 sources, and particularly where the Home Office contracted doctor disagrees with the findings made in the external medical report, care must be taken not to dismiss the clinical opinions expressed in the external medical report. The assumption must be that they have been made in good faith, on the basis of the evidence presented. The responsible casework team member is not qualified to make a clinical judgement regarding either piece of evidence. However, where a difference of clinical opinion is noted between the 2 reports, there will be less justification for applying full weight to either.

Accordingly, the vulnerability evidence level should be determined based on those elements which the sources agree on. If both agree to the presence of a mental health condition, for instance, then the AAR level will be level 2. If both agree that detention may result in harm, then the evidence should be considered as satisfying AAR level 3. However, as an example, should there be a disagreement over the likelihood of harm caused by detention, and if the second opinion advances strong

reasons to disagree with the external medical report, then the most appropriate AAR level is likely to be AAR2. In this way, neither report is being dismissed, but neither is full weight being given to the point which is in dispute. However, as with all cases, it remains vitally important that full consideration is given to the individual circumstances of the case.

Responding to the external medical report

Following the consideration of the external medical report and second opinion report and completion of the Detention and Case Progression Review, the responsible detained casework team, or associated barrier team, must draft a response to the external medical report using the allocated decision template ICD.5455. This written response must show detailed consideration of the evidence, as explained within the ['considering the evidence'](#) section above. The completed response must be sent to the detained individual and to their legal representative. The second opinion report must also be attached with the written response. The detained casework team must also notify the Detained Medical Reports team of the outcome of their vulnerability assessment following completion of the Detention and Case Progression Review.

Related content

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Annex A: Invitation to assessment letter template

Detained Medical Reports Team
Tel
Fax
Email
Address

[Recipient's name]
[Nationality]
[Home Office reference]

[00 Month 0000]

Dear [Name]

Subject: Invitation to attend a video assessment with a Home Office contracted doctor

We have received medical evidence relating to issues surrounding your health.

In line with the Home Office's approach to assessing external medical reports and the identification of vulnerable adults, we would now like to conduct an additional assessment.

An appointment has been booked for you to have an assessment with a Home Office contracted doctor. This will be carried out by video-link and will take place:

on [date] at [time] at [location]

(where applicable) A/An [enter language] interpreter will also be present, in person or by video-link, to facilitate communication between you and the doctor.

Are you content to attend this appointment? **Yes / No**

Signed:

The process would be assisted by allowing the release of your NHS healthcare records to the Home Office, who will then share those records with the contracted doctor to assist with their consideration of your state of health.

Do you consent to the release of your healthcare records? **Yes / No**

Signed:.....

If you do not agree to attend this appointment the Home Office contracted doctor will consider the report you have submitted on the papers alone, without the opportunity for you to give further input to them regarding your health and current circumstances.

Important, please note:

A response to this invitation is requested from you directly, or through your legal representative, by email, by **[enter deadline date]**. Should no response be received within this deadline, the medical report you have submitted will be considered on the papers alone.

This will also apply to any failure or decision by you not to attend the above appointment due to a claim of ill-health, or other reason.

Before the assessment commences, the Home Office contracted doctor will explain the purpose of the assessment and confirm that you are willing to engage in it. The assessment will assist the consideration of whether detention is appropriate for you. It may also alter the weight with which the evidence you have submitted will be considered.

Your personal data will be handled securely and in compliance with the Data Protection Act 2018. For further details on how your information can be handled by the Home Office please visit: <https://www.gov.uk/government/publications/personal-information-use-in-borders-immigration-and-citizenship/borders-immigration-and-citizenship-privacy-information-notice>.

Yours sincerely

[Team responsible]