



RESEARCH PAPER

Autumn 2019 Legal Advice Survey

December 2019

Winner of the JUSTICE Human Rights Award 2010



Executive Summary

- 59% of people currently have an immigration solicitor, 68% of whom are represented on a legal aid basis. These figures are similar to the findings in our Spring 2019 Legal Advice Survey (64% and 69% respectively) which were an improvement on previous years, but the level of legal representation remains worse than prior to the legal aid cuts of 2013.
- 52.8% of people with a solicitor said that their solicitor had never applied for bail for them. The reasons given were mostly unsatisfactory and suggest that some DDA lawyers do not understand the bail process.

Waiting times for DDA appointments were still unsatisfactory:

- 59 people in the survey said that they had made an appointment to see the legal aid lawyer.
- Only 6 said this appointment was within 72 hours (equivalent to the period of time the Home Office allows for a person to receive advice prior to removal); and
- the majority were waiting over a week for the appointment.

We found that DDA solicitors were not spending enough time with the clients in surgery appointments. Legal advice appointments within detention are supposed to last 30 minutes and it is considered that this is already a very short period given the need to advise persons in detention on making an application for bail and the lawfulness of their detention, as well as their immigration or asylum claim. However:

- of 34 people who told us how long their DDA appointment lasted, 13 said this was less than 5 minutes; and
- 74% said that the appointment was 20 minutes or less.

The quality of advice given in the DDA surgeries was generally poor:

- Of 53 people who gave a description of their DDA surgery appointment, 24 explicitly described the advice as bad, or not useful, or stated that no advice was given.
- There were only 8 people who described the advice they received in a positive way.

A number of the descriptions given of surgery appointments included in this report are cause for serious concern.

We found that:

- frequently people's cases are not taken on by the DDA solicitors; and
- for those whose case is taken on, solicitors can be very difficult to contact.

We also found a number of cases where solicitors sought to persuade detainees to pay them privately to conduct work on the case, without pursuing legal aid through the 'exceptional case funding' process.

The blocking of websites continues to be a serious obstacle for those that seek to prepare their case from within detention.

Access to justice for immigration detainees in prisons remains a serious concern:

- 53 interviewees in the survey said that they had come to the removal centre from prison.
- Of those, only 8 people had received advice on their immigration case from an immigration solicitor – just 15%¹.
- This low percentage is consistent with the results of the previous four surveys².

30% of people interviewed said that at least once in the past they needed to find a new solicitor as a result of being moved from one IRC to another.

Recommendations:

1. We support the recommendation by the Joint Committee on Human Rights that "Initial legal advice appointments under the Detention Duty Advice scheme should be made automatically, unless the individual opts out³."
2. The provision of legal aid advice in prisons should be expanded as a matter of urgency and should be equal to the provision of advice in IRCs.
3. Anyone served with a first stage deportation notice should be offered access to immigration legal advice on their substantive deportation matter and on their detention matter.
4. Anyone held in immigration detention should be entitled to legal aid representation in relation to their detention matter, both in relation to their first application for bail and every 28 days thereafter when they are also entitled to make further bail applications.
5. Legal aid withdrawn under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) must be restored. Any immigration decision, including notice of removal must be challengeable and thus accompanied by legal advice and representation.

¹ When asked if they had received legal advice on their immigration case whilst in prison, 11 out of 53 people said yes. However, of those 11 people, 1 said the advice was from a criminal solicitor, 1 said it was from an immigration officer, and 1 said it was from a prison officer. Only 8 people said that the advice came from an immigration solicitor.

² The % of those who received immigration advice while they were in prison, for the last four years, has been 9.3% 17.5%, 12%, 10%

³ Joint Committee on Human Rights *Immigration Detention* Sixteenth Report of Session 2017-19 pg 20

<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf>



6. There should be a smaller number of providers that are contracted to provide support under the DDA scheme. In addition the scheme should be reviewed:
 - a. The LAA should carry out a review of the quality of advice on the surgery rota following the increase in the numbers of firms contracted to deliver advice.
 - b. The LAA should carry out a peer review of advice delivered on the surgery by firms that have not previously dealt with immigration detention cases.
 - c. The LAA should allow detainees to seek advice from any non-surgery legal aid lawyer of a person's choosing. This will help to ensure that reputable firms attract advice work without forcing detainees to rely on a duty scheme in detention that has presently lost detainees' trust



About BID:

BID is an independent national charity established in 1999 to challenge immigration detention and improve access to release from immigration detention for those held under Immigration Act powers in immigration removal centres and prisons. BID provides immigration detainees with free legal advice, information, and representation, and engages in research, policy and advocacy work, and strategic litigation. BID is accredited by the Office of the Immigration Services Commissioner (OISC), and won the JUSTICE Human Rights Award 2010. In the last 12 months, BID provided support to 4,161 people.

With the assistance of barristers acting pro bono, BID prepares and presents bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal for the most vulnerable detainees, including long term detainees, people with serious mental or physical ill-health, detainees who have intractable travel document problems, or who are main carers separated by detention from their children, and who are unable to obtain legal representation. Since 2014 BID has also provided legal advice and representation to people challenging deportation on the basis of article 8 ECHR.

One of BID's key aims is to improve access to justice for detainees. To achieve it, and to improve our own advice service, BID speaks directly to detainees twice a year so that we can document their experiences of getting legal advice while in detention. The November 2019 Legal Advice Survey was the 18th that we have carried out. We interviewed 90 BID clients in immigration detention in order to find out about people's access to legal advice and representation. We are indebted to volunteers from BPP law school that carried out the interviews.

Legal advice in immigration detention

BID's clients are detained indefinitely without trial and face enforced removal from the UK. Many fear persecution upon return and others know that enforced removal means permanent separation from their family. Often decisions to detain and to deport are based on flawed Home Office reasoning. The Home Office is repeatedly found to have broken the law in its operation of the immigration detention system and last year it was required to pay out £8.2 million to compensate the 312 people it was found to have detained unlawfully⁴. In a system in which the odds are stacked against them at every stage it is vitally important that people in detention are able to access justice through the courts.

⁴ Home Office Annual Report and Accounts 2018-19 (For the year ended 31 March 2019)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807126/6.5571_HO_Annual_Report_201920_WEB.PDF



LASPO

However, cuts to Legal Aid brought about in 2013 under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) removed non-asylum immigration work from the scope of legal aid. This has had a devastating impact on the immigration legal aid market⁵.

The cuts have been disastrous for BID's clients. Although bail and judicial review remain in scope for legal aid, the lawfulness of detention and the likelihood of bail being granted are intimately tied to a person's substantive immigration case. As the Immigration Law Practitioners' Association (ILPA) stated when LASPO was passing through parliament:

"the lawfulness of a person's detention or the prospects of that person being granted bail are intrinsically linked to his or her ability to articulate, present and pursue a claimed entitlement to remain."⁶

In BID's legal advice survey in November 2012, before the Legal Aid Cuts came into force, 79% of respondents had legal representation, of which 75% were legal aid. Since the cuts came in in 2013 there has only been one year where the number of people with a legal representative was above 60% and in a number of years this figure has been below 50%.

Contractual Changes

Another matter of great concern has been contractual changes made in September 2018 by the Legal Aid Agency in 2018 governing the provision of legal advice in immigration detention, the Detention Duty Advice (DDA) scheme. Under the DDA scheme detainees can book a half-hour appointment with a legal aid immigration lawyer, and each firm that is contracted to give advice in that detention centre is responsible for the provision of advice for a week at a time. Lawyers staffing the DDA legal advice scheme or surgery agree, and are required, to take on all cases that have merit.

The main feature of the changes has been a sharp increase in the number of providers. Prior to September 2018 there were eight or nine firms delivering the DDA in seven IRCs⁷, there are now 77 firms. The vast majority of providers have never run DDA surgeries in the past and lack experience of detention work which is a very complex, fast-changing and specialist area of immigration law. Under the previous system firms were delivering regular surgeries, whereas now firms are unlikely to deliver more than 3 weeks of surgeries over a 2 year period in any given IRC. Such irregularity means that newer firms cannot build up expertise and those with experience risk losing their expertise.

⁵ For more details see Dr Jo Wilding's report on the immigration legal aid market, *Droughts and Deserts* (2019),

⁶ ILPA briefing, Legal Aid, Sentencing and Punishment of Offenders Bill June 2011: Matters of relevance to Immigration Detention.

⁷ There are now 6 IRCs since the closure of Campsfield IRC in 2019



BID is concerned that changes to the DDA contracts have led to a severe depletion in the quality of legal advice in immigration detention, which in turn has affected our clients' ability to access their right to liberty and to challenge immigration decisions. Unfortunately, the results of this year's survey indicate that the quality of legal advice in immigration detention remains poor.

BID is not alone in the view that contractual changes have had a catastrophic effect on the quality of legal advice in immigration detention.

The contractual changes were widely criticised in submissions made to the The Parliamentary Joint Committee on Human Rights (JCHR) by a number of key stakeholders: Dame Anne Owers – chair of the Independent Monitoring Board; Dr Jo Wilding – researcher focussing on immigration legal aid; solicitors and barristers who specialise in detention work who were questioned by the committee; Gatwick Detainee Welfare Group⁸. The JCHR's report stated that changes to the DDA contracts "has raised concerns about whether there will be a consistent level of expertise, given that the decision to disperse contracts to over fifty firms will mean one firm may appear only once or twice per year in the rota and the possibility that some firms will not have a proven track record in detention work." They recommended that surgeries "should be long enough to ensure that there is sufficient time for the detainee to explain their case and for the adviser to collect the necessary details needed to take the case forward to representation." They also stated that the new system "should be kept under review to ensure that the firms responsible for advising detainees have the necessary skills and experience to do so"⁹.

Methodology:

Sample: The detainees were interviewed between 4th November and 15th November 2019.

The sample group was taken from BID's clients who, as at 1st November 2019

- had open files with BID;
- had signed letters of authority consenting to the disclosure of their anonymised information to further BID's research work; and
- were detained in IRCs, not prisons.

There were 176 clients who met this criterion and were telephoned by researchers. Researchers were directed to call clients 3 times only if their calls were unanswered. Of the (176), 90 answered and completed the survey. (n=90). 97% (n=87) were male and 3% (n=3) were female. The sample

⁸ All submissions to the Committee and transcripts of evidence sessions can be accessed here <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/inquiry10/publications/>

⁹ Joint Committee on Human Rights *Immigration Detention* Sixteenth Report of Session 2017-19 pg 20 <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf>



were detained at the following IRCs: Brook House (n=17); Colnbrook (n=16); Harmondsworth (n=26); Morton Hall (n=21); Yarl's Wood (n=3)¹⁰.

Of this sample, some participants did not answer all the questions; however, the answers they did provide have been included in the results.

We asked the interviewers carrying out the survey to write down what the interviewee said as accurately as possible whenever qualitative answers were given. This includes instances where the question requires a qualitative answer as well as those cases where the individual volunteered additional qualitative information despite not having been asked to do that.

Findings

Level of legal representation:

Access to legal representation is vital for immigration detainees. British immigration law is extremely complex and has become more so in recent years. The legislative provisions have been repeatedly amended and expanded¹¹ and the Immigration Rules have more than doubled in length since they were drafted, now running at over 1000 pages.¹² There have been 5,700 changes to the Immigration Rules since 2010, and 230,000 words added.¹³ There are also rafts of other guidance documents on the Home Office website that are subject to constant change¹⁴.

It is near impossible to navigate this area of the legal system without a lawyer. But those in detention face additional disadvantages – they are deprived of their liberty and thereby socially and geographically isolated. Many do not speak English well and may not understand why they are being detained. Many are survivors of torture, trafficking or other traumatic experiences and there is a high incidence of mental illness in immigration detention. Detainees will be unable to effectively fight their immigration case or challenge their detention without access to legal representation.

The immigration bail application process was designed to be simple so that people are able to represent themselves in hearings. Bail is a more straightforward process for applicants than other

¹⁰ Two individuals who completed the survey had very recently been released when we spoke to them

¹¹ Immigration legal provisions and can be found in statutes from 1971, 1988, 1999, 2002, 2004, 2006, 2007, 2008, 2009, 2014 and 2016. Refer to Colin Yeo, "How complex is UK immigration law and is this a problem?", *Free Movement*, 24 January 2018, retrieved from <https://www.freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/>

¹² Martha Bozic, Caelainn Barrm, Niamh McIntyre and Poppy Noor, "Revealed: immigration rules in UK more than double in length", *The Guardian*, 27 August 2018, retrieved from <https://www.theguardian.com/uk-news/2018/aug/27/revealed-immigration-rules-have-more-than-doubled-in-length-since-2010>

¹³ Ibid.

¹⁴ The House of Lords Constitution Committee inquiry into the "The Legislative Process: Preparing Legislation for Parliament" noted that immigration law was among the fields where complexity: "had developed to the point that it was a serious threat to the ability of lawyers and judges to apply it consistently—not to mention raising rule-of-law concerns as to the ability of the general public to understand the law to which they are subject." (cited in Joint Committee on Human Rights *Immigration Detention* Sixteenth Report of Session 2017-19 pg 20 <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf>)



immigration hearings. However, BID recently received a response to an FOI request¹⁵ from HMCTS which showed that outcomes are much worse for unrepresented applicants in bail hearings. The results, in the table below, show that the percentage of bail hearings that are granted is almost double for represented applicants vis-à-vis those without representation, who are almost double as likely to be refused bail.

Outcomes for bail applications¹⁶

		Withdrawn	Granted	Refused
2017	unrepresented	38%	18%	40%
	represented	41%	35%	23%
2018	Un represented	33%	23%	38%
	Represented	37%	37%	24%
2019 (to date)	Un represented	34%	21%	43%
	represented	40%	36%	22%

In the survey, 59% of people surveyed currently have an immigration solicitor, and 68% of these are represented by a solicitor on a legal aid basis. These figures are similar to the corresponding figures in our Spring 2019 Legal Advice Survey (those figures were 64% and 69% respectively). This is an improvement upon previous years. However the level of legal representation remains worse than they were in the four surveys conducted in the two years prior to the implementation of the legal aid cuts in 2013. It remains unsatisfactory that over 40% of respondents either do not have, or do not know whether they have, an immigration solicitor.

1. Do you have an immigration solicitor now?		
Answer (90 answers)	N	%
No	34	37.8%
Yes	53	58.9%
Not sure	3	3.3%
2. If yes, are they legal aid or do you pay for them privately?		
Answer (applies to 53 people)	N	%
Legal aid	36	67.9%
Private	15	28.3%
Don't know	2	3.8%

¹⁵ request was submitted 14th November, response received 28th November 2019

¹⁶ The figures do not add up to 100% as there are other possible outcomes in the FOI not included in this table – including ‘bail dismissed without hearing’; ‘completed’ and ‘continued’. These categories have not been included here because they only apply to a very small minority of applicants.

For the 37 unrepresented interviewees¹⁷, 16 said that the reason was financial (43%) – either they told us that they couldn't afford it, or were told that they were ineligible for legal aid. A number of other examples were quite concerning:

One interviewee who had very recently been released told us that when in detention he struggled to get legal aid solicitors. The solicitors wouldn't take his case as there was no money involved. They would give him their number, look at his documents and say he was not eligible for legal aid but wouldn't say why.

One interviewee told us that he previously had a solicitor but took money and didn't help. Trying to find a new one now.

One interviewee told us that he had a solicitor who took his money but was not helpful. Met a free lawyer who did not take on his case. So decided not to have a lawyer.

One interviewee simply said "I don't want one now, they're useless".

18 of the 37 unrepresented detainees told us that they had never had a solicitor in immigration detention.

Bail:

Immigration detention is a highly distressing and harmful experience and solicitors should generally be seeking to make bail applications for their clients as a matter of urgency. Of 53 people with an immigration solicitor, 28 said that they had never applied for bail for them (52.8%). We asked people to give the reasons why their solicitor had not made a bail application for them.

Reasons why solicitor had not applied for bail¹⁸

- 5 people said that this was because of address related issues
- 5 people said it was because they could not afford the fee that the solicitor was asking for
- 4 people said it was because they were doing the application themselves / has already applied themselves
- 3 people did not know the reason
- 2 people said the solicitor deferred to BID
- 2 people said the solicitor only took the case very recently
- 1 person said this was because the solicitor was unresponsive
- 1 person said the solicitor was currently in the process
- 1 person said the solicitor was just doing asylum.
- 1 person said that the solicitor needs more info

¹⁷ This figure (wherever it appears) includes the 3 who are unsure whether or not they currently have a solicitor.

¹⁸ Two people answered 'N/A'



- 1 person simply said it was due to ‘complications’

It is concerning that for represented detainees, the solicitor had made a bail application in less than half the cases, and the reasons given to the client for not applying were usually inadequate. With respect to the most common reasons given, address related issues should not prevent an individual from applying for bail, and solicitors should not be charging a fee for bail to somebody who can't afford it because legal aid is available. These responses suggest that some DDA lawyers do not adequately understand the bail process.

DDA appointments

Waiting times

It is vital that detainees are able to access legal advice in a timely manner because timescales for lodging appeals and challenging removal from the UK are very tight. The recipient of an Asylum refusal, or a deportation order, has 14 calendar days to appeal that decision. The stakes are exceptionally high as those who are not able to access timely legal advice could face permanent separation from their families in the UK or may fear harm upon return to their country of origin.

The Home Office's Removal Notice Windows policy gives people a notice period of 72 hours before the commencement of a 3 month period in which the individual can be removed immediately, without further notice. Individuals therefore need to be able to speak to a lawyer, gather evidence and put forward submissions to challenge their removal within the 72 hour notice period. The 3 month period is currently suspended as a result of a legal challenge brought by Medical Justice, although the 72 hours' notice period remains in operation.

59 people said that they had made an appointment to see the legal aid lawyer. Only 6 said this appointment was within 72 hours and the majority were waiting over a week for the appointment.

11a. how long did you have to wait before you could see a free lawyer? (59 answers)	
Answer	N
Less than 72 hours	6
72 hours – 1 week	21
1-2 weeks	20
2-3 weeks	7
More than 3 weeks	3
Not sure	1
Apt. made, date not yet confirmed	1

We asked all interviewees who had booked an appointment to see the DDA solicitor to describe that appointment¹⁹. There were 59 individuals who had booked an appointment with the DDA solicitor. We asked all of them to describe their appointment, and to give an indication of how long the appointment lasted.

DDA Lawyers not spending enough time with clients at the appointment

DDA appointments are meant to last 30 minutes. This is a very small amount of time for a legal practitioner to read through somebody's papers, assess the merits of their case, make a decision about whether to take them on or give advice about what their next steps should be, and ensure that the detainee has understood what they have been told and whether their case has been taken on. It is also important to give written feedback where possible²⁰. It is already very difficult to achieve all of this in a 30 minute DDA appointment, especially if an interpreter is required.

54 individuals gave some description of the advice given²¹, and 34 also stated how long the appointment lasted.

Of the people who told us how long the appointment lasted, 74% said that it was shorter than 20 minutes, (at least 10 minutes shorter than the designated 30 minutes).

13 individuals said that the appointment lasted less than 5 minutes. Only 7 people estimated the appointment lasted between 21-30 minutes, and a further 2 people said it was longer than 30 minutes. So of the 34 people who told us how long the appointment had lasted, a maximum of 9 (but probably fewer) people had an appointment that was 30 minutes long (26%).

How long did the appointment last?	n
Less than 5 mins	13
5-10 mins	3
11-20 mins	9
21-30 mins	7
More than 30 mins	2
Don't mention how long	25

¹⁹ We changed our approach this year so that we asked interviewees simply to describe the appointment, rather than giving a list of three options as had been done in previous surveys. As a result we received much more detailed information about the kinds of issues that detainees were experiencing at the DDA appointments.

²⁰ Jo Wilding, a researcher focussing on the immigration legal aid market who previously worked as a barrister specialising in immigration and asylum found that "Detention providers in my study also explained the acute difficulty in providing adequate advice in the half-hour slot allowed. The half hour includes the time for the detainee to be brought to the legal visits area, to obtain the right interpreter on the telephone, to look at the detainee's documents and take instructions sufficient to understand the case, to explain their legal position to them and give advice, and to obtain evidence of the detainee's means or at least an account of their means, if there is a case which the lawyer can pursue on the detainee's behalf. NGO workers and lawyers explained that, partly as a result of this, it was not unusual that the detainee was left uncertain whether or not the lawyer had taken on their case". This quote is extracted from her submissions to the Parliamentary Joint Commission on Human Rights' inquiry into immigration detention.

²¹ There were 59 people who had booked an appointment to see the DDA solicitor but there were 4 individuals who had not yet been to an appointment – either because they had only booked it recently, or they had decided not to go to the appointment in the end as the wait was too long. There was one further individual who didn't answer the question when we asked them to describe the appointment.



These results are reinforced by HMIP in a recent unannounced inspection of Colnbrook IRC, in which inspectors found that

some of the new representatives providing this service had been seeing a large number of detainees for less than the allotted time, potentially affecting the quality of provision²².

Our survey findings and those of HMIP suggest there is a very real concern that it has become commonplace for solicitors on the detention rota to keep appointments with clients very short, making meaningful advice and assessment of merits impossible.

Poor quality advice given at the DDA

53 interviewees gave a description of the DDA appointment and these revealed a picture of consistently poor quality advice being given.

We asked detainees to describe the appointment and it was their decision whether to comment on the quality of the advice given in the appointment.

24 interviewees explicitly described the advice as bad, or not useful, or stated that no advice was given. The following instances are descriptions of the appointment:

- Was told to pay fee of £350 to take the case. No information given about finishing her case, just taking it. Was told would have another appointment with the solicitor on 8 November. That appointment did not happen and she did not hear from the solicitor again.
- "They don't care about you, they just want your signature to get your money. One didn't care, another one tried to take it privately. Another one got my signature and didn't respond to me at all after I repeatedly contacted him"
- Only advice given was to introduce him to BID and tell him that they can apply for bail, but that's it
- Met lawyer 2 months ago (Sep). 5 min meeting. Lawyer took details but gave no advice. No contact from the lawyer since. Not sure if his case was taken on
- 5 min meeting. Gave solicitor details about his case but solicitor 'didn't even want to look at [his] paperwork'. Gave no advice. Said he wouldn't take the case unless paid cash, because he didn't take legal aid.
- Appointment lasted 3-4 minutes. They listened to his story and told him he should "do it yourself". Advice given not helpful as dealing with mental health issues. They would tell him to call them but only if he could pay for the service.
- No advice given as to his case, solicitor stated he would get bail, took his paperwork and never got back to him

²² Report on an unannounced inspection of Colnbrook Immigration Removal Centre by HM Chief Inspector of Prisons
<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/04/Colnbrook-web-2018.pdf>



- Not even 5 minutes¹, only asked 2 questions, gave no advice. Told she had to pay for lawyer as she's European (but did not refer to legal aid specifically)
- Very bad advice, saw the solicitors for a total of 5 minutes and they give their details but then make excuses or ignore the calls

21 people did not comment on whether they found the advice good or helpful but just gave a description of what happened in the appointment and how long it was. However even among the group of 21 interviewees who did not expressly state that they were satisfied or dissatisfied with the advice given, it is clear from the description they gave that the quality of the advice was sub-standard. For instance:

- “Less than 10 minutes, told that they couldn't take on his case”
- “5 minutes, went over case”
- “They advised him to apply for asylum and made him familiar with the steps he needs to take. Solicitor then told him to make contact with the solicitor before his interview, but the detainee has not been able to make contact with the solicitor even he has tried on several occasions. He has now waited to hear back from the solicitor for 7 months.”
- “Appointment lasted 10 minutes. The solicitor immediately asked for £3000 "under the table" with a guarantee to get the client out. The solicitor said legal aid was available but the case was very complicated so needed to charge the £3000. The client reported this but doesn't know if anything was done about it”
- “Solicitor informed him that he has a strong case but would not do it for free, charged £3000, he was paid and did not do anything for the case”
- “30 minutes, went over case, solicitor said couldn't take case and was not allowed to take it (interviewee didn't know why that's the case)”
- “The appt lasted 2/3 minutes, she explained she cannot help with case nor apply for bail app. The client assumed it is due to the merits of the case.”
- “It lasted 10 minutes, they said they can't take his case because he has been in prison”

Only 8 people described receiving useful advice in the appointment. In 1 of these 8 cases this was qualified and the respondent described the advice as 'kind of good'. In another the interviewee described the lawyer as having given specific advice but that the appointment only lasted 5 minutes. In another case the individual stated that they received “good advice but the solicitor didn't follow through on the advice and it wasn't very case specific” There were a further 2 individuals who reported receiving non-specific or general advice. 1 interviewee reported that the solicitor did not turn up to the appointment.

Lawyers not taking on cases:

We asked all 59 people who had booked an appointment with the DDA solicitor whether the lawyer had in fact taken on their case. 7 people didn't know if their case had been taken on and 27 said that

the lawyer had not taken on their case (including one person who said that the lawyer told them they would take on the case but never did). 20 people said that the DDA solicitor took on their case (34%)²³.

BID received a response to a Freedom of Information Request²⁴ from the Ministry of Justice which gave a breakdown, for each DDA firm, of the number of surgeries they had attended and clients they had seen, and the number of Legal Help matters opened as a result of the IRC surgery. 9 firms had opened Legal Help matters in less than 5% of cases, and there were 5 firms which had opened 0 Legal Help matters, despite all having seen between 30 – 90 clients at surgeries. One firm had seen 250 clients at surgeries and opened 3 Legal Help matters as a result. Low take-up rate is evidently a serious problem at the surgeries and there are a number of firms that appear to be operating a blanket practice of avoiding taking on clients at the surgery.

Lawyers who are difficult to contact:

Out of those 20 people, only 8 people said that the solicitor had got in contact within 2 weeks. 2 people said that the lawyer hadn't contacted them for the first 3 weeks after the appointment and a further 2 people said that the solicitor never got in contact after the appointment. There were a further 3 people who had proactively contacted the DDA solicitor rather than wait to be called.

8 of those 20 people said that the lawyer had given them information and advice in writing whereas 12 said that they had not.

For those whose cases had not been taken on by the DDA solicitor, we asked what reasons were given. We asked this to all 26 people who had said that the lawyer didn't take on their case. The answers are given in the table below:

Answer	N
Solicitor didn't give a reason	1
Lack of capacity for firm	1
Told their case did not qualify for LA / the solicitor demanded money	16
'not enough merit'	6
Said they would get back to the detainee but never did	2
Said they'd help with bail but not with immigration case	1

²³ 5 people did not answer this question.

²⁴ Request made to MoJ on 6th September, response received 17th September, reference number 190917019



DDA solicitors not taking cases on a legal aid basis and seeking private work

Out of 26 individuals who answered that their case was not taken on by the DDA solicitor, 16 said they were told that the reason was because they did not qualify for legal aid, or were told by the DDA solicitor that they would only take on the case if they were paid a fee.

Although non-asylum immigration cases are out of scope of legal aid (bail and judicial review remains in scope), people can still apply for legal aid through the Exceptional Case Funding process. We asked the 16 interviewees referred to above (who hadn't had their case taken on for financial reasons) if the DDA solicitor had told them about Exceptional Case Funding (ECF). Only 1 out of 16 respondents said yes²⁵.

There are a number of characteristics that are frequent among the immigration detainee population that make people vulnerable to exploitation by unscrupulous solicitors. All are socially isolated by the very fact of their detention and some do not have links to people in the UK who might be able to help them. Many do not understand the reasons for their detention and do not have a strong understanding of the immigration system (or rules concerning legal aid entitlements), and some people do not speak English. People in detention are often simply desperate to be released from detention and to avoid imminent removal.

In recent years the rate of grants for exceptional case funding has been high. We are concerned that some DDA solicitors are trying to get detainees to pay privately rather than explore options for legal aid which would normally be in the client's best interests.

Blocked websites:

This is a concern that we have repeatedly raised in each of our legal advice surveys. Once again the results indicate that this is still a significant problem for people in detention. 26 people answered that they had used the internet to research their case²⁶, and we asked each of these interviewees to list any websites that were blocked when they tried to access them to research their case.

22 people gave details of which websites which had been blocked when they had tried to research their case²⁷. Their answers varied - some said many websites were blocked, others said that few were blocked. Some people couldn't remember specific websites; some people said that most websites which would be useful are blocked. Below is a list of some of the specific examples that were mentioned:

²⁵ 12 said no, 1 said don't know, 1 couldn't remember, and 1 didn't answer the question)

²⁶ 63 people said that they had not used the internet to research their case. We didn't ask people the reason why they had not used the internet to research their case but there was one interviewee who told us that the reason they had not conducted such research was because so many websites were blocked. We are concerned that many more of the 63 people who have not used the internet to research their case have been deterred by their knowledge that many or most websites are blocked.

²⁷ 2 people said they couldn't remember, and 2 people said that no websites were blocked, or that it wasn't a problem.



- No email accounts other than Hotmail allowed.
- Social media, Youtube, Facebook
- Newspapers
- Solicitors' firms
- BID
- Human Rights Watch
- Medical Justice website
- European Court website
- Some gov.uk websites

Despite some variations, blocked websites were a serious issue across the whole detention estate. There were individuals in Brook House, Colnbrook, Harmondsworth, Morton Hall, Yarl's Wood and Tinsley House who answered this question. There were respondents in each of these detention centres who indicated that internet access was heavily restricted and this presented a significant barrier to researching their case.

Examples:

One interviewee told us that he tried to search for private firm solicitors but they were all blocked so he did not manage to search for what he needed. Medical websites are blocked too.

One interviewee told us that Most of them are blocked, whenever he searches for something and click on the link it's blocked and he won't get access.

One interviewee told us that BID's article on deportation is blocked as well as many websites, in particular websites that he got up as a result from searching "deportation" on Google.

These concerns continue to be raised by HM Inspector of Prisons. In their recently published unannounced inspection of Brook House IRC they found that

It was still the case that far too many websites were needlessly blocked for detainees. This included, for instance, sites offering advice on immigration matters or legal advice. Some daily newspaper sites were also blocked, for unfathomable reasons. This has been a longstanding issue and resolution is well overdue.²⁸

²⁸ Report on an unannounced inspection of Brook House Immigration Removal Centre by HM Chief Inspector of Prisons 20 May – 7 June 2019 <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/09/Brook-House-web-2019.pdf>



Legal Advice in prisons:

Many people are held under immigration powers in prison upon completion of a custodial sentence. Being held in a prison creates additional obstacles to accessing justice. There is no detention duty advice scheme and detainees in prisons are required to find an immigration solicitor from outside the prison and convince them to come to the prison to take on the case. People in prisons do not have access to mobile phones or the internet and in BID's experience the majority of communication happens via a very slow postal system.

Although we are not able to carry out the legal advice survey with people in prisons (because people in prisons do not have mobile phones and cannot receive telephone calls) 53 interviewees in the survey said that they had come to the removal centre from prison. Of those, only 8 people had received advice on their immigration case from an immigration solicitor – just 15%²⁹. This low percentage is consistent with the results of the previous four surveys³⁰.

Transfer from one IRC to another:

Detainees can be moved around the detention estate without warning, which can cause considerable difficulty for people. In certain cases this will mean that their solicitor will stop representing them. 27 people (30%) said that at least once in the past they needed to find a new solicitor as a result of being moved from one IRC to another. Not only does this cause significant difficulty for the detainee who is trying to fight their case and will be required to start anew with a different solicitor, it is also wasteful to the public purse if this wasted work has been done on a legal aid basis.

In addition, every time a detainee is transferred across the border between England and Scotland, they will be required to change solicitors as they enter a different legal jurisdiction. We recently received a response to a Freedom of Information request³¹ submitted to the Home Office which indicated that from January 2015 – June 2019 there were 3359 transfers of detainees under immigration powers from a place of detention in England to a place of detention in Scotland, and 4467 such transfers from Scotland to England. In each instance the individual almost certainly lost their legal representative.

There has been no research that we are aware of about the impact of moving people around the detention estate, and the disruption this causes to people's legal case and social ties (either within detention or in the surrounding area). As it currently stands the decision to transfer is taken by the Home Office and is only challengeable by Judicial Review. We submit that the individual should be required to consent to any such move.

²⁹ When asked if they had received legal advice on their immigration case whilst in prison, 11 out of 53 people said yes. However, of those 11 people, 1 said the advice was from a criminal solicitor, 1 said it was from an immigration officer, and 1 said it was from a prison officer. Only 8 people said that the advice came from an immigration solicitor.

³⁰ The % of those who received immigration advice while they were in prison, for the last four years, has been 9.3% 17.5%, 12%, 10%

³¹ FOI request reference number 56254 request submitted 01/11/19 response received 21/11/19



Conclusion and recommendations

There are a number of reasons why people in immigration detention have a particularly acute need for quality legal advice. They are locked up indefinitely without trial and facing enforced removal from the UK, potentially to a situation of persecution or permanent separation from their family. UK immigration law is particularly complex, and the Home Office operates a system that is both extremely adversarial and riddled with flawed decision-making. Unfortunately, the evidence of our legal advice survey indicates that people in immigration detention are often unable to access the quality legal advice they so desperately need.

BID argues that immigration detention is inhumane, unnecessary and expensive. We campaign for an end to the practice of depriving people of their liberty for immigration purposes. However, while detention continues to exist the following recommendations need to be implemented urgently

1. We support the recommendation by the Joint Committee on Human Rights that “Initial legal advice appointments under the Detention Duty Advice scheme should be made automatically, unless the individual opts out³².”
2. The provision of legal aid advice in prisons should be expanded as a matter of urgency and should be equal to the provision of advice in IRCs.
3. Anyone held in immigration detention should be entitled to legal aid representation in relation to their detention matter, both in relation to their first application for bail and every 28 days thereafter when they are also entitled to make further bail applications.
4. Anyone served with a first stage deportation notice should be offered access to immigration legal advice on their substantive deportation matter and on their detention matter.
5. Legal aid withdrawn under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) must be restored. Any immigration decision, including notice of removal must be challengeable and thus accompanied by legal advice and representation.
6. There should be a smaller number of providers that are contracted to provide support under the DDA scheme. In addition the scheme should be reviewed:
 - a. The LAA should carry out a review of the quality of advice on the surgery rota following the increase in the numbers of firms contracted to deliver advice.
 - b. The LAA should carry out a peer review of advice delivered on the surgery by firms that have not previously dealt with immigration detention cases.

³² Joint Committee on Human Rights *Immigration Detention* Sixteenth Report of Session 2017-19 pg 20
<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf>



- c. The LAA should allow detainees to seek advice from any non-surgery legal aid lawyer of a person's choosing. This will help to ensure that reputable firms attract advice work without forcing detainees to rely on a duty scheme in detention that has presently lost detainees' trust.

