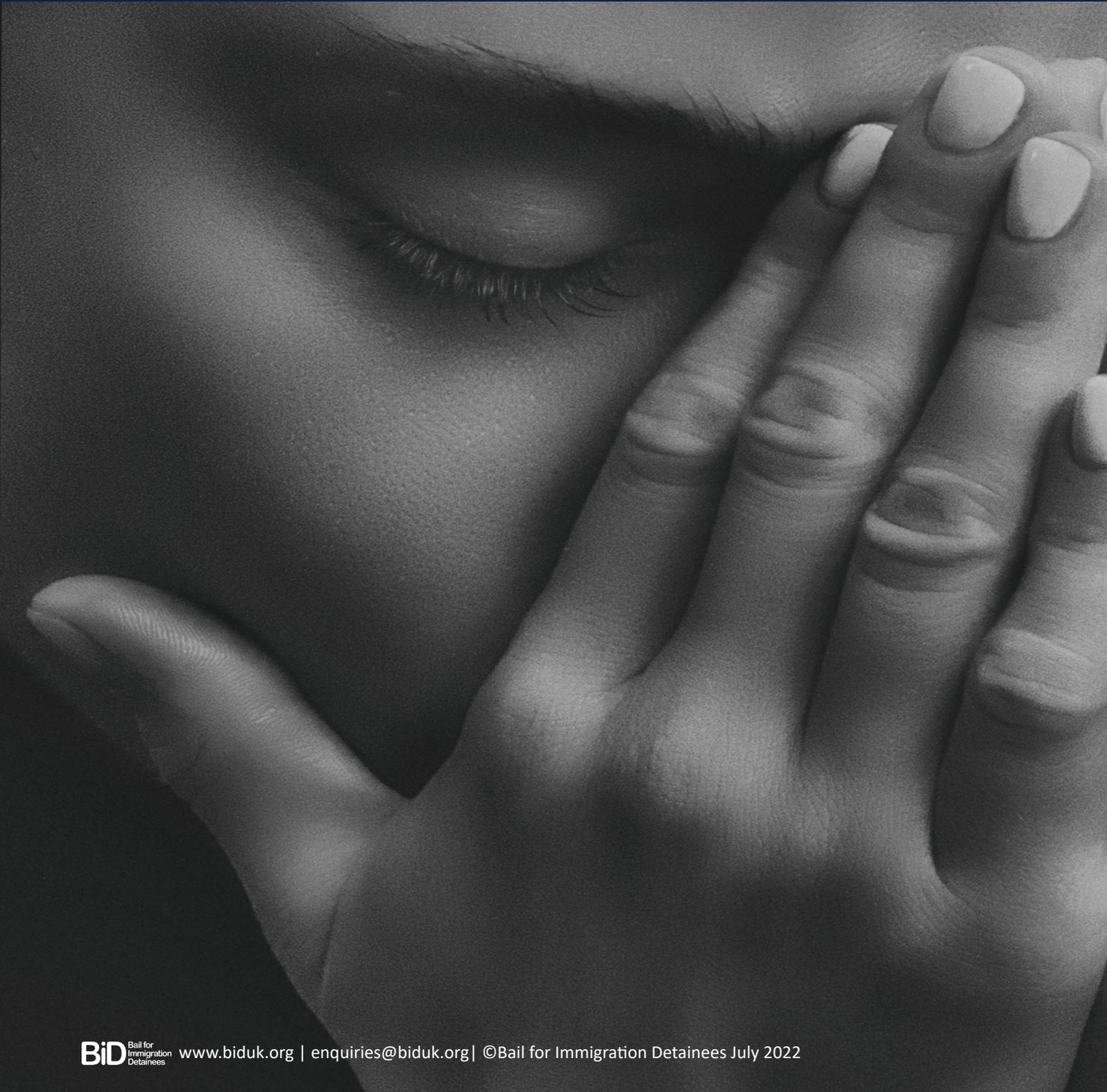


CATCH 2022- accessing immigration legal advice from prison



ABOUT BID

Contents

Executive summary	3
Introduction	4
Importance of immigration advice	6
Methodology	7
Findings	7
Conclusion and recommendations	12
Annex A	13
Annex B	14

BID is an independent national charity established in 1999 to challenge immigration detention. We assist those held under immigration powers in removal centres and prisons to secure their release from detention through the provision of free legal advice, information and representation. Alongside our legal casework, we engage in research, policy advocacy and strategic litigation to secure change in detention policy and practice. In 2014 BID set up a project dedicated to providing assistance for people detained in prisons for immigration reasons. We also provide legal advice and representation to people for their deportation appeals. We are entirely reliant on charitable donations and we are not in receipt of legal aid funding. We do however call for the provision of legal aid funding to everyone held in detention or facing deportation.

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Most of all we would like to thank the people who agreed to share their experiences of accessing legal advice in prison. We hope this report does justice to the honesty and generosity of the testimonies you gave us.

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Executive Summary

People held in Immigration Removal Centres have long been entitled to 30 minutes free immigration legal advice but this did not extend to people held under the immigration acts in prisons. In February 2021 in the case of *SM v Lord Chancellor* – in which BID intervened – the High Court found the lack of legal advice for immigration detainees in prisons to be discriminatory and unlawful. In response the Ministry of Justice has introduced a telephone legal advice service for all immigration detainees held in prisons. Through postal surveys, we have approached as many people as possible who are held in prisons under immigration powers to understand their experience of accessing immigration legal advice from within a prison. We sent out 81 questionnaires and received 27 responses.

Key findings:

Almost everyone who gave their views condemned what they described as the almost total lack of support and legal assistance available.

- 70% of participants (i.e. respondents) do not have a legal representative for their immigration case.
- 89% of participants described, in their own words, the difficulties they had faced accessing justice while detained in prisons under immigration powers
- 74% of participants were locked in their cell for 22-24 hours per day.

In many prisons people were not being given sufficient information by the prison to enable the telephone advice scheme to work effectively, and most people were not given a list of solicitors as required by the telephone advice scheme. There are numerous other practical difficulties which undermine the effectiveness of the scheme including delays and difficulties getting legal numbers added to their pin, and lack of funds.

"I call to lots of solicitors (more than 30). No one accept legal aid."

Overall very few people have been successful in contacting immigration legal aid solicitors under the scheme, and only 11% of participants (3) said they received 30 minutes' immigration advice. People stated that it is virtually impossible to get any assistance with immigration advice from within prison without assistance provided by people they are connected to outside of the prison, such as friends or family. Officers were described as unhelpful or uncaring, or were seen to be discriminating against foreign nationals. All these problems are exacerbated for those who do not speak English.

Those that had been unable to access legal representation in prisons described the ways that it had affected their ability to fight their immigration case and secure release from detention. Many people also highlighted the detrimental impact this had on their mental health. Those who were able to contact lawyers or were able to receive advice were told the lawyer could not take on their cases for various reasons such as the lawyer not having capacity; not providing legal aid; being too far away from the prison; or not dealing with immigration.

Our research shows that the scheme is not working and adds to the large body of criticism from expert bodies, independent inspectorates and international human rights organisations that have criticised the use of prisons (which are essentially establishments whose purpose is punishment) for immigration detention. With an increase in the number of people held in prisons for immigration reasons and an increase in the severity of prison lockdown regimes as a result of Covid, we call on the government to urgently end this practice.

Introduction

While British nationals are released into the community on licence upon the completion of their custodial sentence, many ‘foreign nationals’, including long term residents who are British in all but paperwork, remain locked up either in a prison or an Immigration Removal Centre (IRC) pending deportation.

People held in prison face obstacles to challenging their detention and deportation, with limited telephone access and cannot receive incoming calls, have no internet access, and are heavily dependent on a prison postal system that is often slow. Many people are locked in their cells for almost the entire day. Unlike in Immigration Removal Centres (IRCs), there is no advice scheme for immigration detainees within prisons to book an appointment with a lawyer. It is up to the prisoner, who has no access to the internet, to contact a legal aid solicitor and persuade them to provide legal advice and representation. The majority of the detainees in prisons who we come into contact with are eligible for legal aid immigration advice but do not have any representation.

People detained by the Home Office are scattered across the country, often held in prisons that do not have any legal aid immigration advisers nearby. Moreover, BID has encountered many obstacles to delivering advice inside prisons. We have gained access to some prisons mainly by obtaining the help of visitors’ groups and NGOs such as Hibiscus, by way of invitation, or by us offering our services to individual prisons. We have also written to prisons around the country explaining how we are able to assist immigration detainees held in prisons and offering to provide more detailed advice in the form of workshops and one-to-one advice with individuals held in the prison but often these letters are simply ignored or unfairly rejected. Many prison officers appear to have a poor understanding of immigration detention or deportation issues and are therefore unable to provide support or practical assistance to our clients – something that was reflected in our survey results.

Prolonged solitary confinement

Since the start of the Covid-19 pandemic in March 2020, prolonged solitary confinement (a practice that was used before the pandemic albeit less frequently) has become widespread in prisons, with people being held in their cells for 22 to 24 hours a day. BID and the charity Medical Justice published a research report a year ago documenting the harm caused by prolonged indefinite solitary confinement of immigration detainees in prisons. The Istanbul Statement on the Use and Effects of Solitary Confinement states that “Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day”. The UN Standard Minimum Rules for the Treatment of Prisoners (the ‘Mandela Rules’, adopted unanimously by the UN General Assembly in 2015) adopts an equivalent definition and finds that solitary confinement is prolonged where it exceeds 15 consecutive days. Prolonged solitary confinement is prohibited by the United Nations and can amount to torture or cruel, inhuman or degrading treatment, according to the UN Special Rapporteur on Torture.



Who is detained in a prison:

While the number of people held in Immigration Removal Centres fell as a result of the pandemic, the number of people detained in prisons for immigration reasons increased. On the last day of 2019, there were 307 individuals held in prisons under immigration powers. By the last day of 2020 this had increased to 519, and a year later it was 602, the figure having almost doubled in a 2-year period.

Perhaps more concerningly, data contained in the same FOI response (obtained by BID on 4th May 2022) revealed a concerning rise in the numbers of people held in prisons under immigration powers and awaiting transfer to an IRC. Home Office policy states that immigration detainees who do not satisfy the risk criteria to be detained in a prison will be “placed on a waiting list, operated by DEPMU [Detainee Escorting Population Management Unit], for transfer to an IRC”. The number of people on the waiting list at different dates is given in the table below.

Date	Number of people on waiting list
Week commencing 6 th January 2020	60
Week commencing 4 th January 2021	253
Week commencing 3 rd January 2022	304

Given the severely restrictive lockdown regimes operating in prisons it is very concerning that there are individuals on a waiting list for transfer to an IRC. The view that immigration detention in prisons can only be justified in exceptional circumstances, has been reiterated by various authoritative sources on a number of occasions, including Her Majesty’s Inspector of Prisons, and parliamentary committees. This is particularly so when prison conditions routinely amount to prolonged (and for people held for immigration reasons, indefinite) solitary confinement. However, instead we see hundreds of people being kept in prisons for administrative convenience even when it is not lawful, being arguably unnecessary.

Vulnerable people

Many people held in prisons for immigration reasons are survivors of torture or trafficking, or have complex mental health problems. But safeguards to prevent the detention of vulnerable people do not operate effectively in IRCs. FOI data obtained by BID shows that in 2020 there were 412 people detained in prisons under immigration powers recognised by the Home Office as an Adult at Risk. The figure for January – September 2021, a 9-month period, was 490.

Year AAR lodged		
2019	2020	2021 (up to September)
324	412	490

High Court ruling in the case of *SM v Lord Chancellor* and the government’s response

In February 2021 in the case of *SM v Lord Chancellor* the High Court found there to be an unlawful and discriminatory difference in treatment between people held in prisons for immigration reasons and those in IRCs. People held in IRCs have access to the Detained Duty Advice Scheme (DDAS) where it is possible to book a free 30-minute appointment with a lawyer at the centre, funded by legal aid without reference to merits or financial eligibility. No equivalent scheme existed for people held in prisons for immigration reasons. It was, and continues to be up to the individual held in prison solely for immigration reasons, to contact a legal aid solicitor and persuade them to provide legal advice and representation. All this without access to the internet or external sources of information.

In his judgement, Mr Justice Swift concluded that

“the failure to afford immigration detainees held in prisons access to publicly-funded legal advice to an extent equivalent to that available to immigration detainees held in IRCs under the DDAS, is in breach of Convention rights.” (para 38)

In response to the judgement, on the 1st November 2021 the Legal Aid Agency amended the legal aid contract to provide a legal advice service for all immigration detainees held in prisons, where they can access 30 minutes of advice without reference to their financial eligibility.

The scheme was designed to remedy the discriminatory treatment identified by the court and serve as a functional equivalent to the Detained Duty Advice Scheme for people who are held for immigration reasons in IRCs.

Under the scheme, the Prison Service (HMPPS) is to nationally unblock legal aid advisers' numbers on the prison pin phone system (around 100 phone numbers), and each prison is to provide people held for immigration reasons (and not people with immigration matters who are still serving criminal sentences) with a list of legal aid firms located near the prison. It is then up to the individual to contact a legal aid provider to request an appointment, with the provider arranging a legal visit, and being paid by the Legal Aid Agency for their time and travel.

BiD set out to carry out research with people held in prisons for immigration reasons to find out the extent to which the new scheme allows them to access legal advice. As we set out in the research, the scheme suffers from serious deficiencies that prevent people from accessing justice and does not provide a functional equivalent to the surgery scheme in IRCs.

Importance of immigration advice

Immigration law is very complex. During the passage of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), which removed immigration from the scope of legal aid, the government argued that immigration cases did not require legal aid funding because the process for making applications is straightforward and accessible. That does not reflect BiD's experience – immigration law is highly complex and difficult to navigate.

In 2017 the House of Lords Constitution Committee inquiry noted that immigration law was among the fields where complexity "*had developed to the point that it was a serious threat to the ability for 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*". As summarised by the Law Commission in its report on simplification of the Immigration Rules "*it is widely acknowledged that the Rules have become overly complex and unworkable. They have quadrupled in length in the last ten years.*

They have been comprehensively criticised for being poorly drafted, including by senior judges. Their structure is confusing and numbering inconsistent. Provisions overlap with identical or near identical wording. The drafting style, often including multiple cross-references, can be impenetrable. The frequency of change fuels complexity."

As the JCHR Detention Report states: "Given the challenges individuals face in detention, and the complexity of the law, legal advice and representation is crucial to help individuals to pursue their rights effectively". Representation is especially vital for those pursuing deportation appeals (which is generally true for immigration detainees in prisons) have become very difficult to win due to successive changes in legislation.

Even in bail applications before the tribunals, which are intended to be a simpler and more accessible for unrepresented applicants than other immigration proceedings, those without legal representation are at a considerable disadvantage.

"it is widely acknowledged that the Rules have become overly complex and unworkable"

		Granted
2019	Unrepresented	20.8 %
	Represented	34.2 %
2020	Unrepresented	48.0 %
	Represented	52.8 %
2021	Unrepresented	51.8 %
	Represented	61.3 %

House of Lords Select Committee on the Constitution, 'The Legislative Process: Preparing Legislation for Parliament', Report of the Select Committee on the Constitution, Fourth Report of Session 2017–19, HL Paper 27, para 113. <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/27/27.pdf>

Joint Committee on Human Rights, 'Immigration Detention', Sixteenth Report of Session 2017, HC 1484 HL Paper 278. <https://publications.parliament.uk/pa/it201719/itsselect/itrighs/1484/1484.pdf> para 47

Bail for Immigration Detainees "Excessively cruel" : Detention, deportation & separated families ' Bail for Immigration Detainees June 2021 https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1314/Deportation_Report_Final.pdf Page 6

Methodology

We sent a questionnaire containing 23 questions to all of our clients detained in prisons – 81 in total (see Annex B for a blank copy of the questionnaire). The letters were sent on 8th April 2022 and all responses were received within three weeks of that date. We received 27 responses, from people held in 22 different prisons scattered across the country.

Prison	No of survey respondents
Thameside	1
HMP Pentonville	1
HMP Ford	1
HMP Lewes	1
HMP Doncaster	1
Wormwood Scrubs	1
Swaleside Prison	2
HMP Bedford	2
HMP Belmarsh	1
HMP The Verne	1
HMP Liverpool	1
HMP Brixton Hill	1
HMP Elmey	1
HMP Norwich	1
HMP Durham	1
HMP Lincoln	1
HMP Huntercombe	1
HMP Prison Hull	2
HMP Maidstone	1
Rye Hill Prison	2
HMP Rislely	1
HMP Yoi Isis Prison	1
HMP Prison Bure	2

Where possible we have sought to use the direct words of the people who responded to our survey. An important part of what we are attempting to achieve with this research is to amplify the voices of some of the most marginalised and isolated people in the UK. People held for immigration reasons in prisons stand at the intersection of multiple avenues of disadvantage and discrimination, with very few opportunities to make their voice heard.

Many people know very little about immigration detention and are unaware that this can happen in the setting of a UK prison, and there are few people or organisations that advocate for the rights of people held in prisons. Moreover, the relentless denigration of people who are not British as ‘foreign criminals’ by key figures in the government including the Home Secretary, the Justice Secretary and the Prime Minister himself, render this group particularly vulnerable to abuses and denial of basic rights.

Findings

1. Solitary confinement continues to occur

37% of respondents (10 out of 27) report being allowed out of their prison cell for 1 hour per day or less, including one respondent who said he was allowed out for 30 minutes per day. A further 37% (10) of people reported being allowed out of their cell for between 1-2 hours per day. Therefore 74% of people (20 out of 27) were locked in their cell for 22-24 hours per day.

This reflects analysis by *The Independent* in April which found that unemployed prisoners in 72% of English prisons inspected since Covid restrictions were lifted in the UK spent 22 hours or more in their cell a day. It appears that people continue to be held in conditions amounting to prolonged solitary confinement, in breach of the UN Mandela Rules.

2. Most people don't have a lawyer

70% of people (19) said that they do not have a legal representative for their immigration case. Of the 8 people that said they had an immigration lawyer, 2 said that they had only recently obtained one, and 1 said “yes, but they’re doing nothing for me”. 2 people said that they obtained a solicitor through friends, 1 said BID, and one said that they found the solicitor themselves. Another said “*It [is] not easy to get one in this prison, took me ages to get*”.

One person, who had a solicitor, said “*very helpful*”. Nobody said that they found their solicitor through the prison service or through calling up solicitors.

3. The Home Office provides deportation decisions at different stages of an individual's prison sentence or period of immigration detention

14 of the people we spoke to said that they still had not received a deportation decision. “*I haven't received a decision and I been in this jail for 2 years*”

“*No, I'm still waiting. Its been 7 months*”

“*I have received nothing. He no went to deportation me. No release me. No transfer me IRC*”

Of the 13 respondents that had received a deportation decision, 5 said that they received a deportation order while they were serving their sentence and another said “*I received this on the day I was expecting to be released*”.

3 people said that they received the deportation order after the end of their custodial sentence, while being held in prison under immigration powers.

Given the different stages that people receive deportation paperwork and the tight deadlines for responding, it is vital that immigration legal advice is also accessible for people who are serving a prison sentence.

4. People are not being given sufficient information by the prison to enable the telephone advice scheme to work effectively, and most people are not given a list of solicitors as required by the telephone advice scheme:

We asked people whether they were given additional information about how to get legal aid help with their immigration case. Only 26% of participants (7) said that they had received some additional information. 74% of participants (20) had not received any additional information.

"I've been asking for legal aid but no one talk to you about that and no numbers to ring". "No, everyone joke, no one do his job, from prison to Home Office"

We also asked people whether they had been given a list of lawyers that they could call, as required by the policy. 10 people said that they were provided with a list of lawyers to call, of whom 3 said that none of the lawyers on the list provided legal aid. Among the 10 people who answered yes, some of the statements given are below.

*"Yes, after I asked many times"
"yes. No one accept legal aid"
"yes, most on the list no longer provide legal aid advice"
"Not before going through approval"
"yes, by detention action"
"Yes, from you lot. Not from the prison"*

Meanwhile, 63% of participants (17) said that they were not given a list of solicitors.

5. There are numerous practical problems which undermine the effectiveness of the telephone advice scheme

There are limits on how many telephone numbers people can have on their pin.

*As one respondent stated:
"communication is very hard compared IRC detainees. I have a cap of 5 legal numbers. I add a number, wait for approval, when approved, I make a phone call only to get voice mail which costs me. Some other times it rings continuously with no answer and still I got charged for a call that never got answered. After few days, I have to apply for those numbers to be removed to free space new numbers to be added. another 5-10 days. I call new numbers only to find out they no longer do immigration matters or do not take cases under legal aid"*

We asked respondents how many numbers they can have on their PIN at one time. 9 respondents said they were allowed 1-6 numbers. 7 respondents said they were allowed between 15 and 25 numbers.

We also asked respondents whether the numbers of legal aid lawyers were automatically added to their PIN (as the policy states that they should be) and whether people requested this if it didn't happen automatically, and how long it took for the request to be granted. 67% of participants (18) said that lawyers' numbers were not automatically added to their pin, and only 3 people said that any numbers were automatically added.

*"request and took 4 weeks."
"I'm still waiting for my probation officer's number to go on and it's been near 3 weeks now"
"no, it takes 7 days"
"no, I have to request it. It took over a week".
"No, depends. Min 3 days to 14 days"
"they were 10 solicitors. They were not automatically added. Only the ones from BID"
"No but of you get from someone it take 3,4 weeks. But you must have address"
"No, None of them do legal aid"
"I saved my own numbers and every took 5 days to be added"*

78% of participants (21) said that they were not given any additional money on their pin to pay for legal calls.

81% of respondents (22) said that they had a phone in their cell, which was a recent improvement (although one said *"it's broken so we've been asking for 6 months on when it will be fixed but the officer don't care"*).

We asked people whether there was a time limit on their calls:

- 8 people say there is no time limit. One said *"Not limit, but expensive"*.
- 4 clients specified a time limit between 5 and 10 minutes
- 6 clients say there is between 15 to 20 minutes time limit
- 2 clients say they have a 30 minutes time limit
- 1 client say he has a 50 minutes time limit
- 4 clients say there was a time limit but they did not specify the time limit

6. Many people are unsuccessful when they make telephone calls in order to obtain immigration legal advice / representation

17 people said that they had tried to call any numbers they had access to.

We asked people whether they had received any advice over the telephone or in person. 4 respondents said they had received advice over the phone.

6 people say someone came to prison, but is not clear whether those were for the provision of immigration legal advice.

- *"There is an adviser that comes in but she's not helpful"*
- *"they come once every 3 months"*
- One respondent mentioned Detention Action

6 respondents specified that they have not received face to face or telephone advice.

- *"Only received paper work and no help offered"*
- *"no one, just when I woke up I found letter in my cell, but is hard for me to understand"*

We asked people whether they received any written confirmation of advice they had received, to which four said yes.

We asked people whether a solicitor had agreed to take on their case after receiving advice, only 2 people answered 'yes' and 23 answered 'no'.

"no, only BiD agreed" "I'm still with no representative"

We asked people if they were given any reasons, by lawyers, as to why their case could not be taken on:

- Out of 8 people that received a reason for not taking their case.
- 3 say the lawyers they contacted said that they did not have capacity
- 2 said the lawyers they contacted do not provide legal aid
- 1 said the lawyers do not deal with immigration
- 1 said *"that the home office hasn't come to a decision on my case"*.
- 1 respondent said: *"1) charging money, 2) too far, 3) just can't take my case"*
- 15 clients did not answer or say it was not applicable.
- 1 said 'none', 1 said 'no reason'.
- 1 said *"they took my case but never come to see me again"*.
- 1 said *"advice given"*.

7. The lack of immigration legal advice in prisons denies people held in prisons the fundamental right of access to justice and causes harm in the process

The final section of the questionnaire contained two questions that gave respondents the opportunity to provide more expansive responses, in their own words. The first of those questions asked people who had spent a period of time without an immigration lawyer how this had affected them.

78% of participants (21) answered this question to indicate that the lack of access to immigration legal advice had had a detrimental impact on their case. Most people answering this question said that this had affected their ability to appeal Home Office decisions or to secure release from detention.

"Yes, it was hard so I had to get my mother to find me a lawyer. It was hard to getting credit to ring them I had a few trouble making an appeal"

“yes, Language barrier, release accommodation, job seekers, accountancy. Difficulty in applying for bail application”
“trying for appeal over 40 days still no legal aid solicitor for me”
“I have been affected with application, appealing decisions, applying for bail as I had to represent myself in my last bail hearing”
“I've had trouble applying for bail for 7 months”
“I'm having a problem with all these things now and I'm hoping you can help me”
“Yes, I only had help of you”
“It was bad. I was refused bail. My bail application was going to be 100% successful if it was represented by a barrister or solicitor.”
“trouble doing all of it really as don't know about it”
“I try all that I can but no hope for me, no release, no bail”
“I had trouble getting bail because my address was not approved”

Five of those people gave answers indicating that not having an immigration solicitor had also affected their mental health or well-being.

“Depressed, anxiety though not caring what is going on. I have lived in the UK Since 4, over 30 years.”
“Made me anxious and sleeping difficulties. Only English cellmates helped me with appeal paperwork”
“This affected me by prolonging my bail and making my mental health deteriorate”
“This affect me day by day because there is no one to help and you can't start trouble because I may end in segregation”
“Always I'm in bad situation. You imagine, 16 week my sentence and 1 year immigration hold me”

The second was more broad and open and simply asked “Is there anything you would like to tell us about your experience of getting immigration legal advice while you have been detained in prison?”

89% of participants (24) answered this question by providing additional information detailing the difficulties they had faced accessing justice while detained in prison under immigration powers (two people left it blank and one said they had nothing to add).

It should be noted that this is a very large response rate for an open question at the end of the survey and indicates the strength of feeling and desperation among respondents.

People raised a diverse range of issues including:

- Being unable to access legal representation and facing detriment as a result.
- People stating that it is very difficult to get any assistance with immigration advice from within prison, and relying on assistance provided by people they are connected to outside of the prison, such as friends or family, in order to get a lawyer.
- Officers not helpful or not caring, or even discriminating against foreign nationals.
- Solicitors not helpful or unable to take on cases either on a legal aid basis or at all
- Not being given a list of solicitors.
- People being desperate, or so tired and broken down by the system that they give up and stop fighting.
- Not having time to find and instruct a solicitor within the tight deadlines given by the Home Office for appealing against deportation.
- Not being able to receive calls.
- Not being able to copy documents.
- Impossible for people who do not speak English to get the help that they need.
- Not being able to understand key documents.
- Remaining in detention due to lack of accommodation.
- Having a cap on how many numbers can be on the pin and delays in getting a number approved.
- Not being able to reach solicitors by telephone (but still being charged).
- Getting through to solicitors only to find out they no longer do immigration or legal aid
- Postal delays.

The words of respondents themselves:

"Without legal advice I have been relying on other prisoners to fill out paperwork and to translate. I have been unable to appeal against my deportation order as neither I or others understand some of the legal questions. My bail though granted has come to nothing due to lack of accommodation and I have no one to challenge probation over this I have resident in the UK for 22 years but without legal help I am unable to argue anything."

"I do not get legal immigration advice, prison or detained advice. No one of the officer will help you."

"In prison, I cannot copy my original document or receive invitation calls from a solicitor who might have the capacity to take my case. This reduced my chances of getting representation. In this prison I cannot get my phone numbers from reception. I'm locked away from the outside world, cannot contact friends and family to get help or representation. How do I contact my friends for help?"

"I call to lots of solicitors (more than 30). No one accept legal aid. Even prison foreign national officers not bother other than deportation. Hard to get legal advice. Great thanks to BID and whole team always great on calls, letters response."

"The only help I have is from my partner as I don't have access to anything and don't understand any of the forms. I fell completely scared... I feel abandoned and frightened to the system"

"communication is very hard compared IRC detainees. I have a cap of 5 legal numbers. I add a number, wait for approval, when approved, I make a phone call only to get voice mail which costs me. Some other times it rings continuously with no answer and still I got charged for a call that never got answered. After few days, I have to apply for those numbers to be removed to free space new numbers to be added. another 5-10 days. I call new numbers only to find out they no longer do immigration matters or do not take cases under legal aid."

"If you don't have family or friends on the outside, it nearly impossible to fight your case from prison and the only solicitor that does legal aid they don't work with people in prison."

"immigration refused asylum because I had no solicitor. I found this very stressful and upsetting. I often felt very alone"

"I am trying to get to the detention centre but still no hope, I am five months extra in prison now, I want to go to detention centre but they don't want to take me out to the detention centre"

"In 2 years I have been waiting for a decision from the immigration and I've got nothing. Even though I'm a __ national and they cannot deport me back to a unstable country, they still make it hard for me and wasted my progression by keeping me here and now my release date is days away (05/05/22) and I can't get hold of my probation officer nor have they approved my address or sort put accommodation. For me my anxiety is high. I'm stress out and barely sleep. Read the attached letter"

"I received support (illegible) until we came across BiD which have been excellent. They provided __ and __ who went above and beyond in obtaining bail for me, keeping me and my family updated of any changes and providing emotional support. Without BiD I would have given up and lost in the system."

I needed a solicitor but I couldn't get legal aid. The jail never gave me a list of solicitors who do legal aid."

"It was not easy I had to get my family to get me a lawyer. For my appeal which took some time. But I am glad that BID contacted me and gave me advise and information that I need to know and he keep in contact (illegible) more than my other lawyers."

"6 or 7 months ...(illegible) ... he (immigration officer) said to me he's going to release me with tag, I was happy but nothing happen. Now I'm like die in cell. Sometimes I'm not get my food. the office says I'm not in the list. This is just a small example and so many things happen to me in this prison. PLZ PLZ PLZ if you can help me, can you I'm so tired and I stop to fighting. And about staff here in prison no one care if you get your food or are you okay."

"When I received my stage 1 papers I try to get a solicitor to help me to reply back but my wife got me couple numbers from internet. I call them they said they are all full or they don't do legal aid"

“Due to the pandemic, when I tried to assign a solicitor for my response letter to the Home office, they were not able to take on the case in time for the response deadline so I had to write a letter myself.”

Conclusion and recommendations

“Depriving people of their liberty for immigration reasons is extremely harmful & undermines basic rights”

BiD believes that detention for administrative immigration reasons is cruel, unnecessary and undermines fundamental rights and recommends that the practice should be ended in its entirety.



Depriving people of their liberty for immigration reasons is extremely harmful and undermines basic rights. People in detention experience loss of liberty, social isolation, uncertainty about their future, lack of agency and poor healthcare. Studies have consistently demonstrated the negative impact of detention for immigration reasons on mental health.

This is not a radical recommendation, particularly when compliance with immigration bail is extremely high. Government data obtained by BiD shows that of the people granted bail from February 2020 to March 2021 (of which there were more than 7,000), just 43 people absconded – less than 0.56%, while other data suggests that 1% of people released from detention in 2020 absconded.

While it continues, we recommend that the government stops using prisons to hold people for immigration reasons as a matter of urgency.

Prisons are a wholly inappropriate environment

people held for immigration reasons, who have particular needs and are held for administrative rather than punitive reasons.

Many of the problems identified in our research are an inevitable consequence of the decision to scatter people held for immigration reasons in prisons across the country and cannot easily be improved while this practice continues.

Nevertheless, while people continue to be detained in prisons the government should as a matter of urgency improve access to justice by applying the following measures:

1. Restore legal aid for immigration cases including for those seeking deportation. This work must be paid sufficiently well to create an incentive for practitioners to take on cases and to ensure that the immigration legal aid sector as a whole is sustainable.
2. Extend the telephone advice scheme to all foreign nationals against whom the government is pursuing deportation, including those who are still serving a custodial sentence.
3. Provide training to ensure that all prison officers have an understanding of detention for immigration reasons and deportation law policy and practice.
4. The use of solitary and shared cell confinement in prisons should be ended. The UK government must adhere to the UN minimum rules on the treatment of prisoners (the Mandela Rules), and the use of prolonged cell confinement (more than 15 days) should be ended. This should happen as a matter of urgency given that the impact upon health risks becoming irreversible beyond this point. Prisons should guarantee prisoners much more time out of their cells and improved opportunities for rehabilitation and education.
5. Review the location of detention on a weekly basis as per its own policy.
6. Serve people with a decision-letter, notifying them that detention will take place in a prison, and giving reasons for the decision, with the ability for people to make submissions as to why they should not be held in a prison.
7. Ensure that that the length of time that shared cell and solitary confinement will last is communicated to detainees at the outset of their confinement.
8. Weigh the conditions of treatment and the impact this has on individuals in each review of detention.
9. Introduce an equivalent to the Rule 35 process that exists in IRCs, so that there is a mechanism for people to have their vulnerability recognised by a doctor, and for this information to be passed on to the Home Office to trigger a review of detention that is also provided to the individual.

Annex A: Criticism of the use of prisons for immigration detention

We echo the numerous international and domestic bodies have criticised the practice of using prisons to hold immigration detainees.

In its 2016 report on the UK, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) found that prisons were inappropriate places to hold immigration detainees:

*“180. The CPT also wishes to reiterate that prisoners who have completed their sentences and who are subsequently liable to be deported to their country of origin should not be held in prison. At the time of the visit, there were 480 immigration detainees held in prison. **The CPT recommends that foreign nationals, if they are not deported at the end of their sentence, be transferred immediately to a facility which can provide conditions of detention and a regime in line with their new status of immigration detainees.**”*

In a report into immigration detention, the UK’s parliamentary Joint Committee on Human Rights session (2017-19) explicitly recommended that:

“If it is necessary and proportionate for an individual to be detained under immigration powers after they have finished serving a prison sentence, then detention should take place in an immigration removal centre.”

The parliamentary Home Affairs Committee, in its 2017-19 report on immigration detention, raised specific concerns and made recommendations in relation to access to legal advice for people held under immigration powers:

“97. People held under immigration powers in prisons subject to deportation procedures, i.e. foreign national offenders who are serving custodial sentences in prisons and who are liable to deportation at the end of their sentences, do not have access to the DDA scheme in prison. This means that they have no guaranteed access to a legal adviser and have to find and contact a lawyer themselves. Foreign national offenders should be afforded the same legal safeguarding provisions as immigration detainees held in IRCs so that, on completion of their custodial sentence, they can be deported or have their immigration status resolved rather than entering immigration

detention. This should include access in prison to the DDA scheme.”

In 2015, a review was commissioned on behalf of the then Home Secretary, Theresa May, into vulnerable adults in immigration detention. Former Prisons and Probation Ombudsman Stephen Shaw found that *“It was reported that detainees held in the prison estate found access to legal advice more difficult, reducing their ability to progress their immigration case, and to seek independent scrutiny and release from detention, as well as affecting their physical and mental wellbeing.”* Shaw explicitly made the recommendation that Rule 35 (or an equivalent mechanism) should apply in prisons to ensure that vulnerable adults are brought to the attention of the Home Office. In a 2018 follow-up report, Shaw reiterated the urgency of this recommendation.

In a report published last year, the Independent Chief Inspector of Borders and Immigration found that there continued to be a difference in treatment between those held in IRCs and those in prisons, and that progress on that work had been ‘too slow’. Safeguards for vulnerable adults clearly did not work as well in prisons. The inspector found that ‘CID’ case notes were ‘far sparser’, because

“as the mechanisms by which the Home Office would access such information on the condition of individuals in the detention estate – via DET engagement, Rule 35 reports, or Part Cs – either did not apply to TSFNOs in prisons or prison staff were unaware of the available mechanisms.”

The Independent Monitoring Board at HMP Maidstone found that the Home Office refusing to engage with prisoners, and that this was a *“major cause of stress and anxiety leading to self-harm”*.

Joint Committee on Human Rights *Immigration Detention*, Sixteenth Report of Session 2017–19 <https://publications.parliament.uk/pa/it201719/itselect/itrights/1484/1484.pdf> Home Affairs Committee *Immigration Detention* Fourteenth Report of Session 2017–19 <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf> Stephen Shaw (published in 2016), *Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

IMB National Annual Report 2020-21, <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2021/09/2021-09-23-IMB-National-202021-Annual-Report-FINAL.pdf>

Her Majesty’s Inspector of Prisons is frequently critical of the use of prisons for immigration detention. In their reports on individual prisons HMIP often recommends that people should only be held in prisons in exceptional circumstances, and often make criticisms of the lack of access to immigration legal advice.

In a HMIP report on HMP Wandsworth, 45% of the prison population are foreign national offenders, yet *“inexplicably, Home Office staff had absented themselves from the prison for more than a year”*. In HMP & YOI Chelmsford it was found that foreign nationals had ‘poor’ access to free independent legal representation and *“the library contained one out-of-date textbook on immigration law”*. Around 20% of prisoners in HMP Belmarsh were foreign nationals but they had no access to free independent immigration advice and many hadn’t been given any information on their immigration status. HMP Manchester *“did not provide any information or support to help those being deported from the UK to access legal assistance”*.

Detainees in HMP Hull could not access *“independent legal advice and translated materials were limited”*, in HMP Oakwood and HMP Wormwood Scrubs there was little or poor access to free legal representation, and *“legal advice on immigration issues was not easily accessible for many prisoners”* in HMP Huntercombe.

- [Report on an unannounced inspection of HMP Wandsworth](#) (pg. 3)
- [Report on an unannounced inspection of HMP & YOI Chelmsford](#) (pg. 32)
- [Report on an unannounced inspection of HMP Belmarsh](#) (pg. 34)
- [Report on an unannounced inspection of HMP Manchester](#) (pg. 34)
- [Report on an unannounced inspection of HMP Hull](#) (pg. 32)
- [Report on an unannounced inspection of HMP Oakwood](#) (pg. 10) &
- [Report on an unannounced inspection of HMP Wormwood Scrubs](#) (pg. 34)
- [Report on an scrutiny visit of HMP Huntercombe](#) (pg. 19)

ANNEX B: questionnaire sent to all clients held in prisons

Please tell us about your experience of getting immigration legal advice in prison

Your name or initials:		
BiD reference Number:		
Prison where you are held		
Male or Female:		
These questions are for <u>everyone</u>:		
1	What was your criminal release date:	
2	How long are you allowed out of your cell per day?	
3	Do you have an immigration legal representative?	Yes/No
4	If yes, how did you find your solicitor?	
5	Have you received a deportation decision? If so, was this received when you were still serving your criminal sentence?	
6	Do you have a phone in your cell? If so, please explain how you make a call (the process for dialling a number, and whether there is a keypad you are able to use).	
7	Have you been given additional money on your pin to pay for legal calls? If so, how much?	
8	Were you given any information about how to get legal aid help with your immigration case?	

9	Have you been given a list of lawyers that you can call?	
10	Were they automatically added to your pin? If not, did you request this and how long did it take?	
11	How many lawyers' numbers can you have on your pin at one time?	
12	Is there a time limit on your calls?	
13	Have you attempted to call the numbers?	
14	Were all of the numbers for lawyers to do immigration work?	
15	Were you able to speak to somebody?	
16	Did you receive 30 minutes advice?	
17	What interpreting services were provided, if any?	
18	Did somebody come to the prison to give that advice or was it only over the telephone?	
19	Did you receive written confirmation of that advice?	
20	Did anyone agree to take on your case after 30 minutes?	
21	If you spoke to a lawyer & you were not given any legal advice or representation, what reason was given?	

If there was any time when you did **not** have help from an immigration solicitor:

22 How did this affect you: e.g. did you have trouble making a claim, appealing a decision, applying for bail, or getting release accommodation?

OTHER QUESTIONS

23 **How did this affect you: e.g. did you have trouble making a claim, appealing a decision, applying for bail, or getting release accommodation?**

BiD Bail for Immigration Detainees

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