

BiD Bail for Immigration Detainees

**Autumn Legal
Advice Survery**

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About BID:

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 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.

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 – known as the 'Legal Advice Survey'. This is the first such survey we have been able to carry out since before the pandemic. It is the 19th Legal Advice Survey we have carried out, and we interviewed 42 BID clients in immigration detention. We would like to thank the volunteers from BPP law school who carried out the interviews, and the people who agreed to share their experiences of accessing legal advice in prison.

Introduction:

“anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. ICCPR [1966] (Article 9(4))

Governments cannot simply lock people up and throw away the key – people who are being deprived of their liberty must be able to access legal advice, representation, and the courts. It is the government's duty to provide this. However, unlike in the criminal justice system, there is no automatic provision of legal advice for people who face being deprived of their liberty.

Not only is legal assistance important for the bail process and essential for challenging the lawfulness or conditions of detention, it is also vital for an individual's substantive immigration case. The stakes in such cases could not be higher, where individuals face enforced return to a country where they face persecution or children face being permanently separated from a parent.

The Home Office's powers of detention are very wide, with few checks and balances such as judicial oversight or a time limit. The fact that the Home Secretary has such unrestricted recourse to detention increases the



need for a fully functioning system for provision of legal advice in place. In the case of *J.N. v. the United Kingdom*, Application no. 37289/12, the European Court of Human Rights (ECtHR) held that the lack of a maximum time limit or automatic judicial oversight of detention was not unlawful due to the existence of other procedural safeguards – common law principles which establish limits on the lawfulness of detention (the *Hardial Singh* principles). Put another way, the lawfulness of the UK’s illiberal detention system rests on the notion that individuals can simply bring a judicial review claim before the High Court.

However, there are multiple and mutually compounding barriers to people in detention accessing the courts. There have been deep cuts to legal aid which, as our survey highlights, have had a devastating impact on immigration detainees – and indeed other people subject to immigration control who cannot afford a lawyer. Immigration law is very complex and it is near impossible to navigate it without a lawyer. People in detention are also more likely to face other barriers relating to language, literacy or vulnerability which make preparing an immigration application or challenging detention much more difficult. The desperate situation that people are placed in by the UK’s punitive immigration system means they are also vulnerable to exploitation by unscrupulous providers.

Sample: The detainees were interviewed between (6th – 26th July 2022) .

The sample group was taken from BID’s clients who, on 5th July 2022

- 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 86 clients who met the above criteria and were telephoned by researchers, and we completed 42 interviews. We asked the interviewers carrying out the survey to write down what the interviewee said as accurately as possible whenever qualitative answers were given¹.

The people we spoke to had been detained for an average of 121 days (4 months). Of the 42 people who answered the survey, 9 people were held in Brook House, 11 people were held in Colnbrook, 9 people in Harmondsworth, 2 people in Yarl’s Wood, and 11 people did not specify the location of their detention. 7 people had been released by the time that they carried out the interview for the survey. 11 of the interviews were carried out with an interpreter².

Findings

Level of legal representation:

¹ 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. Some interviewees left certain questions blank.

² 5 Arabic, 1 Czech, 1 Slovak, 1 Romanian, 1 Albanian, 1 Portuguese, 1 Polish

In the survey, only 18 out of 42 people currently have an immigration lawyer (43%). These figures are significantly lower than previous surveys in 2019 where the figures were at 64% (spring) and 59% (autumn). This trend is very alarming, particularly against the background of the Nationality and Borders Act 2022 and a general increase in laws and policies that criminalise and punish people subject to immigration control and remove people's basic rights. The need for legal representation is greater than ever. Of those that are represented, 14 out of 18 said that their lawyer was funded by legal aid (77%).

These figures are concerningly low. In our last survey in 2019, 59% of people had a lawyer, 68% of which were on a legal aid basis.

Immigration advice for people in detention has never recovered from the cuts to legal aid in 2013 which removed non-asylum immigration work from the scope of legal aid. 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 BID legal advice survey where the number of people with a legal representative was above 60% and in 7 out of 19 surveys this figure has been below 50%. As has been widely documented, the cuts to legal aid have had a devastating effect on the entire immigration legal aid market, and the impact is not limited to immigration detainees³.

The high number of unrepresented people is reflected in surveys carried out by HMIP as part of their inspection of Colnbrook (2022) and Brook House (2020). In Colnbrook IRC 48% of those surveyed by HMIP did not have an immigration lawyer, whilst in Brook House the figure was 30%. The people BID interviews may be less likely to have legal representation with which they are satisfied – indeed that may well be part of the reason they approach BID.

Reasons for low level of representation

Most people who did not have a lawyer said it was because of financial reasons, or not knowing how to get one. Out of 23 people who did not have a lawyer, 6 mentioned that financial reasons were a contributing factor, including one person who was previously represented privately but had to stop when it became too expensive, and was now 'stuck without one'. 3 people said that they were not provided with enough information or did not know how to get one, and 5 people indicated that they had tried to find a lawyer but had been unable to find anybody, or had previously spoken with solicitors but this had not led to their case being taken on, or the solicitor had stopped responding. For instance, one man said that he has "had 4/5 appointments so far but nobody gets back to him after the initial appointment. Nobody has even given him feedback explicitly saying they cannot take the case, they just do not respond to his phone calls and emails". Another said he "had been put in touch with solicitors, they contact him, they keep saying they will send him a letter, but nobody does and he has not yet received a letter".

Nine people in the survey said that they had *never* had a lawyer while in immigration detention. People who volunteered further information on this question said that this was due to financial reasons, not being

³ For more details see Dr Jo Wilding's report on the immigration legal aid market, Droughts and Deserts (2019)



provided with any assistance in finding one, or not being able to find a lawyer to take on their case. One of the individuals who had never had a lawyer in detention had been “told him he has to pay for a private solicitor but does not have the money for that”. Another individual said – “he has tried to contact several but no one is helping him”.

Those who did not have a solicitor had been negatively affected by the lack of legal assistance. 10 people said that it meant they did not know how to challenge detention, 10 people said it meant they were unable to apply for bail, and 7 people said it meant that they did not know which evidence they needed to collect, and 5 people said that they felt it made it more likely that they would be deported. 15 people said that they had done work on their main immigration case themselves. Several of those that had done so commented that immigration law is complex and difficult to work on without the assistance of a legal professional – for instance as they do not know who to contact to get evidence, or that they need assistance opening a case.

Bail

Eleven out of 18 people said their current lawyer had applied for bail. However there were examples of lawyers not being proactive, or people not understanding, or not being given satisfactory reasons as to why their solicitor had not applied for bail. That includes one individual who said that no reasons were given to him and that he had asked his solicitor about bail “around 25 times” while another said that he had asked his lawyer this “many times” and had not been given a response. Another individual said that he was told he was not eligible for bail “due to personal reasons” and another said he had been told that because he had a second interview scheduled, the lawyer did not want to make the bail application yet because he feared it might be refused.

One individual mentioned that “several others in the detention centre are being referred to the welfare office and told to fill in bail applications themselves” and said that “these individuals are the ones who do not know how to read or write.” Another said that he struggles to understand his lawyer who he has not heard from in a while and has no updates regarding the progression of his case. One individual said that he thought he was not eligible for bail due to personal reasons but feels he is being pushed back and forth.

These are not satisfactory reasons for failing to apply for bail. The deprivation of individual liberty could not be more important to people detained and lawyers should be applying for bail at the earliest possible opportunity.

Immigration legal advice in prison

Out of 24 people who had previously been in prison, only 2 people received legal advice from an immigration solicitor while held there. While some additional individuals indicated that they had received advice while in prison, they clarified in the following question that it was from somebody other than an immigration solicitor (e.g. information leaflets / BID). This is particularly problematic as people often receive deportation paperwork while they are still serving their sentence and need advice and representation in order to submit the correct evidence, demonstrate that they meet the necessary legal tests, and comply with tight Home



Office timescales. It is also essential that people receive advice in relation to the fact that they are likely to be detained beyond the end of their sentence – especially as the Home Office frequently notifies people just days before their release date.

As one individual said, he “received letters about being deported whilst in prison but was not given any legal advice regarding his immigration status”. Another participant said he “has never been given any legal advice about his immigration case before whilst in prison”. One individual stated, in answer to the question of whether he lost a solicitor moving to an IRC, that when he was in prison he was asking to speak to a solicitor but nobody ever answered his calls. He became very depressed and unwell so he asked to be moved from the prison and then he found a new solicitor.

These findings are consistent with the results of our recent prison legal advice survey⁴, in which we sent questionnaires to people held in prisons under immigration powers to gain a better understanding of their access to legal advice. Of the 27 people who responded to that survey:

- 70% of participants 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

HMIP made similar findings in its recent report concerning immigration detainees in prisons, finding that “Twenty-one of the 45 we interviewed did not have any legal representation for their immigration cases, and many of these said it was due to being unable to afford a lawyer.”

DDA scheme

We asked people a number of questions about the DDA scheme although there was some confusion in the answers given by some participants as to whether the lawyer that they spoke to was from the DDA scheme or outside of that. This is likely to do with the fact that the DDA scheme is now usually telephone based, meaning that there is not the same process of the DDA lawyer physically coming in to the centre. Some participants answered questions about the DDA, but referencing law firms that do not have a DDA contract.

15 people told us that they were not aware of how to access free legal advice in the removal centre. Some knew about the service but had not been told how to access it, while others were entirely unaware that this was something they were entitled to.

18 people said that they had made a DDA appointment. Most people did not have to wait more than a week for the appointment although 6 people said it was 1 or 1-2 weeks waiting time. The vast majority of the DDA appointments were over the phone – 14 people said they were telephone based while 3 said that the

⁴ CATCH 2022 - accessing immigration legal advice from prison *Bail for Immigration Detainees* https://hubble-live-assets.s3.amazonaws.com/biduk/file_asset/file/635/BiD_Prisons_Report_page_1_1_.pdf



appointments were face to face. Some people said that they had made requests to use the service on a number of occasions but the appointment was never made.

The quality of the appointments varied considerably. Some people said that they received helpful advice from a solicitor who wanted to help, and assisted with obtaining medical evidence. Other people said that the advice was unhelpful, or just generic advice that was not specific to their case, and some people said that the solicitor didn't call them back, or that they were unable to get a DDA solicitor to take on their case.

One individual said that he contacted 8 different solicitors and not a single one took on his case. "One said they couldn't take on his case because of BREXIT rules, another said they had too much work, every one gave different reasons. All of this was conducted over the phone".

Another individual said "Cases are not looked at properly by the free legal advice team" and said "there are other individuals in the centre who have their case looked at for 20 minutes and are then told they will not be taken on". He told us that people will be offered free support for 2 weeks then they start asking for payment.

10 out of 18 people said that the lawyer took on their case. Those people whose cases had not been taken on were mostly unsure of the reasons why, and most people said they did not receive advice in writing. Not a single person had been told about ECF.

HMIP's survey data shows that in Brook House IRC (2020) 59% of those surveyed had not received free legal advice during their time in detention, while in Colnbrook IRC (2022) the figure was 69%. In Brook House, HMIP noted that "Some detainees told us that, while they could access this scheme, they had to speak to several solicitors before finding one who agreed to take on their case".

Internet access

A number of people had used the internet to research their case and said that websites had been blocked, including websites that would potentially have been helpful in preparing their immigration case. Those websites included:

- AppealsBarrister.com
- Social networks
- Streaming services
- Human Rights websites
- EU immigration law websites
- Solicitor websites
- Category of business as a whole is blocked
- Emails

One individual said that he has used the internet but has found it very difficult to access many websites he needed because of the internet restrictions, and that he feels he had been cut off from the outside world. Another said that he attempts to use the internet but 95% of the websites are blocked.



It is unclear why any of these websites should be blocked and it is unreasonable that social media continues to be blocked across all IRCs. This exacerbates the isolation that everyone in detention experiences, by making it more difficult for people to remain part of their networks outside of the detention centre. Blocking social media, as with other sites that are blocked, also interferes with people's ability to gather evidence for their immigration case. It is an unjustified and unnecessary infringement on individuals' right to liberty and access to justice.

Immigration detention is an administrative process and not a punishment – paragraph 3(1) of the Detention Centre Rules (2001) state that the purpose of detention centres shall be to “provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible”. As the importance of social media grows this restriction appears increasingly disproportionate and indeed it has been repeatedly criticised by HMIP as ‘inappropriate’ in an IRC. The banning of social media is increasingly inconsistent with this paragraph and the restriction should be lifted as a matter of urgency. The Home Office has never offered any justification for the banning of social media in immigration detention.

IRC transfers

People can be moved across the country, without warning, to a different detention centre. Often people are moved in the middle of the night. This is a significant cause of stress as well as practical difficulty. Four people said that they have had to find a new solicitor as a result of moving from one removal centre to another. One participant said that he has moved around IRCs a lot and been detained so many times, each time having to change solicitor, and complained about the difficulty this caused him. Another said that when he was in Scotland he had a very good solicitor but since he has moved detention centres and come to England he has had to find someone new and does not have any of the old documents that he had in Scotland.

Additional issues

People also complained about a number of problems that are familiar to BID and frequently raised by people held in immigration detention or who have experienced immigration detention:

- The quality of healthcare and in particular the complete lack of any mental health support; several people complained about Paracetamol being used for all ailments, no matter what type or severity.
- The impact of detention on their physical and mental health conditions.
- The long-term uncertainty, over months, of when they would be released
- The over-use of segregation. One individual complained that people are sent to ‘the block’ (segregation unit) if they complain.
- One individual who had already been released spoke about how he now needed greater assistance getting his life back on track once out of detention, and that this was particularly difficult now that he has a tag on his leg.



- One individual was extremely grateful for arranging a translator for the interview with BID, and said that speaking in his own language made him feel much better mentally.
- Difficulty of living in an oppressive and stressful atmosphere and prison-like conditions inside the IRC.
- One individual complained that on a previous occasion he had been held for six months and then released again, and nobody said sorry to him when he was released.
- Not knowing who their Home Office caseworker is.
- People being stuck in detention even though they want to return home and are doing everything they can to facilitate that.

Recommendations

Access to justice is a cornerstone of the rule of law and that means that everyone must have effective access to the courts, and legal advice, to ensure their rights are not breached. That is particularly acute for people in immigration detention who are denied individual liberty and face permanent removal from the UK. Unfortunately, our clients face immense difficulties accessing that legal advice and holding the Home Office to account.

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 out⁵”.
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. An end to the use of prisons for immigration detention.
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. 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.
6. 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.
7. The DDA scheme should be reviewed in the following ways:
 - a. The LAA should review the number of providers on the rota.
 - b. The LAA should carry out a review of the quality of advice on the surgery rota and remove firms that are not providing sufficiently high quality advice, or routinely not taking on cases.

⁵ 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.
- d. There should be automatic entitlement to legal aid representation at bail hearings at least every 28 days; with the merits test based solely on the fact that a person has either been initially detained under immigration powers or they have been detained for 28 days or more since their last bail hearing.

