

Behind locked doors: Immigration detention in prisons exposed

BiD Bail for
Immigration
Detainees



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@BIDDetention
#BehindLockedDoors



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- **Richie**, former BID client who was detained in prison under immigration powers
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Chair/Director's Report

Pierre Makhlouf, Assistant Director



Achievements 2018 / 19



We assisted a total of **4,161** people



510 people were released after our assistance



522 cases prepared for representation



We helped **138** detained parents separated from their **272** children



107 legal advice sessions delivered to **1,208** detained people



121 clients provided with advice or representation on deportation



118 cases referred for unlawful detention and immigration challenges



64 media mentions





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BID's Prisons' Project




Jess Bicknell, Legal Manager

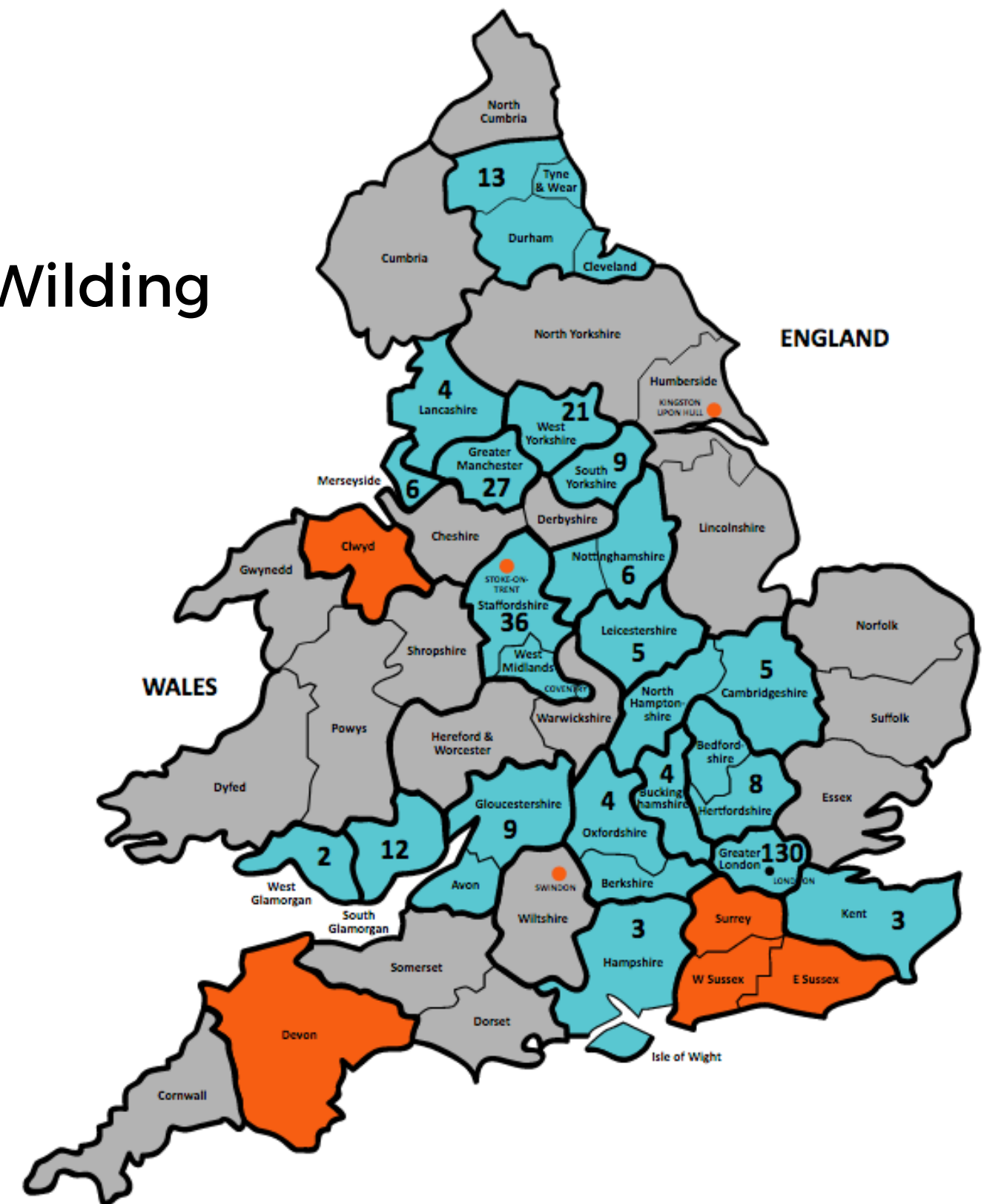


Legal Aid Deserts Map

Map from 'Legal aid droughts and deserts' by Dr Jo Wilding

KEY:

-  No Legal Aid Immigration and Asylum Lawyers
-  One Legal Aid Immigration and Asylum Lawyer
-  More than one Legal Aid Immigration and Asylum Lawyer



BID's Prisons' Project

Jess Bicknell, Legal Manager



Refusal of bail from August 2019

I am very concerned about the length of time that the Appellant has been detained under the Immigration Act, since 06/12/2017. Given the guidance from the courts, this would normally mean that bail should be granted because detention is no longer proportionate.

I accept that there is nothing to suggest the Appellant did not comply with his criminal court bail conditions.

The problem is the address that the Appellant would go to if bailed - there is none.

I am not prepared to release the Appellant on bail when no address has been put forward, or assessed, or offered.

Refusal of asylum support from August 2019

You have made an application for asylum support under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act) by submitting an ASF1 application form.

However, I note that you are currently detained under Immigration Powers and there is no record of you being granted bail or that a decision has been made to grant you bail in principle subject to you providing a residential address. (whether by the Home Office or an Immigration Judge).

I am therefore satisfied that your essential living needs, including accommodation are being met in full. Your application is therefore refused.

If you are granted bail, you may submit a fresh application to be provided and I would add as you have had asylum claim refused you should apply for Section 4 support not section 95 when you are released from detention.

You should note that you do not need to provide the address of where you propose to live in order to apply for bail.





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Legal Issues

**Toufique Hossain, Director of Public Law
Duncan Lewis**



Well, aren't they all criminals?

"It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people". Lord Steyn continued: "Even the most wicked of men are entitled to justice at the hands of the state". And I doubt whether Mr Kambadzi is the most wicked of men.'

Lady Hale

Kambadzi v SSHD UKSC.

"I said during the course of the hearing words to the effect that the Claimant is not a particularly worthy, likeable or sympathetic individual, and that there must be at least a risk that any award of damages would not be put to good use. I do not withdraw those observations. Another way of looking at this case, however, is to point out that the Claimant is vulnerable, that he probably suffers from paranoid schizophrenia, and that only those obligated to an adherence to the rule of law would be likely to vindicate his rights. This alternative viewpoint is based not on any subjective preferences but on the loyal discharge of the judicial function."

Mr Justice Jay, AXD v Home Office

Vulnerable Detainees

"Prisoners held under immigration powers may well be subject to wider vulnerability issues, and I do not believe the current system is likely to pick this up. This is a worrying gap and needs to be remedied."

Following my discussions with senior prison officials, I am much less confident that Rule 21 is an adequate substitute. There are fewer full-time healthcare staff to make assessments, and less regular contact with detainees given the larger prison population numbers. 2.45 Indeed, I was unable to find any information on how often Rule 21 is used in prisons, and suspect that it is rare in the extreme"

Stephen Shaw – a former Prison Ombudsman in his second review of procedures affecting the welfare of those held in immigration detention, in **2018**.

Legal Actions

MR (Pakistan) & Anor, R (On the Application Of) v Secretary of State for Justice & Ors [2019] EWHC 3567 – Safeguards for Immigration detainees in the Prison Estate

On 20 December 2019, Mr Justice Supperstone dismissed our clients' judicial review claims challenging the absence of equivalent safeguards to Rules 34 and 35 of the Detention Centre Rules for immigration detainees held within the prison estate.

The Claim

The principal issue in this claim is whether the scheme governing the detention of immigration detainees held in the prison estate is unlawful. Rule 21 of the Prison Rules 1999 does not provide an equivalent protection to that contained in Rules 34 and 35 of the Detention Centre Rules 2001.

Critically, nothing in the scheme governing the prison estate requires doctors to ask foreign national prisoners if they have been a victim of torture. That means there is potentially serious underreporting of matters which the SSHD clearly wishes to know about.

The Grounds

It was argued by the claimants that the absence of equivalent safeguards in the Prison Rules was unlawful for the following reasons:

- There is inherent unfairness/unreasonableness in the failure to put in place an equivalent mechanism to Rules 34 and 35 in the case of immigration detainees held in prison.
- This amounts to unlawful discrimination in breach of Article 14 ECHR;
- There is a breach of the Equality Act 2010.

The Claimants

We represented both lead claimants, *MR* and *AO*.

MR is a Pakistani national. He claims to have been the victim of ill treatment by a notorious gang in Pakistan and a victim of torture. He has made an asylum claim which remains outstanding.

AO is a Nigerian national. He claims to have been ill treated by members of Boko Haram in Nigeria and to be a victim of torture.

Judgment

- Mr Justice Supperstone dismissed all of the claimants' grounds of challenge. He adopted the SSHD's submission that the prison estate often holds greater medical information on detainees compared to detainees who enter IRCs often from liberty.
- Misses the point: nothing in any of the medical information gathered in the prison estate would contain the answer to the question not asked: is the detainee a victim of torture.
- In this case the SSJ and SSHD were not aware of the fact that both claimants were victims of torture.
- **The claimants are appealing.**



2. Access to Justice

Shaw back in 2016 in his first report quoted what BID had told him:

Detainees held in the prison estate suffer from multiple, systemic, and compounding barriers to accessing justice, with an often devastating effect on their ability to progress their immigration case, seek independent scrutiny of their ongoing detention from the courts and tribunals, and seek release from detention, as well as on their physical and mental wellbeing



4 years on...

Still encountering so many people in prison who have been unable to get through to legal aid lawyers.

- People cannot apply for bail
- People are not released after grants of bail because of lack of address
- Detention claims
- Fresh claims for international protection
- Deportation appeals
- Revocation of deportation order
- Art 8 applications



Our proposed legal challenge

We will say:

- The legal aid rules unjustifiably discriminate against immigration detainees who are detained in prison compared to those detained in immigration removal centres, in breach of Article 14 ECHR
- The Detained Duty Advice Scheme (DDAS) enables a Legal Aid when attending surgeries regardless of the eligibility for legal aid of the attendees to that surgery.

Article 14 is engaged:

- The Claimants' access to publicly funded immigration legal advice fell within the ambit of Articles 2 and 3 in relation to their protection claims, Article 5 in relation to immigration detention, and Article 8 in relation to the right to remain in the UK.
- The legal aid arrangements for immigration detainees held in prisons and those held in IRCs constitute a significant difference in treatment.
- Being detained in prison is an "other status" for the purpose of Article 14 ECHR.
- The Defendants bear the burden of justification for this differential treatment.



3. Clients who have lived through this

HS is a victim of trafficking and was tortured by his traffickers in Somalia when he was a child. His injuries included: (i) a burn mark on the palm of his right hand caused by hot firewood being placed directly onto his hand; (2) a scar on his left arm caused by a knife wound; (3) burn marks on his chest from where boiling water was thrown onto him; and (4) a disfigured left ear where his traffickers cut off a part of his ear with scissors. Despite the extent of his scarring, *HS* had never been assessed by an independent medical expert. His claims to have been a survivor of torture and trafficking were not known to the HO due to the lack of an equivalent mechanism to rules 34 and 35 in prison, and also because *HS* had entered the UK on a family reunion visa to join his refugee mother and so had never raised his own independent asylum/trafficking claim.

MA had suicidal ideations. Tortured in Iraq when his father discovered he was a gay man, whipping him, resulting in visible scarring on both of his legs, feet and ankles.

MA's medical records from HMP Leeds reported that he had had suicidal thoughts and felt '*withdrawn*'. MA informed prison healthcare that he was scared of returning to Iraq due to his sexuality and that he had '*marks on his body caused by his family*'. He also reported feeling depressed, trouble staying asleep at night, staying awake during the day, having little energy, poor appetite, feeling claustrophobic, and that he had thoughts of self-harm all of the time. He also disclosed to having cut himself with a razor 6 months previously. An ACCT was opened.

MA attempted suicide by hanging himself with a ligature and prison staff had to cut him down.

Despite MA's repeated suicide attempts and disclosure to health care staff that he was a torture survivor, his suitability for continued detention was not assessed; no medical practitioner's opinion was sought to confirm whether his health was being negatively impacted by detention. Similarly, there was no review by the HO into whether detention remained appropriate.

AA – Sudanese torture survivor. Now a refugee studying law.

Transcript from a CA permission hearing:

- *LORD JUSTICE SULLIVAN: I just simply do not see anywhere where these very, it seems to me to be quite powerful indications of torture, they just simply do not seem to be addressed at all. Simply referring to the earlier immigration decisions where there was not any medical evidence almost begs the question because he made allegations of torture. He was not trying to be credible, but at least one of the reasons why he might not have been credible was because there was absolutely no medical evidence to support the fact he had been tortured.*
- *He looks at the wounds, the scars and says whether or not they are or are not indicative, highly indicative, or consistent or highly consistent - I do not know what the terminology is - with torture. This is not just an isolated scar, for heaven's sake. There are any number of scars which are either consistent or highly consistent. I just simply cannot see how you can sensibly and bluntly reject this without actually looking at it. This has not been looked at.*



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May Bulman

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Help us #EndDetention

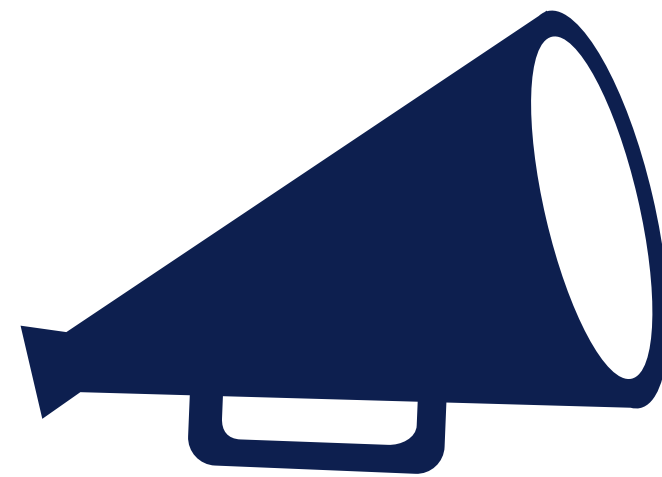
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