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Bail for Immigration Detainees (BID) evidence to the Independent Review of Administrative Law

Bail for Immigration Detainees (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. We are accredited by the Office of the Immigration Services Commissioner (OISC). Between 1 August 2019 and 31 July 2020, BID provided some form of assistance to 2,861 individuals. Alongside our legal casework, we engage in research, policy advocacy and strategic litigation to secure change in detention policy and practice.

Our response to the Government's 'Independent Review of Administrative Law' relates to our experience representing people detained under immigration powers. Although we do not provide representation to individuals in Judicial Review claims, we work closely with public and immigration law solicitors who carry out this work. In addition, we have acted as claimants and as interveners in Judicial Review claims, and in other claims we have provided expert witness evidence to the court. Our response draws upon the experience and expertise we have gained over 21 years.

1. **Are there any comments you would like to make, in response to the questions asked in the above questionnaire for government departments and other public bodies?**

These questions ask government departments to comment on whether aspects of judicial review impede the proper or effective discharge of government functions, or whether the prospect of being judicially reviewed improves their ability to make decisions. In the context of Home Office detention and deportation policy we submit that judicial scrutiny improves the quality of government policy as well as the discharge of its functions in practice. Much of the framework of immigration detention policy is in the form of policy documents, guidance for caseworkers, and secondary legislation. These do not receive the same degree of parliamentary scrutiny as primary legislation. Judicial review is essential in ensuring that the government is accountable and does not operate unlawfully, and that its policies do not lead to systemic unfairness and are compliant with human rights law.

There are countless examples where judicial review challenges have brought about important changes and improvements in government policy. By facilitating scrutiny of the lawfulness of government actions, judicial review helps to ensure good governance. We have included a number of examples below.

Unlawful detention

The Immigration and Asylum Chamber is not tasked with the responsibility of considering whether detention is lawful, only with assuming that it is, and therefore with deciding whether a person should be granted bail. The case of Hardial Singh [1984] 1 All ER 983, [1984] 1

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WLR 704, [1983] Imm AR 198 that was decided in 1983 laid out certain principles as to when the detention of a person for administrative reasons may be lawful, and the point at which continued detention may become unlawful.

Without an independent judicial authority tasked with the automatic and regular scrutiny of the lawfulness of detention in individual cases, the Home Office retains the power to consider and decide whether its decisions to detain are lawful. The process of judicial review therefore remains essential in ensuring that the executive is subject to some, albeit not regular or automatic, judicial oversight.

There have been many cases over the last few decades that have allowed the courts to consider whether detention is unlawful, some resulting in damages being issued, and others dealing with wrongful decision-making or procedural failings. Indeed in the cases of ***JN v UK no. 37289/12 19 May 2016*** *and that of* ***Draga no. 33341/13 18 May 2017 before the European Court of Human Rights (ECrtHRs)*** *the UK Government argued, and the ECrtHRs agreed, that the process of judicial review met Article 5(1) standards on the basis that it is 'sufficiently accessible, precise and foreseeable in its application because it permitted the detainee to challenge the lawfulness [of his detention] at any time' (see para 37 in Draga or paras 90-93 in JN). Therefore the lawfulness of immigration detention in its current form is only lawful to the extent that judicial review is available as a remedy.*

In fact, most recently the House of Common rejected a House of Lords amendment to the Social Security Coordination (EU Withdrawal) Bill to introduce a time limit on the length of immigration detention, 'Because procedural safeguards already exist to ensure the lawfulness of the period of any detention.' Those judicial procedural safeguards are solely that of judicial review.

Therefore, the need for access to judicial review to be simplified and made easily accessible to the applicant cannot be understated. Nevertheless it is the only meaningful source of judicial oversight of immigration detention (although BID certainly considers this to be insufficient).

Detained Fast-Track

The High Court decision in 2014 in Detention Action vs (1) FTT (IAC) (2) UT (IAC) & (3) Lord Chancellor (CO/6966/2013) (and subsequent appeals) found that the Detained Fast Track (DFT) system for considering asylum claims carried an unacceptable risk of unfairness because of a range of serious failings in the system. This was due to obstacles faced by people detained under the DFT who were unable to access early and meaningful legal advice, and the inability of lawyers to properly represent their clients. This in turn meant the system for detaining people under the DFT and for considering their asylum claims, including subsequent appeals, were inherently unfair. Further, the screening process for admitting people into the DFT was found to be inadequate as it did not focus on the individual circumstances of the individuals detained under the DFT; Rule 35(3) reports relating to

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people who had experienced torture, rape or sexual violence were not considered properly so as to take people out of the DFT; the Home Office should have justified continued detention in view of the reports; there were failings in identifying trafficking victims; there was a failure to consider issues relating to mental health or learning disabilities; and there was a failure in the Home Office to properly apply a concession to medical NGOs. Subsequent appeals by the Home Office were dismissed and the DFT process was abandoned as it was inherently unfair.

In the recent case of PN [2020] EWCA Civ 1213 the Court of Appeal upheld a High Court order for the Home Office to bring back a Ugandan woman to the UK who had been removed under the Detained Fast track system despite claims that she had been gang-raped in Uganda. The judge ruled that PN's case was an example of the inherent unfairness of the DFT.

Rough sleepers challenge

The case of R (Gureckis) v Secretary of State for the Home Department [2017] EWHC 3298 (Admin) concerned the Home Office's practice of detaining and forcibly removing EEA nationals who faced removal from the UK because they were sleeping rough. The Home Office argued that these individuals were misusing their treaty rights. A Judicial Review challenge was brought by 3 EEA nationals, with an intervention from the AIRE centre. The policy was found to be discriminatory and contrary to EU law. The Home Office did not appeal, but produced an updated version of the policy. The practice of detaining and administratively removing EEA nationals on the grounds that they were rough sleeping appears to have ended.

Deport first, appeal later

In ***R (on the application of Kiarie) v Secretary of State for the Home Department [2017] UKSC 42,*** *the Supreme Court addressed the lawfulness of the 'deport first, appeal later' provision of the Immigration, Nationality, and Asylum Act 2002 – section 94B, as amended by section 17(3) of the Immigration Act 2014[1]. Under this provision, the Home Office was able to deport people before their appeal had been heard, provided that such removal did not cause 'serious irreversible harm'. The appeal would then be heard out of country.*

BID provided evidence on the difficulties of having an effective out of country appeal. Those deported had to secure, fund, and instruct legal representatives from abroad, obtain expert evidence where relevant, and, crucially, give effective oral evidence, whether in person or by

[1] https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/03/end-deport-first

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way of video-link (which was impracticable in the vast majority of cases). The Supreme Court found that out-of-country appeals may be unlawful when appellants cannot bring an effective human rights appeal from overseas. Out-of-country appeals were not found to be inherently unlawful but now we see far more people who are facing deportation outside the EU being granted an in-country right of appeal.

Definition of torture

In the case of ***Medical Justice & Ors v SSHD, EHRC intervening [2017] 2461 (Admin)*** *the High Court found that the Home Office's adoption of a narrow definition of torture was unlawful. The definition of torture in operation (the UN Convention Against Torture's definition) had the effect of excluding those who are victims of torture by non-state actors. This meant that many torture victims who were vulnerable to harm in detention were not protected by the safeguards and policies designed to reduce the detention of vulnerable adults. Mr Justice Ouseley found the narrowing of the definition of torture by the Home Office to be unlawful, and that it 'lacked rational or evidence based'. It has since been replaced by a less restrictive definition of torture.*

Brook House Inquiry

In ***MA, BB v Secretary of State for the Home Department (The Equality and Human Rights Commission intervening) [2019] EWHC 1523****, the High Court found that an investigation into abuse at Brook House Immigration Removal Centre must have the power to compel witnesses, hold public hearings, and the claimants must have access to properly-funded legal representation.*

The BBC's "Panorama" programme uncovered systemic mistreatment of detainees by G4S staff running Brook House IRC. Undercover footage showed staff assaulting, bullying and directing racist and verbal abuse at detainees, and evidence of healthcare staff proposing covering up evidence of such incidents.

The court found that a Prisons and Probation Ombudsman's review into the events would be insufficient to meet the state's duties under Article 3 ECHR. Mrs Justice May found that the inquiry would need to have the power to compel witnesses, so that staff could explain "why and how they came to do it so openly, and so regularly, without complaint or criticism…". She also held that public hearings would be necessary, noting that she "would be concerned at whether private hearings could secure sufficient accountability, allay suspicions of state tolerance of mistreatment of the weak, and ultimately maintain confidence in the rule of law[2]."

Delays in the provision of Section 4 accommodation or with allocating accommodation to people held under Immigration Act powers in prisons

[2] https://www.gardencourtchambers.co.uk/news/high-court-declares-home-secretarys-investigation-into-immigration-detention-abuse-at-brook-house-inadequate

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Delays with allocating bail accommodation to certain categories of people who are waiting to be released on bail has a history of being resolved mainly by way of applications for judicial review as there is no alternative remedy. The old (now abolished) accommodation provisions under section 4(1)(c) of the Immigration and Asylum Act 1999 made release accommodation available for those who did not have an address in order to make a bail application. The Home Office had spent many months considering its policy in this regard and BID had also met and raised its concerns with the Home Office but with very little progress being made. It was however with the judicial review claim of ***Razai & Ors [2010] EWHC 3151 (Admin) (02 December 2010)*** *that the Home Office produced and published its policy relating to Section 4 bail accommodation, just in time for a hearing where the issues were examined.*

Subsequently BID found that pursuing pre-action protocol procedures meant that many unresolved Section 4 bail accommodation cases involving people who had been held in immigration detention for very long periods of time were in fact resolved before applications for permission to apply for judicial review needed to be made. So, the pre-action process led to the release of people who would otherwise have continued to be detained, and had the beneficial impact of reducing the need for judicial review claims to obtain the release of people held potentially unlawfully in immigration detention.

In 2016 the case of ***Sathanantham & Ors, [2016] EWHC 1781 (Admin)*** *dealt with the further issue of keeping people in immigration detention until the precise type of bail accommodation that was deemed to be required would be made available to them. Such people would in normal circumstances have been released had they been British nationals, an issue that the court took into account in resolving that the most suitable accommodation possible in the circumstances should be made available to enable the release of people who would otherwise be held unlawfully.*

Schedule 10 bail accommodation

On 15th January 2018, the Home Office changed the system for provision of post-release accommodation. This included the repeal of section 4(1)(c) and its replacement with a complex system (under paragraph 9 of Schedule 10 of the Immigration Act 2016) in which it is very difficult for detainees to access Home Office 'Schedule 10' accommodation. Under the new regime, the Home Office rarely grants release accommodation and the process for applying is highly opaque. Homeless detainees now face the prospect of being indefinitely detained for no other reason than their lack of suitable accommodation; or being released by the Home Office to the streets, potentially into destitution. Those who require Schedule 10 accommodation are frequently forced to challenge the lack of accommodation through judicial review claims in the High court.

This foreclosed a quick and effective process for accessing Home Office accommodation in order to be released from detention and forced detainees to go through the complex process of a judicial review hearing in the High Court in order to secure release.

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Importance of Judicial Review as a remedy in Schedule 10 cases

1. *JM*

JM was placed in immigration following the issuing of a deportation order. He entered the UK legally as a child and has a child himself in the UK. He has severe mental health issues including paranoid schizophrenia and he was sectioned during his period in immigration detention and had to be detained for over 2 months under the Mental Health Act during his period in immigration detention.

JM was granted bail in principle in January 2020, meaning that he would be released from immigration detention subject to sourcing of appropriate accommodation by the Home Office. He was granted bail in principle again the following month. We also made an application for schedule 10 accommodation on his behalf, but this was ignored by the Home Office. He was granted bail in principle for a third time in May 2020. During this time JM became increasingly distressed, and his mental health deteriorated significantly. It was eventually necessary to make an application for judicial review challenging the lack of Schedule 10 accommodation. At the interim relief hearing, the High Court ordered his release from detention, requiring the Home Office to source accommodation within a week.

The Home Office complied with the court order and he was released after more than a year in immigration detention (that is equivalent to the time that an individual would spend incarcerated if they received a 2 year prison sentence). It is striking that he remained in detention for a full 5 months after the first time that an immigration judge granted him bail.

2. *OS*

OS was detained in January 2020. She has numerous health problems and is considered to be an 'adult at risk' by the Home Office. She was granted bail in principle in March and in April, and made an application for schedule 10 accommodation. The Home Office deemed that she was eligible for accommodation but did not provide a physical address. Her legal representatives sent a Pre-Action letter to the government challenging the delay in providing accommodation, and the government responded by stating that they would find accommodation within a week. However, the government did not provide an address for her to be released for over a month, and it was only after her legal representatives lodged a judicial review claim that the Home Office was forced to act and source an address.

For JM and OS, it should never have been necessary to make a Judicial Review claim but this was necessary as a measure of last resort because there was no other way to force the Home Office to provide accommodation so that they could be released from detention. For many of our clients who are granted bail but not released because they do not have an address to be released to, judicial review is an imperfect remedy but unfortunately the only one available to them.

3. *Humnyntskyi v SSHD [2020] EWHC 1912*

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*The case of **Humnyntskyi v SSHD [2020] EWHC 1912 Admin** concerned the Home Office's system for provision of accommodation to those on immigration bail under Paragraph 9 Schedule 10 of the Immigration Act 2016.*

BID had sought to resolve the deficiencies in the system through repeatedly raising concerns in written correspondence and meetings with Home Office officials, but no policy changes were ever made. As a result a challenge to the policy was brought by three separate claimants. BID provided 3 witness statements to the court to show the systemic nature of the problems with the system.

The policy was found to be systemically unfair and must, as a consequence of the judgment, be revised. Mr Justice Johnson put forward an irreducible minimum set of requirements for a fair process and stated that the system failed to meet a single one of those requirements:

- *A person needs to be able to make representations in support of a claim for accommodation*
- *People should be able to access information about the requirements for such accommodation*
- *People must be able to access information about how to apply for such accommodation*
- *Any representations made by an applicant should be considered by the decision maker*
- *Decisions must be made in line with the Secretary of State's policy*
- *The applicant is to be informed of the decision so that they know where they stand and can decide whether to make further representations, or to make a bail application, or to challenge the decision*

The Home Office will now be required to update the policy and institute a fair process for the provision of bail accommodation.

Entitlement to Exceptional Case Funding Legal Aid

*The Court of Appeal decided in the case of **Gudanaviciene & Ors v the Director of Legal Aid Casework & the Lord Chancellor (British Red Cross Society intervening) [2014] EWCA Civ 1622** that the test for deciding whether or not legal aid can be provided under the Legal Aid Agency's Exceptional Case Funding scheme is the need to ensure effectiveness and fairness of the judicial process, and not the need to meet a "very high" (or, indeed, any) threshold. Up until the point of this case very many people had been unable to obtain legal aid to support their claims to remain in the UK, including separated families, people who had*

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lived in the UK since they were children and EEA nationals who were faced with the complexity of the law, or who could not access the law due to language barriers.

2. In light of the IRAL's terms of reference, are there any improvements to the law on judicial review that you can suggest making that are not covered in your response to question (1)?

Judicial review should be made simpler and more accessible. This is particularly important for individuals held in immigration detention, many of whom don't have access to a lawyer and so are unable to challenge the lawfulness of their detention.

Legal Aid rules need to be revised to make it easier and more practical and easily accessible for individuals to be able to access good legal advice from the outset. This will enable individuals to ensure that meritorious cases can be taken forward and will reduce the number of legal aid practitioners who are currently unwilling to take forward cases 'at risk'.

Section 2 – Codification and Clarity

3. Is there a case for statutory intervention in the judicial review process? If so, would statute add certainty and clarity to judicial reviews? To what other ends could statute be used?

Judicial review does not need clarification or codification in statute. However if there were statutory intervention in the judicial review process this should not be used to limit the grounds upon which decisions, policies, or government actions can be judicially reviewed.

4. Is it clear what decisions/powers are subject to Judicial Review and which are not? Should certain decision not be subject to judicial review? If so, which?

The grounds to bring a judicial review are:
(a) Illegality (procedural or otherwise) ;
(b) Fairness (i.e. no abuse of power); and
(c) Irrationality and proportionality (Wednesbury unreasonableness).

We have not identified any decisions or powers that should not be subject to judicial review. Judicial review requires a very high standard and test to be met e.g. where a procedural failing or a decision is found to be Wednesbury unreasonable, or so unreasonable that it would not have been made by a decision-maker in their right mind. Wednesdbury unreasonableness was set out by Lord Greene in ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, HL.*** *"If a decision*

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on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere... but to prove a case of that kind would require something overwhelming..."

*The case of **MR (Pakistan) & Anor v Secretary of State for Justice & Ors [2019] EWHC 3567 (Admin)** is instructive. This case concerned the difference in safeguards for vulnerable individuals detained under immigration powers in Immigration Removal Centres vis-à-vis those detained under immigration powers in prisons. Mr Justice Supperstone found that even though the safeguards in prisons 'could be improved', it failed to meet the threshold of unlawfulness. In his judgment he laid out just how exacting a test this is, citing (at paragraph 98) the words of Lord Dyson in **R (Detention Action) v First Tier Tribunal (Immigration and Asylum Chamber) and others [2015] 1 WLR 5341.***
"Lord Dyson MR summarised the applicable legal principles for a challenge of this kind as follows:
"27. … (i) in considering whether a system is fair, one must look at the full run of cases that go through the system; (ii) a successful challenge to a system on grounds of unfairness must show more than the possibility of aberrant decisions and unfairness in individual cases; (iii) a system will only be unlawful on grounds of unfairness if the unfairness is inherent in the system itself; (iv) the threshold of showing unfairness is a high one; (v) the core question is whether the system has the capacity to react appropriately to ensure fairness (in particular where the challenge is directed to the tightness of time limits, whether there is sufficient flexibility in the system to avoid unfairness); and (vi) whether the irreducible minimum of fairness is respected by the system and therefore lawful is ultimately a matter for the courts. I would enter a note of caution in relation to (iv). I accept that in most contexts the threshold of showing inherent unfairness is a high one. But this should not be taken to dilute the importance of the principle that only the highest standards of fairness will suffice in the context of asylum appeals.""

It is crucial that government decisions remain subject to judicial scrutiny. At the moment this exists in the limited form of judicial scrutiny, via the judicial review process. If certain decisions are removed from the purview of judicial review, this will risk removing unjust, unreasonable, and potentially illegal decisions from any accountability.

5. Is the process of i) making a Judicial Review claim, ii) responding to a Judicial Review claim and/or iii) appealing a Judicial Review decision to the Court of Appeal/ Supreme Court clear?

Judicial review is inaccessible for most unrepresented appellants. The judicial review process is both legally and procedurally complex. Judicial review is not an appeal process and the extremely high standard, restrictive and difficult thresholds that need to be met means that it is poorly understood by many claimants, and indeed Home Office decision-makers. Claimants are required to have a grasp of a huge body of caselaw from both domestic and international courts, as well as understanding relevant

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legislation and Home Office policies. Claimants need to be granted permission before they can proceed and comply with the complexities of the High Court process.

In addition immigration law is notoriously obscure and complex. In a speech in 2018, Lord Justice Irwin stated that the immigration rules are 'something of a disgrace' due to the complexity and poor drafting[3]. Judicial review is not an accessible remedy for unrepresented individuals.

Claimants must be able to access legal aid, or else be able to afford expensive legal representation and court fees, as well as being in a financially secure position to accept a risk that a costs order will be made against them (which could be many thousands of pounds).

Section 3 - Process and Procedure

6. Do you think the current Judicial Review procedure strikes the right balance between enabling time for a claimant to lodge a claim, and ensuring effective government and good administration without too many delays?

It is BID's view that the 3 month time limit within which to bring a claim is already extremely short, especially for people detained in IRCs or prisons without easy access to legal advice. It could certainly be extended for people in detention. Furthermore it is difficult to see how a stricter time limit on a claimant bringing a claim would facilitate effective government and good administration. It would be likely to prevent meritorious claims from reaching court and it may increase badly prepared judicial reviews that have been produced hastily to meet a tight deadline.

We reject in the strongest terms the suggestion that judicial review undermines effective government and causes delays. Judicial review is a vital tool to reduce the possibility of illegal, unreasonable and unjust decisions. Despite the difficult and very high threshold that needs to be met, judicial review is the only way that many people detained for immigration reasons may be able to challenge their wrongful and unlawful detention.

To help improve effective government and good administration, the government needs to ensure that the lessons arising from claims whether settled or found in the claimants' favour, are learned. This will help end the repetition of similar claims. For example, the government is consistently found to be breaking the law in immigration detention – in the last year, the government paid out £8.2 million to 312 people it had detained unlawfully. All of those individuals were required to bring a claim for judicial review in order to access that compensation. It is not known how many individuals were unrepresented but could have brought a successful claim had they had access to a lawyer.

Following the removal of most immigration appeal rights in the 2014 Immigration Act, judicial review provides a very basic level of protection where decisions may be

[33] https://www.freemovement.org.uk/the-immigration-rules-are-a-disgrace/

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unreasonable, unjust or illegal. We believe proposed reforms to judicial review risk reducing its role as a basic protective measure against harmful and unreasonable decision-making where, as with many immigration and asylum cases, a person's liberty and safety may be at risk. At a time where the government is applying increasingly complex rules and barriers as part of its 'hostile environment' policy judicial review provides a basic level of protection that can regulate the more harmful and indeed dangerous aspects of that policy.

Judicial review is also used to challenge Home Office policies and practices which by their repetitive and endemic nature may reveal systemic failings, pointing to the need and guidance for the revision of policies.

The need to be able to identify systemic failing can be found in the case of ***Humnyntskyi v SSHD [2020] EWHC 1912 Admin****. BID had met with the Home Office and had written to explain the problems arising from the lack of any process or from the various problems arising with provisions relating to the Secretary of State's ability to provide 'exceptional circumstances accommodation' arising from paragraph 9, Schedule 10 of the Immigration Act 2016. But our efforts at seeking improvements with the new system met with no progress despite over two years of effort and assisting people who faced the same problems resulting in their unjust and unlawful detention. The judgment in the case of Humnyntskyi explained at para 286: the "Secretary of State's policy for the provision of Schedule 10 accommodation does not come close to satisfying the irreducible minimum criteria which are necessary (and may not even be sufficient) to secure fairness. Procedural unfairness is inherent in the policy." These failing included the inability to make representations; the lack of process or criteria; the failure to take into account representations where these were made; the application of unpublished policy that contradicted a published policy; and the lack of notification of decisions where these were in fact made.*

By identifying systemic problems, judicial review can therefore assist government by ensuring the revision of policies, changes of practices and lessons learned from the thorough and investigative work that a judicial review judgment can provide.

7. Are the rules regarding costs in Judicial reviews too lenient on unsuccessful parties or applied too leniently in the Courts?

It is concerning that this question is phrased in such a way that appears to ignore the possibility that the rules regarding costs may in fact be applied too harshly. In our experience, the prospect of facing costs is a considerable deterrent to individuals, and indeed small charities acting as claimants in judicial review claims. Potential claimants are also deterred by the fact that any litigation costs that they would need to pay the Home Office (if they lost their JR – which often happens when they are unrepresented) can also be used against them in the future when they make immigration applications.

BID's recent challenge to the Cabinet Office's decision not to place G4S on a contractual review following abuses at Brook House exemplifies how the process can discourage claimants. Although BID was granted permission to apply for judicial review, it was

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refused a costs-capping order, partly leading to BID's decision to withdraw its claim (although the government's decision to issue new contractual arrangements also formed part of this decision). However, the prospect of having to pay the costs of the other side if unsuccessful forces BID to be extremely cautious and to think very carefully before bringing a Judicial review claim. This is a major barrier for any organisation or individual in an comparable position.

8. Are the costs of Judicial Review claims proportionate? If not, how would proportionality best be achieved? Should standing be a consideration for the panel? How are unmeritorious claims currently treated? Should they be treated differently?

9. Are remedies granted as a result of a successful judicial review too inflexible? If so, does this inflexibility have additional undesirable consequences? Would alternative remedies be beneficial?

Although there do not seem to be statistics available, it would seem from the experience of immigration lawyers that the vast majority of claims for judicial review are settled out of court. The ability to settle cases provides for a form of resolution that minimises costs and provides for flexibility as to how the parties to a case can resolve a claim.

10. What more can be done by the decision maker or the claimant to minimise the need to proceed with Judicial review?

If decision makers stopped making unlawful decisions this would minimise the need to proceed with judicial review. In immigration detention there are few safeguards in relation to the decision to detain. As we have previously stated the Home Office was required to pay out £8.2 million to compensate the 312 people it was found to have detained unlawfully.

Appeal rights for immigration decisions should be reinstated and legal aid should be made more accessible. By ensuring legal representation and a proper understanding of the legal options available to individuals from the outset of their immigration and asylum matters and a proper understanding of legal avenues of redress, recourse that unrepresented individuals in particular may have to judicial review may be reduced.

It is our view that the government could engage more meaningfully and earlier with relevant stakeholders in advance of producing new policies, and this would prevent or reduce the need for judicial review. Wendy Williams found in her "Windrush: Lessons Learned review" that one of the reasons for the Windrush scandal was that "Warnings by external stakeholders, individuals and organisations were not given enough consideration." This reflects our experience. The Home Office is often very unwilling to consider the views of stakeholders in the production of policy. It is essential to ensure that Home Office consultations are not box-ticking exercises, and that the government engages actively with proposals and suggestions made to it by external bodies.

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11. Do you have any experience of settlement prior to trial? Do you have experience of settlement 'at the door of court'? If so, how often does this occur? If this happens often, why do you think this is so?

Although BID does not bring its own judicial review claims in individual cases, we are aware that a significant proportion of our cases referred for judicial review are in fact settled. We are aware of the Home Office often conceding cases following a permission decision or at a late stage, releasing clients from detention in response to unlawful detention claims or providing bail accommodation just before a case goes to hearing.

12. Do you think that there should be more of a role for Alternative Dispute Resolution (ADR) in Judicial Review proceedings? If so, what type of ADR would be best to be used?

The pre-action protocol process would seem to be a meaningful means of resolving disputes prior to a hearing. This also avoids the need for a new process of resolution when negotiation can already occur prior to an application for permission to apply for judicial review, or indeed in support of an application for judicial review.

13. Do you have experience of litigation where issues of standing have arisen? If so, do you think the rules of public interest standing are treated too leniently by the courts?

This question is phrased in a leading way as it appears to suggest that the only possibility envisaged is that issues of standing are treated too leniently – the converse may also be true but this appears to have been disregarded.

BID is concerned to ensure that improved access is provided to individuals and organisations who may have standing with the courts to help resolve issues and ensure a better understanding of matters that are being considered by the courts. Standing is already considered by the courts and those rules are not treated leniently. BID is always anxious to ensure that it can demonstrate its standing to the court before acting as claimant or intervening in a judicial review claim.

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