Bail for Immigration Detainees' (BID) submission

to the Justice Committee on the future of Legal Aid

About BID

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 through the provision of free legal advice, information and representation on bail and deportation. BID engages in research, policy and advocacy work, and strategic litigation. BID is accredited by the Office of the Immigration Services Commissioner (OISC), and won the JUSTICE Human Rights Award 2010. In the last 12 months, BID provided support to 4,161 people.

With the assistance of barristers acting pro bono, BID prepares and presents bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal for the most vulnerable detainees, including long term detainees, people with serious mental or physical ill-health, detainees who have intractable travel document problems, or who are the 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 of the European Convention on Human Rights (ECHR).

One of BID's strategic objectives is to improve access to justice for immigration detainees.

This submission summarises issues relating to legal advice for those held under immigration powers and highlights the impact of the 2013 legal aid cuts on this particular group. In particular we focus on the impact this has had upon people resisting deportation on the basis of their right to a family or private life under Article 8 of the ECHR, and problems with the legal aid Exceptional Case Funding (ECF) scheme. We also highlight a number of issues with the operation of legal advice surgeries in immigration detention centres, and the obstacles to accessing justice for people held in prisons under immigration powers. We also address the increasing use of technology in court hearings. We have sought to be concise in this submission and we can expand further on any of the points raised in this submission if that would be useful to the committee.

Legal advice for immigration detainees

BID's clients are detained indefinitely (there is no time limit on immigration detention) and face enforced removal from the UK. Many fear persecution upon return and, for many others, enforced removal means permanent separation from their children, their family, and the home that they have known for most of their lives. Home Office decisions are frequently incorrect – half of all appeals against immigration decisions were successful in the year leading up to June 2019[1]. The Home Office is also repeatedly found to have broken the law in its operation of the immigration detention system – in thelast year alone it was required to pay out £8.2 million to compensate the 312 people it was found to have detained unlawfully[4].

In a system in which the odds are stacked against migrants at every stage it is vitally important that people in detention are able to access justice through the courts. The figures cited in the above

[1] *More than half of immigration appeals now successful* https://www.independent.co.uk/news/uk/home-news/immigration-appeals-home-office-success-rate-windrush-migrant-crisis-a8957166.html

paragraph may well be the tip of the iceberg because many others are unable to access the immigration legal advice necessary to challenge Home Office decisions. This is particularly vital where immigration decisions are concerned because people face the prospect of long-term deprivation of liberty and enforced removal from the UK. This could mean loss of ties to family and friends in the UK and permanent separation of primary carers from their children. Many facing deportation grew up here or may have been born here and are British in all but nationality. Many face destitution or persecution in their home country.

Impact of LASPO

Cuts to legal aid brought about in 2013[2] removed non-asylum immigration work from the scope of legal aid. This has had a devastating impact on the immigration legal aid market[3] and has been disastrous for people subject to immigration control. Without the cuts to legal aid, the Windrush scandal would not have happened[4]. The government's LASPO post-implementation review showed an 85% reduction in legal help for non-asylum immigration matters since LASPO, and a 62% reduction in full representation[5].

BID's clients have been badly affected. Although immigration bail and judicial review remain in scope for legal aid, the lawfulness of detention and the likelihood of bail being granted are intimately tied to a person's substantive immigration case. This is because the lawfulness of detention, and the prospects of being granted bail are intrinsically connected to whether an individual can be removed from the UK. Applicants in bail hearings and appellants in deportation appeals are both around twice as likely to succeed if they are able to access legal representation[6].

In November 2010, BID began to conduct surveys every six months regarding immigration detainees' access to legal representation from within detention. 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. In May 2013, immediately after the introduction of LASPO cuts to legal aid, the proportion of those surveyed with a legal representative fell to 43%. In total, under a third (29%) had a legal aid solicitor. Since then there has only been one year where the number of people with a legal representative was above 60% and in a number of years this figure has been below 50%.

Figure 1. Representation Rates Among BID's Legal Advice Survey Respondents

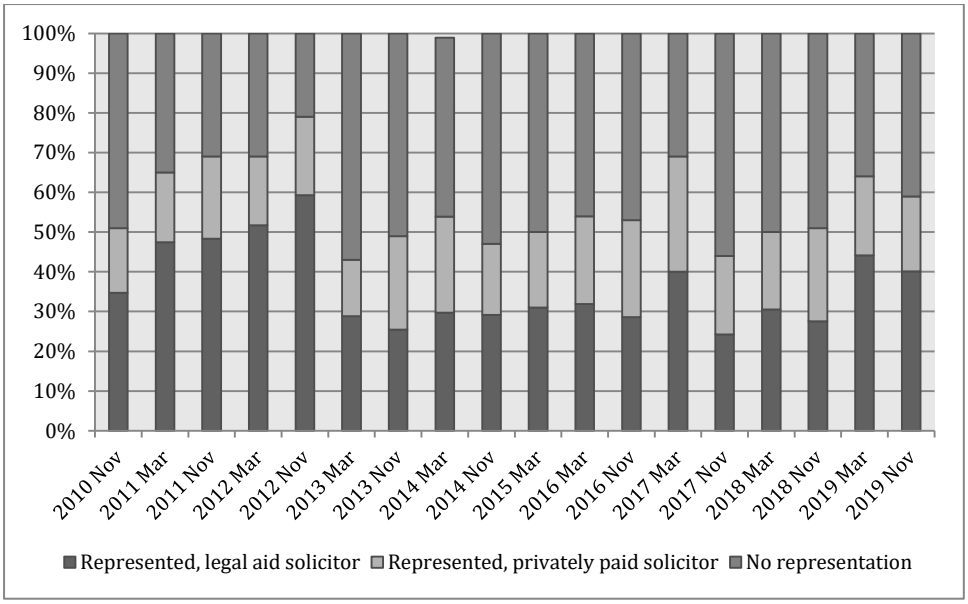
[2] under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO)

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

[4] https://www.freemovement.org.uk/immigration-legal-aid-cuts-to-remain-in-place-following-major-government-review/

[5] https://www.freemovement.org.uk/immigration-legal-aid-cuts-to-remain-in-place-following-major-government-review/

[6] This was revealed in statistics provided to BID in response to Freedom of Information requests.



Prior to LASPO, the government argued that "*The Government's view remains that, in general, individuals in immigration cases should be capable of dealing with their immigration application, and it is not essential for a lawyer to assist*.[7]"

This position is wilfully ignorant and contrary to all available evidence – this was illustrated by the Windrush scandal. Legal representation is crucial in deportation cases and British immigration law is extremely complex and has become more so in recent years. The Law Commission recently recommended the simplification of the Immigration Rules, and the introduction to its report states:[8]

> *"The Immigration Rules regulate the entry into and stay in the UK of people who are subject to immigration control. They impact on millions of people each year. Yet 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 parliamentary Joint Committee on Human Rights (JCHR) argued in 2019 in their inquiry into immigration detention[9], "*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*".[10] This reflects BID's position.

The JCHR report also emphasised that the legal aid cuts may be a false economy because they simply transfer costs to other parts of the system:

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[7] Reform of Legal Aid in England and Wales: the Government Response (2011)

[8] Law Commission, *'Simplification of the Immigration Rules: Report'* (Law Com No 388, 2020). Para 1. https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/01/6.6136_LC_Immigration-Rules-Report_FINAL_311219_WEB.pdf

[9] *Joint Committee on Human Rights* Immigration detention Sixteenth Report of Session 2017–19, published January 2019

[10] JCHR Detention Report at para 47

"*Not only is detention itself expensive, but there are likely to be costs elsewhere in the system, if the lack of legal aid means it takes longer to settle someone's immigration status and wastes more court time with unrepresented individuals. It could be cheaper overall if legal advice were provided at the outset, so that all issues could be properly considered when the issues first arise and thereby reduce the need for repeated court interventions. We have already recommended that the Government consider whether immigration cases engaging the Article 8 right to private and family life be brought within the scope of civil legal aid, where they would be available on the means and merits test basis. We consider there is a case for similarly reinstating legal aid for all immigration cases*."

Article 8 and separated families

The legal aid cuts have particularly affected families, as the removal of legal aid for private and family life claims has stripped many parents of the ability to challenge their deportation. Many parents are detained pending deportation with little attention paid to the child's welfare.

Successive legislative changes have made it very difficult to succeed in deportation appeals. Automatic deportation for foreign nationals who receive a 12-month custodial sentence was brought in under the UK Borders Act 2007. This applies to all non-EEA nationals, including those who have indefinite leave to remain and families in the UK, and those who grew up and went to school in the country and would have been eligible for British citizenship (which is difficult and expensive to apply for).

Further changes brought about under the Immigration Act 2014 introduced additional hurdles to those seeking to challenge deportation on the basis of the strength of family or private life in the UK. To succeed in a deportation appeal on the basis of your parental relationship, it is necessary to show that deportation would be 'unduly harsh' to the child, which has been interpreted by the Home Office to mean 'excessively cruel'[11]. That is to say, the Home Office interprets the Law strictly, sanctioning cruelty to children as long as it is not excessive. In the case of KO (Nigeria) v SSHD [2018] UKSC 53 the court ruled that an interpretation of the 'unduly harsh' test requires an examination of the 'degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent'. The threshold for those challenging deportation on the basis of private life in the UK is equally demanding[12]. It is therefore essential for Article 8 applicants and appellants to be able to understand the Law and how the courts and the Home Office have interpreted it, before being able to make detailed submissions, or before drafting complex grounds of appeal. This demands legal advice and representation from experienced legal representatives.

People challenging deportation also need to provide evidence in the form of expert reports to satisfy the high evidentiary threshold. Independent social work or psychiatric reports on children can cost £1000-2000 or more. Some people may be able to afford private representation but few can afford the costs of the necessary expert reports. Equally, private representation can become prohibitively

[11] See Home Office guidance 'Criminality: Article 8 ECHR cases' that states (page 13): "When considering the public interest statements, words must be given their ordinary meanings. The Oxford English Dictionary defines 'unduly' as 'excessively' and 'harsh' as 'severe, cruel'" https://bit.ly/2JhRrkp

[12] Those sentenced to 4 years or more in custody are not even eligible to be considered under the 'exceptions' to deportation being in the public interest and must meet an even higher and ill-defined test of 'very compelling circumstances' over and above the exceptions.

expensive if cases progress through the higher courts. If a person does not speak good English, the lack of legal aid means that the costs for legal representation are doubled, as they need to pay interpreters as well. The reinstatement of legal aid in Article 8 cases is absolutely critical.

Until the 2013 legal aid cuts, however, those individuals had a right to legal aid to argue that deportation would be disproportionate to the private and family life that they had established. BID set up its Article 8 Deportation Advice Project (ADAP) in 2014 in response to the LASPO cuts. The project represents people with family and private life claims in the UK who cannot access legal aid and whom the Home Office seek to deport.

It is our experience that those facing deportation have no real understanding of the legal tests that they are required to meet nor the type of evidence required. In the overwhelming majority of cases, expert evidence is required for the individual to have a fair chance to make out their case against deportation either to the Home Office or to the court.

In his 2018 report into immigration detention, former prisons and probation ombudsman Stephen Shaw was 'deeply troubled' by the Home Office's practice of routinely seeking to remove foreign national former offenders, even when they had grown up in the UK.

"*The removal of these individuals raises real ethical issues. Not only does their removal break up families in this country, and put them at risk in countries of which they have little or no awareness. It is also questionable how far it is fair to developing countries… Having said that, I acknowledge that the 2007 UK Borders Act is in very strong terms*[13]*. Moreover, since 2013, when the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force, legal aid is not available for people facing deportation to argue that it would be disproportionate to deport them because they have established a private and family life in the UK."*

Barriers to accessing ECF

ECF is not an adequate substitute for legal aid in Article 8 cases. BID has set up a project that makes ECF applications for individuals and, if granted, refers the case to a legal aid lawyer. The process for making an application for ECF is cumbersome – the forms are long and complex and require an understanding of the legal merits of the case. It is almost impossible to complete these applications without a lawyer even without the added barriers such as language or psychological ill-health. If BID had not made these applications for ECF those applicants would simply not have been able to access essential legal advice needed to secure access to justice.

If legal representatives make ECF applications for clients, they take the risk that they will receive no payment for work conducted on the file if the application is unsuccessful. The financial risk for legal

13 In respect of automatic deportation the Act says in part:
(1) In this section "foreign criminal" means a person—
(a) who is not a British citizen,
(b) who is convicted in the United Kingdom of an offence, and
(c) to whom Condition 1 or 2 applies.
(2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.
(3) Condition 2 is that—
(a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and
(b) the person is sentenced to a period of imprisonment.

aid practitioners, who are already stretched, is considerable and it is not financially viable for firms to make applications in many cases. This represents a significant barrier to accessing legal aid funding.

Access to legal advice under the Detention Duty Advice Scheme (DDAS)

There is a 'detention duty advice scheme' (DDAS) in immigration removal centres which was established in 2005. Under the DDAS detainees are entitled to a free half-hour appointment with a legal aid immigration lawyer, and different firms are responsible for the provision of advice on any given day. Lawyers staffing the DDAS are required to take on all cases that have merit.

In September 2018, the Legal Aid Agency made significant changes to the Detention Duty Advice Scheme. The main feature of the changes has been a sharp increase in the number of providers. Prior to September 2018 there were eight or nine firms delivering the DDAS in seven IRCs[7], there are now 77 firms. The vast majority of providers have never run DDAS surgeries in the past and lack experience of detention work which is a very complex, fast-changing and specialist area of immigration law. Under the previous system firms were delivering regular surgeries, whereas now firms are unlikely to deliver more than three weeks of surgeries over a 2 year period in any given IRC. Such irregularity means that newer firms cannot build up expertise and those with experience risk losing their expertise.

BID is concerned that changes to the DDA contracts have led to a deterioration in the quality of advice, affecting our clients' ability to access their right to liberty and to challenge immigration decisions.

BID's legal advice surveys have highlighted the following issues in relation to the quality of advice under the DDAS:

- Solicitors not making bail applications or not understanding the bail process, and in some instances giving incorrect advice - for example stating that a financial condition support is required for a bail application when this is simply not the case.
- Long waiting times for an appointment (despite the fact that frequently people have urgent cases).
- Lawyers seeing detainees for far less than the allotted 30 minutes. This concern was reflected in HMIP's report on an unannounced inspection of Colnbrook IRC, in which inspectors found that "*some of the new representatives providing this service had been seeing a large number of detainees for less than the allotted time.*"
- Lawyers not taking on cases[14].
- Lawyers saying that they cannot take on the case on a legal aid basis and asking for detainees to pay a fee.
- People in detention feeling that the quality of advice they had received was poor. Frequently people tell us that they do not bother making appointments with the DDAS lawyers because

[14] BID received a response to a Freedom of Information Request24 from the Ministry of Justice which gave a breakdown, for each DDA firm, of the number of surgeries they had attended and clients they had seen, and the number of Legal Help matters opened as a result of the IRC surgery. 9 firms had opened Legal Help matters in less than 5% of cases, and there were 5 firms which had opened 0 Legal Help matters, despite all having seen between 30 – 90 clients at surgeries.

everybody in detention feels that the standard of legal advice across the DDAS providers is consistently poor/not helpful.

- Lawyers being unresponsive or difficult to contact.

The DDAS has been widely criticised. In the parliamentary Joint Committee on Human Rights' (JCHR) inquiry into immigration detention, the scheme was criticised in evidence submissions by the chair of the Independent Monitoring Board; Dr Jo Wilding – researcher focussing on immigration legal aid; solicitors and barristers who specialise in detention work; Gatwick Detainee Welfare Group and other NGOs[15]. The JCHR's report stated that changes to the DDAS contracts "*has raised concerns about whether there will be a consistent level of expertise, given that the decision to disperse contracts to over fifty firms will mean one firm may appear only once or twice per year in the rota and the possibility that some firms will not have a proven track record in detention work." They recommended that surgeries "should be long enough to ensure that there is sufficient time for the detainee to explain their case and for the adviser to collect the necessary details needed to take the case forward to representation." They also stated that the new system "should be kept under review to ensure that the firms responsible for advising detainees have the necessary skills and experience to do so*[16]".

The need for an automatic right to legal aid in bail applications

Parliament has provided for people held administratively in immigration detention to apply for bail at least every 28 days, or more often where their circumstances have changed. The bail process also serves an important means for bail applicants and their representatives to be able to assess whether continued detention remains justified or lawful. BID believes there should be automatic entitlement to legal aid advice and representation in relation to all applications for immigration bail.

BID represents people in immigration detention who either do not have access to legal advice or because their legal aid lawyers believe they do not meet the legal aid merits test. Despite taking on such cases, BID has been successful in the majority of cases before the First-tier tribunal, 59% in 2018-2019, and over 90% success rate during the period of the COVID 19 pandemic since March 2020. The legal aid merits test should be removed to allow people held in immigration detention to access legal representation in all bail applications.

Increase in charter flights

The government's decision to relaunch charter flights on an unprecedented scale in early August has brought the system to crisis point. Since the beginning of August, the Home Office has been operating multiple charter flights per week to European countries to transfer asylum seekers under the EU Dublin agreement. The Home Secretary plans to remove 1,000 people this way before the end of the Brexit transition period, on the 31st December 2020.

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

[16] 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

Many people who have legitimate claims to remain in the UK are unable to find legal representation. Many are survivors of torture or human trafficking and will not have had access to legal advice before entering detention. Lawyers are required to act very quickly to prevent removal. The volume of charter flight removals (which has not been seen before, even outside of the pandemic) and the frequently poor quality of advice provided under the DDAS means many are removed without any legal advice whatsoever.

Detention in prisons under immigration powers

There are approximately 400 immigration detainees held in prisons across the UK[17] at the end of their custodial sentence pursuant to deportation.

Our clients held in prisons face multiple, mutually compounding barriers to accessing justice. Unlike in detention centres in the UK, there are no advice surgeries, and detainees in prisons are required to find an immigration solicitor while imprisoned, and convince them to come to the prison to take on the case.

People in prisons do not have access to mobile phones or the internet and most communication happens via a very slow postal system. This is critical for those who have appeal deadlines who do not know when or if their appeal against deportation will arrive with the court. Frequently our clients do not receive post, and on many occasions we have seen the Home Office state that our client failed to respond to a deportation notice, where the client has instructed us that they did receive it.

Prisons in which immigration detainees are held post-sentence are often located far from any source of publicly-funded immigration legal advice, since firms providing immigration advice are overwhelmingly concentrated in cities. Between October and December 2018, 68 prisons were used for immigration detention purposes[18]. Of those, 22 do not have any legal aid immigration advisors within at least a 25 mile radius[19].

In our most recent legal advice survey, 53 interviewees in the survey said that they had come to the removal centre from prison. Of those, only 8 people stated they had received advice on their immigration case from an immigration solicitor – just 15%[20]. This low percentage is consistent with the results of the previous four surveys[21].

In addition to immigration detainees, people in prisons may still be served with HO documents that require urgent advice and assistance while they are still serving a sentence. For instance, one of BID's Legal Managers managed to spend an hour on the phone last week to a person in prison still serving his sentence who was served with a deport decision. They went through every section of the

[17] This figure fluctuates but it is always close to 400 people. In the months leading up to the Covid-19 pandemic the figure was usually above 400, and since March it has been closer to 350. At any one point there will be roughly 70 prisons were immigration detainees are held, but this can vary.

[18] This data was obtained through a Freedom of Information request made to the Ministry of Justice by the Association of Visitors to Immigration Detainees

[19] According to the Law Society website

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

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

appeal form so that the caller would not miss the 14-day appeal deadline. The caller has no money to pay for a lawyer. He has been in the UK since he the age of 2.

In 2015, HMIP produced a thematic review *"People in Prisons: Immigration Detainees: A Findings Paper*[22]*"* that addressed a number of the obstacles to accessing justice for people held in immigration detention. HMIP states that "*in our prison inspections we found that few prisons had arrangements for independent immigration advisors to attend"* and that *"these difficulties in accessing justice are compounded by poor communication facilities".* BID can confirm that the lack of arrangements for independent immigration advisors to attend prisons is also reflected in the HMIP reports that have been published since 2015.

HMIP argues that lack of internet access in prison not only limits people's ability to contact lawyers, it also prevents them from researching information about their country of origin (for instance, for an asylum claim) and means they cannot "*contact friends and family to gather evidence to show the strength of their family and social ties in the UK*."

Another key issue raised by HMIP is that the way that work is remunerated by the Legal Aid Agency (LAA) makes taking on clients in prisons particularly risky.

> "*The terms of the contract with the LAA mean that lawyers may be reluctant to visit immigration detainees in prisons because of the long travel times associated with getting to some prisons. In addition, lawyers will only visit detainees if they know they will get paid by the LAA. However, the LAA will only fund a protection case if it has a 50% chance of success. To assess whether the case meets this threshold a face-to-face interview is required between the lawyer and the detainee. In an IRC this assessment can be conducted in the free 30 minute advice slot. But for prisons lawyers find themselves in a catch 22 situation: they are unlikely to risk travelling, sometimes long distances, to take instructions from a detainee if there is a chance they will not be paid*."

Moreover, the option of travelling to take instructions from an individual held in a prison has become impossible because legal visits are suspended as a result of the pandemic. This means that individuals can only contact solicitors to try to obtain legal representation, or speak with their existing legal representative, via telephone or postal contact. Telephone access is highly restricted and depends on the time that a detainee has out of their cell, the amount of credit they have on their phone account, and normally the upper limit of 10 minute phone calls. These obstacles to gaining legal representation will be insurmountable in many cases, particularly for those detainees with mental health problems, learning difficulties or lack of English.

Covid-19 and increasing use of technology

Immigration bail hearings during the Covid-19 pandemic have been held remotely, via telephone. BID takes the view that this was a necessary adjustment given the risks of requiring counsel, Home Office Presenting Officers, judges, applicants, sureties and clerks to travel across the country, in order to be in the same room. These types of hearings have facilitated access to justice reasonably well and most bail applicants have had access to a fair hearing. However some clients have told us

[22] https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/11/HMIP-Immigration-detainees-findings-paper-web-2015-1.pdf

that before they contacted BID, they were denied a fair bail hearing – in some cases they were not produced for the hearing and so could not take part or respond to the reasons put forward by the Home Office as to why detention should be maintained.

Prior to the pandemic, the vast majority of bail hearings were held in a physical courtroom of the First-tier Tribunal, with the detainee connected via video-link.

Technology may not be totally reliable and relies on people having access to the necessary equipment and fast and secure internet access. Where the internet does not work this disrupts the entire hearing and can be very stressful for the applicant who may feel alienated during the process. The quality of the picture and the sound is frequently poor. In some cases prior to the pandemic, our clients would complain that in video-link bail hearings they could not hear properly what is going on in the courtroom, or that there was an echo.

Applicants need to be clear about who everyone is in the court room, their roles, where they sit, and the order of the hearing. It is much more difficult to understand what is happening in the courtroom when not physically present, and it may be more difficult for the applicant to communicate with their representative[23] (if they have one).

For vulnerable people, the experience of having a digital hearing may be particularly stressful. It may also be important for the judge to be able to assess the demeanour of the applicant, particularly in immigration bail hearings where the primary purpose is to assess whether the applicant is likely to abscond if released on bail.

It is BID's view that, once the pandemic is over, deportation appeals should be held in person wherever possible. However, technology can be useful in enabling witnesses to participate where this would not otherwise be possible due to health reasons or geographical location. For bail hearings, the applicant should have the choice to participate either in person or remotely.

Recommendations:

1. Legal aid should be re-instated for all human rights and deportation applications and appeals, including claims based on Article 8 ECHR grounds.
2. The DDA contract should be reviewed and contracts only awarded to firms who can establish they have the required experience and capacity.
3. An equivalent to the DDAS should be introduced to prisons
4. There should be mandatory access to legal advice for everyone subject to a decision to remove or detain at the time they receive the decision
5. Legal aid should be awarded for JR even if permission is not granted so as not to discourage firms who are worried they may not be paid. The Legal Aid agency can undertake their own merits assessment prior to lodging so solicitors can be sure they will be paid.

[23] For instance, in video-link bail hearings (under pre-pandemic conditions), the tribunal only allocates representatives 10 minutes to take instructions from their client prior to the hearing, which is insufficient, particularly where the use of an interpreter is required or where the applicant has mental health problems. In some cases our barristers have told us that it has been difficult or sometimes impossible to communicate with clients in advance of telephone hearings because it was not possible to get the interpreter connected on the platform.

6. The ECF application process should be simplified and a process should be introduced for immigration matters to be stayed pending a decision on Exceptional Case Funding.
7. There should be automatic entitlement to legal aid advice and representation in relation to applications for immigration bail, without need for a merits test.