

Mind the Gap: Immigration Advice for Detainees in Prisons

Headline Findings

- Just 22% (4 out of 18) detainees currently held in prison have an immigration solicitor
 - Only one in twenty respondents had received any independent advice about their immigration case while held in prison
 - Most detainees are given less than 2 weeks' notice that they will be held in detention beyond the end of their criminal sentence, with many told on the day they were due to be released.
 - Detainees in prison are routinely denied access to basic information that might help their immigration case, despite it being readily available in IRCs.
-

Background

In September 2014, BID published the report *Denial of justice: the hidden use of UK prisons for immigration detention*. In that report we found that, unlike for detainees held in Immigration Removal Centres (IRCs), those held in prisons had limited access to communications, and restricted opportunities to access immigration advice.

As of September 2016, the government were holding 558¹ people detained under immigration powers in prisons in the UK. Beyond that stark figure, we know no further details of those detainees. Unlike for IRCs, the government does not publish figures showing how long immigration detainees are held in prisons, nor on the outcome of their immigration case on departure.

There are eleven immigration removal centres in the UK. At the time of writing, BID is in contact with immigration detainees held across 39 different prisons. For organisations such as BID, the scattering of detainees across the prison estate creates significant difficulties in providing services to all those who might need to access it. The extent of the problem goes far beyond BID's ability to help those in need, however. The fragmented approach to the use of prisons as a place of detention routinely serves to deny those being held the fundamental rights that they should have access to as immigration detainees.

At every IRC there are regular legal advice surgeries funded under legal aid – every detainee is entitled to 30 minutes of free legal advice. There are libraries stocked with materials that allow detainees to access basic information that might help them work on their immigration case. Detainees are permitted mobile phones to communicate with loved ones and legal advisors alike. None of these rights offset the impact of or justify the use of administrative detention in the UK. But even these basic rights are denied to those unfortunate enough to be detained in prison.

In January 2017, while carrying out a legal advice surgery at HMP Wandsworth, BID encountered an individual who had been held at the prison, in immigration detention, for 2 years. He had been subject to the same restrictions as those serving their criminal sentences – 23 hours of lockdown

¹ Source: Ministry of Justice (JSAS/FOI 108670)

included. He was unaware of any actions he might take to end this limbo, unable to access proper legal advice to help secure his release. Sadly his situation is far from unique.

To get further insight into the problems facing immigration detainees held in prisons, BID spoke to 18 current clients held in immigration detention in prison, and a further 68 clients who had been held in prison before being transferred to an IRC. This report focuses on their experiences accessing legal advice and information while in prison.

Impact of Cuts to Legal Aid

Cuts to legal aid for immigration and deportation cases, introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, are readily evident among both groups that we surveyed. **Only four of the eighteen being held in prison had a solicitor** at the time of the survey, and just two of them had been able to secure representation through legal aid.

BID's Autumn 2016 *Legal Advice Survey* found that, even among detainees held in IRCs, just one in four were able to secure a legal aid solicitor. However 70% of detainees in IRCs had been able to access the free legal advice provided by the detention duty advisor programme. For those held in prison, not having a solicitor uniformly means not receiving any immigration advice at all – except for that provided by BID.

Detainees strongly felt that not being able to access immigration advice harmed their chances of leaving detention, and simultaneously increased the likelihood that they would ultimately be deported. Indeed, among those without a current solicitor, there was complete agreement that the lack of legal advice meant that, not only were they not able to apply for bail, but they were unaware that applying for bail was even an option open to them.

Independent Advice

Beyond the small minority of prisoners who have a solicitor working on their immigration case, access to any independent advice on immigration matters is severely lacking for those held in prisons. Of the 86 people in this survey, **just five reported that they had received 'independent' advice about their immigration case**. Other than BID, the only independent source of advice cited was from detainees' criminal lawyers. This non-expert, often generic advice can never be seen as an appropriate substitute for advice from immigration-specialist solicitors.

Where detainees did receive some other form of advice regarding their immigration case, BID has serious concerns about the neutrality of the source. Detainees reported that prison officers (in three cases), their prison's Offender Management Unit (six cases), and Home Office officials (four cases) were other sources of immigration advice. One detainee commented on the situation in HMP Littlehey: "In this prison no one helps. They all try to get us deported as best they can in every way possible".

Decisions to detain

When the government intends to detain a foreign national on completion of a prison sentence in preparation for deportation, individuals must be informed via a document called an IS91R form. This explains that the government intends to remove them from the UK, and why it has been determined that they should be held in immigration detention while the removal or deportation process is ongoing.

Our findings, however, show that significant inconsistencies exist as to whether this actually happens. All too often, in our experience, detainees are told at the last possible moment that they will not be released upon completion of a criminal sentence, and are frequently not informed until

much later as to the reason. Confusion and opaqueness should never be present in relation to someone's liberty and, yet our findings show that it is common practice.

Among the 18 respondents currently held in prisons, just one person was given more than a month's notice that he would be held under immigration powers beyond the end of his criminal sentence. Ten people were told less than two weeks before their sentence was due to come to an end that they would remain in detention. **Most shockingly of all, seven people reported that they were told they would remain in detention only on the day they were due to be released.**

Two-thirds of detainees are informed that they will be detained upon completion of their sentence directly by the Home Office – half by letter and half in person. However, four detainees reported to us that it was left to prison officers to tell them what was happening to them, while two detainees told us that no one had ever explained to them that they would now be held under immigration powers while remaining in prison.

This uncertainty – as well as being inherently wrong in a society where transparency and fairness should be foremost – is often frequently cruel, not just for the detainee, but for family members waiting for them at home. In the course of our survey, we spoke to two fathers who had been telling their small children that they would see them soon, only to find out on the expected day of release that they would, in fact, continue to be detained. As previous BID research has shown, often children so affected are themselves British citizens, who suffer a range of physical and mental effects due to separation from their parent. These are then compounded by further, unexpected, separation.

Sources of Information

Immigration Removal Centres are governed by a series of regulations known as Detention Service Orders (DSOs). The Operating Standards Manual contains minimum auditable standards that all IRCs must adhere to, and includes a section on access to legal services. Each IRC must have available for detainees:

- Leaflets on legal advice for detainees produced by the Office of the Immigration Services Commissioner (OISC), the Law Society and the Legal Services Commission
- A copy of BID's notebook (How to Get out of Detention)
- Copies of the Immigration Acts of 1971, 1999 and 2002, a copy of the Detention Centre Rules 2001 and books on immigration law
- A list of legal representatives.

Prisons holding detainees under immigration powers are not governed by either DSOs or the Operating Standards Manual. We asked detainees in prison which of the above items they had access to while held in detention. Eight of our eighteen respondents had seen a copy of BID's notebook – we had provided it directly to them. Three people had had access to books on immigration law and one had seen a copy of one of the immigration acts. Not a single detainee in prison had access to information leaflets from the OISC or the Law Society. **None had been able to access a list of possible legal representatives.**

A Continuing Denial of Justice

At any given time, detainees held in prisons make up approximately 10% of the overall immigration detainee population in the UK. They are not necessarily those with the most serious offences, nor those whom the government has determined it is the biggest priority to remove. Rather, they are simply the unluckiest ones – the people the government does not have a place for in an IRC, or the people it is administratively simpler to leave where they are.

Immigration detention can be cruel. It has no time limit, it has no judicial oversight, and it is almost always an unwarranted deprivation of liberty. But it does, at least in IRCs, have a defined set of rules

governing what rights detainees have. For the 10% of detainees held in prisons, however, the scant protection that those rules offer simply does not apply.

Detainees in IRCs have access to a mobile phone to talk to loved ones and legal advisors alike. They have access to the internet to research their rights, to seek out information to help them apply for bail, and to allow them to work on their immigration case. Detainees in prisons have no phones and no internet. They have no information.

Worse, our findings show that the rate of legal representation for detainees in prisons for their immigration matter is half that of those in IRCs. Access to free legal advice is non-existent in prison – there are no legal aid surgeries, no dedicated legal aid provider. The only access to free immigration advice detainees in prison get is from organisations such as BID, who seek them out – and our capacity can only stretch so far.

About BID

Bail for Immigration Detainees is an independent charity established in 1999 to challenge immigration detention in the UK. We assist detained asylum seekers and migrants in removal centres and prisons to secure release from detention through the provision of free legal advice, information and representation. We also provide free legal advice and representation to detainees on deportation.

While detention exists, BID aims to challenge long-term detention and to improve access to justice for immigration detainees. We seek an immediate end to the separation of families for immigration purposes and of the detention of vulnerable people. BID believes that asylum seekers and migrants have a right to liberty and access to justice. They should not be subjected to immigration detention.

Every year BID helps around 3500 detainees to apply for bail. We provide information and support to detainees to help them prepare and present their own bail applications (what we call 'DIY bail'). We do this through our helplines, bail workshops in removal centres and prisons, and our 'Notebook on Bail' and various bulletins. In just over 10% of cases we prepare bail cases for court with assistance from barristers acting pro bono.

Our priority cases include separated families, unrecognised trafficking cases, those with mental and physical ill-health, long term detainees, and those held in prisons. We also assist about 100 people each year in preparing their deportation appeals on Article 8 grounds.

For further information please contact John Hopgood, Policy and Research Manager for BID on 020 7456 9762 or at john@biduk.org

February 2017.