

Justice Select Committee Inquiry: Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Written evidence submitted by Bail for Immigration Detainees, 30th April 2013

Bail for Immigration Detainees is a charity which provides immigration detainees with free legal advice, information and representation to secure their release. From 1 August 2012 to 31 July 2013, BID assisted 3367 detainees.

Executive summary

- Since the April 2013 legal aid cuts were introduced, BID has carried out a small-scale monitoring exercise involving families separated by immigration detention.
- 11 of the 47 parents in the research sample were removed or deported without their children. BID is gravely concerned that legal aid is no longer available to the vast majority of parents who wish to challenge their removal or deportation.
- See p4-5 for case studies on the impact on children of parent's removal or deportation.
- 33 of the 47 parents in the sample were released from detention on bail or temporary admission. However, given the unavailability of legal aid, they faced considerable barriers to regularising their immigration status. Case studies are provided on p5-7. One concerns a mother who has been subjected to domestic violence and speaks limited English, who has been refused Exceptional Case Funding. The other involves an illiterate father who represented himself in his deportation appeal in the Upper Tribunal, which was dismissed.

Question 1: What have been the overall effects of the LASPO changes on access to justice? Are there any particular areas of law or categories of potential litigants which have seen particularly pronounced effects?

1. Since the April 2013 legal aid cuts were introduced, BID has carried out a small-scale monitoring exercise involving families separated by immigration detention.¹ 11 out of the 47 parents in the research sample were removed or deported without their children.
2. BID is gravely concerned that legal aid is no longer available to the vast majority of parents who wish to challenge their removal or deportation, including single parents. In many cases, a parent's deportation means that their child will effectively be separated from them for the remainder of their childhood. Children may have been born in the UK, have strong ties to another parent or carer in the UK, and be in the appalling position of having to choose between their parents. Where such cases meet the requirements of the legal aid means and merits tests, we believe that legal aid is necessary for evidence regarding the best interests of children to be properly gathered and considered.

¹ An outline of the research methodology is provided in Appendix 1.

- Families of limited means are often unable to pay a private solicitor to appeal a parent's deportation. Even where a family is able to pay a solicitor, they are unlikely to be able to find the funds for independent assessments to properly evidence their children's situation. In BID's experience, Independent Social Workers typically quote between one and two thousand pounds to carry out an assessment of the situation of the children in a family. BID has dealt with cases where parents have paid private solicitors to bring deportation appeals for them, where the amount paid has been very significant to the client but relatively low in relation to the work needed; BID has had serious concerns about the quality of work done on a number of these cases, which in some cases has been negligible.

Quantitative data

- Data were collected on 47 parents who were separated from their children by immigration detention, deportation or removal from the UK. These 47 parents had a total of 101 children under 18 living in the UK. In the 46 cases where we were able to obtain these data, the parents were detained for an average of 286 days. In some cases, children had no other parent to care for them and so were in foster or Local Authority care during their parent's detention.
- Table 1 shows that 11 of the 47 parents in the sample were removed or deported without their children. Even where parents were released, the Home Office had in the majority of cases detained them for the purpose of deporting or removing them without their children.
- 91 of the 101 children in the sample were born in the UK, and as can be seen from Table 3 the majority were British Citizens. Their parents had typically lived in in the UK for long periods, and in 11 out of 47 cases the parent came to the UK as a child themselves. The countries which the Home Office planned to remove or deport parents to included Zimbabwe and Somalia.
- Table 4 sets out the criminal convictions which triggered the parent's deportation or removal. It shows that in two out of 47 cases, parents had no criminal convictions, and 38 parents were convicted of non-violent offences including theft and false documents.

Table 1: Outcomes of detention

Outcome	Number of parents
Released on Temporary Admission	4
Released on Bail	29
Deported without children	10
Removed from the UK without children	1
Other ²	3
Total	47

² In one case, the client was convicted of a criminal offence and moved from immigration detention to prison. In another case, the client's partner bought a plane ticket for him and he left UK the day before he was to be forcibly removed. This was because the client had been informed by the Home Office that if he was forcibly removed he would be banned from re-entering the UK for five years, whereas if he arranged his own return he would be banned from re-entry for one year. The couple hope to get married and be reunited in the UK. In a third case, the client was removed from the UK by the Home Office, but informed BID that he had decided to co-operate with his removal.

Table 2: Children’s ages on the date their parent was detained

Age	Number of children
0-2 years	23
3-5 years	24
6-10 years	27
11-14 years	20
15-17 years	1
Unknown	6
Total	101

Table 3: Children’s Immigration Status

Immigration status	Number of children
British	64
Refugee status	1
European Economic Area national	2
Indefinite Leave to Remain	4
No immigration status	6
Unknown	24
Total	101

Table 4: Criminal convictions which triggered parent’s deportation or removal

Criminal conviction which triggered deportation or removal	Number of parents
No criminal convictions	2
False document offence ³	8
Theft	2
Burglary	2
Robbery	2
Fraud	4
Drugs - Class A	15
Actual Bodily Harm ⁴	2
Other/multiple ⁵	10
Total	47

Parents deported without their children

8. As is set out above, 11 of the 47 parents in the sample were removed or deported without their children. Table 5 sets out the criminal offences which triggered their deportation or removal. None of these offences were violent.

³ In four of these eight cases, the parent had no previous offences. In two cases parents had been convicted of minor driving offences. In a further case, the parent had previously been convicted of a driving offence; a false document offence; theft; and making false representations to make gain for self or another, cause loss to another or expose another to risk. In a final case, the client had previously been convicted of: possession of a false identity document; breach of terms of a suspended sentence; obtaining money by deception and handling stolen goods; using a false instrument; and fraud and forgery (for this last offence he received a fine and a two year suspended prison sentence).

⁴ One of the parents who was convicted of Actual Bodily Harm was a mother who was acting in self-defence, and was recognised by the court as a victim of domestic violence.

⁵ See Appendix 2 for an outline of these parent’s offences.

Table 5: Criminal conviction which triggered deportation or removal - parents who were deported or removed

Criminal conviction which triggered deportation or removal	Number of parents
False documents	1
Theft	1
Drugs - Class A	7
Other/multiple	2
Total	11

9. One of these parents, Benjamin, was deported after living in the UK for 15 years. He has five children. His 12 year old son, Carl, has attention deficit disorder. He requires constant supervision, and lives with Benjamin's sister because his mother cannot deal with him as well as her other children by herself. Carl is a British Citizen. During Benjamin's detention, Carl wrote to him saying:

10. *'Dad – I love you and I miss you and I think about you every day. Can't wait to see you so we can play football when you get out. I wish you don't get deported because I wouldn't know what I could do without you.'*

11. Benjamin's daughter, who is 13, wrote a witness statement before her father's deportation which said:

12. *'If my daddy was ever to leave my family it would be very very devastating.. he means the world to me. I am stressed, tired and messing up on my grades.'*

13. Another father, Gerald, was deported when his son was 12 and his daughter was eight. Both children were born in the UK. During Gerald's detention, their mother said in a witness statement:

14. *'Since [my son] and [his father] have been separated, [my son's] behaviour and confidence have been strongly affected. He has a stutter that has become much worse whilst his father has been away. He has been excluded from two schools during this time due to his anger. When questioned by myself and the school, he will always reply that it is because he needs his dad back in his life.'*

15. Before Gerald's deportation, his son wrote to him saying:

16. *'I miss you so much and I can't wait for you to come out of prison. My sister always ask me when are you coming home? I don't know what to tell her – what should I tell her Dad.'*

Case study: family separation

Mattheas came to the UK from Angola during the civil war. Many members of his family had been killed. Shortly after arriving in the UK, Mattheas met his partner, who is a recognised refugee. They later had two children. Almost 12 years after his arrival in the UK, Mattheas was convicted of possession of false documents and for failing to surrender to custody. The probation service assessed his risk of reoffending as low. Mattheas had previous convictions and after his prison sentence he was detained under Immigration Act powers.⁶ In a witness statement, Mattheas' partner explained the impact of his detention on their two children, aged four and nine:

'My children constantly ask me when he will be coming back home. It has been very hard for them without their father. I have to bring up our two children alone. Sometimes things get too much for me.'

After two months in detention, Mattheas was diagnosed with prostate cancer. He went on to be detained for six more months, but did not receive treatment for his condition. He missed four hospital appointments because Home Office contractors failed to transport him to them. Seven months into his detention, Mattheas went on hunger strike. The Home Office's Monthly Progress Reports reviewing Mattheas' detention make no mention of his cancer, food refusal or the welfare of his children. Mattheas' deportation appeal was heard after the April 2013 legal aid cuts came into effect. He was represented by a private solicitor, and his appeal was refused. Mattheas was then deported to Angola without his partner and children.

17. Three of the 11 parents who were removed or deported came to the UK as children themselves. One client, Donald, arrived in the UK when he was 12 with his mother and siblings. When he was 18, he was convicted of a drug-related offence. His daughter was born later that year. He was assessed by probation as low risk, but was detained for a long period and deported shortly after his 21st birthday. In a witness statement, he said *'I was a child before I was incarcerated and I did not know about having to regularise my stay.'*

Parents unable to regularise their status

18. As is set out above, 33 of the 47 parents in the sample were released from detention on bail or temporary admission. However, given the unavailability of legal aid, they faced considerable barriers to regularising their immigration status.

Case study – family separation

Leonard came to the UK 13 years ago, when he was 21. Two of his brothers had been killed as a result of a feud in Leonard's country of origin, and he had been shot and stabbed in the face. Shortly after arriving in the UK Leonard met his partner Mary, and became stepfather to her two infant daughters. Three years later the couple had a son. Both parents are HIV positive, and Mary has chronic arthritis. She is therefore heavily reliant on Leonard jointly parenting with her.

Leonard was convicted of possessing a handgun. He had previous offences, and following this the Home Office detained and sought to deport him. Probation have assessed his risk of reoffending as *'clearly low.'* Mary and the three children all have British citizenship, and Leonard sought to appeal his deportation. However, Leonard's appeal to the Upper Tribunal was heard after the April 2013 legal aid cuts came in. He was unable to access legal aid and represented himself.

⁶ These offences were: possession of a false identity document; breach of terms of a suspended sentence; obtaining money by deception and handling stolen goods; using a false instrument; and fraud and forgery (for this last offence Mattheas received a fine and a two year suspended prison sentence).

Leonard is unable to read or write. He said that he felt *'intimidated and distressed'* during the hearing. He didn't know how to speak to the judge and couldn't understand what the judge said: *'They just said "go and stand there" [in the courtroom]. Because I've got a criminal record, I don't think they really listened to what I said. They thought I was lying. A lot of what they were saying wasn't true, but I didn't know what to say, how to challenge it. It didn't take them long to reject my case.'*

During Leonard's detention, his partner struggled to cope. His children became very distressed and had difficulties sleeping. In particular the youngest child had nightmares, lost weight and had difficulties eating. The eldest child began getting involved in fights at school. The middle child tried to self-harm, and has begun receiving counselling for depression. Leonard's doctor produced a report stating that if Leonard was returned to his country of origin *'his life expectancy would be severely curtailed'* as he would not be able to access the HIV medication he needs.

However, Leonard did not know that evidence such as his doctor's report or evidence of his partners' difficulties caring for the children were needed to support his appeal, and did not provide this to the court. Leonard was released on bail, and has been reunited with his family. However, he is unable to resolve his immigration case as he cannot access legal aid. **BID is gravely concerned that parents such as Leonard are representing themselves in deportation appeals, despite not being able to do this adequately. This means that their case, and the best interests of their children cannot be properly considered by the court.**

Question 6: What effects have the LASPO changes had on the take-up of mediation services and other alternative dispute resolution services, and what are the reasons for those effects?

19. We note that alternative dispute resolution is not an option in immigration cases.

Question 9: Is the exceptional cases funding operating effectively?

20. In BID's view, the Exceptional Case Funding (ECF) scheme is not operating effectively. The process for applying for funding is complex and detailed. If legal representatives make applications for clients, they do so at the risk that they will receive no payment if the application is refused. Given that a very low number of immigration cases have received funding, this financial risk is considerable, and it will therefore not be financially sustainable for firms to make applications in the vast majority of cases. Furthermore, in BID's experience, detainees do not generally have the legal knowledge needed to make applications which adequately set out their case. Furthermore, BID regularly deals with detainees who speak limited English, and we have clients with learning difficulties and mental health problems. We also deal with unaccompanied children in detention who the Home Office has incorrectly assessed as being over 18. It is wholly unrealistic to imagine that many of these detainees would be able to effectively apply for ECF themselves.

21. BID has had considerable difficulty finding solicitors who we can refer clients to in order for ECF applications to be made. We advise well over 3,000 individuals each year, providing anything from one-off telephone advice, to representation in bail applications. On numerous occasions since the introduction of the April 2013 legal aid cuts we have assisted clients who have presented with particular vulnerabilities and/or what appear to be exceptionally complex cases. However, we have only been able to successfully refer two of these many clients to specialist legal aid providers able to assist them to make ECF applications. Both of these applications were refused.

22. Due to our limited resources, BID has not been in a position to make any ECF applications ourselves. For example, we recently tried to refer a client in detention with a pending appeal hearing to a reputable solicitors firm for substantive advice and representation, but they could only consider taking on the matter if we made the requisite ECF application for the client. Following a review of the application forms and ECF guidance it was clear that it would have taken at least five hours' work to prepare. The solicitors firm did not have the capacity to make the ECF application, but nor did we, and so no application was made and we were unable to refer our client to them or anyone else.
23. We set out below an example of a case in which a solicitor did make an ECF application for a client but the application was refused.

Case study: Single mother/Domestic violence

Lauren was subjected to domestic violence by her partner for an extended period. On one occasion, she took a kitchen knife and stabbed her partner in self-defence. Although the court recognised that Lauren was a victim of domestic violence she was convicted of Actual Bodily Harm. The couple's infant daughter was taken into Local Authority care. The Home Office decided to deport Lauren, and after she had served her criminal sentence, she was detained under Immigration Act powers.

A letter from Lauren's charity support worker records that: *'Though the father would like [the child] to be returned to him, social services has concerns regarding his parenting abilities, living quarters and his shift patterns which would leave gaps in his care provision.'* A social work report notes that Lauren's ex-partner: *'presents as a father who has very little experience of caring for young children.'*

Lauren speaks very limited English. She wished to challenge the Home Office's decision to deport her, but was unable to access legal aid for her deportation appeal following the April 2013 cuts. A solicitor submitted an application for Exceptional Case Funding for Lauren, which was refused. At the time of writing the solicitor is in the process of trying to challenge this decision. **BID is gravely concerned that legal aid funding is not available, and Exceptional Case Funding has been refused in a case which raises such serious child welfare issues.**

24. Refusals of ECF can currently be challenge by way of judicial review. However, the Government proposes to impose a residence test which would prevent detainees from accessing legal aid for judicial review, and to restrict the circumstances in which people can bring judicial reviews.⁷
25. Finally, we note that the Government has also argued that cases can be brought under 'no win no fee' arrangements with insurers. However, most immigration cases do not attract damages, and therefore cannot be insured. Clients and insurers cannot take the risk that they would have to pay the Home Office's costs if the case is lost.

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⁷ Ministry of Justice (3/10/13) Transforming Legal Aid: Next Steps <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps>; Ministry of Justice 5/2/13 Criminal Justice and Courts Bill Factsheet: Reform of Judicial Review https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277730/factsheet-judicial-review.pdf

Appendix 1: Research Methodology

BID has carried out a small piece of research into all our family team cases involving parents detained without their children who left detention between 1st April 2013 (when the legal aid cuts were introduced) and 28th February 2014.

In total, BID's family team dealt with 55 cases of parents with children in the UK who left detention between 1st April 2013 and 28th February 2014. We sought to include all these cases in the research sample. However, we were unable to contact one client to seek permission to use his data for research purposes. A further seven cases were referred on to other caseworkers at BID by the family team because it became clear that they didn't fit the family team's criteria for representation, and therefore are not included in this sample.

The 47 parents in our research sample had 101 children aged under 18 years living in the UK. 11 of these 101 children were stepchildren. In every case involving stepchildren, the parent had biological children aged under 18 living in the UK in addition to their stepchildren. In one further case, a parent had five children but four of these had been adopted and are not counted in this sample. The fifth child was in Local Authority care, and the information on the client's file indicates that due to issues with the mother's parenting she would not have lived with her child on release, but would have had contact with her more frequently than she was able to from detention.

A number of parents were held in immigration detention on more than one occasion. The data presented in this document relates their most recent period of detention within the research period ending on 28/2/14, with one exception. In this case, the client was released on bail during the research period, and then re-detained for a very short period and released. As the client had previously been detained for over a year, their penultimate period in detention is recorded here.

Appendix 2: List of 'other' offences committed by parents

Table 4 sets out the criminal convictions which triggered deportation or removal for all 47 parents in the sample. 10 parents are marked 'other/multiple.' A list of all the offences these parents were convicted of, including the offences which triggered their deportation or removal, is provided below. It is noted that five of these ten clients were convicted of violent offences.

Client 1: Assault, theft and driving offences.

Client 2: Class A drugs, and possession of a prohibited weapon and ammunition.

Client 3: Class A drugs, possession of an imitation firearm and obtaining property by deception.

Client 4: Burglary and assault during the riots in 2011, Actual Bodily Harm.

Client 5: Possession of a handgun, Class A drugs, battery and resisting or obstructing a constable, driving offences.

Client 6: Obtaining a money transfer by deception; using threatening, abusive, insulting words or behaviour with intent to cause fear; common assault; false documents.

Client 7: Racially aggravated intentional harassment, robbery.

Client 8: Violent disorder (rioting) and breach of a conditional discharge; robbery; Class A and Class B drugs; using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence.

Client 9: Deception & attempted deception, Class A drugs.

Client 10: Assisting unlawful immigration.