

Briefing paper on access to immigration bail – May 2008

“We were concerned about the lack of help with bail. A detainee who had just returned from an unsuccessful bail hearing, at which he was unrepresented, showed us the document given to him by the court following refusal which said: ‘Served with ICD 0350 notice of asylum claim to be refused under S.72 and given 28 days to 14/7 for rebuttal of notice.’ He had no idea what it meant and neither did we.”

- HM Chief Inspector of Prisons, Report on an unannounced inspection of Harmondsworth Immigration Removal Centre, July 2006

What is immigration detention?

Every year 30,000 people are detained in the UK ‘for the purposes of immigration control’. Often described as ‘immigration detainees’ they include

- asylum seekers detained whilst their claims are decided¹
- migrants or asylum seekers whose claims have been refused who are facing forcible removal from the UK, and
- foreign nationals who have finished a criminal sentence and are awaiting deportation.

Held in ten detention centres (also known as Immigration Removal Centres) in England and Scotland, their detention is not ordered by a court and there is no time limit to the period they are detained.

According to government policy, people are usually detained for them to be removed from the UK, if their identity or the basis of their asylum claim needs to be established or if there is reason to think they will abscond if released. While the government maintains immigration detention should be used ‘sparingly, and for the shortest period necessary’, Bail for Immigration Detainees (BID) has supported many detainees who have been in detention for prolonged periods and when there is no imminent prospect of them being removed from the UK. One man BID knows was detained for nearly three and a half years.

What is immigration bail?

When challenging their detention, most detainees apply to the immigration courts (known as the Asylum and Immigration Tribunal) for bail. Their application for bail is decided at a legal hearing in front of an Immigration Judge. The burden is supposed to be on the government to demonstrate to the Judge why detention continues to be necessary; the Judge then decides whether a detainee would abscond if released and whether bail should be refused or granted. If bail is granted, the Judge usually attaches conditions to the terms of release which require the detainee to live at a certain address, to report regularly to the immigration authorities, to be electronically tagged, or to have sureties who put down money which could be lost if the detainee runs away. If the Judge refuses bail, the detainee is able to apply again every 28 days or sooner if they can make fresh arguments about why they should be released.

Since spring 2008, virtually all bail hearings for people held in immigration detention centres are heard by video link. This means the detainee remains at a detention centre and the Immigration Judge, the Home Office representative, and the legal representative, interpreter and sureties (if the

¹ See BID’s briefing paper on the detained fast track process for asylum claims

detainee has them) will be in court. Many detainees have to make their own bail applications and represent themselves at their bail hearings because they are unable to access legal help.

Key facts about immigration detention and bail

- Since September 2006, the government has not produced any information about the length of time it keeps people in immigration detention. Freedom of Information requests show that on 30 September 2006, 50 people had been detained for more than one year² and the average time detainees' were held during 2005/06 ranged from 16 days at a detention centre near Gatwick airport to 61 days at a detention centre in Dover.³
- In 2007, Immigration Judges made decisions on 8,950 applications for bail: 22.2% were successful.⁴
- The vast majority of people who contact BID do not have a lawyer. BID's very existence, empowering detainees to apply for bail themselves, is testimony to the unmet need for quality legal advice in detention centres.
- According to a study by South Bank University, out of 98 asylum detainees bailed between July 2000 and October 2001, 90% complied with their bail conditions even though some knew they were due for removal from the UK.⁵
- The average amount of money it costs to keep a person in immigration detention per week is £759.89.⁶

Key concerns about access to immigration detention and bail

• Immigration detention is indefinite

There is no limit on the amount of time a person can be held in immigration detention. In January 2008, BID supported four Algerian men to successfully challenge their illegal detention in the High Court – all four had been held for between 14 and 18 months. While MPs from all parties have condemned the government's plans to extend pre-trial detention for terrorism suspects to 42 days, immigration detainees can be held without charge for years. BID believes the government's power to detain must be subject to statutory time limits.

• There is no automatic judicial oversight of the government's decision to detain

The right to an automatic bail hearing for immigration detainees after 7 and 35 days in detention was provided for by law in 1999, but three years later it was repealed without ever having being brought into effect. This leaves the onus on the detainee to know what bail is, to know how to apply for bail, to know what evidence needs to be gathered and to go ahead and make an application. For many people who do not speak English, who may be traumatised from experiences in their home countries and who are without the help of a lawyer, a bail hearing is not an accessible safeguard to end their detention. In BID's view there must be a prompt, automatic and independent review of the government's decision to detain.

• Access to legal representation is limited

Many detainees approach BID for support either because they do not have a legal aid lawyer or because they can no longer afford to pay their fee charging lawyer. Despite the government's funding rules for legal aid being more flexible for bail cases than most other aspects of asylum and immigration cases, BID supports many detainees who are unable to access legal representation from a legal aid lawyer. Immigration detainees held in certain parts of the country also struggle to

² Taken from a Freedom of Information Act request released on 07/03/08 and based on information from 30/09/06

³ Taken from a Freedom of Information Act request released on 05/01/07 and based on information from 2005/2006

⁴ Taken from figures provided by the AIT for bail hearings between 01/07 and 12/07

⁵ South Bank University, *Maintaining Contact: What happens when detained asylum seekers get bail?* by Professor Irene Bruegel and Eva Natamba, June 2002

⁶ Taken from a Freedom of Information Act request released on 05/01/07 and based on information from 2005/2006

find legal aid lawyers nearby - this is a particular problem for immigration detainees held in remote prisons. The government has since December 2005 funded 30 minutes of free legal advice for people held in detention centres, but in our experience many detainees are unaware of the scheme. The government also plans to introduce exclusive contract for legal aid lawyers working in detention centres and we fear this will further constrict detainees' choice when accessing legal help. We believe there should be accessible publicly-funded legal representation for immigration detainees applying for bail.

- **The impact of long term detention on mental and physical health**

Long-term detention can have a profoundly negative impact on a person's mental and physical health. In 2007, 157 people held in detention centres required medical treatment after self-harming – that is one person every 2.3 days.⁷ When a Médecins Sans Frontières doctor carried out medical assessments on detainees in 2004, she found that they had all experienced deteriorating health since being detained, and that continued detention would be likely to result in their mental health deteriorating further. The prolonged incarceration of immigration detainees is not sanctioned by law and detention centres are not designed to hold people for long periods.

Case studies

Dennis' story

'My name is Dennis. I was detained at Dover Immigration Removal Centre for about 3 months. I was given bail forms by the Immigration Officer but I did not apply for bail because I felt that there was no hope of getting it. I then saw an advert for the BID workshop in the library. When I was at the workshop I started to think I could get bail. They helped me understand the way to get bail and the reasons I should give to the Immigration Judge. The workshop also made me understand that I could apply for bail many times. The first time I applied for bail I was not successful. I already knew from the workshop how I could apply for bail again so I was only a little upset. My second application for bail was also unsuccessful. This time I was very upset. I did not want to apply for bail again because I could not see any hope of getting released. My friend encouraged me to apply for bail again. On the hearing date for my third bail application I felt positive. I was disappointed because my accommodation provider did not come to court. The Judge still gave me bail. The Judge released me for the same reason that the previous Judge had used to refuse me. I found it strange that the same reasons were used by two Judges but they came to different conclusions. I felt really so happy to be released.'

A's story

A from Ghana was arrested for travelling with a false passport when he arrived in the UK in April 2005. He served six months in prison before being transferred to immigration detention. The Home Office continually thwarted his attempts to apply for bail by moving him between detention centres in Scotland and England which have different legal systems. He also had to manage the appeals process himself as it was too difficult to secure a lawyer. He contacted BID from a detention centre near Heathrow airport in November 2006, but it was July 2007 before he had a bail hearing because of his constant moves across the border. A was granted bail at his first bail hearing and was released after having been detained for two years and three months.

What is Bail for Immigration Detainees doing about access to bail?

Bail for Immigration Detainees (BID) www.biduk.org is a small independent charity that exists to challenge immigration detention in the UK. BID's three offices in London, Oxford and Portsmouth provide telephone advice and information to detainees and present bail applications using pro-bono barristers. BID has produced a Notebook on Bail for people in immigration detention and delivers free workshops and legal advice surgeries in detention centres to enable detainees to

⁷ Taken from a Freedom of Information Act request released in 04/08 and based on information from 2007

represent themselves. Last year we supported 1,927 people held in immigration detention and provided telephone advice to a further 1,222 people. We use the evidence we collect through our casework to challenge the government's use of immigration detention and to push for an end to arbitrary detention.

Further information

For more information about immigration detention: Bail for Immigration Detainees, [Immigration detention in the UK – key facts and figures](#), May 2008

For more information about securing release from detention: Bail for Immigration Detainees, [Notebook on Bail](#), January 2008 and Immigration Law Practitioners Association/Bail for Immigration Detainees, [Challenging Immigration Detention: a best practice guide](#), October 2003

For more information about video link bail hearings: Bail for Immigration Detainees/Refugee Council, [Immigration bail hearings by video link: a monitoring exercise by Bail for Immigration Detainees and the Refugee Council](#), March 2008

For more information about the health impacts of detention: Bail for Immigration Detainees, [Fit to be detained?: Challenging the detention of asylum seekers and migrants with health needs](#), May 2005

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