

Ministry of Justice - Proposals for the Reform of Legal Aid in England & Wales

RESPONSE FROM BAIL FOR IMMIGRATION DETAINEES

Q1: Do you agree with the proposals to retain the types of case and proceedings listed in paragraphs 4.37 to 4.144 of the consultation document within the scope of the civil and family legal aid scheme?

Bail for Immigration Detainees (BID) is an independent charity established in 1999 which exists to improve and promote access to justice for those held under Immigration Act powers. It pursues these ends through the provision of legal advice and pro bono representation for immigration bail hearings, by providing training and self-help materials to immigration detainees in order that they may represent themselves at bail hearings, through advocacy with civil servants and politicians, and by way of strategic interventions in litigation relevant to issues which fall within BID's core areas of expertise. From 1 August 2009 to 31 July 2010, BID helped 2089 people held in immigration detention. BID does not receive legal aid funding, but rather provides free accredited legal advice through the use of trained volunteers and pro bono barristers and solicitors.

In this consultation exercise we have limited our comments to our areas of expertise.

BID is pleased to note the proposal to retain detention-related matters within the scope of legal aid advice, specifically challenges to detention, variation or extension of immigration bail, and matters related to forfeiture of bail (Green Paper: 4.82). Where the issue at stake is loss of liberty, immigration detainees must be enabled, through the provision of legal aid where necessary, to exercise their right to challenge their loss of liberty in a meaningful way.

There is currently no statutory time limit on immigration detention, and the UK government has chosen not to opt into the EU Return Directive which sets a limit on immigration detention of 18 months. Twenty percent of immigration detainees are held for 6 months or more, and around 10% have been held for 12 months or more (Home Office, 'Control of Immigration: Quarterly Statistical Survey, Quarter 3 2010'). BID now routinely encounters immigration detainees who have been held for significant periods of time, such as two or three years. This means that, for significant numbers of detainees, removal is not in fact imminent at the point at which they are detained. It is therefore of paramount importance that legal aid continues to be provided for immigration detainees so that they can have access to mechanisms to effectively challenge their ongoing detention, such as applying for release on immigration bail. Long term and indefinite detention is costly both in financial terms and in the well documented toll it exerts on the mental and physical health of detainees (e.g. Robbins, R. et al, (2005), '*Psychiatric problems of detainees under the Anti-Terrorism Crime and Security Act 2001*'. The Psychiatrist 29: 407-409)

However, while welcoming the proposal to retain legal aid for detention-related matters, BID wishes to submit evidence here on the lack of capacity of publicly funded legal advice and representation for immigration detainees held in immigration removal centres, as currently provided under the Legal Services Commission's Detention Duty Advice Scheme (DDA).

Inadequacy of the Detention Duty Advice (DDA) scheme – capacity and quality of work

We note that levels of unrepresented individuals in detention are high. A recent survey carried out by BID and ICAR at the Runnymede Trust (BID & ICAR, (2011), 'Provisional results of a survey of levels of legal representation for immigration detainees across the UK detention estate') found that 49% of detainees interviewed had no legal representative at the time of the survey. Worryingly, 19% of all detainees interviewed had never had a legal representative while in detention.

Set against this background BID's experience over several years is of

- i. Insufficient capacity in terms of legal aid matter starts available to providers of legal advice to detainees under exclusive contracts, and
- ii. Variable quality of the advice available

Our experience of the DDA scheme to date causes us to have deep concern about the efficacy of the scheme to meet the needs of detainees and has done nothing to allay our concerns about the variable quality of legal advice given to many detainees.

Anecdotal evidence suggests that under the new exclusive contracting arrangements in place since November 2010 there are already capacity issues for providers, and detainees are finding that contracted firms are unable to take their cases on immediately in some IRCs. Where loss of liberty is at stake delays of days or weeks before a detainee can access basic advice on bail and other matters cannot be acceptable. BID was set up in 1999 in response to the shortage of publicly funded legal advice for immigration detainees, and our continued existence in support of detainees with no solicitor or solicitors who will not run bail is evidence of the ongoing shortage of publicly funded immigration advice for detainees.

Where detainees are taken on by DDA contractors, early evidence suggests that a bare minimum of work is being done by certain providers. For example, there are many anecdotal reports from organisations that support and visit detainees that certain providers with exclusive contracts are making applications for Temporary Admission to UKBA (which are overwhelmingly refused) and then closing cases on the grounds that nothing more can be done for that individual. A study by ICAR (2010) found that graduated fixed fees for immigration legal aid work lead to certain providers cherry-picking simpler cases or cases that can be closed quickly, and in increasing 'paralegalisation' of advice-giving as it is passed to cheaper less-qualified staff.

The DDA scheme administered by the Legal Services Commission undertakes to provide thirty minutes of free legal advice to detainees in immigration removal centres. Providers may then take on the detainee as a client, subject to merits and means tests. BID understands that certain suppliers under the scheme have been restrained by their own matter start capacity from immediately taking the cases of all detainees who pass a means and merits test. Detainees have reported being told to wait for some time before work on their case can begin, or to contact another advice provider operating in the same removal centre to see whether they have capacity to take on the case.

If the government is arguing in the Green Paper – correctly in our view - that detention-related work is to be retained in scope because loss of liberty is at stake, then the firms with exclusive contractors under the DDA scheme must be sufficiently well funded by the Ministry of Justice to allow for adequate capacity to take on and immediately act for all clients who meet the means and merits test. In BID's experience this is not the case at present.

In addition, awareness of the DDA scheme among immigration detainees is low across the detention estate. Our own recent survey (BID & ICAR, 2011) found that 47% of detainees said they had not heard of the DDA scheme. Of those detainees that had heard of the scheme and booked an appointment with a contracted advice provider, 23% were taken on as a client. The survey was

carried out in November and December 2010, across the immigration detention estate, with 134 detainees representing 43 nationalities.

BID therefore recommends that publicly-funded legal representation should be provided to all immigration detainees to make an application for bail every 28 days or sooner if fresh evidence arises.

BID is also pleased to note the proposal to retain asylum matters within the scope of legal aid. It is essential for asylum seekers to have good quality legal advice on their claim from the earliest point in their case in order to ensure that decisions that relate directly to fundamental human rights can be properly examined. Accordingly, BID believes it is right that that access to legal aid for asylum applicants with no financial means be retained, and funded to a sufficient level. However, we strongly disagree with the proposal for an overall reduction in legal aid fees of 10% across all matters that remain in scope, including asylum work. Evidence suggests that further erosion of legal aid fees, which in immigration work have not been index-linked in recent years, will continue the trend of exit from the market of advice providers who are not able to maintain the desired quality of asylum and immigration work within the financial constraints of the legal aid fee structure (ICAR, 2010,

Q3: Do you agree with proposals to exclude the types of case and proceedings listed in paragraphs 4.148 to 4.245 from the scope of the civil and family legal aid scheme?

BID strongly disagrees with the proposals to exclude from legal aid funding the following TYPES OF CASE: deportation-related matters; immigration matters not related to asylum claims or challenging detention; and asylum support matters.

BID believes that the removal of these types of case from legal aid funding risks the following outcomes:

- a. An increase in the number of persons who are detained as they are unable to access good advice relating to this complex area of the Law.
- b. An increase in the numbers of long-term immigration detainees who feel that they have been unable to access legal procedures, or who have been unable to make representations that deal with all the issues that relate to their claims to remain. That will in particular affect long-term detainees with family ties, or who are long term residents in the UK
- c. An increase in the numbers of individuals applying for asylum because they cannot get legal aid for immigration applications & deport appeals.
- d. An increase in immigration detainees and other non-detained immigrants seeking alternative forms of advice and help, and in particular approaching MPs to make representations on their behalf.
- e. An increase in applications lodged before the European Court of Human Rights in circumstances where matters would have been more readily dealt with within the domestic jurisdiction, either by the UKBA or the UK courts, had the detainee received good legal advice and assistance with making representations.
- f. A reduction in qualified legal volunteers willing and able to provide their pro-bono services in this complex area of the Law.
- g. While it is proposed that asylum matters and detention-related matters will remain in scope, in practice most legal aid firms balance immigration and asylum work - particularly as asylum is costly, and takes a long time to be paid. So the proposed removal of general immigration

work from scope is likely to make a number of these businesses unviable. This will have an overall impact on the availability of immigration legal advice.

3a) Deportation-related matters

Deportation procedures, including the 'automatic deportation' provisions under the UK Borders Act 2007 apply to a wide range of foreign nationals, from those criminalised while entering the UK to seek protection who rely on false documents for entry, to long term UK residents (often with family and other ties to their community) who have been convicted of non-immigration related offences. The UK Borders Act 2007 removed the discretion of the Secretary of State over whether or not to pursue deportation action against foreign nationals who are convicted of an offence in the UK and who are sentenced to imprisonment for 12 months or more, even where there are compassionate grounds or mitigating circumstances.

BID has had a number of bail clients in detention with signed deportation orders in place, who have been resident in the UK for twenty, thirty and even fifty years, yet who face deportation to their country of origin of which they have limited or no knowledge.

In addition to length of residence in the UK, other compassionate circumstances may apply in deportation cases. For example, a proportion of the women who have been trafficked into the UK to provide commercial sexual services may have faced prosecution and deportation for criminal offences related to their illegal entry to the UK, despite having experienced abuse and exploitation, if protection mechanisms relating to victims of trafficking have not been correctly applied (Sarah Stephen-Smith, 2008, Prisoners with no crime: Detention of trafficked women in the UK', Poppy Project)

BID has extensive experience over a number of years of working with parents in immigration detention who face deportation without their children, often in cases where they are the main carer for that child or children. In cases that involve the removal from the UK of main carers without their children, and cases where children face removal with their parents, BID believes it is essential that legal aid be retained within scope for deportation matters. It is not reasonable to expect that applications and appeals in such complex deportation cases, especially where the welfare of children is involved, can be handled by applicants without the benefit of expert legal advice.

From November 2008 to August 2010 BID's family team worked with 28 families where children who were not detained had been separated from their parent (in nearly every case their primary carer) who was in immigration detention. The UKBA's stated aim in separating these families is to effect their forcible removal from the UK. However, to the best of our knowledge, none of the 28 cases BID has dealt with since November 2008 have so far led to a parent or child being forcibly removed. In most cases, there are complex barriers to removal during the parent's detention, including: ongoing legal applications, lack of travel documentation, family court proceedings, and requirements for Children's Services to assess parenting capacity outside detention.

It is of grave concern to BID that in the absence of proper processes in this area, the UK Border Agency's Criminal Casework Directorate are in some cases seeking to separate families for the purpose of removal. In such cases, the parent could be removed from the UK leaving their children here in the care of Children's Services, or in some cases in private fostering arrangements which give rise to serious child protection concerns. BID knows of cases where there are no known child protection concerns about a detained parent, and the UKBA's Children's Champions office has advised that a parent be released to allow a parenting assessment to take place so the family can be reunited, and yet the Criminal Casework Directorate caseowner has sought authority to split a family

for removal. In such cases, it appears that this step is being taken despite the profoundly negative impact it could have on child welfare, because it serves the administrative convenience of the UKBA. In addition, it is also unclear to us that this strategy is an effective one even in terms of effecting a parent's removal from the UK, given that attempting to separate a family in this way is likely to lead parents to make Human Rights applications on the basis of the right to family and private life (ECHR Article 8).

In addition, we also note that the prolonged detention of a parent and separation of a family increases the harm which would be caused to a child's welfare if they were forcibly removed with their parent, and therefore potentially creates further barriers to their removal. Children who have spent their formative years in the UK are in any case likely to find removal to a country which is foreign to them very disruptive. This disruption will be seriously exacerbated if they are to be removed with a parent who they have been separated from for over a year by immigration detention. Prolonged separation of parent and child is likely to be a significant factor in relation to whether or not the child can safely or reasonably be expected to adjust to life in a country that may be largely or entirely foreign to him or her, because the child's capacity to make such an adjustment is likely to be seriously impaired or damaged to the extent that he or she does or does not have a strong, stable and familiar relationship with his or her parent.

Although deportation action is appealable, it is BID's experience that our bail clients in immigration detention, including many who are long term UK residents, who have signed deportation orders in place are currently unable to examine their legal position in relation to deportation action, including any human rights challenges they may have (for example under ECHR Article 8, the right to family life), let alone mount a legal challenge to proposals to deport them where this might be an appropriate course of action. Their access to justice has been severely affected early on following conviction by a lack of availability of immigration legal advisors in the geographical area where they have served their prison sentence. This is then exacerbated by the difficulty in obtaining and keeping legal representation once in immigration detention. BID has found in a recent survey of immigration detainees that 23% of the sample had lost their legal representative on one or more occasions due to a transfer between removal centres, as a result of the cap on travel costs for advice providers under the legal aid funding code. Without a legal representative, foreign nationals subject to deportation action are unable to examine their legal position, including any human rights challenges they may have under ECHR Article 8 (the right to family life).

A recent survey by BID and ICAR (2011) of the levels of legal representation among immigration detainees across the detention estate found that 60% of those surveyed were subject to deportation action as a result of their criminal sentence, and had been transferred to a removal centre straight from prison. Seventy eight percent of detainees facing deportation had received no immigration legal advice in prison. The opportunities for foreign nationals to examine the legal basis for their deportation are already curtailed at present due to the geographical mismatch of demand and supply for immigration advice.

However, the Ministry of Justice now proposes to go further and remove from scope completely all legal aid for deportation-related work. This proposal will only create more inequality of arms between people facing deportation and the State. BID strongly opposes this proposal.

The consequences of deportation from the UK are extremely serious. Deportees are excluded from the country for a minimum of 10 years, and must apply to have their deportation order revoked before they are even able to seek an entry visa again. Other exclusionary provisions apply to the administrative removal of illegal entrants and visa overstayers. It is BID's experience that the majority of long-term immigration detainees (12 months or more) are ex-offenders, and without advice and explanation from a properly funded independent legal advisor, their removal from the UK

by means of deportation often progresses slowly if at all, prolonging detention at great financial cost to the state and personal cost to the individual.

Not all immigration detainees facing deportation wish to challenge their deportation, indeed some are keen to return to their country of origin. However, BID believes that foreign national prisoners and ex-offenders must be enabled to exercise their rights, including their right to family life in the UK where appropriate, and for this they need access to publicly funded legal advice, subject to existing means and merits tests. If deportation-related matters are taken out of scope of legal aid, BID's immigration detainee clients who have lived in the UK for ten, twenty, forty and even fifty years, many with UK citizen partners, children, and grandchildren, will be denied access to justice. We therefore strongly argue that legal aid for deportation matters should be kept in scope.

3b) Immigration matters not related to asylum claims or challenging detention

BID strongly disagrees with the proposal that matters relating to "immigration where the individual is not detained", including general immigration issues faced by detainees that are not related directly to a challenge to their detention, should be taken out of scope.

In the Green Paper it is suggested that "an individual involved in non-detention immigration cases will usually have made a free and personal choice to come to or remain in the United Kingdom, for example, where they wish to visit a family member...or fulfil their desire to work or study here" [4.201]. However, BID would argue strongly that simply because an individual at some point in the past came to the UK voluntarily, it does not necessarily follow that they should never be considered deserving of help in the form of legal aid for immigration matters. In many instances individuals subject to immigration control do not make a free and personal choice to come to the UK, for example people who were born in the UK or came here as children; people with Article 3 or other human rights claims; people who are granted Discretionary Leave or Humanitarian Protection for complex reasons related to violence they have fled but which would not ordinarily lead to a grant of refugee status. Even people who have "made a free and personal choice to come to the UK" may be subject to immigration detention, for example while the basis of their right to remain in the UK is determined. At this point their general immigration case is likely to be highly relevant to their detention and loss of liberty.

It is BID's experience that there is a significant cohort of immigration detainees, both in removal centres and prisons, who are long term UK residents but not citizens (for example someone who came to the UK as a child with their parents). These detainees typically have been detained for 12 months or more, have UK citizen children, parents or siblings and related but unexamined human rights claims, and may resist attempts to remove or deport them without proper legal attention to their wider immigration case.

It is proposed (4.200 and 4.201) that the removal from scope of general immigration matters should include work on obtaining travel documents where individuals have been unable to obtain one from their own state. BID strongly opposes this proposal.

Delays in obtaining travel documents are the one of the most common factors contributing to long term detention. A sizeable proportion of foreign nationals in immigration detention have no travel documents, having entered the UK without documents or with false documents, or having later lost or destroyed them. The cooperation of both foreign missions and immigration detainees is required in order to identify the individual as the national of a country and issue new travel documents for the purpose of removal. However, both missions and individuals may withhold or delay co-operation with the redocumentation process for a variety of political and personal reasons. There are also

frequent examples of the UKBA acting in a dilatory and tardy fashion in their dealings with various embassies/missions. It is frequently the case that the UKBA only take steps to pursue a documentation issue when a bail application is due to be heard. Where individuals cannot be documented they may face long periods in immigration detention, sometimes amounting to years, in what becomes de facto indefinite detention

BID's casework experience suggests that the course of the redocumentation process as managed by the UKBA is routinely characterised by lengthy delays and failure to progress cases. Basic information on evidentiary requirements for travel documentation is currently not always shared between UKBA caseowners and the various units within UKBA that handle documentation. Reviews carried out by BID of ten complete case files obtained as Subject Access Requests are perhaps indicative of a wider problem. BID found in one case that that immigration bail was refused to the detained applicant on the grounds that the Home Office had asserted in the bail summary that travel documentation was imminent, whilst at the same time a different unit in UKBA had noted elsewhere in the client's file that redocumentation was not possible for this individual.

Detainees are given little or no guidance from the UKBA on the steps they might take to expedite the documentation process in a timely manner and thus end their detention. Detained long term UK residents subject to deportation action can face practical barriers to documentation as a result of loose ties with their country of origin after many years in the UK, and may have problems obtaining evidence of their life in their country of origin. BID believes it is essential that, where required, legal aid funding should be retained for work related to obtaining travel documents, for immigration detainees and non-detained individuals with immigration cases.

In BID's experience it is simply not possible to state categorically that in all non-asylum related, non-detention related immigration cases the individuals concerned are not at risk as a consequence of decisions in their immigration case. Threats to safety or life may not be immediately obvious but BID believes that there should be scope for proper examination of the facts of such cases, with legal aid support where necessary and subject to the usual means and merits tests. Issues relating to family or private life are no less important for not being matters of life and death, and the UK has European human rights obligations in this area. Human rights claims can be very complex, requiring applicants to submit detailed evidence that establishes their personal history, including the extent to which they have developed and adapted to life in the UK, and the reasons why it may be difficult or impossible for them to adjust to life in their country of origin. Obtaining this type of evidence can require detailed letters and reports from schools, independent social workers, and other professionals who may have contact with the individuals concerned. It is not realistic to expect unrepresented individuals to both be aware of what type of evidence is required and be able to collect it.

In summary, around 40% of immigration detainees at any one time have never claimed asylum but rather find themselves detained due to an immigration issue affecting themselves or a family member (e.g. overstaying a student visa) and/or as a result of deportation action. The point is that unresolved immigration matters can land people in immigration detention, and keep them in prolonged detention in more complex cases. For these reasons BID also opposes the proposed removal from scope of general immigration work for non-detained applicants/litigants who have passed a means test.

If detainees cannot be represented for their immigration matter via legal aid, it seems unlikely that exclusive contractors under DDA scheme will take cases on simply to run bail applications. We would expect the removal of immigration matters from scope for detainees to have a knock on effect on levels of legal representation for bail applications.

BID believes that the proposal to continue to fund detention-related issues but remove public funding for detainees on their wider immigration case is not logical.

3c) Asylum support

BID strongly opposes the proposal to remove from scope of all legal aid work related to asylum support claims.

In general BID opposes the proposal to take asylum support applications out of scope, a proposal which has been advanced on the grounds that there is clear guidance available and a number of voluntary sector organisations who provide advice in this area. These reasons for withdrawal of legal aid funding could be said to apply to any number of areas of welfare benefit advice (e.g. housing benefit).

Those applying for asylum support are particularly disadvantaged in terms of language and cultural competence. We suggest that asylum support applications are not especially "straightforward" (4.223), and we believe it is disingenuous to suggest that if asylum support is refused applicants will be able to mount an adequate challenge, especially within the very narrow time frame for appeals to be lodged. Failure to be granted asylum support may result in destitution, and a proportion of asylum support applications involve children. We strongly oppose the proposal to take asylum support applications out of scope on the grounds that the government must continue to fulfil its obligations to children under s. 55 of the Border, Citizenship & Immigration Act 2009. This proposal also goes against commitments made elsewhere in the Green Paper that legal help relating to the 'roof over your head' will be prioritised.

BID has extensive experience over several years with a specific type of asylum support applications, namely those from immigration detainees seeking an address to use for bail applications (applications made under Section 4 (1)(c) Immigration & Asylum Act 1999). We also oppose withdrawal of legal aid for asylum support claims on the grounds that it will effectively remove the right of appeal for detainees deemed to pose a 'high risk' of harm to the public, and who rely on UKBA-provided asylum support accommodation to use as a bail address. Under the proposals for reform of legal aid, immigration detainees who rely on what is known as Section 4 support for a bail address and financial support, and who would be otherwise be destitute if released from detention on bail, would no longer under these proposals have access to legal aid to challenge decisions by the UK Border Agency to refuse support. This is likely to affect only a small number of immigration detainees, typically high risk ex-offenders (with a MAPPA rating of 2 or 3) and registered sex offenders. These are categories of bail applicant who UKBA have recently stated that they will formally issue with a refusal to support because the cost of providing suitable accommodation for such individuals would be disproportionately high, this refusal is then appealable in the Asylum Support Tribunal (UKBA Policy Instruction 'Section 4 Bail Accommodation, Version 7.00, (October 2010). Without accommodation in place Tribunals will not accept applications for bail, making it almost impossible for detainees relying on Section 4 bail accommodation to apply for release from detention, in breach of their ECHR Article 5 right to challenge their detention.

BID believes that without legal aid for legal advice and representation, detainees will generally be unable to mount such appeals themselves. While the asylum tribunal system might be accessible, the legal issues under consideration at tribunals are not. It is generally accepted that immigration and asylum law is highly complex and relies on proper understanding of legislation, case law, policy, and related human rights legislation. Furthermore, lay applicants are highly unlikely to be able to mount a defence against allegations of risk of harm to the public, and to argue a complex case relating to the assessment and management of risk of harm to the public were they to be released on immigration

bail. Applicants would be required to obtain and understand National Offender Management Service risk assessment reports (OASys reports), National Probation Service reports, and judges' sentencing remarks, and check the accuracy and adequacy of these assessments against policies currently in application.

The High Court, in its recent decision in the case of Razai and others vs. SSHD [2010] has stated that higher risk detainees can apply to have their appeal of a Section 4 bail accommodation refusal transferred to the Immigration and Asylum Chamber of the Tribunal for consideration if legal aid were not to be available in the asylum support chamber. Again, we suggest that awareness of this option, let alone the lodging of an application for transfer of an appeal, is beyond the ability of the overwhelming majority of unrepresented immigration detainees.

BID also disagrees with the removal from scope of legal aid funding for CERTAIN TYPES OF PROCEEDINGS, namely:

3d) Hearings before tribunals - comment in relation to general immigration matters before a tribunal

In the Green Paper it is proposed that legal aid for "advocacy before most tribunals is not justified given the ease of accessing a tribunal and the user friendly nature of the process" (4.153). In very broad terms it may well be appropriate to claim that tribunal processes are "user-accessible" (4.202) and "designed to be simple to navigate" (4.203). However, it is BID's view that while the processes may or may not be relatively straightforward, the legal issues and jurisprudence under consideration are not. Such a characterisation cannot automatically be extended to immigration matters under consideration in those Immigration and Asylum Chambers of the Lower Tier and Upper Tier Tribunals. Immigration cases may or may not be complex, but will almost certainly require the marshalling and presentation of facts and evidence for the benefit of the court and the presentation of legal arguments in an adversarial procedure, the more so at appeal stage.

BID therefore cannot agree with the government's assertion that it is possible for individuals to represent themselves in certain types of case or proceedings at tribunals, especially at appeal stage. We note that the government is generally represented in cases or proceedings taken against it, and suggest that an expansion of types of case or proceeding where individuals are held to be generally able to represent themselves goes against the principle of equality of arms.

Q6: We would welcome views or evidence on the potential impact of the proposed reforms to the scope of legal aid to litigants in person and the conduct of proceedings.

We make what we consider to be the relatively uncontentious claim that litigants across all areas of law, including immigration and asylum law, benefit from good quality professional legal advice and representation. Such advice enables litigants to:

- Understand their rights and responsibilities, ideally as early on as possible in a case. See for example the advantages of frontloading asylum legal advice in the Home Office Early Legal Advice Project (ELAP) for asylum applicants (Aspden, J. (2008). Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission).

- Profit from a proactive approach to their case, where evidence is gathered and engaged with, additional research is carried out where required, and evidence is presented in the best possible way to enable good decisions to be made and hence cut down on appeals and time spent in detention.
- Navigate the legal system and Home Office or other agency procedures.
- Benefit from the professional management of their expectations. A realistic picture of the chances of success in any legal case helps applicants make informed decisions and can shorten the length a case takes to come to resolution.

Immigration law is complex and unwieldy. Immigration rules and UKBA policies on the enforcement of these rules are constantly in flux. We believe it is disingenuous of the Ministry of Justice to expect individuals to be able to navigate law and policy around general immigration and deportation issues, to be able to advance legal arguments, and to progress their case in anything like a satisfactory way. Outcomes for applicants cannot help but be affected. Research carried out in 2010 by BID found that of those applicants represented at an immigration bail hearing 47% were granted bail, while only 13% of unrepresented applicants were granted bail (BID, A nice judge on a good day: immigration bail and the right to liberty).

Immigration detainees in particular (and migrants more generally) make poor litigants in person for the following reasons

- They are often extremely vulnerable
- They may be unable to speak or read English, or to do so to a high enough standard to truly understand their position and take action accordingly
- Some will have been abused or traumatised, or have mental health problems.

The argument in the Green Paper that there is a safeguard in the form of provision for an interpreter in tribunal hearings (4.203) is of no use to the unrepresented applicant who is attempting to understand her legal position in regard to her immigration case, or submit and prepare for her case prior to the hearing.

The Office of the Immigration Services Commissioner, and the Law Society's Immigration Accreditation Scheme, are both intended to regulate standards of immigration advice. Both schemes take into account the complexities of different areas of Immigration Law by restricting advisors from being able to advise unless they have passed exams that reflect knowledge in those areas of the Law. It is illogical therefore to suggest that litigants who have no knowledge or experience in these levels of legal competency should be able to represent themselves both prior to, and before a Tribunal.

The Ministry of Justice does not consider that challenging detention, or seeking a variation or extension of bail, or facing forfeiture of bail "are cases in which the individual could be expected to resolve the issue by themselves" (4.83). Nor does the Ministry of Justice consider that certain types of cases (e.g. mental health detention) are ones "where the individual could be expected to resolve the issue themselves given the involvement of the state" (4.93). The Green Paper states that "the litigant's ability to present their own case (including the likely vulnerability of the litigant, and the complexity of the law)" has been taken into account in proposing these reforms (4.29). However, it is not clear to us why, in deportation and general immigration matters, they do not appear to consider these factors relevant.

BID is also concerned that a reduction of legal aid for immigration related matters will also threaten a reduction in its pool of available volunteer barristers who provide pro-bono representation in bail cases, and therefore the overall charitable service that BID currently provides. That is because the reduction of legal aid will lead to fewer barristers working in the specialist field of Immigration and

Human Rights Law. BID strongly believes that if it is to continue to attract and retain volunteers who wish to contribute their legal skills in this field of the Law, then good legal aid provision in all areas of Immigration and Human Rights Law must be maintained and expanded upon.