MAX meeting on Immigration Bill, Wednesday 15th January 2014

BID briefing on provisions relating to residential tenancies that will affect detainees seeking release from detention on immigration bail

About BID

BID is a national charity that provides immigration detainees in removal centres and prisons with free legal advice, information, representation, and training, and engages in research and policy work including "*Fractured Childhoods: the separation of families by immigration detention*", (2013) and "*The Liberty Deficit: long-term detention and bail decision-making. A study of immigration bail hearings in the First-tier Tribunal*", (2012). BID won the JUSTICE Human Rights Award 2010. Over the last year BID has assisted 3367 people held in immigration detention. BID also works through advocacy with civil servants via Home Office and HM Courts & Tribunals Service stakeholder groups. BID runs a bi-annual survey of legal representation across the UK detention estate. The domestic and European courts have granted BID permission to intervene in a number of cases raising important issues regarding immigration detention policy and practice, including: Mustafa Abdi v United Kingdom (European Court of Human Rights, Application 2770/08)[1]; SK (Zimbabwe) v SSHD UKSC 2009/0022[2]; Walumba Lumba (Congo) and Kadian Delroy Mighty (Jamaica) [2011] UKSC 12[3], and most recently by the Court of Appeal in the case of David Francis v SSHD (2013/2215/A).

For further information about bail and residential tenancies provisions in the Immigration Bill please contact Dr Adeline Trude, 07890 037896, 0207247 3590, biduk.adeline@googlemail.com

Part 3 Access to services
Chapter 1 Residential tenancies
Clauses 15 – 17

Purpose: To save additional cost to the public purse by retaining the ability for immigration detainees seeking release on First-tier Tribunal bail to occupy accommodation subject to a residential tenancy even where, under the provisions of the Bill, they would otherwise be disqualified. If disqualified from premises under residential tenancy, several thousand immigration bail applicants each year will need to rely on Home Office bail accommodation.

Briefing

Clause 16 Persons disqualified by immigration status or with limited right to rent

The provisions in the bill at Clause 16 disqualify certain foreign nationals from occupying rental accommodation. The provisions comprehensively exclude occupation as tenants, co-tenants, and lodgers as "another adult not named in the agreement". Immigration detainees with no leave to be in the UK – but who may not be removable from the UK for a number of reasons – will be classified as being not a "relevant national" and will "not have a right to rent".

[1] The sequel to the Court of Appeal's decision in R(A) v SSHD [2007] EWCA Civ 804

[2] Where the court considered whether a breach of public law duty involves non-adherence to a published policy (and delegated legislation) requiring periodic detention reviews.

[3] Established a breach of a public law duty involving non-adherence to a published policy identifying substantive detention criteria.

Bail for immigration Detainees estimates that the majority of their detained clients have no leave to enter or remain in the UK and would fall foul of this provision. Disqualified from occupying rental accommodation they would instead need to apply to the Home Office for Section 4 (1)(c) bail accommodation in order to apply for release from detention, at a cost to the Home Office where previously there was none.

Clause 17 Persons disqualified by immigration status not to be leased premises

The majority of immigration detainees seeking release on bail, some after many months or years in detention, currently use rented accommodation with friends and family as a bail address, typically residing as a lodger on release. The Bill at 17(1) notes that "A landlord must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status"

Family and friends in rental accommodation, especially local authority or other housing where permission to take in lodgers is required, will no longer be able to offer bail accommodation to detainees who will be "disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement".

If unable to occupy rented accommodation even as a lodger paying no rent, detainees will instead have to rely on Home Office Section 4(1)(c) bail accommodation at a cost to the public purse.

11, 971 applications for release on immigration bail were made to the First-tier Tribunal in the year to March 2013[4]. 3,465 applications for Section 4 (1)(c) bail accommodation were received by the Home Office during the full year 2012[5]. A significant proportion of the 8000 or so detainees applying for release who relied on private accommodation in 2012 would, under the provisions of the Bill, instead have to rely on Home Office provision of Section 4 (1)(c) support at a cost to the public purse. This is a very large increase in demand for Section 4 (1)(c) support , and BID is not confident that the Home Office could meet this demand, set against a detention estate with a growing capacity.

Delays in provision of Section 4 (1)(c) bail support which enable release to be applied for are subject to delays of weeks or months, meaning that detainees will likely be advised in addition to seek permission from the SSHD under the provision at 16 (3), to see which route delivers a bail address first to allow an application to be lodged.

The discretion provided to the SSHD in relation to foreign nationals disqualified from occupying premises under a rental tenancy agreement, by clause 16 (3), is not a meaningful discretion since the SSHD opposes applications for release from detention on Tribunal bail. Refusals of permission are likely to attract judicial review.

Families separated by detention will now also be separated on release if the detained parent is unable to occupy rented accommodation with his or her family. The Bill fails to consider the best interests of children involved, in breach of the s55 duty of the Secretary of State[6].

[4] Home Office response to Bail for Immigration Detainees 9th October 2013, Freedom of Information Act request number 28774. Some of these requests for support were duplicate requests made when no response had been received to an application from the Home Office.
[5] HM Courts & Tribunals Service, HMCTS Presidents' Stakeholder Group, '*Bail Management Information Period April 2012 to March 2013*'.
[6] "The introduction of section 55 of the Borders, Citizenship and Immigration Act 2009 places an obligation on all public and private welfare institutions, courts of law, administrative authorities and legislative bodies to 'safeguard and promote the welfare of children who

Detained parents seeking release overwhelmingly rely on private accommodation in bail applications, specifically the family home, which Bail for Immigration Detainees report is typically rental accommodation. Where the detained parent is not a "relevant national" under this new bill, and so under these new provisions cannot reside in the rented family home, they will instead need to reside in Home Office-funded Section 4 (1)(c) bail accommodation and will automatically be separated from their family members, including children. The provisions in the bill at Clause 16 and 17 automatically preclude due consideration of the s55 duty of the SSHD to consider the best interests of children involved.

By preventing a foreign national parent without leave (not a "relevant national" in the terms of the bill) from residing in the rented family home either as co-tenant, tenant or lodger, these provisions prevent the family from re-establishing a subsisting family life.

These provisions will generate homelessness among those the Home Office chooses to release, and frustrate the purpose of immigration enforcement

Detainees released by the Home Office on Temporary Admission who would currently be able to reside in rented accommodation with family or friends will be disqualified from so doing under the provisions at Clause 16 and 17. a number of detainees each year are currently released by the Home Office on Temporary Admission to destitution where they have no available accommodation. The provisions in the Bill will create a new cohort of destitute former detainees, who because they are homeless will struggle to maintain contact with the Home Office. The provision has the potential therefore to frustrate Home Office attempts at immigration enforcement.

RECOMMENDATION

- Add in clause excluding immigration detainee applying for bail from the provisions of (16) and (17) so that while detained and seeking release the provisions do not apply to them, but they would apply once released. This kind of para could be inserted after 16 (3) which contains the discretion of the SSHD to grant permission to otherwise disqualified foreign nationals to occupy rental accommodation.

  There is currently a provision to seek Section 4 (1)(c) bail support if bailed to a private address if that arrangement later breaks down, i.e. from the community rather than detention, which would continue to offer a safeguard).

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are in the United Kingdom'". Ian McDonald QC, Introduction to Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo, (2011), *Working with refugee children: Current issues in best practice'*. Immigration Law Practitioners'' Association. http://bit.ly/1d6QPne