

## **BRIEFING: House of Commons debate, *Report of the Inquiry into the Use of Immigration Detention in the UK*, 10 September 2015.**

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### **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.

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 to the detention of vulnerable people.

BID believes that asylum seekers and migrants in the UK have a right to liberty and access to justice. They should not be subjected to immigration detention.

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### **Headline Facts**

- The use of immigration detention increased by 10% in the year to June 2015. At that time, there were 3,418 people in immigration detention.
- 216 people leaving detention in the past year had been detained for more than 12 months. Of those, just 38% were ultimately removed from the UK.
- Access to legal advice while in detention is unsatisfactory. BID's research shows that just 50% of respondents to its survey currently have a legal representative.
- Immigration detention routinely separates parents from their children. BID's research has shown that in more than 75% of these cases, parents are eventually released, their detention having served no purpose, but causing emotional distress to them and their family.

### **Key Questions**

- To what extent does the Government use community-based alternatives rather than immigration detention?
- What assessment has been made of the quality and ease of access to legal advice for immigration detainees?
- What safeguards is the Home Office considering putting in place to ensure that there is, in practice, a presumption against the use of immigration detention?
- What assessment has the Government made of the impact that the removal of section 4(1)c bail addresses will have on access to the justice system for immigration detainees?
- What steps does the Home Office take to ensure that it adheres to its Section 55 duty when making decisions to detain parents away from their children?

## Background

The joint inquiry, carried out during the last parliament by the APPG on Migration and the APPG on Refugees, concluded that the Home Office's policy that detention be used as a last resort and for the shortest possible time is "not being adhered to or having its desired effect".

While immigration detention exists, it is essential that appropriate safeguards are in place when people are deprived of their liberty for months or even years at a time.

BID welcomes the recommendation of the inquiry that a maximum period of detention of 28 days should be introduced via statute. **We are wary, however, that any time limit must not simply become the norm, detention has the potential to be harmful or unlawful from the very first day, and so the Home Office should operate in theory and in practice with a presumption against the use of detention.** We agree that any time limit should be operated alongside a new and robust system for reviewing the decision to detain early in the period of detention, via some form of automatic court hearing and a statutory presumption that detention is to be used only exceptionally and for the shortest possible time. In our evidence to the inquiry we argued that the successful introduction of a time limit on detention in the family returns process could and should now be extended beyond family cases. In family cases, the time limit is 72 hours.

Similarly, improved provision of legal advice throughout any period of detention is essential if detainees are to fully exercise their right to liberty and access mechanisms for release from detention. We are pleased the inquiry recommends that the Legal Aid Agency and Office of the Immigration Services Commissioner carry out regular audits on the quality of advice provided by contracted firms in IRCs.

## Access to Legal Advice in IRCs

Publicly funded immigration legal advice is made available to detainees held in IRCs via on-site surgeries referred to as the Detention Duty Advice scheme (DDA). The DDA scheme is funded by the Legal Aid Agency, and organised independently in each IRC by the centre management.

Since November 2010, BID has been conducting a survey on detainees' access to legal representation. According to the findings of our most recent survey, conducted in May 2015, just 50% of respondents had legal representation at the time of the survey, whether through legal aid or otherwise. **11% of those surveyed reported that they had never had legal representation while in detention.**

## Immigration bail as a safeguard against arbitrary and prolonged detention

Immigration bail should, in BID's view, be properly characterised as a mechanism for release, rather than an 'alternative to detention'. Nevertheless, it is a vital safeguard that, as long as immigration detention is utilised by the Home Office, must be protected.

The Immigration Act 2014 introduced restrictions on release on immigration bail which BID opposed. The new provisions mean that the First-tier Tribunal must dismiss an application for bail without a hearing if bail has been refused within the last 28 days and the applicant cannot demonstrate a "material change in circumstances". This applies even in cases where the First tier Tribunal has made a procedural or material error.

Research by BID has shown that this happens often enough for the provision to be unsafe. It fails to allow the First-tier Tribunal to rapidly correct its own errors by means of a new bail application heard within a few days. Detainees in this position may have been held for months or years in detention. **The senior courts have indicated that even very short periods of detention – sometimes a matter of days - may be found to be unlawful under certain circumstances.**

At the end of June 2015, there were 3,418 people in detention. Over the preceding 12 months, 32,053 people had been detained under immigration act powers for some period of time. Statistics on bail hearings are shown in the table below.

<b>Immigration bail at the First-tier Tribunal (IAC) January – December 2013<sup>1</sup></b>			
		% of total number of applications received	% of applications fully heard (i.e. not withdrawn)
Bail applications received	12, 373		
Bail applications heard	12, 248		
Grants of bail	2, 717	22.18	34.68
Refusals of bail	4, 973	40.60	63.47
Withdrawals	4, 538	37.05	

Home Office migration statistics show there is a greater reliance on bail as a means of getting released from detention by those detainees held for longer periods. In the year to 30 June 2014, 36% of people leaving detention were detained for seven days or less, and of these, 1% were bailed, compared with 60% who were removed. **But, of those people leaving detention who had been detained for 12 months or more, 30% were bailed, 24% were granted temporary admission or release, and 44% were removed.** Longer-term detainees were still less likely to be removed at the end of their detention. Of the 5 detainees who left Immigration Removal Centres in 2013 after spending 48 months or more in detention, only 20% were removed from the UK.

### Separation of Families

BID's 2013 report 'Fractured Childhoods: the separation of families by immigration detention' examined the cases of 111 parents who were separated from 200 children by immigration detention:

- 85 of these children were in foster or local authority care during their parent's detention.
- Parents were detained for an average of 270 days.
- Children described the extreme distress they experienced – they reported losing weight, having nightmares, suffering from insomnia, crying frequently and becoming deeply unhappy.
- In 92 out of 111 cases, parents were eventually released, their detention having served no purpose.

BID carried out a similar monitoring exercise in 2014/15, with a sample of 102 parents separated from 219 children. Parents were detained for an average of 228 days, and in 78 out of 102 cases, parents were eventually released on bail or temporary admission. Shockingly, 22 of the parents were removed or deported without their children.

BID believes that there are serious problems with the quality of Home Office decision-making on authorising detention. Home Office figures state that in the second quarter of 2014, the cost of detaining people who left immigration detention and were subsequently granted Leave to Enter or Leave to Remain in the UK was £207,467.40.

It is difficult to imagine any other setting in which children in the UK could be separated from their parent without proper enquiry as to the impact of that decision or the proportionality of it. As part of our research, we explored how a child's welfare was considered in the Home office's Monthly Progress Reports, bail summaries and (where available) detention reviews for a qualitative of sample of 12 families. In the majority of cases there was no recorded consideration of child welfare in any of

<sup>1</sup> Source: HM Courts & Tribunals Service, 'Bail management information period April 2012 to March 2013' & 'Bail management information period April 2013 to December 2013', produced for HMCTS Presidents' stakeholder meeting. This is the most recent full year for which data is available.

these documents. In some cases, child welfare was reviewed on the basis of inaccurate information or flawed reasoning, **and in all 12 cases these Home Office documents failed to mention significant information about child welfare which was included in the parent’s BID file.** The Home Office did not contact any of the 53 children in the small quantitative sample of 27 families to ascertain their wishes and feelings before or during their parent’s detention.

### Bail addresses

BID has submitted a response to the Government’s current consultation, “Reforming support for failed asylum seekers and other illegal migrants”. As well as raising concerns over the Government’s inappropriate use of language throughout the document, we draw particular attention to the proposed removal of Section 4(1)c of the Immigration and Asylum Act 1999.

For detainees who are unable to propose a private address to support their application for bail and who can no longer obtain a bail address via Section 4(1)c bail support, release from detention on bail would be impossible in our view. Without the grant of Section 4(1)c support from the Home Office, a detainee who must rely on a Section 4(1)c bail address will be unable to lodge their application for release on bail. In BID’s extensive experience it is normal practice for HMCTS hearing centres to refuse to list bail applications for a hearing without a bail address, save in very unique circumstances.

**53% of BID’s clients rely on a section 4(1)c bail address to support their application. Abolishing this provision would leave thousands of detainees unable to apply for bail, with the potential for their detention to become unlawful as a result.**

**Home Office Section 4(1)c bail accommodation: applications, grants by accommodation type, and refusals of support since January 2010**

	Number of APPLICATIONS RECEIVED for s4 (1)c bail accomm <sup>2</sup>	Number of grants for Initial Accommm	Number of grants for Standard Dispersal Accommm	Number of grants for Complex Bail Accommm	Total number of grants for the year
2010	3,367	1,916	66	19	2001
2011	3,138	1,568	218	55	1841
2012	3,465	1,961	382	35	2378
2013	3,841	2,081	529	14	2624
2014	3635	2233	613	14	2860

*(Source: Data obtained from the Home Office by BID through a series of FOI requests since 2011)*

### The Shaw Review

BID welcomes the Shaw Review into the detention of vulnerable people, and has submitted evidence. **However, we remain concerned that the remit of the review does not include consideration of the decision to detain.** Our casework has shown that the most urgent problem in relation to the detention of vulnerable people is the quality of Home Office decision-making on detention, and we do not believe that the Shaw Review alone can represent a satisfactory response from the Government to the joint inquiry.

**For further information** please contact John Cox, Policy and Research Manager for BID on 020 7456 9758 or at [john@biduk.org](mailto:john@biduk.org)

<sup>2</sup> Some individuals made more than one application during this period.