

November 2017

Bail for Immigration Detainees: Submission to the Home Affairs Select Committee's Inquiry on Immigration policy: principles for building consensus

1. 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. We also carry out research, policy advocacy and strategic litigation to secure change in detention policy and practice. Since 2014 we have also provided legal advice, information and representation to time-served foreign national prisoners facing deportation despite long-term residence in the UK and British partners and children, for whom there is no legal aid.
2. BID challenges the unnecessary use of immigration detention and seeks to improve access to justice for immigration detainees. We also seek an immediate end to the separation of families for immigration purposes and to the detention of vulnerable people.
3. 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.

This submission

4. We note the general questions that are posed by the Committee, but would emphasise that any debate around immigration must pay heed to enforcement issues. As we explain below, the impact of enforcement measures on British people – as well as migrants – is already extensive, and enforcement cannot be separated from the economic and social issues connected with immigration.

Background

5. During the 12 months to June 2017, 27,819 people entered detention in the UK¹. At the end of June 2017, 2994 people were being held across the Immigration Removal Centres (IRCs) in the UK. In addition, 360 people were being held under immigration powers in prisons.
6. The United Kingdom is unique among European countries in not having an upper time limit beyond which people cannot be held in immigration detention. Similarly, immigration detention is the only power of detention within the UK that exists without an upper time limit.
7. BID's policy paper *Safeguards against arbitrary and prolonged detention*² compares the lack of time limit in immigration detention with other powers of detention:

¹ <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2017/how-many-people-are-detained-or-returned>

²

<http://www.biduk.org/sites/default/files/media/docs/BID%20policy%20paper%20on%20detention%20time%20limits%20015.pdf>



TYPE OF DETENTION	MAXIMUM PERIOD	POWERS
Following arrest by the police	24 hours (extendable to 36 hours by police superintendent, to 96 hours by a magistrate)	Criminal
Immigration detention (parents with their minor children)	72 hours (extendable to 7 days with ministerial authority)	Immigration
Pre-charge (arrested under the Terrorism Act)	14 days (in stages)	Terrorism
Post-charge custody time limit (remand)	56 – 182 days	Criminal
Immigration detention (adults)	None	Immigration

8. During the year ending June 2017, 27,862 people left detention. Of these, 64% had been in detention for less than 29 days, 17% for between 29 days and 2 months, and 11% for between 2 and 4 months. Of the 1,943 (7%) remaining, 172 had been in detention for between 1 and 2 years, and 28 for 2 years or longer. Of the 46 children leaving detention, 38 had been detained for seven days or less, three for between 8 and 14 days, three for between 15 and 28 days and two for between 29 days and 2 months.

9. In the same period, over a third (35%) of people leaving detention had been detained for 7 days or less (9,717). Of these, 56% (5,401) were returned; 42% (4,100) were granted temporary admission or release (TA/TR); and the remainder were either bailed (52), granted leave to enter (LTE) or leave to remain (LTR) (38), or released for other reasons (126). Of the 200 people detained for 12 months or more, 33% were bailed, 32% were returned, and 32% were granted TA/TR.

10. As at 30 June 2017, the longest length of time a person had been currently detained for was 1,514 days.

11. These timeframes refer only to the most recent period of detention. Many people subject to immigration control will experience multiple periods of detention, and the government does not track cumulative time in detention.

12. There is no automatic bail hearing for detainees, no automatic legal representation, and no time limit. That means that people can be, and are, detained for months or even years and some are re-detained after being released. In the last year, 52% of people in detention were released back into the community, their detention having served no purpose.

13. BID's experience is that the vast majority of long-term detentions serve no purpose, but cause immeasurable hardship and suffering to the detainee and their family.

14. **BID believes that immigration detention exists solely as an administrative convenience, and thus campaigns for its end. People facing removal can be monitored and managed within the community with the same success as they would have been within an IRC, and**



often at far less cost. We welcomed, as a first step towards this, the recommendation of the 2015 APPG Inquiry – endorsed by the House of Commons – that a maximum period of detention of 28 days should be introduced via statute. We were disappointed that Parliament rejected amendments to this effect during the passage of the Immigration Act 2016.

Access to Justice

15. It is the Home Office’s current stated policy that immigration detention be used as a last resort and for the shortest possible time. As was observed by the joint inquiry into immigration detention, this policy is “not being adhered to, or having its desired effect.” Similarly, the Shaw Review into the detention of vulnerable people raised concerns that some categories of people continue to be detained unnecessarily.
- 16. BID believes that, for any inquiry that seeks to look at the immigration debate in a holistic manner, it is necessary to address enforcement issues – and particularly the use of immigration detention, existing alternatives, limits and restrictions.**
17. The Secretary of State’s power to detain a person for immigration purposes is limited by existing laws. A person may only be legally detained to allow investigation as to whether that person should be permitted to enter the UK, or for the purpose of removing or deporting the person from the UK – and then only for a “reasonable time”.
18. BID’s experience in its 18 years of existence is that these restrictions are regularly flouted. People who cannot possibly face imminent removal are detained. People without travel documents are detained. People are detained for months and years at a time. A recent Italian national client of BID’s was co-operating with efforts to return him to Italy, but had lost his Italian ID card. He was detained for 8 months because the Home Office had failed to arrange for him to be interviewed by the Italian authorities so they could issue a replacement for him.
19. It is our observation that a key challenge to access for justice for those faced with immigration detention is the approach of the Home Office and the Immigration Tribunal. While in principle, it is for the government to demonstrate why a person needs to be detained, in practice the burden of proof is unfailingly on the detainee to demonstrate why they should be released.
20. From an evidential standpoint, this creates significant problems. BID routinely acts in cases where a person has been detained (or re-detained) while in the process of complying with their reporting conditions. Almost without fail, at the subsequent bail hearing, the Home Office will argue that our client has a high risk of absconding if they do not remain in detention. Indeed, our 2012 research, *The Liberty Deficit*³, observed that, in a sample of 80

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<http://www.biduk.org/sites/default/files/media/docs/BID%20report%20The%20Liberty%20Deficit%20December%202012.pdf>



bail hearings, the Home Office cited risk of absconding as a reason for maintaining detention in 82% of cases. This despite their own study that demonstrated compliance rates for reporting conditions including electronic monitoring – an option readily available – are at or above 90%, even for those regarded as ‘high-risk’. In other words, while the Home Office claims that 8 out of 10 people subject to immigration control will abscond if they are not detained, their own evidence shows the number is closer to 1 in 10.

21. Twice each year, BID carries out a survey among people held in immigration detention, seeking information on the availability of legal advice and assistance. Over the course of twelve surveys, dating back to 2010, an average of 18% - about 1 detainee in 5 – of respondents have reported that they have **never** had legal representation while in detention⁴. Barely half of detainees have a lawyer at any given time. This lack of legal assistance, combined with a Home Office willing to present generic ‘evidence’ that has little basis in reality, has created a gaping justice gap at heart of the immigration enforcement project. Given this flawed interaction, no wonder then, that the success rates for bail hearings are routinely so low:

Immigration bail at the First-tier Tribunal (IAC) January – December 2013 ⁵			
		% 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	

22. It is also worth considering the issue of deportation appeals. Successive governments have systematically dismantled the possibility for foreign national former offenders faced with deportation to make their case to stay in the UK. Legal aid was removed with the enactment of LASPO in 2013, and, until this was successfully challenged in the Supreme Court (*Kiarie & Byndloss*, BID intervening), the Immigration Act 2016 permitted the Home Office to ‘certify’ a decision to deport an individual, meaning that they would be deported before their appeal was heard, only having the right to an out-of-country appeal.
23. Out-of-country appeals present a fundamental hurdle when it comes to accessing justice, but are also a damaging blot on any UK aspiration of protecting human rights. BID represents 120 clients each year who are challenging their deportation on Article 8 grounds

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http://www.biduk.org/sites/default/files/media/docs/BID%20legal%20advice%20surveys%201%20to%2010%20summary_0.pdf

⁵ 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.



– many of them are asserting that, by being removed from the UK, their right to a private and family life, established in the UK, will be breached.

24. It is important to remember that for most people, removal or deportation is not something that only affects the individual facing deportation. Many people who BID encounters have no family, friends or connections in their ‘home’ country. Their life is in the UK, yet the UK is not interested in giving them a fair chance in making their case. BID’s 2015 research, *Rough Justice*, looked at the impact of the 2013 legal aid cuts on families separated by detention and facing deportation. In that study, we investigated the cases of 102 parents subject to deportation action and for whom there was a real possibility they would be deported away from their families in the UK. Of the 219 children who were put through the trauma of seeing a parent detained, of prolonged separation, and the agony of potentially having their loved one sent away permanently, more than 80% were British citizens, and 93% were born here in the UK.

We address the specific questions of the inquiry below:

- 25. What approaches the Government might adopt to build consensus on how future immigration to the UK might be dealt with:**

Immigration is a topic which divides people in the UK. If the UK genuinely wishes to welcome immigrants to this country to contribute to its economy, then it will have to start changing the way in which immigrants and immigration are spoken about in public discourse. It should also publish the significant number of studies undertaken that demonstrate that immigration has been a force for good and that immigrants contribute more financially to the UK economy than they take out. We address the issue of EEA nationals in our separate submission.

- 26. What key principles would an immigration policy need to satisfy in order to achieve consensus?** Whether a future immigration regime in the UK is open and progressive and welcoming – as BID believes it should be – or restrictive and hostile, a fundamental principle should be fairness and compassion. The current regime routinely inflicts mental suffering, distress and hardship not just upon those it seeks to remove from the UK, but on British citizens – husbands, wives, sons and daughters. It denies even the smallest expectation of fair access to justice, and no conversation about immigration can be complete without acknowledgment that enforcement must be addressed.

