**March 2018**

**Bail for Immigration Detainees: Follow-up for Home Affairs Committee regarding immigration detention**

**Evidence given which requires further exploration**

* **Hunger strike:** The information given related to food and fluid refusal but the vast majority of those on hunger strike were taking fluids but not food. Questions should be asked about the numbers refusing food even though the hunger strike is now over as the impression given was that the women were not on hunger strike even though we know they were.
* **Rule 35 reports**: Questions must be asked about not just the time taken to get an appointment for a Rule 35 report, but the time taken to prepare it and the time taken for the Home Office to respond to it. Questions should also be asked of the Home Office as to why they refuse to release in 85% of cases.
* **Drugs**: Evidence already provided by BID shows that information we have been given that all mail is screened contradicts the evidence given at committee stating that no mail was screened.
* **Mental health**: The Serco CEO cited the fact that 14 women had been sectioned as evidence that mental health provision had improved. We find this fact shocking in that it is only when a mental health condition becomes unmanageable that a person is sectioned. We find this unacceptable and an indication of the damaging impact of detention on mental health.
* **Staff misconduct**: We know from detainees that there is a fear of complaining and that misconduct is far more widespread than the figures given would indicate. It should not require undercover filming to expose it. Questions should be asked about existing complaints mechanisms and how many related to staff conduct, even though this is likely to be significantly under-reported.
* **Time**-**served foreign national former offenders**: In response to the question from Sarah Jones on conditions in prisons for those held under immigration powers, Phil Wragg said that he thought they were “broadly the same as what they would have if they were in Morton Hall”. This is incorrect. BID has produced a briefing on the use of prisons for immigration detention (<https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/157/Denial_of_Justice.pdf>) and the 407 people currently held in prisons under immigration powers are held as serving prisoners. They have no special entitlements, are denied access to phones, have no legal advice through which they can challenge any deportation orders or notices of intention to deport and, in many cases, are subjected to 23 hour lockdowns because of the conditions in the particular prison. In addition, the Rule 35 process or adults at risk policy is not followed in prison. They even have to pay more for their medical records than they would do if they were in an IRC (£50 as compared to £10). We have repeatedly written to the Home Office about these matters and we are awaiting a further response from them.

**Other concerns**

**Decisions to detain:** Detention should only be used as a last resort and alternatives to detention already exist, most appropriately in the form of regular reporting conditions. The Home Office should be asked about the process of deciding that detention is necessary and the process of exploring all possible alternatives before making the decision to detain. Our experience is that this is merely a tick-box exercise and that detention is used because it is convenient. More than half of all those detained are released, many of them going on to be granted leave. It is a scandalous abuse of people’s rights and merits further scrutiny. From the Home Office Annual Report 2016/17: Payments totalling £40.3 million were made by the Home Office in relation to 6,011 legal claims. These include 4,173 adverse legal cost payments totalling £33.4 million; 195 ex-gratia cases totalling £1.1 million; 1,598 compensation payments totalling £3.3 million**; 32 cases of unlawful detention totalling £1.8 million** and 13 cases of tribunal costs totalling £700,000. The annual cost of detention is £118m.[[1]](#footnote-1)

Given that our legal survey demonstrates that just a quarter of detainees questioned have legally-aided legal representation, it is only a small minority of detainees who are fortunate enough to have support to bring legal actions against the Home Office for unlawful detention.

**Access to legal advice and representation:** There is no automatic legal representation as there is in the criminal justice system. Detainees must pass a means and merits test to be granted legal aid to challenge the matter of their detention, or to get legal aid for their substantive case.

Our legal survey, undertaken every six months for the past seven years, demonstrates that just a quarter of detainees questioned have legally-aided legal representation, and it is only a small minority of detainees who are fortunate enough to have support to bring legal actions against the Home Office for unlawful detention.

**Automatic bail hearings**

The automatic bail hearing provisions, implemented on 15 January 2018, require that a bail case be referred to the Tribunal when an individual has been detained for four months.[[2]](#footnote-2) Although only recently implemented, BID is concerned about the emerging operation of the automatic bail hearing provisions**.** BID has clients who have been notified that they have a bail hearing listed only the day prior, or a couple of days prior, to the hearing. Many of these detainees’ applications have been either withdrawn or have failed because the Tribunal has found that the detainee failed to provide grounds for bail, financial condition supporters, recognisance or a bail address. The onus has therefore been inappropriately placed on the detainee to argue that they should be released, rather than on the Home Office to justify the detainee’s ongoing detention (well beyond a reasonable period). Rather than providing an opportunity for a meaningful review of the decision to continue detention, the automatic bail hearing process appears to be working to simply legitimise continued detention.

**New accommodation provisions for detainees released from detention**

On 15 January 2018, schedule 10 of the Immigration Act 2016 and the repeal of section 4(1) of the Immigration and Asylum Act 1999 (“s4(1)”) were effected. Pursuant to these changes, immigration detainees can no longer apply for s4(1) accommodation if they have nowhere to live when released from detention. Accommodation will only be provided by the SSHD if a detainee meets extremely narrow exceptional circumstances criteria (referred to as “exceptional circumstances accommodation”). The Home Office has confirmed that there is no application process for detainees to apply for exceptional circumstances accommodation. There are also no appeal rights for a decision made to refuse exceptional circumstances accommodation. These changes have had a significant impact on our clients as the vast majority are no longer able to apply for accommodation support from the Home Office. At present, we have many clients who are being indefinitely detained for no other reason than their lack of suitable accommodation. This essentially converts immigration removal centres into holding facilities for homeless immigration detainees (many of whom have been rendered homeless through the detention system itself).

BID has other clients who have been released by the Home Office on SSHD bail to the streets into the destitution, as the provisions and guidance appear to allow for this. We consider this to be a violation of Article 3 of the ECHR, as was found in the case of Limbuela.[[3]](#footnote-3) If an individual released to the streets is ineligible for public funds, as will most likely be the case, they will have very few options but to rely on charity organisations or be forced into destitution. This is of particular concern in circumstances where bail conditions bar the individual from working.

Section 4(1) support should be immediately restored.

**Case example**

*One of our clients has a bail hearing today, and his case illustrates many of the concerns we have about immigration detention.*

*David was born in St Vincent and the Grenadines in 1974, and was enlisted in Her Majesty’s Armed Forces on 16th of March 2001. He served in Bosnia and Kosovo, and later two tours in Iraq. He was discharged on medical grounds in 2012, having experienced severely traumatic episodes in Iraq, which later developed into Post-Traumatic Stress Disorder.*

*David is a former foreign national offender, and after serving a 4 year prison sentence, he was detained in Brook House IRC on 23rd of September 2016. He has submitted two separate rule 35 reports, and has been accepted by the Home Office to be an adult at risk. These reports did not lead to his release, nor did three detailed psychiatric reports. Today (18 months after his detention began), the a G4S medical practitioner has made a statement that David is not fit for detention, as his symptoms and diagnosis mean that he needs specialist help from PTSD clinics which are not available in detention.*

*David has another bail hearing today. He has been granted bail in principle on two previous occasions; however, his inability to gain access to Home Office accommodation is keeping him in detention. Probation have advised us that he’s not high risk enough to require an approved premises address, and that he would need to apply for a section 4 address. He first applied almost 12 months ago, and no address has been provided. Section 4 accommodation has now been repealed with Schedule 10 of the Immigration Act 2016 coming into force on January 15th 2018. If he were deemed to be a risk to the public, he would require an approved premises address and would likely have been released by now.*

1. Home Office Annual Report 2016-17 https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/627853/ho\_annual\_report\_and\_accounts\_2016\_2017.pdf [↑](#footnote-ref-1)
2. para 11, schedule 10, Immigration Act 2016 [↑](#footnote-ref-2)
3. R (Limbuela) v Secretary of State [2005] UKHL 66 [↑](#footnote-ref-3)