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Maintaining contact:

What happens after detained asylum seekers get bail?

Irene Bruegel
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With a foreword by Stephen Castles
Director Refugee Studies Centre
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Faculty of Humanities and Social Science
South Bank University
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PREFACE

This report is the latest in a series of research papers from the Faculty of Humanities and Social Sciences, South Bank University. The aim of the series is to publish working papers and the findings of research projects which would otherwise not be readily available in their entirety to the scholarly community and other interested parties.

Jane Franklin
Report Editor
June 2002

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FOREWORD

Detention of asylum seekers is a matter of serious concern in a democratic country, because it violates the principle that people should only be imprisoned if they have committed an offence. Seeking asylum in the United Kingdom is not a crime, even if use of false papers is sometimes the only way of getting into the country to make a claim. Detention of asylum seekers is also to be rejected on the grounds that such unpleasant initial experiences can have negative effects on future integration for those who do obtain leave to remain. Finally, detention is to be rejected on humanitarian grounds: people who have fled their countries due to persecution, violence and torture (often by their own government) may suffer severe trauma from being imprisoned in a country where they hoped for safety. For all these reasons, detention should only be used in exceptional cases, and where there is overwhelming justification.

The Home Office defends the use of detention mainly on the grounds that it prevents asylum seekers from absconding and disappearing into the community. It is hard to know whether this fear is justified, because relatively little research has been on the topic to date. The importance of this study by Irene Bruegel and Eva Natamba is that it seeks to assess whether detention is really necessary. Using case-files provided by the charity Bail for Immigration Detainees (BID), the researchers examined the extent to which asylum-seekers who received bail – despite opposition by the Home Office – actually complied with the bail conditions.

The study paints a disturbing picture of increasing use of detention without trial. Bruegel and Natamba find that whether someone is locked up or not may be quite arbitrary, depending on the availability of accommodation on that day. As detention facilities have grown, more and more people have been locked up – which seems to be a classical self-fulfilling prophecy. They also find that at most 8-9 per cent of asylum seekers who got bail subsequently attempted to evade the asylum system. In other words, over 90 per cent of detainees were imprisoned unnecessarily. If this finding is typical, then detention of asylum-seekers involves a vast waste of public money. More serious, it involves a severe and unjustifiable restriction of human rights, which should not be tolerated in the United Kingdom. This is an important study, which urgently needs to be replicated on a larger scale.

Stephen Castles
Director
Refugee Studies Centre
University of Oxford

SUMMARY

Government policy is to increase the proportion of asylum seekers who are detained in secure accommodation. There is, however, no strong evidence that such detention is necessary to assuring compliance with asylum procedures.

Using the records of Bail for Immigration Detainees (BID) this study traces ninety-eight asylum detainees who were bailed between July 2000 and October 2001 through to the winter of 2001/2002.

These asylum seekers had been in detention for an average of 16 weeks, about 2 weeks longer than the average for all UK asylum detainees. The Immigration Service would therefore appear to view these detainees as at above-average risk of absconding. Nevertheless over 90 per cent were found to have kept to their bail conditions; of these 7 per cent were granted leave to remain or full refugee status by the time they were traced in this study.

Many had been detained from the date of arrival and only 15 per cent were bailed while awaiting removal. Fully 80 per cent of the latter group complied with the set bail requirements and, where not granted leave to remain, were successfully removed.

In 2001 Home Office data showed that of all refused asylum, those from Poland, Nigeria and Zimbabwe, are most likely to be detained. Relative to the numbers detained, the BID caseload of bailees contains a disproportionate number from Zimbabwe and from the Middle East, suggesting that legal representatives were least able to take up bail applications for detained clients from these regions.

The research uncovered inconsistencies in decisions to detain and to oppose bail and some breaches of Immigration Service rules. There were some worrying instances of bail being opposed for those with acknowledged mental health problems, suggesting a need to enforce regulations to take account of mental, as well as physical, health.

Detainees represented by BID were not always required to find sureties; where they were the median amount required in total was £250. Higher sums were associated with those whose appeals had been turned down, but there is no evidence that high sureties are required to assure compliance.

The research found detention to be poorly targeted and highly inefficient. For every absconder, nine people were detained. Taking Haslar 'Removal Centre' weekly costs as the benchmark, suggests that the Home Office spend £430,000 in 2000/2001 detaining seventy-three people who, on the evidence, would have complied anyway. At the costs of a week in Oakington Detention centre, the figure was £1.9 million. Grossing this up to all those detained at one point in time in 2001 – most of whom were considered to be at less risk of absconding than the BID caseload – between £500,000 and £2.2 million was wasted on unnecessary detentions each week.

These results suggest that under the new regime heralded by the White Paper 'Secure Borders, Safe Havens', with stricter reporting regimes, induction and accommodation centres, and smart cards, there should be no need to forcibly detain anyone, save for some whose documentation for removal is absolutely complete and where there is objective evidence of an intention to abscond, and then only for a restricted period of not more than a week.

The evidence of this research is that those willing to comply with the asylum system can be identified through independent review of administrative decisions on detention. Given this, there is every reason to proceed to the automatic bail hearings for those detained anticipated, but never implemented, in Part III of the 1999 Immigration and Asylum Act. There is also a strong case for providing an independent appeal against an order to reside in a given accommodation centre for those directed to such a centre.

MAINTAINING CONTACT:
WHAT HAPPENS AFTER DETAINED ASYLUM SEEKERS GET BAIL?

Introduction

The White Paper 'Secure Borders, Safe Haven'[1] published in February 2002 seeks to ensure that anyone claiming asylum remains in close contact with the Immigration Service through the whole asylum seeking process. New technologies are being harnessed to help sustain contact and new systems of reporting are being developed. People are no longer to be detained in conventional prisons. But far from reducing the numbers housed under surveillance, the White Paper seeks to institute a 'seamless' progression from one kind of secure accommodation to another for a good proportion of asylum seekers of all ages, including children.

This is the latest stage of British asylum policy which has seen an exponential rise in the numbers detained under Immigration Act powers since the late 1990's. In 1998 according to Home Office figures 741 asylum seekers were detained at any one point in time; by 2001 the number had risen to 1,515 and is due to double again. When all the new secure removal centres come into full operation, some 4,000[2] will be detained at any one point in time. The proportion of asylum seekers detained, on any given day, will therefore rise from just over 1 per cent in 1998 to around 4.5 per cent in 2002/3[3], even though detention of asylum seekers in Britain is already above the European average[4]. A further 3,000 will be required to live in designated accommodation centres pending the determination of their appeal.

Detention remains, in principal, a last resort, certainly where cases are not deemed 'manifestly unfounded' or 'straightforward'[5]. The rise in the proportion being detained, outside of Oakington Detention centre, is not, however, related to any known increase in the numbers likely to abscond[6]. The Home Office, officially, simply does not know. While the White Paper talks of 'the recurrent problem of not being able to locate a failed asylum seeker' (4.64) and 'a high level of absconding on receipt of the determination', David Blunkett recognises that 'People who apply for asylum want permanent status in this country. That is why they do not come here and disappear illegally'[7]. Such as they are, Home Office statistics put absconding at less than 4 per cent of all asylum refusals[8]. Moreover, despite a commitment to evidence-based policy[9], the Home Office has not undertaken, or commissioned, any research on whether detention is the most effective means of preventing asylum seekers from 'going underground'. Apart from anything else, detention is clearly a hugely expensive way of addressing the issue.

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[1] Secure Borders, Safe Haven Cm 5387 HMSO Feb 2002, See also Nationality, Immigration and Asylum Bill April 2002

[2] David Blunkett Hansard;HoC 7.2.02 col 1028

[3] This is based on numbers of outstanding applications at the end of the year, rather than the number of applicants in that year; the latest figures available are for the year 2001. Asylum Statistics Fourth Quarter 2001: Home Office 2002

[4] Simon Hughes Hansard HoC 7.2.02 col 1031

[5] Criteria for detention in Oakington were initially as 'manifestly unfounded' and lat er as straightforward.

[6] and only a small proportion could be justified by a rise in the rate of removal - an increase of 270 removals in 2001 over 2000. Renaming Detention Centres 'removal' centres as in the Home Office Statistics for the fourth quarter of 2001 should not affect the use of detention as a last resort, and the need for a 'reasonable belief' that they would abscond. White Paper 4.77

[7] HoC Debates 29 Oct 2001:col 641

[8] Asylum Statistics 4th Quarter 2001

[9] Home Office 'Bridging the Information Gap' May 2001

In the light of this, and of the widespread perception that the UK is "awash" with foreigners who have absconded[10], the case for undertaking longitudinal research on detainees who succeed in getting bail is evident. Bail for Immigration Detainees kindly allowed to us to analyse its caseload of detainees who were bailed in the year 2000-2001 to ascertain the rates at which this 'at risk' group complied with their terms of bail.

These were people who had been detained for weeks, if not months - many from arrival – precisely because they were judged likely to abscond. They had all been refused temporary admission, or been detained following a period of admission, and many had had repeated requests for bail refused. From this we can infer that the Immigration Service views them as at particularly high risk of absconding. The majority of this group were far from the end of the road. Though a couple had already been removed to their country of origin - only to be refused entry and returned to the UK asylum system - only 15 per cent were close to being removed at the time of the successful bail hearing and 5 per cent were still awaiting an initial decision on their asylum application. As a group their detention was clearly not part of a coherent 'removals strategy.'[11]

We followed the progress of nearly 100 detainees from the point of getting bail to the present, when some had got full refugee status, others exceptional leave to remain; some had been removed, while others had left the UK of their own accord. A few – less than 10 per cent - proved untraceable and we checked at their port of entry whether or not they were classed as 'unrecovered absconders'.

Some 3.6 per cent of all outstanding asylum applicants could be identified as absconders from Home Office published statistics for 1998. This is a little lower than the rate derived from port statistics by Cambridge University (Weber and Gelsthorpe 2000) for most of the ports covered in their research, but not dramatically so. This rate varied from around 3 per cent for Heathrow Terminal 1 to 12 per cent for Manchester Terminal 1 in the late 1990s[12]. The data are not strictly comparable and subject to a degree of uncertainty, nevertheless, it is worth noting that they show no relationship at all between the proportion of asylum seekers detained for over 5 days and the proportion who were subsequently believed to have absconded. The two Manchester Airport terminals had very similar rates of detention, but differed by a factor of 6 in the degree of absconding recorded - between 2 and 12 per cent. Absconding rates for those arriving at Stansted, Waterloo and Heathrow Terminal 4 were very similar, while detention rates ranged from 2 per cent to 18 per cent. The rate of escape from Oakington Detention centre is said to be lower still (0.28 per cent over the short period of detention in Oakington[13]) but shows that most people – even those deemed to have 'manifestly unfounded' cases – have sufficient faith in the procedures to deem it worthwhile to remain visible.

After describing the procedures through which BID becomes involved in detainees' applications for bail - and hence how the asylum seekers we tracked in this research came into the frame - and the ways in which we traced them, we look at the demographic profile of this group of asylum seekers. This is followed by an analysis of the reasons given by the Home Office for the initial detention and the subsequent opposition to bail. We look in particular at those cases where an asylum seeker was

[10] Letwin Hansard 29.10.2001 referred to 'tens of thousands of asylum seekers who have simply disappeared'; Daily Mirror 17.12.2000 referred to 2.5 million refugees as illegally in the country.

[11] The White Paper (2002:4.75) identifies detention as continuing to have a 'key role' in supporting a removals strategy. Most of our respondents were, however, not part of any such strategy

[12] Their report notes that 'absconding figures are very crude, as they fail to take into account the differi ng time periods spent on temporary admissions when the reports were produced (ranging from March 99 for Stansted to December 1999 for Waterloo), the differing proportions are applicants "available" to abscond (due to differing detention rates), and possible differences between ports in the identification and recording of "absconders".

[13] Hansard 24.10.2001:col95 WH

detained, sometimes in prison, and yet was subsequently granted full refugee status. We also look at how the level of surety demanded relates to subsequent compliance with reporting and other requirements.

The conclusion draws out the implications of our research findings for the proposals contained in the Nationality, Immigration and Asylum Bill 2002.

Bail for Immigration Detainees (BID)

BID is a small charity specialising in providing a bail service for people detained by the Immigration Service. It is a last resort for detainees who have, for one reason or other, had difficulty getting a legal representative to make a bail application. This can be simply because the workload of the legal representative would delay a possible bail hearing, but it may also be that a legal practices outside London, in particular, lack experience with such applications. Other legal practices may be constrained by the terms of their contract with the Legal Services Commission and the requirements of the 'merits' test.

Some detainees are referred to BID by visitors to detention centres or by those approaching the Bail Circle[14] for help in finding suitable sureties. Since BID does not deal with substantive applications for refugee status, all the detainees represented by BID also had a legal representative. Detainees who have no legal representative, either because they are short-term immigrants rather than asylum seekers, or because no legal representative is willing to take the case, would therefore not be included in our research.

The 100 cases we traced were all those whose cases came to the London Office of BID in the period between June 2000 and July 2001 for which BID represented the detainee at a successful bail hearing sometime before October 2001. Not all the100 were living freely in the UK at the time they were traced. In some cases asylum seekers had been re-detained at the Police Station as they were fulfilling the conditions set for their bail, or at the subsequent substantive asylum hearing. Others had been removed before being traced.

Since BID does not deal with substantive asylum applications, tracing took place largely through the legal representative acting in their asylum case. The legal representatives were asked about the asylum seekers current refugee status and whether they had maintained the conditions laid down for their bail. This was essentially a check as to whether or not an 'unrecovered absconder' certificate had been issued. In most of the cases we eventually deemed untraceable, no such certificate was filed with BID.

In most cases legal representatives were extremely helpful, but we had a group of bailees who had moved between a number of legal representatives who proved difficult to follow up, and some legal practices were too busy to be able to help us. Where possible we followed up the sureties, or the address the bailees was detained to, to ascertain their current whereabouts. We also requested information from their port of entry. Though this is a highly sensitive area of inquiry, the information we were given is likely to be accurate in that legal representatives and sureties readily expressed their dismay and anger at those people they thought had absconded. Given this, we would

[14] An organisation run by the Churches Commission for Racial Justice which maintains a register of potential sureties. They currently have 175 individuals willing to offer themselves as sureties to detainees. A common obstacle to making a bail application is the lack of sureties.

argue that our list of possible absconders is unlikely to underestimate the scale of the problem.

Who was bailed by BID in 2000-2001?

The detainees in this study were being detained purely on the supposed risk of their absconding. Four out of five were neither in the initial stages of an asylum application, nor awaiting removal. Even those 'awaiting removal' were not being detained at the point of removal, but were long-term detainees who had been refused temporary admission because they were deemed to be likely to abscond. Only one in twenty had not had their initial asylum request determined at the point of getting bail, but none of this group was being detained at port solely for immigration officials to satisfy themselves as to their identity. In that sense all the ninety-eight cases reviewed were detained because of a perceived risk of them absconding. Their profile is then very different from those recorded by the Home Office as detained at the end of 1998, of whom 17 per cent were currently detained at port, awaiting an initial decision. Many of the differences between the two groups shown in Table 1 reflect the speeding up of procedures since then, but they also serve to show how central the risk of absconding was to the detention of those subsequently bailed as clients of BID.

As Angela Eagle MP, Under Secretary of State at the Home Office reiterated on 28.10.2001 in response to a parliamentary question

> "Detention must be justified as necessary in every case on the basis of an assessment of the individual's circumstances. There is a presumption in favour of granting temporary admission or release. Written reasons for detention must be given in every case and detained persons are regularly kept informed of the progress of their case.
> Detention takes place under the following criteria:
> — to establish nationality/identity and basis for seeking leave;
> — where there is a fear of the applicant absconding;
> — to effect removal."

Table 1: Asylum position of those in detention

	Home Office 30.12.98 %	BID clients at Bail[15] %
awaiting initial decision	57	5
awaiting appeal	24	70
awaiting further judicial decision	16	10
awaiting deportation	4	15
	100	100

Not only was the risk of absconding central to the detention of the asylum seekers covered by this research, they are also a group who were seen to be particularly likely to

[15] based on an effective population of 63. Immigration status at the bail hearing was not recorded in 23 cases. Because the BID files are not totally comprehensive, there are a number of missing cases for each of the characteristics analysed in this paper. The number of cases on which the profile of successful bailees is given in a footnote to each table.

abscond. This is evident in the length of time that they were detained prior to their successful bail application. Table 2 (below) shows that half had been detained for over 100 days at the point they got bail, while only a quarter of all asylum seekers held in detention at 30.6.01 had been in detention for over 100 days[16]. The Home Office figures in column 1 of Table 2a are those given in a parliamentary question by Angela Eagle on 25.10.01 and exclude those in Oakington detention centre and in Police cells. Those given in column 1 of Table 2b come from the Home Office Quarterly Asylum Statistics for Autumn 2001.

The recently published data suggest, however, that BID cases are less likely to have been detained for over 1 year, than all those in detention as at 29.12.01. It may be that many of those detained for over a year do not have a legal representative instructed in their case. The detainees covered by the research were detained in a wide range of centres, reflecting the prevailing policy: these included HMP Wandsworth, HMP Bullington, HMP Liverpool, HMP Belmarsh , HMP Cookham and HMP Lindholme (a prison with a dedicated wing for immigration detainees, now designated as a Removal Centre), though the majority were in HMP Rochester, in a similarly dedicated wing (20 per cent), Tinsley House (30 per cent) or Campsfield (26 per cent)[17].

Table 2: Length of Detention of different groups of detainees

a. categories in PQ	2001	2000-1
	All detainees outside Oakington *	Bid detainees[18]
less than 25 days/1 month	43.9	3
25-50 days/ 1-2 months	13.9	18
51-100 days	18.2	38
over 100 days	24	41
*PQ 25.10.01	100	100
b. categories (HO QS)	All detainees outside Oakington~	Bid detainees[6]
Less than 1 month	37.6	3.0
1 to 2 months	17.3	18.2
3 to 4 months	17.3	37.9
4 to 6 months	11.4	21.2
6 to 12 months	11.0	16.7
over 12 months	5.5	3.0
~Home Office Asylum Statistics 3.2002	100	100

[16] These figures are not strictly comparable. BID data refers to the length of completed detention, while Home Office data covers uncompleted periods of detention. The completed lengths will be longer on average, but not as long as those for BID bailees. The difference depends on the rate of throughput or turnover of people in detention, a figure that is only available for Oakington.

[17] The national pattern has changed in the period so that 17% of all detainees were in Yarls Wood and 16% in Harmondsworth by December 2001 and many fewer in prisons, in line with policy. The BID figures are of an effective population of 80

[18] Based on an effective population of 65

The BID clients came from many different countries[19], but their national profile was radically different from detainees as a whole (Table 3) and quite distinct from that of those refused asylum. Compared to detainees as a whole they were more likely to have come from Africa, particularly from Zimbabwe (16 per cent) or the Middle East (including Turkish Kurds). This could be for a variety of reasons that we cannot fully distinguish with the data available. It could be that these groups were detained for the longest time, and were hence more likely to be part of the 'core' represented by BID, or it could reflect greater familiarity of legal representatives with cases from some countries rather than others.

Table 3 Countries of Origin BID group compared to all those detained (% from each area)

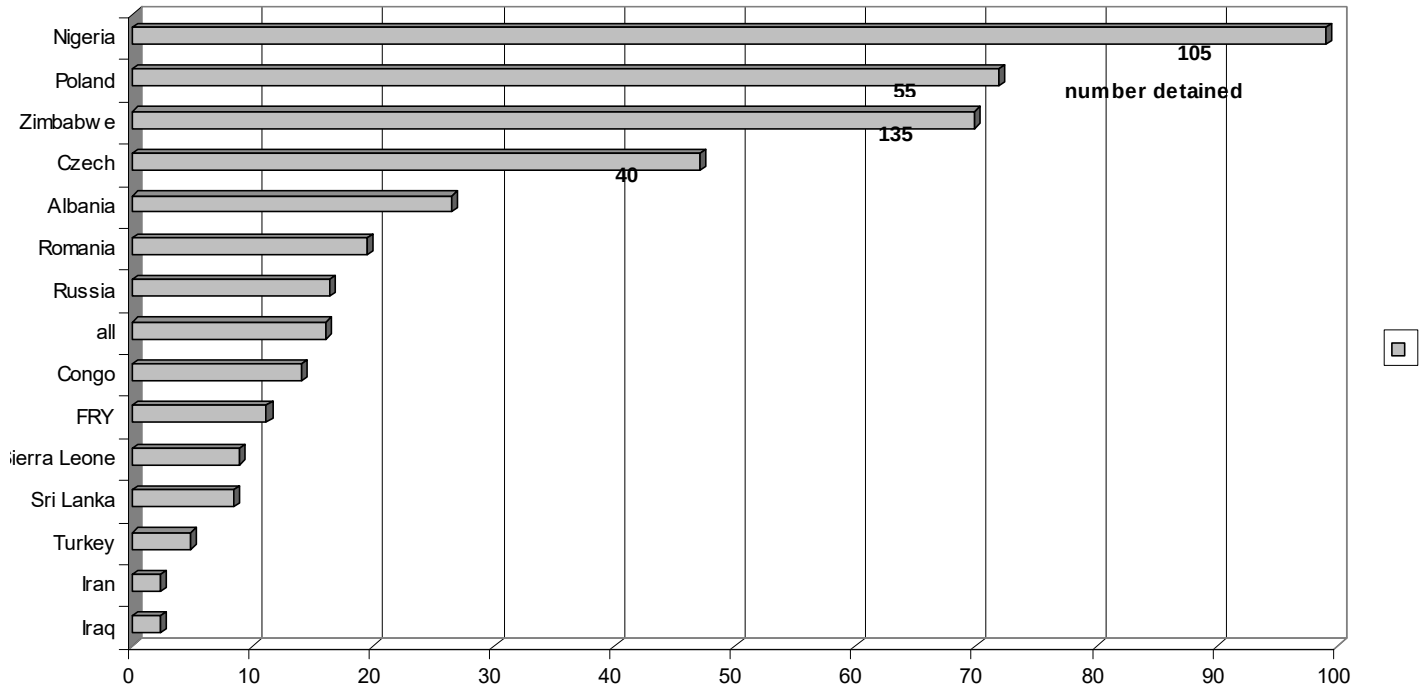
	Asylum detainees*	BID bailees[20]
Europe	24	21
Africa	34.4	56
Asia	16.6	13
Middle East	4.6	8
Other	3.5	2

*source Home Office Statistics March 2002

The national profile of detainees is anyway very different from that of asylum refusals. In Figure 1 countries are ranked according to the numbers detained in December 2001 relative to every 1000 refused asylum in the year as a whole. On average across all countries, sixteen asylum seekers were detained on a given day in December for every 1000 nationals refused asylum. This ratio varies greatly by country. Countries like Somalia and Afghanistan have significant numbers refused asylum, but too few detained to be included in figure 1.[21] The low detention rate is probably associated with a difficulty of removing people to these countries in the period in question. At the other end of the scale, Nigeria, Poland and Zimbabwe have very high rates of detention relative to the numbers refused asylum. This may well reflect the practice of certifying asylum seekers from these countries as those with 'manifestly unfounded' cases, though this cannot be the complete explanation for the pattern shown in Figure 1 because Oakington itself only covered 16 per cent of detainees in December 2001.

[19] We recorded the country of origin as given to BID; this was not always that of accepted by the Home Off ice, but this did not affect the broad categories given here.
[20] Based on an effective population of 88
[21] That is they do not feature in the in list of countries with at least 5 detainees at 29.12. 2001 (Home Office 2002: Table 10)

Figure 1: Detainees (at Dec 2001) per 1,000 asylum refusals in 2001



Source Home Office Quarterly Statistics Fourth Quarter 2001

Amongst asylum seekers from Zimbabwe, there were sixty-nine detainees for every 1000 refused asylum in 2001, and ninety-nine Algerian detained for every 1000 refused asylum, suggesting that, with Poles, these groups are regarded by the Immigration Service as more likely than average to abscond.

On top of this, comparing all detainees to those bailed with the support of BID, Table 3 showed that BID took a disproportionate number of African cases. We thought that the high African profile of the group bailed by BID might be associated with the above average length of detention of BID bailees. So we looked at the length of detention by region of origin. Table 4 shows, however, that the median length of time in detention before being bailed by BID was not particularly long for the African group, although this included two Egyptians with lengthy detentions. The longest detentions were experienced by those from Sri Lanka and the Middle East, followed by those from China. This may relate to the problems of gaining agreement to repatriation from the countries concerned.

It seems that African refugees feature disproportionately in BID's caseload because legal practices outside Greater London have less experience in dealing with such bail applications, as against the more long-standing groups, such as East European refugees.

Table 4 Average length of detention before successful bail	
Countries of Origin	**Median months[22]**
Europe	3.0
Africa	3.4
Asia	7.5
Middle East	3.0
Other	1
All	3.0

In line with earlier research on the BID caseload by Kings College in 1999, a high proportion of the cases handled by BID were people detained since arrival (54 per cent directly on arrival and 67 per cent within one month of arrival). These were fairly evenly spread across the different country groups in the BID cohort, but markedly biased towards Africans when compared to the numbers applying for asylum nationally in the year 2000. Those who were detained on arrival had been held for an average (median) of 3 months, before getting bail. Thus the detainees in the cohort were people who were viewed with suspicion from their first arrival in the UK, rather than people who were seen to have overstayed their visit and subsequently applied for asylum. Only 12 per cent of the group had arrived in the UK before 1999 (and only 3 per cent before 1995) and relatively few (15 per cent) were awaiting removal. Those classed as awaiting removal had been detained on average for 3 months and hence were not simply awaiting imminent removal.

Why were they detained ?

Asylum seekers could only be detained as 'a last resort' for most of the period in which our cohort was detained. After 2000, those certified as having 'manifestly unfounded'/'straightforward' cases could be detained in Oakington detention centre for 'fast tracking'[23] and those accused of having 'terrorist connections' may now also be detained outside the provisions of the European Convention on Human Rights and Fundamental Freedoms, following a derogation of certain aspects of Article 5 for this purpose. In practice very few of the cohort fell within the Oakington criteria and, if they did, were detained elsewhere after a period in Oakington detention centre.

Though reasons for detention are supposed to be provided in writing to detainees, fewer than one in five of the BID case files had a copy of the form setting the 'written reasons'[24], referred to by Angela Eagle, though they may have been issued to some of the others. For the most part we categorised reasons given for detention using the submission made by the Home Office Presenting Officer (HOPO) to the bail hearing. This document concentrates more on the reason for opposing bail, rather than providing a detailed explanation for the initial decision to detain[25], but the two statements rarely differed because of any real change in circumstances during detention.

[22] based on an effective population of 65
[23] The challenge to this under the European Charter of Human Rights was overturned in the High Court in November 2001
[24] on form AIS91/RF. The absence of a form in BID files does not mean that none was issued, only that BID did not have such a form available when making the case for bail.
[25] Even though the function of the adjudicator is to review the original decision to detain.

In their very useful study Leanne Weber and Lorraine Gelsthorpe (2000) show that many Immigration Officers express a keen awareness of the need to avoid stereotyping in assessing the risk of absconding, at least when talking to researchers. On the basis of interviews with Immigration Officers at the major ports of Heathrow and Waterloo and four smaller points of entry, Weber and Gelsthorpe present a picture of a mix of hawks and doves (2000:103), in which there are a fairly sophisticated and sensitive group of 'gate-keepers', aware of the limits of the information they have:

> "*If it was a new entrant that had never set foot in the country before and we had no immigration history on them then, no, I don't see how we can draw anything other than subjective opinion. We don't know the individual. We don't know who he (sic) is, where he's come from most of the time. How can we say we don't think he's going to comply? We don't know anything about him….*" (2000:p101)

In the view of these officers detention on arrival was often

"*based too much on excessive subjective decisions and speculation*"

indeed it was possible to

"*make anything sound reasonable if you want to…almost anything*"

and as one put it

"…trying to define 'reasonable belief is virtually impossible isn't it"
(2000:101)

Weber and Gelsthorpe show that detention as a 'last resort' is variously interpreted by Immigration Officers. In their 'presentation of self' to the Cambridge researchers Immigration Officers stick to the Immigration Service instructions on detention (IDI Jan/97 CH31:1) which state that

> 'neither detention nor temporary admission will necessarily be warranted on the grounds of only one of the criteria in isolation.'

Rather, all eleven factors[26] 'must be taken into consideration'.

Hence whilst some told Weber and Gelsthorpe that they interpret a lack of identity papers, or the holding false documents or clandestine entry as 'the norm' and therefore as not warranting detention, others treat them as automatic evidence of deception and hence as supporting a 'reasonable belief' of the likelihood of absconding. Similarly, Immigration Officers denied that country of origin, and the supposed strength of the asylum claim always influence the likelihood of absconding. Those asylum seekers covered in the BID case files were generally given more than one reason for detention, in line with requirements, but 1:25, were apparently detained for one of the eleven factors alone.

As both the Kings College study and the Cambridge study demonstrated, decisions to detain are far from rigorous. Indeed whether or not an individual is detained may depend simply on the availability of accommodation that day. As the available accommodation has increased, so the numbers detained has risen, without any evidence that the risk of absconding has increased. The corollary to this is, of course, that the threshold level of risk fell considerably over the period, even when allowing for the

[26] listed at appendix 1

rising numbers of asylum applicants in the period to 2000[27]. This point is discussed further in the conclusions.

The cases of those bailed by BID reveal a number of inconsistencies in decisions to detain and to oppose bail. There was indeed one case in which two separate AIS91/RF forms were issued on consecutive days by different immigration officers stating wildly different reasons for detention, the one stating that deception on entry (entering as a visitor) made him he was an 'unacceptable character' and the other that the reason for detention was that he lacked ties with the UK.[28]

A common reason for seeking and maintaining detention was entering with false documentation. Those holding such documents were recorded as practicing severe deception, even where the person sought asylum immediately on entry. Despite the provisions of the 1951 Convention relating to the Status of Refugees[29] , some of the cohort were detained for considerable periods before being bailed with BID's support, seemingly on this 'misdemeanour' alone. In the case of a Chechen and a Palestinian this was (partly) in HMP Rochester for 7 months[30] and 9 months[31] respectively. But in one case the reason for detention was recorded by the Immigration Officer as 'having genuine documentation' (for entry into Italy), when the asylum seeker explained that the documents had been purchased clandestinely[32].

In a similar vein, having no 'ties' or relatives in the country featured as one of the reasons for considering that an asylum seeker might abscond, but in at least one case, that of a Czech Roma with a wife, daughter, sister and nieces in the UK, the reason given for classifying him as at risk of absconding was having a relative who had been removed from the UK. His credibility was additionally argued to be in doubt because he stated that he had no fears for his own safety, only for that of the women and children in his family. While this might be a reason for refusing asylum, it hardly constitutes evidence of deception and untrustworthiness and the adjudicator ruled that it did not justify continued detention, granting him bail after 3 months in HMP Rochester.

In a number of instances bail appears to have been opposed on the basis of the apparent merits of the substantive case for asylum, even where no certificate of 'manifest unfoundedness' had been issued. In two cases[33] the reasons for opposing bail was cited as 'not attempting to seek asylum earlier', in other words staying in their country of origin for some time after they had came under suspicion or political pressure. This mixing of functions between 'border control' and 'determination of claim' is expressly disapproved by UNHCR. For this reason immigration officers in the UK (when carrying out that function) do not decide asylum claims.

The treatment of sureties also appears to be inconsistent. The criteria for detention issued to Immigration Officers include no reference to sureties and yet in some cases, the lack of sureties[34] – or the failure of sureties to come to previous applications for bail[35]- appears as a major reason for opposing bail on the part of the Home Office. In the

[27] according to the latest figures recorded in the Guardian on 2.3.02, numbers fell from 2000-2001.
[28] 196/00
[29] which provides explicit immunity (Art 31) from penalties for refugees who, 'coming directly from a territory where their life or freedom was threatened' and (Art 1) those who present themselves without delay to the authorities and show good cause for their illegal entry or presence."
[30] 166/00
[31] 27/01
[32] 196/00
[33] 145/00
[34] 11/01; 230/01
[35] 7/01

case of a person arrested for trying to leave the UK using false papers, bail was opposed additionally on the grounds that the Home Office queried the proposed accommodation, seemingly because this was a Turkish Kurd proposing to live in a small town in Wales[36]. We discuss below the variations in the surety demanded for bail.

Detention was sometimes opposed on the grounds of the 'good health' and fitness of the detainee[37], but in at least two cases bail was opposed on the grounds of the poor mental health of the detainee[38], despite the Immigration Service criteria for suitability of an individual for detention (see the appendix). In one case a suicide attempt was treated as evidence of risk of absconding and in a second case the doctor stated that continued detention would increase distress and depression but failed to certify that there were medical reasons for release. This was because the guidelines are apparently restricted to physical health, or so the medical officer was led to believe. In this case the Home Office argued that bail should be denied, because Tinsley House offered the best psychiatric help available[39] – notwithstanding the offers of help from outside organisations.

In all these cases bail was eventually granted and the bailee continued to comply with the various conditions for bail for anything up to 18months, that is, to the point when they were traced.

The Conditions of Bail

All those granted bail had fairly standard conditions attached to their bail, involving regular visits to the local police station and appearances at asylum appeal and bail renewal hearings - often some considerable distance away. They all had to have a registered address and were required to make a formal application to change that address. In addition their sureties are pledged to notify the court if the individual absconds. On average this group of bailed detainees were granted bail on the identification of sureties of £420[40]; most with two sureties[41], and half including a relative or friend of the asylum seeker from their own community. The sums demanded for bail varied from £1 to £1700 (Table 5). Though the amount required of African detainees was significantly greater than the mean, at £620, the data revealed no systematic difference between Bail courts in the scale of surety demanded[42]. There is some evidence that surety levels vary with the asylum status of the detainee, in fairly predicable ways. Those appealing against asylum refusal were expected to find sureties averaging £350; but those that were either seeking a Judicial Review, making a Human Rights claim, or seeking bail when removal was in train, had to find £550 on average. There are too few cases of bailees absconding to establish unequivocally whether they were viewed by adjudicators as requiring higher sureties, but some of the highest sureties required related to those who subsequently absconded. The numbers are too small – because there were so few absconders[43] – to make much of this, but the evidence suggests that the level of surety required would appear not to affect the decision to

[36] 230/01
[37] 145/00
[38] 144/00 27/01
[39] *Psychological disturbances in asylum seekers held in long-term detention: a participant-observer account.* Aamer Sultan and Kevin O'Sullivan. *MJA* 2001; 175: 593-596. 'Confinement in immigration detention centres for extended periods of time can have severe, psychologically disabling effects on asylum seekers.'
[40] over 38 cases where information was available
[41] 55%
[42] The small number of cases in which the amount of surety required was recorded in the BID files militate against any firm conclusion on this score.
[43] And relatively few cases in which the sureties required were recorded in the files

comply decisively. Further research covering all those bailed as immigration detainees, is required to establish whether or not this is the case more generally.

Table 5	**Total Surety: those getting Bail**		
	%		
below £100	18.9		
£100-£299	27.3		
£300-£599	15.9		
£600-£999	11.4		
above £1000	13.6		
Total	100	median	£250

Who complied with bail conditions?

As the Immigration Service instructions on detention recognise, asylum seekers have an incentive to keep in touch with the immigration authorities. So long as they still have some hope of being granted refugee status or leave to remain, they have little to gain in the long run by going underground. Indeed, absconding could be taken to affect the credibility of their asylum claim as a whole. Our analysis of the BID records suggests, nonetheless that the majority of detainees granted bail who face early removal maintain contact with the authorities. We identified some 15 per cent of bailees as being close to removal at the point they were granted bail. One of these from Eastern Europe[44] was eventually granted full refugee status despite having been issued with removal directions and having spent two months in Campsfield. Four out of five of the group due to be deported complied with bail requirements right up until the point of removal, with only one in five of this group proving untraceable.

Table 6	**Outcomes at date of tracing -all BID bailees**	
Absconded/deemed to have absconded		8
Complied and deported		8
Complied and granted ELR/refugee status		6
Complied and awaiting determination		50
Complied and other	(died/ married/left UK)	9
Not known		17
Total		98

There were four cases where the asylum case was sufficiently strong for the bailee to be granted full refugee status, despite having been detained for fear that they would abscond. One was the Eastern European mentioned above; others included a Kosovan whose claim was initially rejected because (amongst other reasons) he did not apply for asylum at port and who was then detained in HMP Rochester for a month before being bailed with BID's advocacy. A third was a 'very ill' asylum seeker from West Africa,

[44] 187/00

with family in the UK who was held in HMP Liverpool for four and a half months despite his illness. There was also a North African held for six months in HMP Rochester as a 'calculated manipulator' who was eventually granted refugee status after obtaining bail and complying with the conditions of bail.

As explained in the preface, the original motivation for the research was to see whether it was possible to use longitudinal analysis to identify those at risk of absconding. Unfortunately from the point of view of the research, but fortunately on all other counts, too few of those bailed proved untraceable, 'presumed absconded' to provide the basis for any 'risk/ probability' analysis. In addition those that were thought to have absconded were also those for whom information in the BID files was particularly sparse, even at the stage of seeking and getting bail. It may therefore be that a number of those that were 'untraceable' were those where the paper work got lost between agencies. When we checked with the ports, we were informed that at least two had not had 'unrecovered absconder' forms issued in their respect. Their papers may simply have got lost between legal representatives; others may have left the country voluntarily. Nobody knows the scale of such outflow[45], as the information is no longer collected on those leaving the UK by lawful means.

As it stands we can say very little about the characteristics of those who proved untraceable. As pointed out above, they were more likely to have had a removal order issued. Even so the vast majority – 80 per cent - of those who could expect early removal complied with the conditions of their bail and one of them was subsequently found to have a well-founded fear of persecution warranting a the granting of full refugee status.

Only one of the eight absconders identified can be described as 'an overstayer'[46] who entered the UK months or years before asking for asylum, though two others were arrested 'in country', while employed, one having been detained on arrival and given Temporary Admission[47]. Two others had come in hidden on lorries and claimed asylum as soon as they could[48], while the others all claimed asylum on arrival and were detained on arrival and only subsequently bailed. There is very little information on file on their bail conditions, but where sureties were recorded, they were higher than average.

According to the BID files some of these people were under some stress; the wife of one committed suicide before the records cease[49] and one of the Roma was classified as a victim of rape[50]. In two cases the Immigration Officer classed members of this group as highly likely to abscond, but in six of the eight cases, there is no such statement on file.

[45] though some re-emerge as new entrants. The Overseas Passenger Survey does include those leaving the country as well as entering, but the coverage and sample size make it an uncertain source of information on the emigration of recent asylum seekers.
[46] 73/00
[47] 127/00/ 118/00
[48] 147/00 and 148/00
[49] 143/00
[50] 180/00

Conclusion

Of the cases for which sufficient data was made available to the researchers, eight were classified as 'untraceable, probably absconded'. A further 11 cases dealt with by one legal practice are classed as unknowns, since it proved impossible to get information from them, though in two cases the surety and the port confirmed that they had complied with the bail conditions. Depending on how the unknowns are treated, our conclusion is that between 8.1 and 9.8 per cent of this high risk group of asylum seekers are likely to have attempted to evade immigration control by ceasing to comply with requirements to live at a registered address, check in with a local police station or attend appeal hearings. It is possible to speculate on why they may not have complied, before concluding that they all were actively seeking to evade immigration control, but this is not the most relevant issue[51].

Of course had these eight people been detained until they were removed, a nil absconding rate might have been achieved. In that sense, like prison more generally, detention 'works'. But such a facile conclusion depends on being able to accurately and objectively identify those likely to abscond; and our experience with this group, assumed by the Immigration Service to be at high risk of absconding, suggests that it lacks the ability to forecast absconding with any degree of accuracy.

Since the Immigration Service has the information in its possession which would help identify the characteristics of all those deemed 'unrecovered absconders', our first conclusion is that they should replicate this study with a much larger population base, preferably using researchers who have the confidence of asylum seekers and their ethnic communities[52]. In the event that the Home Office is unwilling to fund such a study we would advise that BID records data on those bailed in a retrievable form and sets up a system with legal representatives and the ports for recording more automatically the 'final' outcome for the person bailed, to enable this study to be replicated over 2001/2002.

Though the low rate of absconding is consistent with other available data (and David Blunkett's statement of October 2001), it confounds those who compare the rate of refusals with the rate of removals, and it is clear that additional research on 'asylum-career histories' is required. One area that would repay research investment is the rate at which asylum seekers leave the UK voluntarily, with and without UK state support. The provisions contained in the Nationality, Immigration and Asylum Bill 2002 should improve the visibility of such out-migration, but consideration should be given to using the International Passenger Survey as a source of additional data on these movements.

The argument that 'detention works' in preventing absconding by asylum seekers is inadequate for two reasons. Firstly it assumes that the experience of detention has no impact on the subsequent behaviour of the asylum seeker. If, as is likely, a period of detention, often without access to a bail application for lengthy periods, reduces an asylum seeker's confidence in the system and in their own case, it is reasonable to argue that it actually increases the probability of subsequent absconding. A full longitudinal

[51] Dunstan (2002) points to failures of NASS to provide travel warrants on time. This – and the need to travel considerable distances to unknown places - may explain some failures of compliance. Our experience trying to reconstruct the paper trail, also suggests that administrative failures may sometimes underlie non-compliance.

[52] A suggestion for such research was made in 2001, see Home Office paper *Bridging the Information Gaps.* p. 46. *Workshop 1: European Asylum and Immigration Policy.* (Potential areas of research) "Detention: What are the positive alternatives to detention? That is, what measures might ensure/encourage compliance (rather than focusing on absconding)? Opportunities exist for the consideration of best practice models, using cross policy approaches. "

multi-variate analysis involving all the detainees in the system would be required to ascertain the scale and direction of any such dynamic.

The second aspect is the issue of the impact on the health generally and particularly the mental health of detainees.

The third, more obvious, inadequacy relates to the cost of detention. In order to prevent eight people absconding, on current state of the art of predicting who is likely to abscond, some eighty people were detained for an average of 16.25 weeks at a weekly cost of between £364 (Haslar) and £1620 (Oakington)[53]. On this basis the cost of preventing each case of absconding each year was of the order of £200,000 to £850,000, respectively at Haslar and Oakington. Put another way, the Home Office needlessly spent £430,000 to £1.9million on detaining seventy-three asylum seekers who, on the evidence, would have remained in contact with the immigration authorities, had they been granted Temporary Admission or Chief Immigration Officer's bail[54] . Grossing this up to the 1,515 detained at any one time in the year 2001, most of whom were considered to be at *less* risk of absconding than the BID caseload, about 1,350 people are currently being detained needlessly at any one point in time. In any given week the waste embodied in such detentions lies between £500,000 on the basis of Haslar costs and £2.2 million on Oakington figures. Of course the current alternative of requiring asylum seekers to exist on the NASS support systems is also expensive, with £150 million being spent on accommodation in 2001-2 and £40 million on administration to cover all within the NASS, but detention involves a hefty additional financial and human cost.

There are other arguments against detention, especially where the European Convention of Human Rights is breached, but this research is only really relevant to the pragmatic argument that detention is an extremely inefficient and costly way of processing asylum applicants.

Although there may be an apparently strong populist voice for the detention of asylum seekers (at least outside people's own backyards) the political rationale for it has not been part of the research. Given the high financial cost of the detention estate, the conclusion must be that the political rationale also needs independent assessment.

Of course 'efficient' targeting of potential absconders would reduce the costs of the system and our research has not revealed any sure-fire way of identifying potential absconders. However, as the Immigration Officers interviewed by Weber and Gelsthorpe, suggest, the longer the contact with the Immigration Service, the more evidence there is on which to make a decision to detain.

The evidence of this research is that those willing to comply with the asylum system can be identified through independent review of administrative decisions on detention. Hence the 'deadweight' costs would be reduced by allowing the case for detention to be tested in a quasi-judicial process as early as possible.

But rather than allow automatic bail hearings as promised in the 1999 Act, the White Paper proposes repealing that section of the Act on the grounds that they are complex and unnecessary. The Bill suggests no alternative safeguards, nor does it address the inadequacies in the current bail process that effectively prevent many detainees from having a bail application made on their behalf (the requirement for sureties and the

[53] House of Commons: 25.10.2001 colonial 333W
[54] CIO bail is essentially TA with conditions attached such reporting and sureties.

merits test for public funding). The repeal of Part III thus increases the risk of prolonged, costly and unnecessary detention without opportunity to make an application for bail. This is particularly worrying against the backdrop of the intention stated in the 2002 White Paper to detain more children in asylum seeking families who can "where necessary, now be detained at other times and for longer periods than just prior to removal." (Para. 4.77)

It is not at all clear at this stage how easily asylum seekers will be able to contest the requirement to live in accommodation centres, even where children are involved[55]. Despite the statement that asylum seekers will be able to seek bail if detained, by deliberately designating accommodation centres as non-detention centres, rights to seek independent review are potentially eroded. Since it is clear that people stand to lose financial and social support if they do not accept direction to an accommodation centre, and that such action 'may affect the outcome of an asylum claim'[56], we are in something of an Orwellian world. For most people a requirement to reside in a specified place isolated from the wider community is a form of detention, especially if curfews are likely to operate restricting outside activities in the evenings[57]. This is particularly worrying if children are accommodated in such centres because the proposals contained within the 2002 Bill withdraw asylum seeking children from mainstream education. At the very least a review mechanism must be instituted for all those under 18 required to live in accommodation centres.

Our research also questions the assumption that detention 'prior to removal' is always necessary. At the very least it suggests that such detention should only come into effect where it has been objectively assessed as appropriate and only when all the necessary travel documents have been secured. Moreover such detention should be time-limited, say for a week. If, by that time removal cannot be facilitated then release with reporting restrictions would automatically follow. Currently, as we have shown, the period prior to removal can stretch over many months, and most of the people, notwithstanding that they are said to have reached the end of the road still comply with reporting requirements, when living in the community.

The White Paper contains innovation which, if applied imaginatively, could dramatically reduce the need for detention. Given the general failures of the detention regime, our research suggests that this is the avenue to be pursued, rather than the building of ever more detention centres in out of the way places.

[55] The provisions in s41 of the Nationality, Immigration and Asylum Bill 2002, leaves it open for the Home Secretary to make regulations which would allow a decision on 'where support provided under s95 is to be provided to be appealable'.
[56] Home Office 2002:4.38
[57] The Nationality, Immigration and Asylum Bill 2002 allows the Secretary of State to require ' a person not to be absent during specified hours', without limit.

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Bail for Immigration Detainees can be contacted at
28 Commercial Street
London E1 6LS
Tel: 020 7247 3590 Fax: 020 7247 3550

APPENDIX 1

Immigration Service instructions on detention
Extract from IDI Jan/97 ch31 Section 1

Criteria for Detention (abridged)
Decisions to detain are to be made on the basis of the criteria set out below. These are not in any order of priority and neither detention nor temporary admission will necessarily be warranted on the grounds of only one of the criteria in isolation – all factors must be taken into consideration.

- Is there substantive doubt as to the subject's identity and/or nationality
- Is there any evidence of previous absconding from detention?
- Is there any evidence of previous failure to comply with conditions of temporary admission?
- Has the subject shown blatant disregard for the immigration laws?
- Has the subject attempted to gain entry by presenting false documentation?
- Has the application been certified as being 'without foundation' by the Secretary of State?
- Is there a previous history of complying with the requirements of immigration control?
- What is the likelihood of the person being removed and, if so, after what time scale.
- What are the person's ties with the UK? Does he have a settled address/employment? Are their close relatives here?
- What are the individual's expectations about the outcome of the case? Are there factors which afford an incentive for him to keep in touch with the port?
- Does the person fall into one of categories that are regarded as generally unsuitable

Categories of persons unsuitable for detention in Immigration Service accommodation:

- unaccompanied children, under 18
- the elderly
- pregnant women, unless there is a clear prospect of removal prior to confinement
- those suffering from serious medical conditions or the mentally disturbed
- people with serious disabilities
- the physically violent or emotionally disturbed
- those with suicidal tendencies
- determined absconders
- those with a violent or serious criminal background