BiD Bail for Immigration Detainees

Winner of the JUSTICE Human Rights Award 2010

Challenging immigration detention in the United Kingdom

ANNUAL REPORT 2011

What is immigration detention ?

Immigration detention is when people subject to immigration control in the UK are held in custody pending either a consideration of permission to enter the country, or pending deportation or removal.

There are currently eleven immigration removal centres (IRCs) in the UK and people can also be held post-sentence in prisons under Immigration Act powers. The power to detain has been conferred on the Home Secretary under a number of Immigration Acts and these powers are devolved to immigration officers. This means that a court does not authorise the decision to detain, continued detention is not subject to a time limit, and someone in detention is not entitled to an automatic bail hearing.

BID believes that asylum-seekers and migrants in the UK have a right to liberty and should not be subjected to immigration detention. While detention exists, it should be sanctioned by a court and time-limited, and detainees should have access to automatic, publicly-funded bail hearings.

BiD Bail for Immigration Detainees

WHAT DOES BID DO?

We provide legal advice, information and representation on bail to people held in immigration detention in the UK. We carry out research and use evidence from our casework to advocate for more humane alternatives to immigration detention and for meaningful safeguards to be adhered to while detention exists. We do this through:

- Providing free information and support to detainees to help them exercise their right to liberty and make their own bail applications in court
- Preparing and presenting free applications for release on bail or temporary admission for some of the most vulnerable detainees
- Carrying out research and using evidence gathered to push for an end to arbitrary immigration detention
- Influencing decision-makers, including civil servants, parliamentarians and the judiciary through policy advocacy
- Raising awareness and documenting and publicising injustices through the media and with the general public
- Carrying out strategic litigation

While detention exists, we will:

- Improve access to bail for immigration detainees
- Push for an end to the separation of families for immigration purposes
- Challenge long-term and indefinite detention

Chair's report

The rhetoric surrounding immigration and asylum continues on its hyperbolic curve. Most people will remember Theresa May's misrepresentation of a case involving a couple owning a cat, her reliance on subsequently being supported by the Prime Minister. But despite the weakness of the example, and the justified criticism of the Home Secretary for her use of it, it seems that little will dissuade the so-called political elite from pandering to the lowest common denominator.

Why would any government be prepared to dissemble to such a degree? Of course, those in power have agendas to fulfil, and they are perhaps unable to be honest with themselves about their true motives, let alone the voting public. But the advantages for government in such posturing are manifold. They include the fact that substantial injustices may not come to wider notice. And there is no doubt that such injustices are, unfortunately, numerous. Week after week BID staff and volunteers learn about the plight of yet more individuals who have been detained for absurdly lengthy periods, lost in the labyrinthine operation of the United Kingdom's immigration system. The heartbreak caused by months or years of detention, without effective oversight, can only be imagined. The fact that an organisation such as BID even needs to exist is a scandal in itself.

This year, regrettably, the attack on BID's work, and the causes it seeks to serve, comes from many quarters. There is the growing unwillingness of the political class to engage with the problems of those who suffer the most in society, and many of those in immigration detention fall into this category. Our lawmakers, from nearly all shades of the political spectrum, seem to be obsessed with the need for economic efficiency and the importance of competing on a world stage. They forget that those who come to our shores, and who are then detained, are often seeking sanctuary from countries where it is impossible to even dream of a modest standard of living. And despite the lack of a clear mandate, the present government is pursuing its austerity agenda, with the consequent attack on the provision of legal aid. For many years, lawyers in this field have become accustomed to dealing with the vagaries of the Legal Services Commission, and its complex system of regulation. Those lawyers frequently offer what is, in effect, a pro bono service. But the obsession with marketisation, and the reduced level of core funding, runs the real risk of reducing access to justice to the absolute minimum. Yet the government presses ahead with its reforms, despite cogent evidence that early intervention by skilled advisers actually reduces the cost to the public purse. The truth of this is exemplified by the economic cost created as a result of an unfair and unjust immigration detention system; more detention places have to be built, with attendant services, and the ever-increasing number of legal challenges lead to the taxpayer footing the bill for damages and legal costs.

Despite this unpromising backdrop, BID, as an organisation, continues to flourish. We have a long-term strategic plan that sets out specific and achievable aims, and our progress towards them is regularly monitored and assessed. The plan, we believe, strikes the proper balance between our work in the fields of policy and casework, with the two interacting profitably. Indeed, it is difficult to see how many of our real-world casework successes, such as assisting former detainees in obtaining substantial compensation, or working towards changing the law at the highest judicial level, would have been possible without the foundation of policy research, built up over many years. It is this that has enabled BID to become one of the most-respected charities in the immigration field, and this is something in which we can all justifiably take pride.

I am only too aware that charities such as BID face difficult times ahead. Nevertheless, the hard work and dedication of staff and volunteers means that we are well-placed to continue our vital work. I am convinced that anybody reading through this year's report, whether it be supporter, funder or interested member of the public, will immediately see the value of the work that BID carries out. Indeed, I would go so far as to say that BID, along with many others working in this arena, plays a crucial role in upholding a number of the fundamental values that should underlie any liberal democracy. And the need to fight for and preserve these values is perhaps more important now than at any other time in BID's history.

Rajeev Thacker, Chair

Director's report

I recently went to court to observe a bail hearing for one of our clients, Mr H, who appeared from detention by video link. In just ten minutes the bail hearing was over, our client having been refused bail despite not being invited to give evidence on his own behalf and despite compelling evidence in our submissions in favour of release. He had been in immigration detention for over four years. He turned, thanked the judge and his representative and returned to his life in detention.

As I left the court building with a lump in my throat, I reflected on the utter waste of life that is immigration detention. I thought about how many lives were being decided that day in that one building, decisions that seem to turn on a whim and, in the case of bail, for which there is no appeal process. How has it come to this? What gives us the right as a society to deprive people of their liberty indefinitely because they've been refused asylum or have overstayed a visa? How can that be right? Why have we allowed it to happen? Imagine the outcry if British citizens found themselves locked up indefinitely in a foreign country having committed no crime - most people would consider it unthinkable. And yet it happens here on a daily basis. And most people either don't know it goes on, or know it goes on but aren't bothered. At times like that it can seem that what BID does is futile, but we have to believe that it isn't, that what we do does make a difference, both for individuals and in tackling the system that puts them there. But it is relentless work and calls for huge reserves of persistence.

Challenging immigration detention is at the heart of BID's work and the last year has seen some significant achievements. The government's pledge to end the detention of children (a cause for which BID had worked for ten years) was partially fulfilled with the closure of the family unit at Yarl's Wood but we remain hugely disappointed that families continue to be detained, albeit in much smaller numbers, in Tinsley House and in a new, short-term holding facility (for a maximum of a week) in Sussex. We were also shocked to learn recently that the government has detained 700 children at port, on entry, over one four-month period in 2011. So much for the ending of the detention of children.

Tackling indefinite and long-term detention has been a much harder nut to crack. Many of our clients who have been detained long-term have been detained following the end of a criminal sentence. Public sympathy is in short supply for such people, usually labelled `foreign national criminals' regardless of the circumstances of their convictions (for example, some serve prison sentences for entering the country with a false document) and the fact that, once time-served, an individual is no longer a criminal. But, more recently we have secured the release of some of our clients who have been detained for the longest periods. And our strategic litigation has had an important impact in the courts. We intervened in four significant cases where the courts gave judgments that have created very significant precedents for immigration detention and whose repercussions will be felt for months and years to come. And individuals and families whose cases BID referred and whose detention was found to be unlawful have received compensation from the courts. These may seem like small gains, but they are hugely important. BID's work is as much about holding the government to account for its detention policies and practices as it is about supporting individuals to regain their freedom.

Despite the difficult funding climate in which we operate, we are optimistic about the year ahead. The challenges of our work remain daunting but through the persistent dedication of our volunteers and staff, we will keep making headway in our challenges to immigration detention. My thanks go to all who have contributed to the achievements of the last year. We are making a difference. And persistence does pay off. Mr H was released at his next hearing, over four and a half years after first being detained.

Celia Clarke, Director

Bail Casework

BID's three offices in London, Portsmouth and Oxford supported 2,115 people during the course of the last year. BID staff prepared a total of 265 bail applications (an increase on last year), of which only 195 were eventually heard in court. 95 of those were successful. At just under 50% success rate, this is significantly better than the overall rate of success for bail, which is 31%. Many of our clients represented themselves after attending a workshop. From cases we have been able to follow up, we know that a total of 521 people who received support from BID were released over the last year.

RIGHT TO LIBERTY

We continued our programme of workshops, delivering either bail workshops or legal surgeries in six detention centres: Yarl's Wood, Colnbrook, Harmondsworth, Dover, Haslar and Campsfield House. We also ran a one-off workshop in a new detention centre, opened in early 2011 – Morton Hall. A total of 799 people attended either a workshop or legal surgery, an increase of over 100 compared to last year.

CASE STUDY

Mr B came to the UK alone using a false passport when he was 17 years old. He claimed asylum on the day after his arrival and was accommodated in a hostel. It seems no support was given to the client and he got involved with the wrong crowd and started taking drugs. Due to his drug habits he became involved in criminal activities and was sentenced to two years in a young offenders' institution. He was detained following completion of his sentence in December 2007.

Mr B's asylum claim was refused in March 2007 and he subsequently made various appeals. He also made 8 bail applications which were all refused. He remained in detention even though the Home Office was unable to produce any travel documents for him. This was despite his cooperation with the immigration authorities. He had his first interview in January 2008 and had numerous interviews between this date and his release with both the Home Office and his embassy. He cooperated in all these interviews. In addition, he completed a number of courses whilst in prison and detention, including drug courses.

BID represented him in one bail hearing in July 2011, which was successful. He had been detained for 3 years and 8 months by the time he was released. The immigration judge released him due to concerns over the length of detention and the fact that no travel documents were forthcoming. He was given twice weekly reporting conditions and was also put on a tag.

Mr B's bail hearing was further complicated by 4 months' delay in hearing back from Section 4 which was to provide accommodation. Following communication from himself and BID, he received his accommodation and was released to section 4 housing.

Strategic Litigation

The aim of BID's strategic litigation work is to influence the law relating to immigration detention so that detainees' rights are not breached, and to enable unlawful detention to be challenged.

There are two main elements to this work: preparation and referral of cases for judicial review of unlawful detention, and civil claims for damages; and acting as third party interveners or providing witness statements in such cases heard in one of the higher courts. This has meant a shift in our casework to doing more detailed casework always with a view to a challenge beyond bail, as bail courts have no jurisdiction to determine the lawfulness of the detention. This approach aims to ensure greater accountability on the part of the UK Border Agency (UKBA) for its decisions to detain and its decisions to prolong detention. While cases of long-term detention are more difficult to secure bail for, we are seeking more ways to challenge an individual's detention including applications for temporary release and securing advice from barristers on next steps, including the merits of referring the case for unlawful detention action. Caseworkers also work to challenge assertions made by the UKBA where these are disputed by the client, including demanding disclosure of adverse evidence where this is presented as a barrier to release.

This new approach is underpinned by an interweaving of our casework, policy and strategic litigation. Each strand of work is enhanced by the development and support of the other, most notably in our work on detained families, and also in the past year, through our interventions in cases in the higher courts. The evidence in our interventions has been drawn from a combination of BID reports, research, records of policy interventions and meetings, and data from casework.

In the last year, our Families Project successfully referred ten cases for either judicial review or claims for damages. £175,000 was paid out in two cases that were settled during the year.

Litigation in the field of immigration detention has been very eventful over the last year, and BID has intervened in two major cases, and provided evidence for an important case focusing on the lawfulness of the detention of families with children.

BID intervened in two Supreme Court cases: *Walumba Lumba (Congo) and Kadian Delroy Mighty (Jamaica) 2011, UKSC12* – which found that it is unlawful for the Secretary of State to apply an unpublished policy that conflicts with a published policy; *Shepherd Masimba Kambadzi (Zimbabwe) 2011, UKSC23* – which found that periods of detention where no detention reviews were carried out were unlawful, although damages would only be nominal where it could be found that had the reviews been carried out, detention would have been maintained anyway; one case that is pending judgment in the European Court of Human Rights – *Mustafa Abdi v United Kingdom (ECHR, Application 27770/08)* – which focuses on whether immigration detention can be used to enforce compliance with immigration measures rather than for the purpose of removal; and the case of *Razai and others v Secretary of State (2010) EWHC 3151 (Admin)* in the Administrative Court, which related to the failure of the UKBA to consider many applications for Section 4 accommodation from former criminals, effectively preventing detainees who had completed criminal sentences from being able to apply for bail. The case for which we provided evidence for the intervention is described in our Families Project report.

"Personally I can say the service I got from your team is superb and next to none. Government or non-government organisation should support you financially to keep up your good service. My experience with BID's work was fantastic. The caseworkers are polite, well-trained and very helpful. However, the organisation should push/ campaign or create more awareness how immigrants are being detained unnecessarily for a lengthy period of time. The UK is the only western country that keeps immigrants for unreasonable lengths of time compared to other European countries. Finally, you guys are doing a very good work – thank you for all your advice and support."

Families' Project

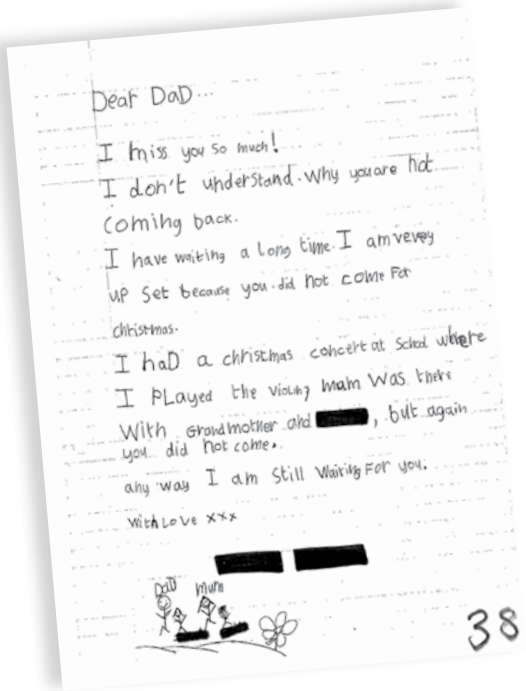
After the government's announcement that they would end the detention of children for immigration purposes, and the subsequent launch of a review into child detention in which BID participated, we shifted the main focus of our project to support families who are separated by immigration detention. We advised 51 families separated by immigration detention, 32 of whom were released - 20 were bailed at the First Tier Tribunal, 11 released through temporary admission, and 1 released through High Court proceedings. Four people were removed. We also lodged 36 bail applications for this group of clients (this includes multiple applications for the same client) and 10 were successful. The average length of detention for clients that were released was 269 days. 30 of our clients were mothers and 21 were fathers.

The family project referred ten cases for unlawful detention judicial reviews or civil claims over the year. There were two important judicial review judgments of separated family cases which BID had referred the previous year. Both judgments found the clients to have been unlawfully detained for parts of their detention, and one in particular (*MXL*) explored the application of the UKBA's statutory duty to safeguard and promote the welfare of children in all its actions and decision-making. This judgment is also referred to in the recent `Bail Guidance for Immigration Judges', written by the Tribunals' judiciary, and it states on the issue of length of detention:

`a period of weeks may be disproportionate where one of the effects of detention is to keep a parent apart from young children'.

(MXL and others [2010] EWHC 561 (Admin))

The family team have also supported twelve clients who have either been pregnant or have partners who are pregnant over the year. Six of our clients were removed. We lodged 3 bail applications, one of which was successful. Two were withdrawn because removal directions were set once the bail application had been lodged. We submitted three temporary admission applications, one of which was successful.by 4 months' delay in hearing back from Section 4 which was to provide accommodation. Following communication from himself and BID, he received his accommodation and was released to Section 4 housing.



CASE STUDY

Mother detained for nearly 20 months in detention

Our client is a mother of 2 who has been in the UK since the mid 90s. She had put in an application to stay in the UK in 2001 and had reported to UKBA for 7 years whilst this application was pending. During this time she was convicted of a drugs offence and was sentenced to 30 months in prison, serving 15 months. She was then transferred to immigration detention whilst UKBA decided whether to deport her. It then took a further 9 months in detention before UKBA decided to deport her. She ended up being detained for nearly 20 months at Yarl's Wood Immigration Removal Centre by the time she was released. The separation from her children through immigration detention was longer than her original prison sentence. Her deportation appeal is still pending.

Unaccompanied Age-Disputed Young People

We have worked with 7 unaccompanied age-disputed young people this year. Four were released on temporary admission, two were bailed and one was removed from the UK. We do not normally lodge bail applications for these clients as bail is normally a remedy for adults not children. The family team's approach is to advise young people in this situation to find a solicitor to organise for an age assessment to be carried out. It is normally through an age-assessment that indicates that the young person is a child that the UKBA will consider releasing the young person, as it is their policy not to detain under-18 year olds. However, in one case we decided to lodge a bail application as the age assessment approach had not been successful. The applicant was released on temporary admission just before the bail hearing.

CASE STUDY

Father-to-be detained a month before baby due

A father-to-be was detained after overstaying his visa. He was living with his partner who had the right to reside in the UK and she was heavily pregnant with his child. A planned caesarian section was scheduled for just over a month after he was detained. BID lodged a temporary admission application for our client and this was a rare occasion where UKBA decided to release our client, without having to go to court and the expense that this entails for all concerned. The couple is now reunited and will be together for the birth of their child which is imminent. Our client is also lodging an application to remain here based on being in a relationship with an EEA national who lives in the UK.

Research and Policy

Although the government had pledged to end the detention of children in May 2010, they have put in place a new `Family Returns Process' which still involves the detention of families for limited periods (up to seven days) in `secure accommodation centres'. Families can still also be detained for brief periods on entry, and the family unit at Tinsley House has been refurbished. In the first quarter of 2010, 230 children entered immigration detention; in the first quarter of 2011 only nine children entered immigration detention. So, although in practice very few families are being detained for removal and for much shorter periods, and this is a significant improvement, nonetheless we are extremely disappointed that the government has not kept to its pledge to end the detention of children entirely.

Over the last year we were involved in intensive dialogue with civil servants to influence the outcomes of the child detention review. We also met Damian Green (Immigration Minister) on several occasions as well as meeting and briefing politicians about our concerns, who in turn asked the Minister questions in parliament to increase the pressure on the government and foster parliamentary scrutiny of the child detention review. We asked an MP to table an Early Day Motion on detention of children, which was tabled and signed by 43 MPs. We also published several briefing papers and consultation responses outlining recommendations for change in this area using evidence from our casework. We published a new research report on the immigration detention of children, titled 'Last Resort or First Resort?'

Our public campaign to end the immigration detention of children received substantial press coverage in outlets including BBC News 24, the front page of the Observer, and Radio Four's Today Programme. We generated coverage in a number of ways, including organising a group of peers to write a letter (drafted by us) to the press calling for an end to child detention.

As part of the child detention review, the UKBA agreed to implement the following recommendations which were put forward by BID and other NGOs:

- After a family's legal application to stay in the UK is refused, they will be given an opportunity to return voluntarily to their country of origin before the UKBA takes any action to forcibly remove them from the country. Families will be offered a face to face explanation of voluntary return, and given the opportunity to check themselves in on a flight rather than being detained for removal. The UKBA is planning to run training and publish best practice guidance for staff on communicating voluntary return.
- The UKBA will work with the UN High Commissioner for Refugees to improve the quality of decision-making on family asylum claims.
- As part of a pilot which they are running in Croydon to forcibly remove families, the UKBA had originally planned to make families destitute if they refused to participate on the pilot. They have now agreed not to do so.
- The UKBA will reduce the ban on re-entering the UK which is imposed in cases where families voluntarily leave the country.

BID's Research and Policy Manager was chosen by colleagues in other organisations to chair the Detention Sub-group of the Refugee Children's Consortium, a coalition of organisations working to support refugee, migrant and asylum seeking children.

In line with our new focus on families separated by immigration detention, we have started to systematically collect data on separated families which will be used in our policy and litigation work and we began to raise our concerns with civil servants about the separation of families using information from our legal casework. As a result, the UKBA agreed to work with us to revise their guidance on decisions to separate families. They recently wrote a new process instruction on the separation of families by detention and removal, which takes greater account of child welfare concerns, and have agreed to revise this instruction following our input.

Improve access to bail for all immigration detainees

We focused on the barriers detainees face in accessing bail processes in order to challenge their detention, and on breaking down those barriers:

Delays in provision of Section 4 (1)(c) (Home Office provided) accommodation addresses for people with criminal convictions

BID undertook advocacy work with the UKBA having gathered detailed evidence about delays in allocating accommodation to people wishing to apply for bail. This delay resulted in denial of access to the courts through lack of accommodation on release. The advocacy work went hand-in-hand with the provision of information for an intervention in the case of *Razai and Others* referred to above. Monitoring and evidence-gathering are ongoing.

"I would like to thank you and your staff for your excellent work in assisting one of our young men in representing himself in a bail hearing and is now free. Mr A contacted your team twice, took the advice given to him and yesterday walked free from the court in Newport. Thanks again."

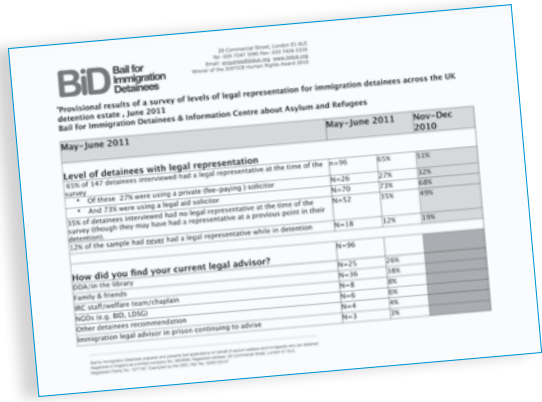
Prison Officer

Survey on legal representation in detention

Working in partnership with the Information Centre about Asylum & Refugees (ICAR) we designed and executed a survey on the level of legal representation across the entire detention estate (these figures are not currently collected by the government), along with questions on detainee awareness of the on-site legal advice scheme (known as the DDA – Detention Duty Advice Scheme), the effect of transfers between centres on continuity of legal advice, and rates of bail applications by legal advisors. The survey was run twice during the year and will continue to be run every six months. Its findings have been invaluable in submissions to government consultations, and lobbying and policy work with UKBA, Ministry of Justice, and the Legal Services Commission that administers legal aid payments. Respondents' comments have helped us identify those issues most of concern to detainees. We also shared our findings with the Immigration Law Practitioners' Association, and with other NGO stakeholders for use in their own lobbying work. Unsurprisingly, the surveys showed high levels of lack of legal representation in detention, poor awareness of the on-site legal advice scheme and poor service in some cases. Survey results can be viewed on our website.

Access to immigration legal advice in detention

Proposals for the reform of legal aid in England & Wales left public funding for work relating to asylum claims and detention-related work untouched. However, deportation work (up to 40% of detainees are subject to deportation action), asylum support work and most other non-human rights-related general immigration work was proposed to be taken out of scope of legal aid. It is essential that the value of legal advice for foreign nationals deprived of their liberty in the UK is understood in this very tight funding climate and BID submitted detailed comments opposing these proposals to a Ministry of Justice consultation exercise in Feb 2011.


BiD Bail for Immigration Detainees

'Provisional results of a survey of levels of legal representation for immigration detainees across the UK detention estate , June 2011
Bail for Immigration Detainees & Information Centre about Asylum and Refugees

May–June 2011		May–June 2011	Nov–Dec 2010
Level of detainees with legal representation			
65% of 147 detainees interviewed had a legal representative at the time of the survey	N=96	65%	51%
• Of these 22% were using a private (fee-paying) solicitor	N=26	27%	32%
• And 73% were using a legal aid solicitor	N=70	73%	68%
35% of detainees interviewed had no legal representative at the time of the survey (though they may have had a representative at a previous point in their detention)	N=52	35%	49%
12% of the sample had never had a legal representative while in detention	N=18	12%	19%
How did you find your current legal advisor?	N=96		
DDA/in the library	N=25	26%	
Family & friends	N=16	18%	
IRC staff/welfare team/chaplain	N=8	8%	
NGOs (e.g. BID, LDSG)	N=8	8%	
Other detainees recommendation	N=4	4%	
Immigration legal advisor in prison continuing to advise	N=3	3%	

BID's information from its surveys and evaluation forms has shown that awareness of the Detention Duty Advice scheme (which entitles detainees to half an hour's free legal advice and the possibility, subject to means and merits, of being taken on as a client under legal aid) is very low. Clients have also expressed concerns about the operation of the scheme, including delays and lack of clarity. BID conveyed these concerns to others, including the Legal Services Commission, the body responsible for funding and managing legal advice provision in prison. BID has also written two bulletins on legal aid – one targeted at detainees and the other targeted at their advisers and supporters. The bulletins sets out the circumstances under which detainees should be granted legal

aid for representation, explain the means and merits tests, what services and actions detainees can expect from their legal advisor under legal aid, and how they can go about complaining if they are not satisfied with refusals of legal aid or files are closed without explanation.

Misconduct and risk

Throughout the year BID's casework generated a number of concerns and questions about misconduct procedures in IRCs. These concerns arise from evidence of inaccurate record keeping of misconduct events, and evidence of disproportionate custody staff responses to the behaviour of detainees with mental health problems or to those who make complaints about staff behaviour or express concerns about their immigration case. These misconduct reports feed into other immigration and detention-related processes such as bail summaries and decisions on eligibility for different types of Section 4 bail accommodation, with implications for the right of detainees to effectively challenge their ongoing detention in a timely manner. We have raised our concerns directly through stakeholder meetings with UKBA officials and through correspondence and a meeting with the Director of Operations.

Health and mental health in detention

We have also been focusing on health (especially mental health) in detention, along with other organizations (AVID, Freedom from Torture and Medical Justice) who participate in the Home Office-convened meetings to discuss health and mental health in detention. One of the issues has been the Home Office audit of their responses to the submission of `Rule 35' letters from a practitioner indicating that a detainee claims they have been a victim of torture. The audit showed that in over 90% of cases, no action was taken. The new Chapter 55 of UKBA's Enforcement Instructions and Guidance (EIG) has recently been changed and now states that those suffering serious mental illness which cannot be `satisfactorily managed' within detention should only be detained in exceptional circumstances. We have been seeking clarification of `satisfactory management' and `exceptional circumstances' and will continue to push for an acknowledgment that detention is no place for anyone with mental health difficulties under any circumstances.

"BID did a brilliant job on my bail application though I was not granted bail. The barrister was excellent. I wished she was my solicitor. She presented my defence well. Keep it up BID".

Challenging long-term, indefinite detention

Documentation project

During the last year BID carried out a small-scale research project on documentation procedures for foreign nationals facing removal or deportation who have no travel documents. A sizeable proportion of the immigration detainees that BID works with are not in possession of any form of travel or identity document and are not able, for a variety of reasons, to provide the UKBA with sufficient information to enable their re-documentation and subsequent removal. In addition, foreign embassies and high commissions in the UK vary widely in their approach towards and speed in acknowledging their citizens and providing travel documents. Foreign national ex-offenders typically face major re-documentation hurdles as a result of loose ties with their country of origin after many years in the UK. Obstacles to re-documentation therefore have the capacity to leave immigration detainees in de-facto indefinite detention, facing little progress in their case and without guidance from UKBA on the steps that could be taken to conclude the documentation process in a timely manner and thus end their detention.

Once the research was completed and written up, a mini-site was created within the main BID website to house the project, providing both legal advisors and detainees with information about cases where documentation issues are delaying progress and lengthening time in detention. This can help legal advisors when assessing whether or not the length of detention and the purposes for which detention is being used, have become unlawful.

Consultation responses

BID has made submissions to the following consultations and enquiries:
Justice Select Committee enquiry into the role of the Probation Service; Ministry of Justice `Proposals for the reform of legal aid in England and Wales' (Feb 2011); Ministry of Justice `Breaking the Cycle'; Written and verbal evidence to `The case for legal aid: an enquiry into legal aid funding, its implications for litigants and for access to justice' organised by the Haldane Society/Young Legal Aid Lawyers; Chief Inspector of UKBA's planned thematic inspections for 2011/12; Home Office consultation on quarterly immigration statistics; Equalities and Human Rights Commission's three year human rights review.

BID's online presence and social media

Working with a design firm we launched a new website in October 2010. We are now able to offer detainees, supporters, researchers, journalists, and legal practitioners searchable resources and regular updates on our work. In May 2011 we launched our Twitter feed @BIDdetention, and already have a growing number of followers. These new resources allow us to position our communications more accurately and respond to events in the sector with a sense of immediacy.

"I think the work BID do is wonderful. They helped me every step of the way in my appeal. They contacted me about everything that I had to do. They took an interest in my case, wanting to know why I was detained and giving me advice about how to present my case. I was so impressed at the amount of time they spent talking to me on the phone for long periods, to ensure everything was in order. On the day I appeared in court they kept in regular contact with my surety to advise her that my barrister had arrived and to confirm that she was on her way. I really do not think I would have been granted bail without their support."

BID Oxford

BID Oxford supports people held in Campsfield House, Lindholme and Brook House. In the last year, we assisted over 296 detainees in relation to detention and bail matters. We prepared 60 bail applications, of which 20 were allowed, 28 were refused and 12 were withdrawn. From our statistics on detainees who have run their own bail applications we have a record of 46 DIY bail applications lodged, of which 6 were allowed. We also made 4 applications for temporary admission to UKBA, of which 1 was allowed and 3 were refused.

We represented Mr C, a victim of torture from Liberia with two separate medical reports confirming this. In spite of this, he spent 3 years in detention. His case was referred to Pierce Glynn solicitors to launch proceedings for judicial review for unlawful detention. They obtained a further medical report to confirm that he was suffering from complex PTSD as a result of past incidents of torture and also his bad treatment in detention. After several applications for bail we finally obtained his release from detention.

Mr B from Algeria was detained for 2 years and 3 months. He had family in the UK, but was trying to seek a court order from the County Court to obtain a contact order with his child. However the UKBA failed to bring him from the detention centre to his family hearings, and as a result his family solicitors advised him that they could not proceed with his family contact case unless he attended the County Court. We ran a bail application in May 2011 at which the Immigration Judge granted bail in principle, and advised us to return at the beginning of June 2011 - we did this and his bail application was refused. We made a further bail application in July 2011 - this time the Immigration Judge made directions for the UKBA to provide supporting evidence for their allegations of the client's poor behaviour in detention - this allegation having been made in spite of Mr B having an excellent character reference from the Manager of the IRC. The UKBA had been asked to file their evidence 4 days in advance of the next hearing, which they failed to do, and handed our barrister a document on the day of the hearing. The matter was resolved by the Immigration Judge asking the Duty Custody Officer (over the live video-link), to ask the Manager of the detention centre directly to confirm the truthfulness of the reference letter. The DCO sought advice from the Manager and was able to confirm that Mr B had indeed been a model detainee. The immigration judge said that if this had been the Crown Court, he would have asked for Mr B's caseowner to be brought to give evidence. He was very scathing about the UKBA's submissions and provision of false information to the court about the client's alleged behaviour.

We also held regular advice sessions and workshops. We ran 12 advice sessions and 7 workshops. Overall 61 detainees attended our advice sessions and 70 detainees attended our workshops. The management of Campsfield House changed hands at the beginning of June 2011 from GEO to Mitie. The staff, however, remain the same and we are continuing to run an advice session once a month and a workshop every 2 months.

In September/October 2010 we had to move offices due to expiry of the lease and the office was closed for two weeks. However, the new premises are bigger and we are now able to have more volunteers in the office, which in turn helps us to advise and represent more detainees.

It is evident from our work that there are some countries for which the UKBA knows that it is very difficult to obtain travel documents. However, they continue to detain people for long periods of time who are not removable due to lack of travel documents. All our current clients are in this situation. We have represented detainees from Algeria, Iran, Gambia, Burundi, Nigeria, Guinea (Conakry), Lebanon, Liberia and India. All our clients have been in detention for at least one year, many over 2 years, and some for 3 years or more.

CASE STUDY

Mr R from India at Campsfield House had been in detention for 2 years. He said that he had been fully co-operating with the documentation process and he felt that his health was suffering as a direct result of long-term detention, and the stress of 'not knowing'. We obtained a copy of his medical records, which indicated that his mental health was slowly deteriorating, and he was now taking anti-depressants and sleeping tablets. We made an application for temporary admission to his caseowner, and were delighted to have the application granted. However, section 4/NASS refused to allow him to use his accommodation because he had been granted temporary admission rather than bail. We sorted out the problem by making an application to Newport IAC for bail, requesting the matter to be dealt with on the papers. It was on this basis that we obtained bail for Mr R, but in spite of his being granted temporary admission he still had to wait a further 8 days for bail to be granted.

BID South

It seems that during these recessionary years we are living in an ever more hostile world. The Conservatives came to power pledging to get tough on immigration and began to introduce legislation to make it much harder to migrate to and settle in the UK. In addition to immigration restrictions, by October, state multiculturalism in Germany was declared dead, a view endorsed by our prime minister in February this year in his first speech on radicalism and the causes of terrorism. According to him some immigrants (overwhelmingly young Muslim men), '...*find it hard to identify with Britain... because we have allowed the weakening of our collective identity...***' and we are allegedly '*fearful*' of standing up to them**

Many immigrants, whether new or established, will be very upset that not only are they being blamed for the failings in our economic policies but are also viewed as potential terrorists. It is within this harsh political environment that we operate and our clients, many of them Muslims, have to persuade the UKBA or an immigration judge that they should be allowed back into our communities. It is no surprise that the journey is frequently a difficult one.
We supported a total of 383 detainees this year using a combination of advice by telephone and fax, bail workshops and providing representation in court where possible. We primarily assist detainees in Dover and Haslar.

We prepared 99 bail applications, 25 of which had to be withdrawn. Of those that were heard, 19 were granted bail and 52 refused. We know that 25 people prepared and presented their own applications and were granted bail after support from us. 3 others were also granted bail.

Judicial reviews

We had 12 cases that had been identified as potential unlawful detention claims. One person was removed from the UK because he chose to return voluntarily to his country of origin. His JR continues in his absence. One was released following an order to social services to provide a care package, with the JR continuing. One was granted temporary admission by the UKBA after the High Court ordered release. Four were granted bail and the JR is continuing. One was granted bail following a successful claim for unlawful detention and one further case was successful, his detention being ruled unlawful.

"I am so pleased with the work that BID have done for me. I'm even pleased with the work you have done for me more than my solicitor. I was so pleased that I contacted BID because they have helped me in every way they can. BID sent a barrister to court with me when I went for bail that I'm very pleased with. I have so much faith in the barrister and BID. I will recommend anyone that have immigration case or not happy with their solicitor to BID. Thank you".

JUDICIAL REVIEW CASE STUDY

An Algerian national came to the UK in 2001 and claimed asylum. His claim was refused and his appeal dismissed. He entered immigration detention in July 2006 following a six month prison sentence for theft. 4 years and 11 months later he was released by the High Court which ruled his detention unlawful from the start as there had never been a realistic prospect of removal within a reasonable time. Not only was there no justification for the detention in the first place, but the UKBA had not kept the detention under proper review and they had also relied on an unlawful secret policy to maintain the detention. In addition they had put forward evidence that was false and misleading. Congratulations to Jane Ryan of Bhatt Murphy for exposing this outrage and bringing the case to a successful conclusion.

'... phenomenal ... magnificent ... thanks ...'
released detainee

At BID South we sent out feedback forms to every client that we represent in court whether or not their case was successful. This year we received 13 responses, 4 from released detainees and 9 from detainees who had been refused bail. The amazing thing is that all of them were very positive about our service despite, in some cases, feeling a bitter disappointment at the refusal to grant bail.

The problem of accessing good legal advice actually got worse during the year with the closure of the Immigration Advisory Service. The detention centres now have new duty advisers but lack of representation for bail applications remains a problem.

The failure of UKBA to provide bail addresses to those deemed high risk remains a problem. Many detainees are unable to access their right to apply for bail and indeed are detained much longer that they should be because UKBA has failed to organise sufficient numbers of bail addresses. We will continue to push for bail addresses on behalf of our clients including making referrals for judicial reviews if necessary.

'Your service was excellent ... your barrister was also excellent ...'

released detainee

While the recession lasts, we need to expect increasing hostility towards immigrants and it is more important than ever that BID continues to keep fighting for the release of detainees individually as well as continuing to highlight the injustices of the detention system with a view to bringing it to an end.

"I am delighted to inform you that I have now received my legal documents to settle in the UK. This is great news and I want to use this opportunity to thank you and the rest of the staff at BID. It would not have been possible without your help. During those difficult days you worked really hard to send in doctors for me and helped with my bail applications. I have not forgotten all that and I want to thank you for all you did. I now look forward to settling and probably studying."

"I'm nothing but grateful — it's because of BID that I'm a free man. BID is a charity that helps people like me and it is people like BID who help so many people who are stuck in the system. I'm very grateful to everyone in the BID team. God Bless you All".

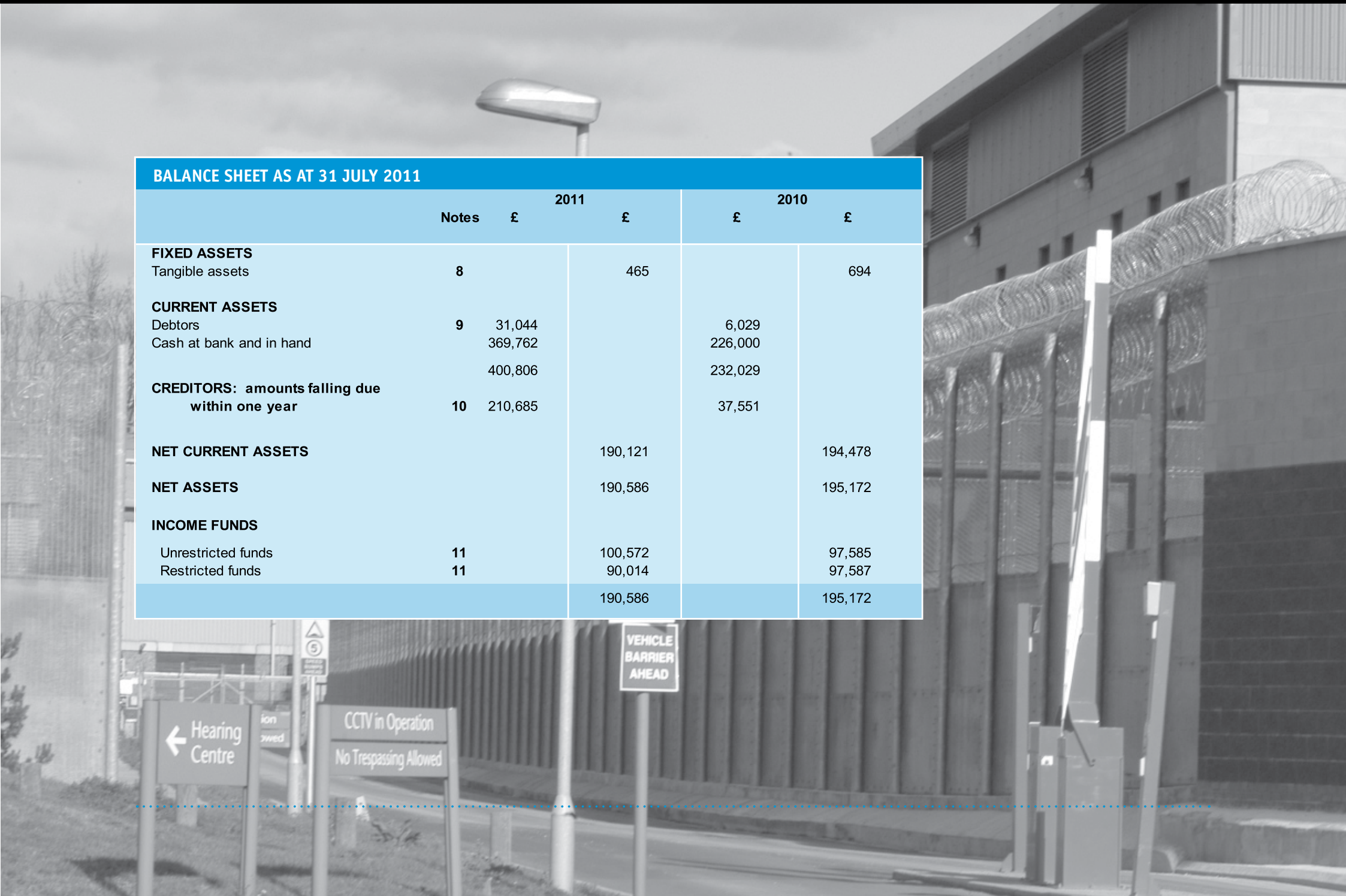
Financial information

SUMMARY INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31 JULY 2011

	Notes	Restricted Funds £	Unrestricted Funds £	2011 £	2010 £
Incoming resources					
Incoming resources from generated funds:					
Voluntary income:					
Donations and grants	2	-	149,959	149,959	182,122
Activities for generating funds:					
Investment income	3	-	1,374	1,374	441
Other income		-	-	-	1,543
Incoming resources from charitable activities	4	437,286	-	437,286	460,989
Total incoming resources		437,286	151,333	588,619	645,095
Resources expended					
Costs of generating voluntary income	5	-	22,324	22,324	18,197
Charitable expenditure:					
Right to liberty		73,550	9,501	83,051	83,177
Bail casework		183,327	82,900	266,227	252,496
Families project		110,563	6,354	116,917	130,726
Research and policy		77,419	7,734	85,153	81,201
	5	444,859	106,489	551,348	547,600
Governance costs	4	-	19,533	19,533	11,835
Total resources expended		444,859	148,346	593,205	577,632
Net incoming (outgoing) resources		(7,573)	2,987	(4,586)	67,463
Reconciliation of funds					
Total funds, brought forward		97,587	97,585	195,172	127,709
Total funds, carried forward		90,014	100,572	190,586	195,172

BALANCE SHEET AS AT 31 JULY 2011

	Notes	2011 £	2011 £	2010 £	2010 £
FIXED ASSETS					
Tangible assets	8		465		694
CURRENT ASSETS					
Debtors	9	31,044		6,029	
Cash at bank and in hand		369,762		226,000	
		400,806		232,029	
CREDITORS: amounts falling due within one year	10	210,685		37,551	
NET CURRENT ASSETS			190,121		194,478
NET ASSETS			190,586		195,172
INCOME FUNDS					
Unrestricted funds	11		100,572		97,585
Restricted funds	11		90,014		97,587
			190,586		195,172



Thank you

THANK YOU TO OUR FUNDERS

Diana, Princess of Wales Memorial Fund
Esmee Fairbairn Foundation
Appletree Fund
The Sigrid Rausing Trust
Joseph Rowntree Charitable Trust
Unbound Philanthropy
Comic Relief
Lloyds TSB Foundation
Trust for London
London Legal Support Trust
Lankelly Chase Foundation
Richer Charitable Trust
Cole Charitable Trust

THE STAFF, TRUSTEES AND VOLUNTEERS

Trustees

Rajeev Thacker (Chair), John Bingham (Treasurer), Liz Barratt (Vice-Chair), Teresa Hanley (resigned 26/01/2011), Stephen Meachem (resigned 26/01/2011), Peter Cleland (resigned 02/05/2011), Laura Bowman, Maggie Pankhurst (appointed 27/07/2011) Chris Tully (appointed 27/07/2011)

Staff

Holly Buick (Legal Caseworker, Families Project), Sarah Campbell (Research & Policy Manager), Celia Clarke (Director), Ionel Dumitrascu (BID Oxford Manager), Matthew Duncan (Legal Manager), Elli Free (Legal Manager, Families Project), Pierre Makhlouf (Assistant Director), Frances Pilling (BID South Manager), Natalie Poynter (BID Oxford Manager), Sille Schroder (Legal Manager), Adeline Trude (Research & Policy Manager), Andrew Viggers (Assistant Manager, BID South, joined 02/11, left 07/11), Kamal Yasin (Office & Finance Manager), Sophy Yildirim (Assistant Manager, BID South, left 12/10).

Volunteers

BID London:
Tony Goodfellow, James Ingram, Maria Baqueriza, El Hadj Amadou Diallo, Targol Jahanbakhsh, Luke Manzarpour, Nimesh Lathia, Semhar Menghis, Iqvinder Malhi, Afsaneh Lotfizadeh, Kathryn Donaldson, Tahsin Rahman, Benjamin Coleman, Lana Homeri, Alistair Jones, Toomaj Karimi-Ayoubloo, Amy Foan, Nicholas Beales, Ripon Roy, Yuhiza Yusop, Tom Tabori, Arya Alatsas, Hadrian Tulk, Jasmine Ganeshalingam, Shoaib Khan, Elaine Nyako.

BID Oxford:
Gillian Baden,Maxine Hedworth, Catherine Kennedy, Ann Gavin, Vincent Ortet, Gosia Danthon, Fae Vincent, Saima Khalid, Jess Bicknell, Pauline Casaux, Julia Steinhardt, Sara Davidson, Abigail Sarfatti, Eliza Eagling, Ayeisha Abbati, Stephanie Griggs-Trevarthen, Evelyn Massa.

BID South:
John Bingham, Mary George, Michael Heaps, Sue Mullan, Nolan Dickman, Lia Deyal, Jo Hunt, Rosemary Hort, Dulani Kulasinghe, Steve Watts, Theresa Colville-Wright, Ayse Storey, Sophy Yildirim, Kate Adams (Dover), Eleftheria Pappwa (Dover).

BID WOULD LIKE TO THANK THE FOLLOWING LAWYERS FOR PROVIDING BID, AND DETAINEES, WITH PRO-BONO REPRESENTATION

Barristers who have represented BID with our applications to intervene before the higher courts
Michael Fordham QC
Laura Dubinsky
Graham Denholm
Alex Goodman

Solicitors who have represented BID
Allen and Overy Solicitors LLP and in particular:
Andrew Denny
Henrietta Jackson-Stops
And
Bhatt Murphy Solicitors, including:
Mark Scott
Janet Farrell

BiD Bail for Immigration Detainees

Barristers who provide their pro-bono services to BID:

Umar Azmeh
Francesca Delany
Anna Watterson
Gwawr Thomas
Greg Ó Ceallaigh
Gemma Loughran
Gilda Kiai
Eleanor Claire Hutchison
Andrew Gilbert
Marisa Cohen
John Crosfil
Alex Goodman
Sarah Hannett
Michelle Pratley
Jack Anderson
David Loveday
Jennifer Thelen
Phillipa Jackson
Ned Helme
Ben Tankel
Heather Emerson
Anabella Lee
Paul Harris
Michelle Knorr
Alasdair Mackenzie
Alison Pickup
Alex Gask
Stephen Broach
Ben Silverstone
Anthony Vaughan
Raza Halim
Kirsten Heaven
Ronan Toal
Claire McGregor
Navita Atreya
Duran Seddon
Patrick Lewis
Simao Paxi-Cato
Irena Sabic
Navtej Ahluwalia
Siobhan Lloyd
Helen Foot
Bryony Poynor
Ousman Noor
Richard Mobbs
Tim Buley
Harriet Short
Allan Braddock
Emma Daykin
Eric Fripp
S. Chelvan
Justine Fisher
Bojana Osanovic
Ellis Wilford
Keelin McCarthy
Sandra Akinbolu
Raphael Jesurum
Gordon Lee
Victoria Laughton
Althea Radford
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Dinali Nanayakkara
Margaret Phelan
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Mehvish Chaudhry
Sarah Pinder
Kezia Tobin
Abigail Smith
Richard Reynolds
Bronwen Jones
Jesse Nicholls
Naomi Lumsdain
Naina Patel
Philippe Bonavero
Tim Potter
Rebecca Filletti
Dr. Pavlos Eleftheriadis
Saoirse Townshend
Grainne Mellon
Martha Spurrier
Hermione Williams
Priya Solanki
Camille Warren
Livio Zilli

`The board continues to be concerned about the number of people who end up being detained for very long periods of time.'

Harmondsworth Independent Monitoring Board Annual Report 2010, May 2011.

BiD Bail for Immigration Detainees

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Challenging immigration detention in the United Kingdom