



## **POSITION PAPER**

### **Spring 2019 Legal Advice Survey**

**May 2019**

**Winner of the JUSTICE Human Rights Award 2010**



## **About BID**

BID is an independent national charity established in 1999 to challenge immigration detention and improve access to release from immigration detention for those held under Immigration Act powers in immigration removal centres and prisons. BID provides immigration detainees with free legal advice, information, and representation, and engages in research, policy and advocacy work, and strategic litigation. BID is accredited by the Office of the Immigration Services Commissioner (OISC), and won the JUSTICE Human Rights Award 2010. In the last 12 months, BID provided support to 5,941 people.

With the assistance of barristers acting *pro bono*, BID prepares and presents bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal for the most vulnerable detainees, including long term detainees, people with serious mental or physical ill-health, detainees who have intractable travel document problems, or who are main carers separated by detention from their children, and who are unable to obtain legal representation. Since 2014 BID has also provided legal advice and representation to people challenging deportation on the basis of article 8 ECHR.

One of BID's key aims is to improve access to justice for detainees. To achieve it, and to improve our own advice service, BID speaks directly to detainees twice a year so that we can document their experiences of getting legal advice while in detention. The May 2019 Legal Advice Survey was the 17<sup>th</sup> that we have carried out. We interviewed 77 BID clients in immigration detention in order to find out about people's access to legal advice and representation<sup>1</sup>. We are indebted to volunteers from BPP law school that carried out the interviews.

## **Legal Advice Survey – May 2019: Headline findings**

**The level of legal representation** among immigration detainees has improved upon previous years. 64% of people held in immigration detention have an immigration solicitor at present and of those, 69% have a legal aid solicitor. Although higher than the last survey, these figures remain lower than they were in the four surveys carried out in the two years prior to the implementation of legal aid cuts in 2013. The level of legal representation in immigration detention therefore remains inadequate.

**Awareness of the availability of free legal advice** in detention was generally good, with 62 out of 77 respondents (82%) saying they were aware that they could access free legal advice in detention.

The poor quality of legal representation featured prominently in responses in this survey. In September 2018 the Legal Aid Agency (LAA) made significant changes to the contractual

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<sup>1</sup> We called every detainee for whom we had an open file. All those individuals had signed letters of authority consenting to the disclosure of their anonymised information to further BID's research work. 88% (n=68) were male and 12% (n=9) were female. The sample were detained at the following IRCs: Brook House (n=18); Colnbrook (n=14); Harmondsworth (n=25); Morton Hall (n=10); Yarl's Wood (n=9).



arrangements governing the provision of legal advice in immigration detention, the Detention Duty Advice (DDA) scheme. Under the DDA scheme detainees can book a half-hour appointment with a legal aid immigration lawyer, and each firm that is contracted to give advice in that detention centre is responsible for the provision of advice for a week at a time. Lawyers staffing the DDA legal advice scheme or surgery agree, and are required, to take on all cases that have merit. The main feature of these changes has been a sharp increase in the number of providers of immigration advice under the DDA scheme. The responses to BID's most recent Legal Advice survey have raised concern that there has been a depletion of expertise among firms carrying out detention-related legal aid immigration work. While the old contracts were restricted to only two or three providers in each centre, a firm could develop legal advice expertise by providing a high number of surgeries throughout the year. Now, each firm at IRCs run just one or two surgery weeks in a year. The vast majority of providers have never run DDA surgeries in the past and lack experience of detention work, and our findings indicate that they are not running enough surgeries to be able develop sufficient expertise in this complex area that has significant implications upon individuals' right to liberty as well as their claims to be allowed to remain in the UK.

## **Poor quality legal advice**

In the survey 51 individuals said that they had booked an appointment with the DDA solicitor. Among these, 25 said the lawyer did not take on their case, and 4 said they were unclear. Among the 21 individuals who said that the DDA lawyer took on their case, 2 said that they had since been unable to get hold of the solicitor.<sup>2</sup>

BID asked the 25 individuals whose case was not taken on what reasons were given. 12 out of 25 people said the reason they were given was that their case was 'not covered by legal aid'. 3 were told that their case didn't have enough merit and another 3 did not know the reason. It was particularly concerning that two individuals were told by the DDA lawyer that they could not take on their case because they did not have capacity to do so.

We asked the 12 individuals whose case had not been taken on because of eligibility for legal aid whether the lawyer had made them aware of the option to apply for Exceptional Case Funding (ECF). Not a single one had been informed of ECF (although there was one individual who recalled being informed about some alternative funding but he wasn't sure if it was ECF). In one particularly alarming case the respondent told us that he enquired about ECF with the solicitor and was told that it was 'too complicated to apply for'.

We also asked individuals what happened in the DDA appointments. Only 12 (25%) were given specific advice about their case. 30 individuals (61.2%) told us that the lawyer just asked for details

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<sup>2</sup> Among these 51 there was also 1 individual who said that it 'wasn't required' for the solicitor to take on their case

and did not give advice, and another 6 told us that the lawyer gave them general information that might help. Only 10 (20%) were given advice in writing.

BID is concerned that the half-hour appointments at DDA surgeries are already insufficient for lawyers to assess a person's case. As such, we are alarmed by reports that DDA lawyers are giving detainees less than the allotted thirty minutes. For instance, in a recent HMIP inspection of Colnbrook IRC it was found that *"some of the new representatives providing this service had been seeing a large number of detainees for less than the allotted time, potentially affecting the quality of provision."* Equally, whilst running an advice workshop at Morton Hall Immigration Removal Centre a BID Legal Manager was told that the duty solicitor attending the surgery had seen a full list of people and completed the surgery between 9am and 11am. One interviewee in the survey told us that he had made repeated appointments with the free lawyers *"but was told on every occasion that he would need to pay to get legal advice. No appointment lasted more than 2-3 minutes"*.

It was clear from our interviews that the DDA scheme now has a poor reputation amongst people in immigration detention. This is expressed in qualitative notes from the interviews:

- One individual, when asked whether she had made an appointment with the DDA solicitor said "no (everyone repeatedly told her that the free legal advice lawyers were incompetent and that she would be wasting her time)"
- Another individual when asked whether she had made an appointment said that she had "never bothered because she heard that they were so unhelpful and often just tell people that their best option is to go back to their home country".
- A detainee told us that he had "found the free solicitors quite unhelpful as they don't seem to know much about this situation".

There were 49 individuals who said that they currently have a solicitor but there were only 22 cases (43.1%) where their solicitor had made an application for bail. We asked individuals if they knew the reason why the solicitor had not applied for bail. Some of these answers were reasonable, such as three individuals who said this was because the lawyer had only very recently taken on the case. However, many answers revealed DDA solicitors' misunderstanding of the bail process or a lack of urgency in securing liberty for their clients.

- Three individuals said that their solicitor had not applied for bail because of issues with their release address including one solicitor who had said that there is no point in applying for bail because the applicant did not have an address.
- One individual said their solicitor had not made a bail application because they said that they 'need referees'.
- Three individuals said that it was because they could not get hold of their solicitor.

- Three individuals said that their solicitor was not doing the application because BID was doing work on bail (BID does not represent people in detention where a solicitor is acting for a person in the same matter)
- Another said they could not afford to pay the solicitor to represent them in a bail application
- Others simply said that they were applying for bail themselves or that they were unclear as to why the lawyer was not applying for bail

There were 26 people who did not have an immigration solicitor, and 2 who were not sure whether or not they had an immigration solicitor. Worryingly, half (14 individuals) said the reason they did not have a solicitor was that they could not afford one or that they were ineligible for legal aid. Another 3 said the reason was that they had recently been moved from one IRC to another and had lost their lawyer in the process. In other cases, the reasons people gave for not having an immigration solicitor are further cause for concern about the quality of legal representation.

- Three individuals said that they had been actively trying to get a solicitor but that they could not find anybody to take on their case.
- One individual told us that he previously had a solicitor that he had instructed privately but the advice given was really poor. The solicitor was taking his money but not providing any legal advice. He applied for a refund and managed to get his money back.
- One individual told us that it was not clear if his solicitor was acting for him as he had not contacted him. Another said that their solicitor had 'disappeared', and another that the solicitor said they are not carrying on with the case but he was not given a reason.

## **Advice in prisons**

Another serious concern was the lack of immigration legal advice provided to those detained in prisons under immigration powers. Although we are not able to carry out the legal advice survey among people currently detained in prisons because they do not have mobile phones, 43 of the 77 interviewees had come to the removal centre from prison. Out of those 43, only 3 (7%) had received legal advice from an immigration solicitor whilst in immigration detention in prison. There were an additional four individuals who said they had received immigration advice from other sources (a criminal solicitor, a charity, BID, a prison officer). These results are consistent with recent legal advice surveys and suggest a serious dearth of legal advice for people who are almost certainly facing deportation proceedings.

One interviewee told us that he was issued a deportation order while in prison but was told that legal aid was not available, and so he had to represent himself. He used the library to familiarise



himself with immigration law and made an application for ECF himself but said that he did not fit the criteria. He told us that *'help in prison is non-existent for immigrants'*. Another individual told us that he was previously detained at Wormwood Scrubs and tried to get a solicitor there - he found potential solicitors by looking in the newspapers - but whenever he tried to book a visit by the solicitor he found that the visit was blocked so he never got to see a solicitor whilst he was in prison.

## **Blocked websites**

Of 28 individuals who said that they had used the internet to research their case, 22 reported that blocked websites in detention had made it more difficult to research their case. For instance, one detainee said that they entered the terms 'legal aid solicitors' into Google's search facility and found the first 5 results blocked. Another said they had searched with key terms like 'injunctions' and found many sites blocked. Categories of blocked website included

- Human rights related websites
- Websites that could be used for immigration / legal research.
- Social media
- Emails
- News websites

One detainee who understood how the filtering system worked gave a detailed account of the various problems he had encountered:

*"The majority of websites are blocked. Most key search terms result in blocked websites e.g. when you type in 'human rights' on Google you get a list of hits but then you get blocked by a firewall when you try and click on any of them. Java is disabled on the websites and this means that most websites won't work. Lots of solicitor websites are blocked, a popular website to try and visit is 'Zafar Chambers' but this site is blocked. It's like a school firewall on the computers. Some people try and get around the firewall by using a proxy but even then if you are able to get on the website you can't use any forums and the websites don't really work properly because Java is disabled. You also can't download PDF's and the print PDF function is disabled. This means that if legal documents are sent by email you often can't actually access them. I am having to get my dad to scan documents and send them in another format to be able to access them. Also lots of email servers are blocked: Live.com, Outlook.com and Microsoft's own email server. This means that anybody who has email addresses with these servers can't access their emails and they are having to create new email addresses on e.g. gmail."*

Other detainees gave accounts of their experiences with blocked websites in detention and the issues it had caused:



One interviewee told us *“They block everything. Even emails - we have to make new ones. Even political papers [are blocked]. We can't find anything that tells us about our situation. It's crazy”* He said that his friends had told him to try the BBC but he could not find anything that related specifically to detention because it is blocked. This meant that he was not able to help himself and without a legal aid solicitor or access to information he did not know how to apply to get out of detention.

Another insisted that nearly every website she tried to go on to research her case was blocked, and even her email was blocked. She could not open any emails from her solicitor or anyone else that could ultimately help with her case. She stated that using the internet for anything in an IRC was impossible.

Another said that she found that if you tried to do research on something like immigration law you could get onto the main ‘gov.’ websites but lots of other sites were blocked. Equally, if you started trying to click through different links to carry out thorough research from a government website she would quickly find that the linked websites were blocked and so she couldn't research properly. She told our researcher: if you do something through a solicitor and an application gets refused they often do not explain it to you. If you then go away and try and understand the reasons through doing your own application you cannot research properly and so you have very little way of understanding your case and helping yourself. A lot of education websites are blocked.

Some detainees said in their responses that they were deterred from using the internet because of the lack of privacy, as detention officers can see what you are looking at.

## **Other issues**

1. 22 individuals (29%) said that on at least one occasion in the past they had been forced to change solicitor as a result of being moved from one IRC to another.
2. Out of 26 people who do not currently have an immigration solicitor:
  - 24 told us about the ways that it had negatively affected them
  - 15 said that it meant they did not know how to challenge detention
  - 12 said that it made them unable to apply for bail
  - 9 said it made it more likely that they would be deported
  - 9 said that it meant they did not know what evidence was needed
  - 9 said that they were unable to collect any evidence
3. Waiting times to see the solicitor were unsatisfactory. We asked each of the 51 individuals who had booked an appointment with the DDA lawyer how long they had to wait for an appointment. Below is a breakdown of the answers:

- a. Less than 72 hours (11) – 21.6%
- b. 72 hours – 1 week (11) – 21.6%
- c. 1-2 weeks (13) – 25.4%
- d. 2-3 weeks (4) – 7.8%
- e. More than 3 weeks (6) – 11.7%
- f. Did not understand / did not answer (6) – 11.7%

It is particularly concerning that only 11 of the 51 respondents who had made an appointment to see the DDA solicitor were able to have the appointment within 72 hours. 72 hours is the amount of notice that the Home Office is normally required to provide to individuals before removal can take place.

## **Recommendations**

BID argues that immigration detention is inhumane, unnecessary and expensive. We campaign for an end to the practice of depriving people of their liberty for immigration purposes. However, while detention continues to exist the following recommendations need to be implemented urgently.

1. Everyone should be offered an appointment with the legal aid solicitor upon entering detention, and this should be recorded.
2. Anyone served with a first stage deportation notice should be offered access to immigration legal advice on their substantive deportation matter and on their detention matter.
3. There must be automatic judicial oversight of the decision to detain with automatic legal representation for the potential detainee
4. THE DDA scheme in IRCs should be reviewed so that:
  - a. The LAA should carry out a review of the quality of advice on the surgery rota following the increase in the numbers of firms contracted to deliver advice
  - b. The LAA should carry out a peer review of advice delivered on the surgery by firms that have not previously dealt with immigration detention cases.
  - c. The LAA should allow detainees to seek advice from any non-surgery legal aid lawyer of a person's choosing. This will help to ensure that reputable firms attract advice work without forcing detainees to rely on a duty scheme in detention that has presently lost detainees' trust
  - d. Organisations such as BID and ILPA should be approached with a view to delivering training on detention and deportation to DDA firms
5. The provision of legal aid advice in prisons should be expanded as a matter of urgency and should be equal to the provision of advice in IRCs.





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