

**BiD** Bail for  
Immigration  
Detainees

**Summer Legal  
Advice Survery**

**August 2023**



## **About BID**

BID is an independent national charity established in 1999 to challenge immigration detention. We assist those held under immigration powers in removal centres and prisons to secure their release from detention through the provision of free legal advice, information and representation. Alongside our legal casework, we engage in research, policy advocacy and strategic litigation to secure change in detention policy and practice. In 2013 BID set up a project dedicated to providing assistance for people detained in prisons for immigration reasons. We are entirely reliant on charitable donations and we are not in receipt of legal aid funding. We do however call for the provision of legal aid funding to everyone held in detention or facing deportation.

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 help 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 sourcing and receiving legal advice while in detention – known as the 'Legal Advice Survey'. We would like to thank the volunteers from BPP law school and BID volunteers who carried out the interviews, and the people who agreed to share their experiences of accessing legal advice in detention.



## **Introduction**

*“The provision of legal aid to individuals who seek redress is not simply a matter of compassion, but a key component in ensuring the constitutional right of access to justice, itself inherent in the rule of law”.* Lord Reed, in *Unison v Lord Chancellor* [2017]

Governments cannot simply lock people up and throw away the key – people who are being deprived of their liberty must be able to access legal advice, representation and independent courts. It is the government’s duty to provide this.

Unlike in the criminal justice system, there is no automatic provision of legal advice for people held under immigration powers who have been deprived of their liberty. However, the complexity and challenges of navigating immigration law are nearly impossible to overcome without access to legal representation. Compounding this, people held in detention are also more likely to face other barriers relating to language, literacy, vulnerability, and trauma, which makes preparing an immigration application or challenging detention much more difficult.

In the case of *J.N. v. the United Kingdom* (Application no. 37289/12), the European Court of Human Rights (ECtHR) held that the lack of a maximum time limit or automatic judicial oversight of detention was not unlawful due to the existence of other procedural safeguards – common law principles which establish limits on the lawfulness of detention (the *Hardial Singh* principles). This means that the lawfulness of the UK’s illiberal detention system rests on the notion that individuals can simply bring a judicial review claim before the High Court.

However, in July 2023, the government passed the Illegal Migration Act which expanded detention powers. The Act limits judicial oversight as, since the 28th of September 2023, the decision on what is a reasonable period of detention now sits with the Secretary of State for the Home Department (SSHD) rather than the courts.<sup>1</sup> The Act also includes the power to prevent a person from applying for immigration bail within the first 28 days of detention under Section 13<sup>2</sup> however this is not yet in force. Furthermore, the Act placed a duty on the Secretary of State to remove anyone entering the UK irregularly and effectively abolished the right to seek asylum in the UK for the vast majority of people. Legal practitioners will also be faced with tight timeframes to respond to the notice of inadmissibility within the Act. In response to these demands, the government determined a 15% uplift in fees to legal aid providers for work under the Illegal Migration Act.

BID responded to consultations on the then-proposed uplift, highlighting that it is not enough to ensure everyone who is issued a removal notice under the Act is able to secure representation. Legal aid fees have remained stagnant since 1996 and were, in fact, reduced in 2011. The lack of supply and

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<sup>1</sup> Illegal Migration Act – Section 12 - Period for which persons may be detained

<sup>2</sup> Illegal Migration Act – Section 13 - Powers to grant immigration bail



capacity of legal aid lawyers has caused advice droughts and deserts<sup>3</sup>, and more than 30% of immigration and asylum legal aid providers who were given contracts in September 2019 had stopped delivering legal aid work by March 2023.<sup>4</sup>

BID as an organisation exists because the Legal Aid sector cannot meet the demand for advice and representation and BID's legal advice surveys demonstrate that current arrangements are inadequate. We have proposed seven recommendations for change which must be implemented urgently to ensure everyone has access to justice.

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<sup>3</sup> Droughts and Deserts. A report on the immigration legal aid market. - Dr Jo Wilding

<sup>4</sup> The Conversation: The legal aid sector is collapsing and millions more may soon be without access to justice – new data. June 2023



### **Research Sample**

People detained under immigration powers were interviewed between 10/07/2023 to 31/08/2023. The sample group was taken from BID's clients who:

- Had files opened from the 1st of December to the 31st of July;
- Have signed letters of authority consenting to the disclosure of their anonymised information to further BID's research work; and
- Were detained in IRCs, not in prisons

Volunteers called 147 people and completed 40 surveys. Ninety-six numbers went to voicemail, were the wrong number, or the phone was switched off.

BID asked the interviewers carrying out the survey to write down what the interviewee said as accurately as possible whenever qualitative answers were given.<sup>5</sup> 23 interviews were conducted by volunteer students from BPP University at the BID office, and 17 interviews were conducted by volunteers from Bail for Immigration Detainees.

The people we spoke to had been detained for an average of 121 days (4 months). Of the 40 people who answered the survey, 14 people were held in Harmondsworth, 12 were held in Colnbrook, 10 were held in Yarl's Wood, 3 were held in Brook House, and 1 was held in Dungavel. 7 interviews were carried out with an interpreter.<sup>6</sup>

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<sup>5</sup> This includes instances where the question requires a qualitative answer as well as those cases where the individual volunteered additional qualitative information despite not having been asked to do that. Some interviewees left certain questions blank.

<sup>6</sup> Albanian - 2, Hindi – 2, Urdu – 1, Polish - 1, Kurdish - 1,

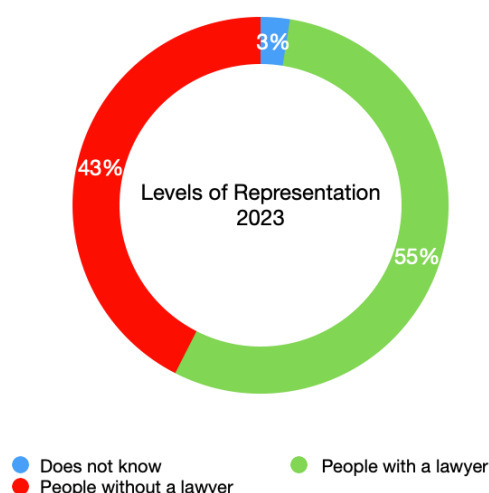




## Findings

### Levels of Representation

From the survey, 22 people out of 40 said they had an immigration lawyer (55%). 17 people said they did not have an immigration lawyer, and one person said they did not know. This is slightly higher than the Winter 2022 Legal Advice Survey, which found 43% of lawyers had an immigration lawyer. However, this is lower than the previous Legal Advice Surveys (2019), which found that representation was at 64% (Spring) and 59% (Autumn). The Legal Advice Surveys were not carried out in 2020 due to the coronavirus pandemic.



Of those who said they had an immigration lawyer, 16 said that their lawyer was funded by legal aid (73%), 6 said they were represented privately, and one person said they did not know.

Of the 17 people who said they did not have representation, 7 were held in Harmondsworth, 7 were held in Colnbrook, 2 were held in Brook House, and 1 person was in Yarl's Wood. The respondent who said they did not know if they had an immigration lawyer was in Harmondsworth.

### Reasons behind levels of representation

Out of the 17 people who said they did not have a lawyer, 6 people said it was due to financial reasons. 4 people said it was because they were told there was no capacity to take on their case. 3 people said it was because they tried to obtain a lawyer and were ignored. 3 people said they had begun the process of obtaining a lawyer but were waiting for a lawyer to get back to them. One person said it was because their case was too complicated, and another person said it was because their case was straightforward. One person did not state why they did not have a lawyer.

All respondents were asked if they had ever had a lawyer; 14 people said yes, 12 people said no, and 14 people did not respond.

Those who did not have a lawyer had been negatively affected by the lack of legal assistance. Respondents were asked how not having a lawyer has affected their case, and 11 people responded. Three people said that this has meant they do not know what to do. Two people said that being unrepresented resulted in their bail application being refused. Two people said that this meant they

had to figure out the next steps alone. Two people said that it was difficult to figure out what to do and it was difficult to find beneficial information for their case. One person stated that this had meant they were left waiting to be deported, and one person said this had negatively impacted their case.

### Bail

The survey shows that the number of lawyers applying for bail for their clients has increased. Out of the 22 people who said they had a lawyer, 17 people (77%) said that their current lawyer applied for bail. In the 2022 Legal Advice Survey, 11 out of 18 people (61%) said their lawyer had applied for bail.

For the people whose lawyers did not apply for bail, there were a range of reasons given on why this might be. One person said they did not know and said their lawyer just asked them to wait. One person said none of the lawyers thought he had a claim to bail. One person said their lawyer had not applied as they did not have accommodation to be released. One person said it was because they knew BID was helping. Another person said they do not know why their lawyer has not applied for bail. These are not satisfactory reasons for failing to apply for bail. In BID's experience, there is a poor understanding of immigration bail in the legal aid sector. Additionally, research shows that the demand for services exceeds the capacity of legal aid providers.<sup>7</sup> Unrealistic demand may also be a factor as to why more than 30% of immigration and asylum legal aid providers who were given contracts in September 2019 had stopped delivering legal aid work by March 2023.<sup>8</sup>

### Detention Duty Advice (DDA) Scheme

Under the Detention Duty Advice (DDA) scheme, people detained can book a 30-minute appointment with a legal aid lawyer, who will assess the merits of the case. Lawyers staffing the rota are contractually required to provide representation in any case that has merit.

We asked people questions about the DDA scheme and if they were aware that they were entitled to free legal advice. 30 people (75%) said they did know that they could get free legal advice, whilst 10 people said they did not know they could get free legal advice. 23 people made an appointment with the DDA lawyer.

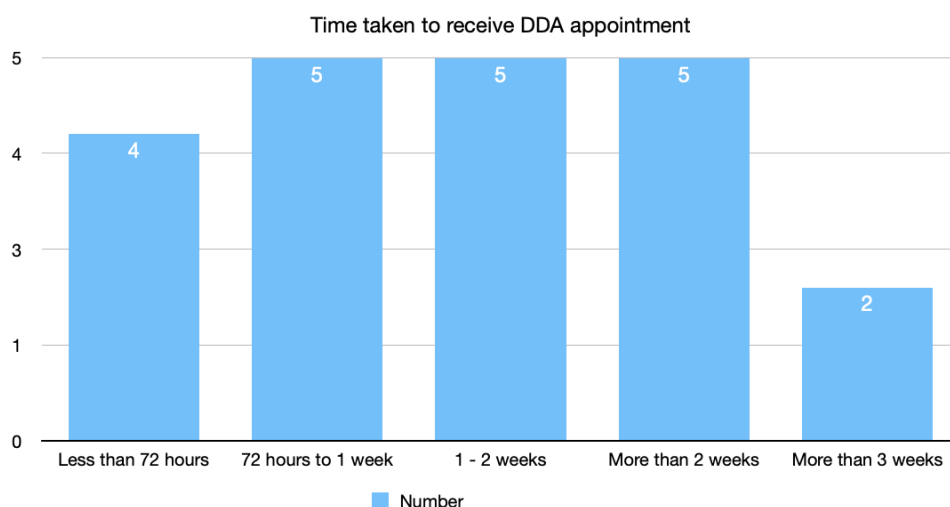
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<sup>7</sup> No Access to Justice: How Legal Advice deserts fail refugees, migrants and our communities – page 44 – Jo Wilding – Refugee Action Report

<sup>8</sup> Source: The Conversation: The legal aid sector is collapsing and millions more may soon be without access to justice – new data. June 2023



Respondents were asked how long it took to receive an appointment, and 21 people answered. 4 people said it took less than 72 hours to receive an appointment, 5 people said it took 72 hours to 1 week, 5 people said it took 1-2 weeks, 5 people said it took over 2 weeks. Two people said it took more than 3 weeks and one person specified that it took 3 months to receive an IRC appointment with a lawyer. The majority of people said the appointments took place face to face rather than via telephone appointments. A face-to-face appointment is always preferable since it enables a more meaningful assessment of vulnerability and overall presentation of a client.



The quality and time of the appointments varied. 13 people said appointments lasted less than the time allocated and that they spoke to the lawyer for around 5-10 minutes or 15-20 minutes. Three people said the lawyer was in a rush and six people said the lawyer did not give sufficient advice. 3 people were told that they would need to pay for legal aid or that the lawyer they saw asked for money. 3 people said the lawyer only took notes on the case but never got back in touch. However, two people said their appointment lasted more than 30 minutes, at 1-2 hours. One person said the appointment 'went smoothly.' 12 people said their cases were taken on, whilst 14 people said their cases were not taken on.

Respondents were asked if they were told about Exceptional Case Funding (ECF). ECF was introduced after immigration cases were taken out of the scope of Legal Aid in 2013 (LASPO Act), and it was designed to be a 'safety net' to ensure people could apply for legal aid funding in cases where decisions made by the Home Office would breach their human rights. Out of 11 people who responded to this question, ten people said they had not been informed of this and one person said they had been told about ECF.



### Immigration legal advice in prison

Out of the 29 people who had previously been in prison, only 1 person said they received advice from an immigration lawyer whilst in prison. 3 respondents said they received advice in prison; however, clarified that it was not an immigration lawyer. One person stated, *'In prison, it is hard to get any kind of legal advice, but other inmates did help out.'*

Similarly, in 2022, only 2 out of 24 people who had previously been in prison received immigration advice from an immigration lawyer.

Under the Detained Duty Scheme, people held in IRCs are entitled to 30 minutes of free immigration legal advice and this did not extend to people held under immigration powers in prisons until the case of *SM vs Lord Chancellor* (2021). BID intervened in this case and the High Court found the lack of immigration legal advice for people held in prison was discriminatory and unlawful. Results from this Summer 2023 survey and the Autumn 2022 survey reveals that people held in prisons are still struggling to access immigration advice. This coincides with the HM Chief Inspector of Prisons Annual Report, which found 'Detainees struggled to access legal advice: very few had been told that they were entitled to half an hour of free advice, and many prisons and Home Office staff who we spoke to were not themselves aware of this entitlement.'<sup>9</sup>

### Internet access

15 people said they have used the internet to research their case, whilst 22 people said they have not.

For those who did use the internet, 10 people said that many websites were blocked, including websites that would potentially have been helpful with preparing their immigration case. Two people stated that the Home Office website is available for use, and Google was available however the sites they clicked on were blocked.

BID's data found practical obstacles in using the internet services. One person commented that it was difficult to search for what he needed in his language. 7 people commented that the internet rooms were always full or that there was a long queue to use the internet room. One person who was detained at Colnbrook said, *'I did not go to the computer room because it is always very crowded, and I am claustrophobic, so I avoid crowded places.'*

Another person who was detained at Harmondsworth spoke of the difficulty of using the internet services and balancing out other services. He stated, *'The internet room is always full. There is a long line for the computer, and it is not possible to do everything. I don't have money, so I have to work & I work for £1 an hour. I can't go because I have to work, but if I don't go to welfare, I will lose my job. The system is wrong, and it is not logical. One day, I tried to go to Education, and I couldn't work, but the guards didn't open the door for Education. Then I tried to go to the gym, but there was no bell, and*

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<sup>9</sup> HM Chief Inspector of Prisons Annual Report 2022-23 – page 76



*they can't hear you, so you have to scream like an animal in a zoo. I didn't want to do that, so I left. It's another prison, just more free time. There's no big difference.'*

Additionally, despite the HM Chief Inspector of Prisons report on Yarl's Wood finding that internet access was reasonably good<sup>10</sup>, in October 2023, BID was sent a joint letter from people held under immigration powers in Yarl's Wood IRC highlighting various issues with the IT rooms which impedes access to justice for the people detained there which included:

- Blocked websites,
- Lack of telephone signal,
- Private messages being read,
- Officers listening to conversations between yourselves and visitors,
- Bad internet signal,
- Broken equipment
- Insufficient amounts of equipment
- Simple functions such as copy & paste not working

### IRC transfers

People can be moved across the country, without warning, to a different detention centre. Often, people are moved in the middle of the night.<sup>11</sup> This is a significant cause of stress as well as practical difficulty. Four people said that they have had to find a new lawyer due to moving from one removal centre to another.

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<sup>10</sup> Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2023/10/Yarls-Wood-web-2023-1.pdf> - page 35

<sup>11</sup> <https://www.icwi.org.uk/news/a-spotlight-on-the-dark-corners-of-britains-detention-and-deportation-regime>



### **Additional Issues**

At the end of the survey, respondents were given space to share any additional issues they faced in the IRC they were detained in. Some people raised complaints about several problems that are familiar to BiD. These are frequently raised by people held in immigration detention or who have experienced immigration detention:

- Difficulty of living in an oppressive and stressful atmosphere and prison-like conditions inside the IRC;
- Lack of ventilation and overcrowding at the IRC;
- Suicide attempts at the centre and mental health deterioration;
- Anti-Albanian sentiments from the Secretary of State;
- The lack of information on issues in the centre and the lack of information in different languages;
- Limited access to books in the library due to it being open for only one hour; and
- Inability to take out books from the library



## **Recommendations**

*“anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. ICCPR [1966] (Article 9(4))*

Access to justice is a cornerstone of the rule of law, which means that everyone must have effective access to the courts and legal advice to ensure their rights are not breached. The rule of law is vital in preventing the abuse of state power and it limits the ability of government to act with impunity.

In the financial year of 2022-23, the Home Office paid out £16.1 million in 736 cases<sup>12</sup> of wrongful detention. This compares to £12.7 million in 572 cases the previous year.<sup>13</sup> These unlawful detention cases are only representative of the ability of people to find lawyers to take on their case and are not the total number of people who may have been wrongfully detained. Since this period, the Illegal Migration Act has passed and the decision on what is a reasonable period of detention now sits with the Secretary of State for the Home Department (SSHD) rather than the courts<sup>14</sup>, making it more difficult for someone to bring an unlawful detention claim against the Home Office.

BID argues that immigration detention is inhumane, unnecessary and expensive. We seek an end to the practice of depriving people of their liberty for immigration purposes. However, while detention continues to exist, we propose the following recommendations to ensure that everyone has meaningful access to justice.

1. Anyone detained under immigration powers should be allocated a lawyer upon entering detention and they should retain the lawyer until either they have been removed from the UK or they have been granted leave to remain in the UK.
2. We support the recommendation by the Joint Committee on Human Rights that “initial legal advice appointments under the Detention Duty Advice scheme should be made automatically unless the individual opts out.”<sup>15</sup>
3. Anyone held in immigration detention should be allocated a legal aid lawyer in relation to their detention matter, both in relation to their first application for bail and any further bail applications.
4. An end to the use of prisons for immigration detention. As prisons have different regimes to each other and providing a similar regime to IRCs remains difficult for this reason, it is

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<sup>12</sup> Home Office Annual Report and Accounts 2022-23

<sup>13</sup> The Migration Observatory - Immigration Detention in the UK – Nov 2022

<sup>14</sup> Illegal Migration Act 2023 – Section 12 - Period for which persons may be detained

<sup>15</sup> <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148406.htm#footnote-053-backlink>



imperative that the use of immigration detention in prisons is ended. Only then can people held under immigration powers be provided with equal access to legal advice services.

5. The automatic allocation of legal aid for the purpose of representation at a bail hearing, without reference to a merit test.
6. Legal aid withdrawn under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) should be restored. Any immigration decision, including first stage deportation notice, should be accompanied by legal advice and representation via a legal aid lawyer allocated to a person when they enter immigration detention or when they are faced with an immigration matter while detained.
7. The DDA scheme in IRCs should be reviewed in the following ways:
  - a. The LAA should review the number of providers on the rota, with a view of increasing providers to meet demands on capacity.
  - b. The LAA should carry out a review of the quality of advice on the surgery rota through the use of peer reviews. Firms that are not providing sufficiently high-quality advice or routinely not taking on cases should be removed from the rota.
  - c. There should be automatic allocation, as well as entitlement, to legal aid representation at bail hearings at least every 28 days, with the merits test based solely on the fact that a person has either been initially detained under immigration powers or they have been detained for 28 days or if there are a change of circumstances to their case.

