

# Prison Legal Advice Survey

December 2023



## Bail for Immigration Detainees – Prison Legal Advice Survey December 2023

### About BID

Bail for Immigration Detainees (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, individuals with serious mental or physical ill-health, those who have intractable travel document problems, or who are main carers separated by detention from their children, and those who are unable to obtain legal representation. Since 2014 BID has also provided legal advice and representation to individuals challenging deportation on the basis of Article 8 ECHR.

One of BID's key aims is to improve access to justice for detainees and to end the use of prisons for immigration detention. To help achieve it, and to improve our own advice service, BID distributes surveys to individuals detained in detention centres in order to document their experiences of sourcing and receiving legal advice while in detention. In 2022 BID began distributing legal advice surveys to individuals detained in prison.

### Acknowledgments

This report was written by Nasrin Warsame, with edits from colleagues at BID. We would like to thank the individuals who agreed to share their experiences of accessing legal advice in prison, and we hope that this report does justice to the testimonies that you gave.

### Glossary

**DDAS** – Detained Duty Advice Scheme (the legal advice scheme that operates in IRCs)

**ECF** - Exceptional Case Funding

**ECHR** – European Convention on Human Rights

**FNO(s)** - Foreign National Offender(s)

**IRC(s)** – Immigration Removal Centre(s), also known as 'detention centre(s)'

**IMA** - Illegal Migration Act 2023

**LASPO(A)** - Legal Aid, Sentencing and Punishment of Offenders (Act) 2012



**NABA** - Nationality and Border Act 2022

**PIN** - Personal Identification Number

**TLAS** – Telephone Legal Advice Scheme (the legal aid advice scheme that operates in prisons)

## Definitions

**Exceptional Case Funding** – Exceptional case funding (ECF) was designed to act as a ‘safety net’ for individuals who require representation in an area of law that was taken out of scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). It is available when a denial of legal aid may breach the individual’s human rights

**Foreign National Offender** – A foreign national offender is a non-British citizen who is convicted of a criminal offence in the UK. This includes people who were born in the UK but have not acquired citizenship, those who have lived in the UK since they were a child and those with indefinite leave to remain in the UK.

**Immigration Rules** - The Immigration Rules are regulations that govern who can enter, stay, work, study or settle in the UK. The rules are subject to regular amendments. The Immigration Rules covering deportation are complex.

**Rule 35 of the Detention Centre Rules 2001** – Rule 35 is a mechanism which aims to ensure detainees who are particularly vulnerable are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing the detention of the individual. It is a health assessment carried out by a medical professional in a detention centre, following which a Rule 35 report is prepared. The Rule 35 report can provide important evidence for release.

## Executive Summary

Individuals held in Immigration Removal Centres (IRCs) have long been entitled to 30 minutes free immigration advice. However, this provision did not extend to people held under immigration powers in prisons. In February 2021, in the case of *SM v Lord Chancellor*<sup>1</sup> - in which BID intervened - the High Court found this disparity to be discriminatory and unlawful. In response, the Ministry of Justice introduced a similar, but not identical, Telephone Legal Advice Scheme (TLAS) for all people detained under immigration powers in prisons. In 2022, using postal surveys, BID approached clients with open case files held in prisons in order to ascertain how the scheme works in practice. This report is a follow up to BID’s 2022 report.

## Key Findings

- 53% of those who responded were locked in their cell 22-24 hours a day. This figure is lower than our 2022 survey which was 74%.
- Lack of representation continues to be high. 75% of respondents do not have a legal representative for their immigration case.

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<sup>1</sup> *SM and Lord Chancellor (Bail for Immigration Detainees I Intervener)* – [2021] EWHC 418 (Admin)



- 75% reported that they had not received 30 minutes of advice under the legal aid telephone advice scheme.
- Individuals detained in prison continue to face practical problems in utilising the telephone advice scheme. 50% of respondents said they did not have numbers for legal advice automatically added to their pin. The time taken to get a legal representative's number added to a PIN varied and, in some cases, had taken weeks.
- 88% of those who responded had not been provided with any information on how to obtain legal aid for help with their immigration case.

## **Introduction**

Individuals serving custodial sentences in prison often describe counting down the days until their release date. However, for people considered 'Foreign National Offenders' (FNOs), they continue to be detained after their custodial release date under immigration powers - after which they invariably count the days up from when they should have been released. FNOs detained under immigration powers either remain in prison or are moved to Immigration Removal Centres (IRCs) pending deportation.

In Immigration Removal Centres (IRCs) individuals have long been entitled to 30 minutes of free immigration advice under the Detained Duty Advice Scheme (DDAS). However, this provision did not extend to those held under immigration powers in prisons. In February 2021, BID intervened in the High Court case of *SM v Lord Chancellor* in which the court held that the lack of free legal advice for people held under immigration powers in prisons was unlawful. It held that the disparity in treatment between immigration detainees in detention centres and prison amounted to a breach of Article 14 of the European Convention of Human Rights (ECHR) - the right not to be discriminated against, when read together with Articles 2, 3, 5 and 8. As a result of *SM v Lord Chancellor*, the Ministry of Justice introduced the telephone legal advice scheme (TLAS) so that individuals detained under immigration powers in prisons would have equivalent (although not identical) access to legal representation.

This research sought to establish whether the TLAS had resulted in improvements in accessing critical legal advice.

Access to timely immigration advice is vital for individuals held under immigration powers in prisons. While the UK Borders Act 2007 introduced automatic deportation orders, the Immigration Act 2014 increased the likelihood that many people born and raised in the UK with no or limited ties to their country of nationality with a partner, family and communities in the UK, face deportation. Research undertaken by BID<sup>2</sup> and academics demonstrates that deportation has a "*potentially catastrophic effect on the whole family, including children and British citizens.*"<sup>3</sup>

<sup>2</sup> "Excessively cruel": Detention, deportation and separated families - Bail for Immigration Detainees, Research Report, June 2021

<sup>3</sup> Available at: <https://www.birmingham.ac.uk/schools/gees/research/projects/deportation-and-thefamily/index.aspx>

There is no automatic right of appeal against a deportation order. The UK Borders Act 2007 requires the SSHD to make a deportation order in respect of an FNO who has been sentenced to over one year in prison unless the individual can demonstrate that deportation would amount to a fundamental breach of their human rights. The right most commonly relied upon is the right to a private and family life as protected by Article 8 of the European Convention on Human rights. Part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014) sets strict limits on the interpretation of this right in the deportation context. Anyone sentenced to 12-month custodial sentence faces automatic deportation unless they can demonstrate that one of the two strictly interpreted “exceptional circumstances” apply, based on length of residence and/ or family life in the UK; anyone sentenced to a four-year custodial sentence or more, must demonstrate ‘very compelling circumstances, over and above’ the standard threshold to successfully resist deportation. Further, the Immigration Act 1971 enables the Secretary of State to deport any person whose deportation may be conducive to the public good. This may include individuals who have been sentenced to less than 1 year in prison.

Despite the critical importance of high-quality, specialist legal advice, as a result of LAPSO, deportation cases based on Article 8 of the European Convention on Human Rights were removed from the scope of legal aid. As a result, these challenges can only be funded privately or through a successful application for ECF.<sup>4</sup>

These obstacles are compounded by the practical difficulties of being detained in a prison. There is limited access to the outside world, which hinders the ability to contact and obtain a legal representative. Individuals detained in prison have no internet access and only limited access to the telephone. They rely on the prison postal system which can cause delays and documents are lost in the post. In order to make calls, people are given a Personal Identification Number (PIN) that they enter before dialling the number they want to call. However, before making a call, individuals must make an application to have a number added to their PIN. They cannot make a call until this application has been approved. There are also different limits set by the prisons to how many numbers can be added to a PIN, the length of a phone call and the charges applied to calls.

According to the Ministry of Justice, all telephone numbers for immigration legal aid contract holders must be automatically added, however, this was not the case for 50% of respondents. In BID’s experience, we have engaged with the Prisons and Probation Service who have rectified unblocked numbers when we are able to bring it to their attention. However, this raises concerns about individuals who are unrepresented or who do not have someone to advocate on their behalf.

The stakes of access to immigration legal advice for people detained in prisons have never been higher. The Nationality and Borders Act 2022 further criminalised irregular entry to the UK<sup>5</sup>, making arrival in territorial waters unlawful and not simply entry on UK territory. This legislation has been aimed at reducing the number of people arriving in the UK by small boats to claim asylum. This year,

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<sup>4</sup> See BID’s Research Report on Exception Case Funding here: [https://hubble-live-assets.s3.eu-west-1.amazonaws.com/biduk/file\\_asset/file/1045/ECF\\_report\\_final\\_3.pdf](https://hubble-live-assets.s3.eu-west-1.amazonaws.com/biduk/file_asset/file/1045/ECF_report_final_3.pdf)

<sup>5</sup> Nationality and Borders Act 2022 - Section 40 - Illegal entry and similar offences

BID has also observed an increase in the prosecution of people seeking asylum and refuge for irregular arrival and entry, in some cases, resulting in sentences of imprisonment of 12 months or more.

The Secretary of State for the Home Department's (SSHD) powers of detention have been further expanded by the Illegal Migration Act 2023 (IMA). The IMA places a duty on SSHD to remove anyone entering the UK irregularly and effectively abolishes the right to seek asylum in the UK for those who arrive in the UK via a third country that is considered to be safe, making up approximately 45% of asylum claims in 2022<sup>6</sup>. It also allows for the Secretary of State for the Home Department to detain a person of any age at any place the Minister considers appropriate.<sup>7</sup> Legal practitioners are faced with very onerous timeframes in which to respond to notices of removal. In addition, judicial oversight is limited as the decision on what is a reasonable period of detention now sits with the SSHD rather than the courts.<sup>8</sup>

This research adds to the large body of criticism from expert bodies, independent inspectorates and international human rights organisations that have criticised the use of prisons, which after all, are designed for the purpose of punishment and not for the purely administrative reasons which is the purpose of immigration powers authorising the use of detention. The increasing criminalisation of migration increases the number of people who need access to legal advice and representation for their immigration matters, since this has subsequent implications for people who are subject to detention under immigration powers.

On its own, the TLAS continues to be insufficient in addressing the large gap in legal representation, information and advice, and therefore we call on the government to urgently end the use of prisons for immigration detention. There also remain issues surrounding the quality of legal advice for people charged with immigration-related *criminal* sentences and for people who have their deportation cases dealt with while they are still serving criminal sentences. They do not have access to the 30-minute legal advice provision. Where individuals have not received immigration advice while serving criminal sentences, this invariably means that once they do receive this advice at a later stage of their case (after they have completed their criminal sentences and they are detained under immigration powers), fresh immigration claims have to be made, incurring further cost and time in resolving their cases. It is therefore essential that the lack of early provision of legal advice in immigration cases is addressed so that all individuals who have immigration matters with the Home Office are able to access immigration legal aid advice, whether or not they are still serving or have completed a criminal sentence.

## Methodology and Research Sample

BID distributed postal surveys containing 25 questions (see Annex A for a blank copy of the survey). We sent out 75 surveys to individuals held in 33 different prisons in the UK. 10 surveys were 'returned to sender' indicating that the person we sent the survey to was either moved to a detention centre, released or removed from the UK. In total, we received 16 completed responses.

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<sup>6</sup> Home Office statistics: Irregular Migration to the UK, Year ending 2022, published February 2023

<sup>7</sup> Illegal Migration Act - Section 11

<sup>8</sup> Illegal Migration Act - Section 12

The sample group for this research report was taken from BID's clients who:

- Had files opened from the 1<sup>st</sup> of December 2022 to the 31<sup>st</sup> of July 2023;
- Had signed letters of authority consenting to the disclosure of their anonymised information to further BID's research work; and
- Were detained in prisons.

Prison	Number of respondents
HMP Maidstone	4
HMP Swaleside	1
HMP Wandsworth	1
HMP Thameside	3
HMP Elmley	1
HMP Wormwood Scrubs	1
HMP Bure	1
HMP Risley	2
HMP Bedford	1
HMP Birmingham	2



## Levels of Representation

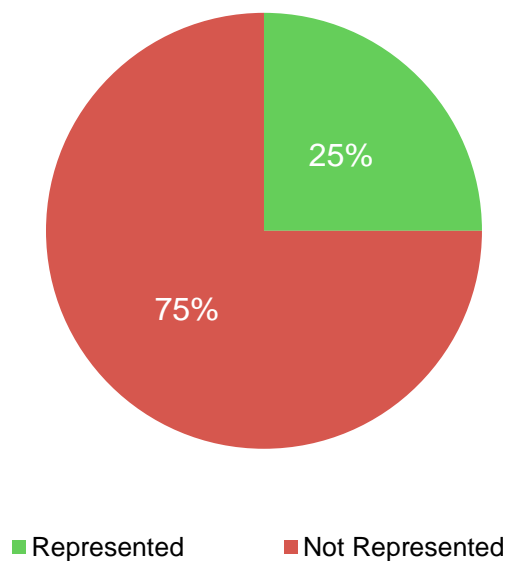
Respondents were asked if they had an immigration legal representative. Out of 16 responses, 12 people said ‘no’ (75%) and 4 people said ‘yes’ (25%). This is line with BID’s 2022 Prison Survey which found 70% of respondents did not have representation.<sup>9</sup>

We asked individuals how they had found their solicitor. Of the 4 people who said they had representation, one person said their family had found their solicitor and one person said they had representation as they had been detained previously. One person said they did not know and one person did not answer but said they had not met their lawyer yet.

For people who did not have representation, we asked if they had made any attempts to find a solicitor. Of the twelve individuals who said they did not have legal representation, nine individuals said they had attempted to find a solicitor, one individual did not answer and two individuals made general statements on the challenges of attempting to find a solicitor.

Ten people elaborated on the difficulty of finding a lawyer. Three people said that they did not have

Levels of Representation



the money for a solicitor or could afford it and one person said explicitly they could not “receive” legal aid funding. Three people said they attempted to find a lawyer but were told there was no capacity to take on their case. One further person said they attempted to find a lawyer but were told by the firm they contacted that they no longer take on legal aid cases.

Three people spoke of the general challenges of being in held prison under immigration powers. One person said “[In] 2010 I was given leave to remain in [the] UK, now they saying I’m in immigration detention. I have finished my sentence but I am still need immigration help.”

<sup>9</sup> Ibid



This is supported by the findings of the HMI Chief Inspector of Prisons for England & Wales who found there to be a marked disparity for people held in prisons, with many people detained for long periods of time despite there being no prospect of removal and vulnerable people, including survivors of torture not being identified and released.<sup>10</sup> The HMIP Annual Report for 2022-23 states:

*“[People detained in prisons] struggled to access legal advice: very few had been told that they were entitled to half an hour of free advice, and many prison and Home Office staff who we spoke to were not themselves aware of this entitlement. Perhaps most worryingly, vulnerable detainees, including victims of torture, were not routinely identified, nor their release considered in the same way as in IRCs.”<sup>11</sup>*

Indeed, the recommendation for Rule 35 (or an equivalent mechanism) to apply in prisons to identify and release vulnerable people was put forward in the 2015 report by Stephen Shaw.<sup>12</sup> It was also reiterated again in Shaw’s 2018 follow-up report.<sup>13</sup>

The urgency of needing legal advice is compounded by the fact that people may be subject to deportation proceedings whilst they are detained under criminal powers. Despite the Home Office beginning deportation proceedings whilst people are serving criminal sentences, people have limited access to immigration legal until they are released from their criminal sentence and detained under immigration powers. We also asked respondents if they had received a deportation decision. 7 people (47%) said ‘yes’, 6 people (40%) said ‘no’, 1 person (6%) was unsure and 2 people (13%) did not answer. Of the 7 people who said ‘yes’, they had received a deportation decision, 2 people clarified that they had received the decision whilst they were still serving their criminal sentence.

### The Telephone Advice Scheme

We asked respondents questions regarding the Telephone Advice Scheme. Firstly, we asked respondents if they had a telephone in their cell to contact an immigration representative. 10 (63%) people said yes, 2 people said no, 2 people did not answer (and 2 people’s answers could not be understood so as to be classified).

Respondents were asked about the process of making a call, and some statements revealed practical problems with using the telephone in their cell. Responses included were:

- *“Yes, there is a keypad but won't allow you to select options”*
- *“Yes & I have a PIN I have to dial before the dialling the number I want to call”*

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<sup>10</sup> HM Chief Inspector of Prisons for England and Wales Annual Report 2022–23, page 76

<sup>11</sup> Ibid

<sup>12</sup> Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw, January 2016, page 194 - Recommendation 22

<sup>13</sup> Assessment of government progress in implementing the report on the welfare in detention of vulnerable people: A follow-up report to the Home Office by Stephen Shaw, July 2018, page 13

- *“Yes, I have a phone in my cell. I have to put phone number on the computer in order to be approved by the prison service. I have put it in computer many times and they have not approved it so I cannot make any calls”*
- *“Yes, I have. I’m able to use [the] keypad.”*
- *“Yes, I have one in my cell, you dial the number then put your pin and the call is then connected. You can’t dial any extension] while you are on the phone.”*
- *“I have a phone in my cell it’s [a] BT phone, very expensive could not use much. I have to put an application first to hope they will find the guy who we want to add in [the] PIN phone then they speak to them [and] they put this number to our PIN phone”*
- *“I have phone in cell with keyboard I enter the number I need phone then hash # then PIN number”*

Respondents were asked if they had been given a list of lawyers to call. 9 people (56%) said ‘no’, 5 people (31%) said ‘yes’ and 2 people did not answer.

We also asked respondents if numbers for lawyers were automatically added to their PIN. 3 people said their numbers were automatically added to their pin, 2 people did not know, 2 people did not answer or could not be coded. 8 people (50%) said ‘no’ and five people specified if they requested it and how long it took. One person said it took one week to get numbers added, another said 2-5 working days, two people said 2 weeks and 1 person said *“Sometimes it takes a couple of days or weeks.”*

The responses on how many lawyers’ numbers could be added to a PIN, and therefore available to call, varies. We received 7 responses to this question. 1 person said there were no limits, 1 person said more than 10, 1 person said 6 (“half a dozen”), 2 people said 5 numbers and 2 people said they could only add one number to call at a time.

Respondents were asked if they had a time limit on calls and if ‘yes’, how long it was. 7 people said ‘no’, with 1 person specifying that there was not a time limit but there was a limit linked to spending. 5 people said ‘yes’, with 3 people stating the limit was 15 minutes and 2 people stating that the limit was 30 mins. 4 answers could not be coded. 1 person answered this question in a different section and said the limit was 30 minutes but then he was cut off and had to wait 10 minutes before redialling.

We also asked if people were given additional money on their PIN for legal calls, and found that this continues to not occur. 14 people (88%) said ‘no’, 1 person said ‘yes’ and 1 person did not know. In BID’s previous Prison survey, 78% of participants (21) said that they were not given any additional money on their PIN to pay for legal calls.<sup>14</sup>

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<sup>14</sup> Catch 22: Accessing Immigration Legal Advice in Prison - 2022 - [https://hubble-live-assets.s3.amazonaws.com/biduk/file\\_asset/file/635/BiD\\_Prisons\\_Report\\_page\\_1\\_1.pdf](https://hubble-live-assets.s3.amazonaws.com/biduk/file_asset/file/635/BiD_Prisons_Report_page_1_1.pdf)

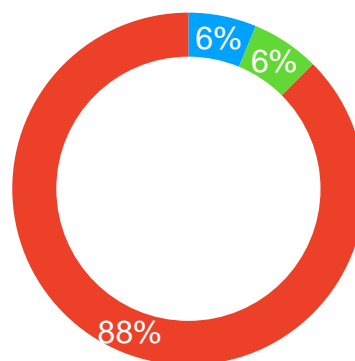
## Immigration Legal Advice

Immigration law is complex and subject to ‘statements of changes’ including legislative changes with minimal parliamentary scrutiny. This complexity can make it difficult for people without legal advice or representation to navigate in order to have a fair chance to put forward their best case.

The TLAS for people detained in prison was designed to be equivalent to the DDAS in IRCs and we asked respondents in prisons if they received 30-minute advice.

12 people (75%) said they did not receive 30 minutes of advice, no person said ‘yes’ and 4 people did not answer. In line with this, on whether anyone had come to the prison to give advice or if it was only over the phone, 10 people said ‘no’, with 1 person stating ‘*Not at the prison and not over the phone, nothing.*’ 4 responses were coded as N/A and 2 people did not answer.

Additionally, 14 people (88%) said they had not been given any information on how to get legal aid help with their immigration case. 1 person said yes and 1 person said they did not know. In BID’s previous Prison survey, 74% of participants (20) had not received any additional information.<sup>15</sup>



Were you given any information about how to get legal aid help with your immigration case?

■ I don't know      ■ Yes      ■ No

We asked respondents if they had ever spoken to a lawyer(s) and if they were not given any legal advice, what reasons were given. The statements from respondents revealed issues relating to capacity and the firms no longer taking on legal aid cases:

- “They don’t take on legal aid, or don’t have enough capacity”
- “Full capacity of clients”
- “They all say they don’t advice or take immigration cases on legal aid.”

<sup>15</sup> Ibid

- *“Not legal aid anymore”*
- *“Just that they don’t have available space for new clients or they don’t accept legal aid.”*
- *“Not really they told us you will make an appointment with us for next time we can discuss.”*

Respondents were also asked if a legal representative attempted to book an in-person legal visit or a video legal visit during their detention, and if ‘yes’, did they experience any delays or issues organising this? 7 people said ‘no’, 2 people did not answer, 2 people were coded as ‘not applicable’ and 2 people said ‘yes’. 1 person expanded on the difficulty they faced with the legal representative they spoke to. He stated, *“Yes, he said to me ‘give us £1000, we will fight for you... your sentence is long, they will give you 3 years extra.”*

The lack of supply and capacity of legal aid lawyers is known as advice droughts and deserts<sup>16</sup>, and the current system of funding, contracting and auditing protects poor-quality legal aid providers, driving up demands and costs for legal services.<sup>17</sup> It has been revealed that 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>18</sup>

The importance of immigration legal advice, at the earliest opportunity, has profound and widespread effects on people detained and their families. Respondents described the adverse impact of advice has had on their case, with challenges in appealing decisions, obtaining bail, accommodation and release. Statements on the impact of the lack of advice include:

- *“I’m left in the dark as how to navigate the situation I don’t know what to do next. I’m left not knowing who to ask for help and this is affecting my physical and mental health.”*
- *“I have been systematically denied my rights here. I did not get any help... I need help for bail and getting release and accommodation.”*
- *“It’s very hard for me, my life gets more worse. My family are waiting for long time to see me. Family [is] destroyed.”*
- *“I have [had] experience in past in 2017, my refugee status was ceased and [I] received a deportation order I was on licence recall at HMP [omitted]. I tried to obtain help but all the solicitors that [I] approached did not accept legal aid, I had to represent myself.”*

## Statements from Individuals Detained in Prisons

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<sup>16</sup> Droughts and Deserts: A report on the immigration legal market - Dr Jo Wilding

<sup>17</sup> Ibid

<sup>18</sup> The Conversation: The legal aid sector is collapsing and millions more may soon be without access to justice – new data. June 2023

At the end of the survey, respondents were given space to share any additional information they would like to share about their experience attempting to receive legal advice whilst detained under immigration powers in prisons.

Some statements from people detained in prison are shared below:

- *“It is really impossible for one to have immigration legal advice in prison because it's a criminal detention and none of the staff have any idea about immigration cases. All they do is to discourage ones efforts to seek legal advice & bail even if one have legal rights to be here [in the UK]”*
- *“There is nothing available for me. I can't get any information from prison staff or Immigration staff. I'm told they don't know anything. I'm told to just wait and see what happens or immigration asks for signature when I don't understand we are all left in the dark about the processes.”*
- *“It was hard for and I was down, after I done 9 years and then been detained in prison, I almost gave up in life. The hard thing I found was getting my number to put on my pin phone. Sometimes apps [applications] go missing. To add BID and detention action numbers it took 3 app [applications]”*
- *“It's very hard to get immigration solicitors. Everyone has excuses. “We are very busy. We are sorry We could not help this time.” Problem [is] money, if I can't “say take £5000 fight my case” they can listen to my problem... I am in prison for long time I came to Prison 2014. I am broken I could not afford it”*
- *[I'm] tearful and anxious, [it] made me feel I want to go back.”*
- *“...I lost my appeal at FTT and UTT because I had to represent myself. In prison There is a shortage of immigration lawyers many foreign nationals including me are suffering or have suffered the lack of representation with the immigration case which may cause them to lose their appeal... some FNOs have difficulties with English language which make a lot difficult for them”*

## **Recommendations**

BID makes 7 recommendations to enable better access to legal advice:

1. The immediate end of the use of prisons for immigration detention.
2. The restoration of legal aid for immigration cases that were excluded from scope under LASPO.

3. Individuals should benefit from access to the 30-minute legal aid telephone advice service in relation to their immigration matters while they are still serving their criminal sentence.
4. Where possible, there should be provision for unlimited telephone and internet access to individuals held under immigration powers in prisons.
5. Individuals who cannot find a legal aid lawyer should have a legal aid lawyer allocated to them by the Legal Aid Agency.
6. Staff training should be provided to ensure that all prison staff understand immigration detention, deportation law and policy and entitlements for people detained under immigration powers.
7. An equivalent Rule 35 process should be introduced in prisons so that there is a mechanism for the suitability for continued detention to be assessed for individuals detained under immigration powers in a prison

## Conclusions

The TLAS falls short in addressing the substantial gap in legal representation and information. While it is designed to be equivalent to the DDAS in IRCs, it continues to be insufficient in addressing the lack of access to justice for individuals detained in prisons under immigration powers or requiring immigration advice while they are still serving criminal sentences. Urgent steps should be taken to address the need for legal advice at the outset of an immigration matter and while a person remains detained under immigration powers.

Urgent government action is also needed to cease using prisons for immigration detention. While BID opposes the use of immigration detention in its entirety, if it must be used it, it should only apply in IRCs (that are intended not to involve a punitive regime) where the DDAS operates. Individuals detained under immigration powers in prisons should preferably be released to their communities where they would have better access to justice than in prison and where they can receive meaningful supervision by the Probation Service while their Licences apply.



**Annex A – Questions sent to people in prison**

**Please tell us about your experience of getting immigration legal advice in prison**

Your name or your initials		BID reference number	
Prison where you are held		Male or female?	
<b>A</b>	<b>These questions are for <u>everyone</u>:</b>		
1	What was your criminal release date?		
2	How long are you allowed out of your cell per day?		
3	Do you have an immigration legal representative?	Yes/No	
4	<b>If yes</b> , how did you find your solicitor?		

5	<p><b>If no</b>, have you made any attempts to find a solicitor. Please explain.</p>	
6	<p>Have you received a deportation decision? <b>If yes</b>, was this received when you were still serving your criminal sentence?</p>	
7	<p>Do you have a phone in your cell?  <b>If yes</b>, please explain how you make a call (the process for dialling a number, and whether there is a keypad you are able to use).</p>	
8	<p>Have you been given additional money on your pin to pay for legal calls? <b>If yes</b>, how much?</p>	
9	<p>Were you given any information about how to get legal aid help with your immigration case?</p>	Yes/No





10	Have you been given a list of lawyers that you can call? <b>If no</b> , have you asked for the list?	
11	Have you attempted to call the numbers?	
12	Were the numbers automatically added to your pin? <b>If not</b> , did you request this and how long did it take?	
13	How many lawyers' numbers can you have on your pin at one time?	
14	Is there a time limit on your calls? <b>If yes</b> , how long is it?	
15	Were all of the numbers for lawyers you received to do immigration work?	
16	Were you able to speak to somebody?	



17	Did you receive 30 minutes advice?	
18	Did somebody come to the prison to give that advice or was it only over the telephone?	
19	What interpreting services were provided, if any?	
20	Did you receive written confirmation of that advice?	
21	Did anyone agree to take on your case after 30 minutes?	
22	If you spoke to a lawyer or lawyers and you were not given any legal advice or representation, what reason was given?	
If there was any time when you did <b>not</b> have help from an immigration solicitor:		
23	How did this affect your case: e.g. did you have trouble making a claim, appealing a decision, applying for bail, or getting release accommodation?	



24	Has a legal representative attempted to book an in-person legal visit or a video legal visit during your detention? <b>If yes</b> , did they experience any delays or issues organising this?	
<b>Finally,</b>		
25	Is there anything else you would like to tell us about your experience of getting immigration legal advice while you have been detained in prison?	



