



BiD Bail for
Immigration
Detainees

**Prison Legal
Advice Survey**

August 2024

About BID

Bail for Immigration Detainees (BID) is an independent national charity established in 1999 to challenge immigration detention. We assist those held in Immigration Removal Centres (IRCs) and prisons under immigration powers 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 work for change in detention policy and practice. In 2013 BID set up a project dedicated to aiding 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 automatic 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 (FTT) 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 their Article 8 (ECHR) family life or private life rights.

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 carries out surveys with individuals held in detention centres to document their experiences of sourcing and receiving legal advice while in detention. In 2022 BID began conducting legal advice surveys of individuals detained in prisons, sending out questionnaires for individuals to complete and return to us.

Executive Summary

Prior to 2021, individuals held under immigration powers had no formal scheme through which they could access free immigration advice whilst detained. This absence was a marked difference from the provision of the Detention Duty Advice (DDA) scheme for those detained in Immigration Removal Centres (IRCs). Under the DDA scheme, detainees are provided the opportunity to attend free appointment(s) with an immigration legal aid lawyer, with the potential for their immigration case to be taken on. However, immigration detainees held in prisons had limited to no ability to maintain such contact. As a result, in February 2021, BID intervened in the High Court case of *SM v Lord Chancellor*, which found that the failure to



provide free initial access to immigration detainees held in prisons – as provided in IRCs under the DDA scheme, was discriminatory.¹

As a result of this judgement, the Ministry of Justice introduced the Telephone Legal Advice Scheme (TLAS). It was introduced in the hopes that individuals detained under immigration powers in prisons would have an effective *equivalent* to the DDA scheme.² In 2022, BID began conducting yearly surveys of this scheme through our clients who were held in prisons. Our report attempts to evaluate current procedures regarding access to immigration advice for those held under administrative powers in prisons. This report is our third such review of the scheme.

Key Findings

- 85% did not have legal representation for their immigration case.
- 71% had not received their 30 minutes of free legal advice under the scheme.
- Individuals detained in prisons continue to face practical barriers to accessing immigration legal advice; individuals faced hurdles in getting PIN numbers approved, obtaining updated list of numbers to call and faced delays in getting lawyers' numbers approved.

Introduction

Under the UK Borders Act 2007, the Secretary of State for the Home Department (SSHD) is required to serve any individual who has been sentenced to more than 12 months in prison with an automatic deportation order. Therefore, unlike their British counterparts, non-citizens or Foreign National Offenders (FNOs) continue to be detained post-sentence under immigration powers whilst awaiting their removal. This deportation regime does not allow a right of appeal, although a right of appeal is provided where a claim is based on human rights grounds.

Furthermore, through the introduction of the 2012 Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act, legal aid funding for general immigration matters was removed from the scope of legal aid. As a result, individuals could no longer access immigration legal aid with regards to removal notices. Although they did retain the right to legal aid in relation to decisions to detain them under immigration powers. The removal of immigration from the scope of legal aid, consequently resulted in many individual unable to access timely, and quality immigration legal advice whilst detained under immigration powers or when faced

¹ *SM v Lord Chancellor* [2021] EWHC 418 Admin

² BID and Medical Justice [January 2024], 10.



with an immigration matter whilst serving a criminal sentence. Access to timely immigration legal advice at the earliest opportunity, carries immense importance to those detained. Lack of such access has the potential to negatively impact an individual's case including; challenges in appealing decisions, obtaining bail, accommodation and release.

Barriers to accessing such legal advice whilst detained are heightened for those being held in prisons. The penal environment relies upon a restriction and isolation from the outside world. This further hinders an individual's ability to have access to justice. Individuals also remain further isolated through the lack of access to means of communication such as the internet and telephone.

In addition to their isolation, individuals detained in prisons continue to be vulnerable due to the lack of adequate equivalent safeguards that are present in IRCs. Those detained in prisons are not covered by the Detention Centre Rules (DCR), and the Detention Service Orders (DSOs). However, Prison Rule 21 of the Prison Rules 1999 requires that Prison Governors should be informed

*'in the case of any prisoner whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment. The governor shall send the report to the Secretary of State without delay, together with his own recommendations.'*³

Further Home Office Immigration Enforcement should be informed of a person's vulnerabilities and any recommendations by way of an IS91 Risk Notification.

To date, failings to properly implement this requirement has led to criticism, including by the HM Inspectorate for Prisons in his 2023 Annual Report.⁴ As well as Stephen Shaw's 2015 report into the welfare of vulnerable detainees, and his 2018 follow up review.⁵

This report primarily evaluates the levels of access to justice for individuals detained in prisons under immigration powers. Of chief interest is the TLAS, and to what extent the scheme has succeeded in providing detainees equivalent levels of access to free immigration advice when compared to people detained in IRCs.

However, the TLAS does not extend to individuals who are still serving their criminal sentence. The TLAS only becomes available after an individual has reached their Conditional Release

³ Prison Rules 1999, SI 1999/728, reg 21.

⁴ HMP Prisons Annual Report [2023], 76.

⁵ Stephen Shaw, Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office [January 2016], 194; Shaw, Assessment of Government Progress in Implementing the Report on the Welfare in Detention of Vulnerable People: A follow-up Report to the Home Office [July 2018], 13.



Date (CRD). This barring remains concerning for those who are served deportation orders during their criminal sentence, the point at which legal advice is most urgently needed. Given the importance of immigration advice remaining timely and automatic, it is imperative that potential deportation orders are accompanied by opportunities for individuals to seek advice and representation.

Delaying such access until after individuals have finished their criminal sentences and are detained under immigration powers not only often creates unnecessary distress and injustice for the individuals concerned but also leads to further delays and additional legal costs further down the line. As individuals contest their cases as deportation becomes a more distinct prospect. The failure to enable proper advice at the outset leads to requests for extensions of time, late claims, fresh claims and, applications for the revocation of deportation orders that have been served upon individuals. Additional legal arguments arise with out of time appeals and challenges to the certification of cases. All in turn compounding the distress, sense of injustice, delays and, the costs caused by the failure to provide advice at the outset when a deportation matter was initially raised. Therefore, it is essential that the TLAS be extended for all individuals who have been served deportation orders whilst in custody, regardless of whether they have finished serving their custodial sentence.

This report ultimately finds that the TLAS remains ineffective at addressing the gap in providing access to justice for those detained in prisons. The scheme operates with significant delays in providing access, lacks updated information about whom to contact and does not seem to adequately address translation issues for many detainees.

This report also serves as further evidence as to the inappropriate use of prisons for the purpose of immigration detention. Prisons are - as sites of punishment incompatible with an administrative detention estate. The incorporation of prisons into the detention estate effectively makes possible the use of administrative detention as a method of prolonging punishment against people who foreign nationals. We therefore call on the government to urgently end the use of prisons for the purpose of immigration detention.

Methodology and Research Sample

BID distributed postal surveys containing 25 questions.⁶ We sent out a total of 110 surveys to individuals held in different prisons in the UK. The surveys were posted on two separate occasions, 80 sent in February 2024 and 30 sent in May 2024.

⁶ See Appendix A for a blank copy of the survey.



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

- Had files opened from 1st November 2023 to the 30th May 2024;
- Had signed Letters of Authority consenting to the disclosure of their anonymised information to further BID's research work; and
- Were detained in prisons.

Of the surveys sent, we received 21 completed responses from individuals at 12 different prisons.

Findings

Levels of Representation

Participants were asked if they had an immigration legal representative. Out of 20 responses, 17 reported that did not have representation (85%) and only 3 participants (15%) stated that they did have representation.

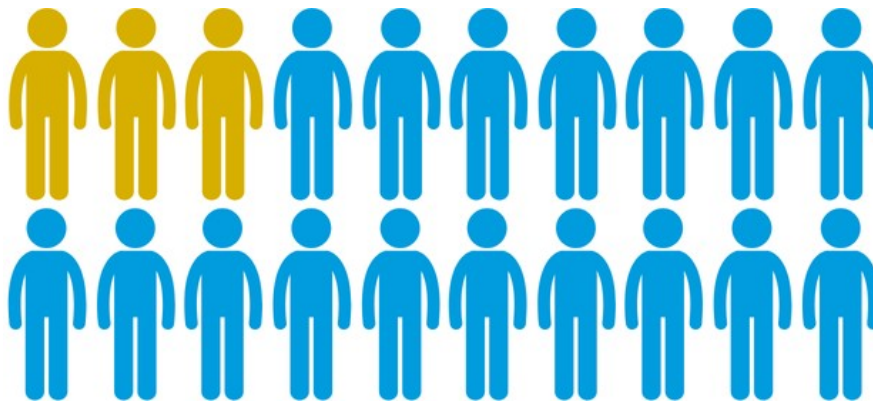


Figure 1: Proportion of Respondents with immigration representation.

Of the 3 participants who had representation, they further elaborated on how they obtained their immigration solicitor.

- One participant found representation through the help of fellow inmates
- One participant found representation through prison services
- And one participant found representation through the help of BID

Of the individuals who did not have representation, 12 individuals, or their friends and families had sought out and failed to seek representation for their immigration cases. Participants often cited issues regarding solicitor's capacity, barriers in seeking help and delays in being given access to legal aid providers, as barriers to representation.

Of the 20 responses, 8 had been served a deportation decision, 2 of which were served before the participant's criminal release date.

The Telephone Advice Scheme

The TLAS attempts to provide a suitable equivalent for the DDA scheme present in IRCs. It allows individuals to contact any legal aid lawyer who holds an immigration law legal aid contract. Prisons are meant to use their access the Legal Aid Agency's 'find a solicitor' web facility or to have lists of lawyers (normally the closest to the prison) to give to individuals once they are detained under immigration powers (and not beforehand). Individuals are expected to be able to contact the numbers which are provided for them, and access 30 minutes of free immigration legal advice over the telephone. In line with the DDA, after the 30 minutes legal providers are expected to take on cases which have merit and meet the financial means test. Although detainees are charged for calls, they are expected to be given £5 weekly for the cost of conducting legal aid calls.

Participants were asked questions regarding the Telephone Advice Scheme. Participants were asked if they had telephone access in their cells to contact immigration legal advice. All 19 of those who answered stated that yes, they did have a telephone in their cell. This finding is an improvement from our previous prison survey, where only 63% of participants stated that they had telephone access in their cell. Access to telephones remains paramount to ensuring that people held under immigration powers can access immigration legal advice when necessary in an otherwise isolated and restricted environment within the prison.

Participants were also asked about the process of making a call. The answers highlighted various practical barriers that prevented individuals from making potential calls to contact immigration representatives. Individuals require PIN codes to be added and approved to their telephone before calls can be made inside the prison. Although access to immigration legal advice should be immediate and unblocked, participants highlighted the delays in both getting the PIN added and also approved before the calls could be made. Participants highlighted delays of upwards of 4 weeks to get numbers approved.

In addition to this, the survey also asked participants whether they had been given a list of lawyers to contact. Under the scheme, individuals should be given a list of numbers/ legal aid firms that would potentially be able to provide them with immigration legal advice. In addition to this, numbers should be unblocked and added to individuals' phones to make calls possible.

Of the 20 responses, 15 participants stated that they had not automatically received a list of lawyers they could contact. Of the 5 that did receive a list, 2 participants stated how the numbers were either outdated and the delays in getting the PIN's approved for contact.



Such results highlight the TLAS' short comings in ensuring that those detained under immigration powers have timely access to free initial immigration legal advice. Delays in disseminating both information regarding whom to contact, as well as contacting such providers is concerning.

Furthermore, contact numbers were not immediately added for individuals to access. Individuals had to request numbers be added to their PINs in order for them to be contacted. Such access came with varying lengths of delays, ranging from 2-3 days to 3 weeks, with participants highlighting:

"[after requesting a number to be added] I must wait normally 4-6 weeks even if I try that faster and [give to] office. Simply does not work. Adding number is very long time in HMP Risley"

"It took 3 weeks to be added to my pin sometimes more than a month."

It also remains unclear whether there is a limit to how many lawyers' numbers could be added to a PIN, and therefore called. Of the 18 that responded to the question, 12 were unsure whether there was a limit placed. The 6 other participants gave limits ranging from 1 – 10 numbers. The TLAS should therefore be amended such that, there is no limit to the number of lawyers that can be added to a given PIN and contacted.

However, BID understands that people held under immigration powers can ask the prison for help to access the contact details for legal aid lawyers using the Legal Aid Agency's 'find a solicitor' tool ⁷ by entering the prison's post code and immigration/asylum law option. This tool provides list of the 10 nearest immigration legal aid contract holders. If none can take on their cases, then the next 10 nearest solicitors can be obtained and so on. The practicality of such a tool for those in prison is in question, as they face additional hurdles with respect to internet and phone access.

Participants were also asked if there were any time limits placed on calls. Given that the DDA scheme aims to provide 30 minutes of access to immigration legal advice, the TLAS should deliver similar levels of access. However, of the 12 participants that responded, 10 stated that there was a time limit of 20 minutes or less on phone calls. 2 participants stated that the time limit was 30 minutes, reflecting the DDA scheme. 4 other participants did not give a specific time frame but answered that there was no formal time limit placed on legal calls.

⁷ 'Find a Legal Aid Adviser or Family Mediator' (Gov UK) Available at: <https://find-legal-advice.justice.gov.uk/>



Furthermore, participants also highlighted the fact that contact with immigration solicitors was only made over the phone, with no participants stating that there were in-person visits with solicitors to discuss their immigration case. Unlike visits to IRCs, the dispersal of detainees across the prison estate, has created additional hurdles for the provision of free immigration legal advice in prisons. In person trips are costly to the lawyers themselves, compounded by the fact LAA will not fund potential casework unless there is a 50% chance of success. As such, people held in prisons under immigration powers (and those faced with immigration matters while serving a criminal sentence) continue to be disadvantaged by the lack of potential in-person visits to discuss their immigration case.

In line with the DDA's application as a free service, access to the TLAS must also be free. Although calls come at a cost for those in prisons, the scheme is meant to address such an issue by ensuring that individuals receive £5 weekly so that the individuals could access the scheme without incurring costs.

Did not receive money for legal call
16%

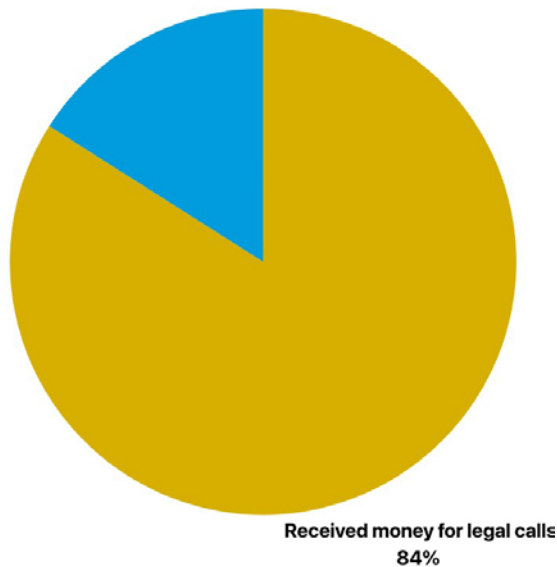


Figure 2: Percentage of participants that received money for legal calls

The survey asked participants whether they received any additional money to make legal calls. 16 of the 19 participants (84%) responded that they did not receive any additional money. The 3 other participants stated that they received between £1-3 for legal calls. Given the costs of making telephone calls within prisons, it is imperative that the mechanisms to cover the cost is effectively implemented, such that as many financial barriers as possible are removed.

Furthermore, the TLAS's implementation varied across various prisons. In particular, the speed through which numbers were made available and able to access varied from prison to

prison. Participants who were in HMP Risley, for instance, highlighted the various delays in using the scheme. Whilst a participant held in HMP Wandsworth stated that it took 2-3 working days. Such discrepancies extended to the length of calls permitted. Participants held in HMP Maidstone and Wandsworth confirmed that they were able to use the full 30 minutes. On the other hand, those held in HMP Belmarsh

and Branston, stated that there was a maximum limit of 10-15 minutes – suggesting that lawyers were not engaging with clients for the 30 minutes allowed to them, which is already a limited amount of time to cover initial advice on deportation, asylum and detention matters.

BID continues to push for the implementation of a fully equivalent DDA scheme in for those held under immigration powers in prisons. Therefore, it is imperative that the TLAS that is properly implemented throughout the prison estate, to ensure individuals are able to meaningfully access the limited advice to which they are entitled.

Recommendations

Whilst the implementation of the TLAS has been welcomed, it is clear that the mechanism still falls short of delivering adequate levels of publicly funded, timely immigration legal advice for those detained under immigration powers in prisons. Further, individuals who are faced with immigration matters while still serving criminal sentences continue to face barriers to accessing advice and do not benefit from the TLAS at all.

BID opposes the use of immigration detention in its entirety. In particular, the use of the prison estate as a component of detention effectively punishes people after they have completed their criminal sentences, solely because they are not British. Individuals continue to be subject to strict prison regimes, including limited time outside of their cells, even past their conditional release date. If administrative immigration detention must be pursued it should only be implemented through IRCs. One participant emphasised that *'it's absolutely devastating. [he] feel[s] very low and broken emotionally and also mentally'* of having to continue being held in prison even after his sentence was completed.

BID continues to call for the release of those detained under immigration powers in prisons to their communities, where they would have better access to justice than through the prison environment. Whilst detention in prisons continue to exist, we make the following recommendations to ensure that individuals have meaningful access to justice.

1. Provision of legal advice in prisons should be expanded and developed as a matter of urgency and should be equal to the provision of advice in IRCS – including creating more avenues to enable individuals to access immigration advice, as well as the ability for individuals to access face to-face advice in line with the DDA scheme in IRCs.



2. Legal aid withdrawn under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) must be restored. In the interim, legal aid lawyers should be allowed to make decisions to issue Exceptional Case Funding without needing to resort to the Legal Aid Agency, removing an unnecessary obstacle to this legal aid resource.
3. People facing deportation action whilst serving criminal sentences should also have access to the TLAS to receive immigration advice as a matter of priority.
4. Individuals held in prison under immigration powers should have prompt access to initial legal advice. If they do not have a legal representative already, they should be provided with an immigration lawyer upon being detained under immigration powers and/or being served with immigration related actions. They should retain their legal aid lawyer until they are either removed from the UK, or granted leave to remain.
5. Ensure Prison Governors, prison staff and people held in prisons are aware of the Rule 21 process for people in prisons so that vulnerable individuals are effectively and promptly assessed with regards to their continued detention under immigration powers in a prison.
6. Individuals should receive assistance to enable them to access advice – including covering call costs for legal advice.
7. Delays in accessing telephone legal advice should be addressed, where possible providing unlimited telephone and internet access to individuals held under immigration powers in prisons.



Appendix A- Survey Questions

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?	
A	These questions are for <u>everyone</u>:		
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	If yes , how did you find your solicitor?		
5	If no , have you made any attempts to find a solicitor. Please explain.		



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



11	Have you attempted to call the numbers?	
12	Were the numbers automatically added to your pin? If not , 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? If yes , 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?	

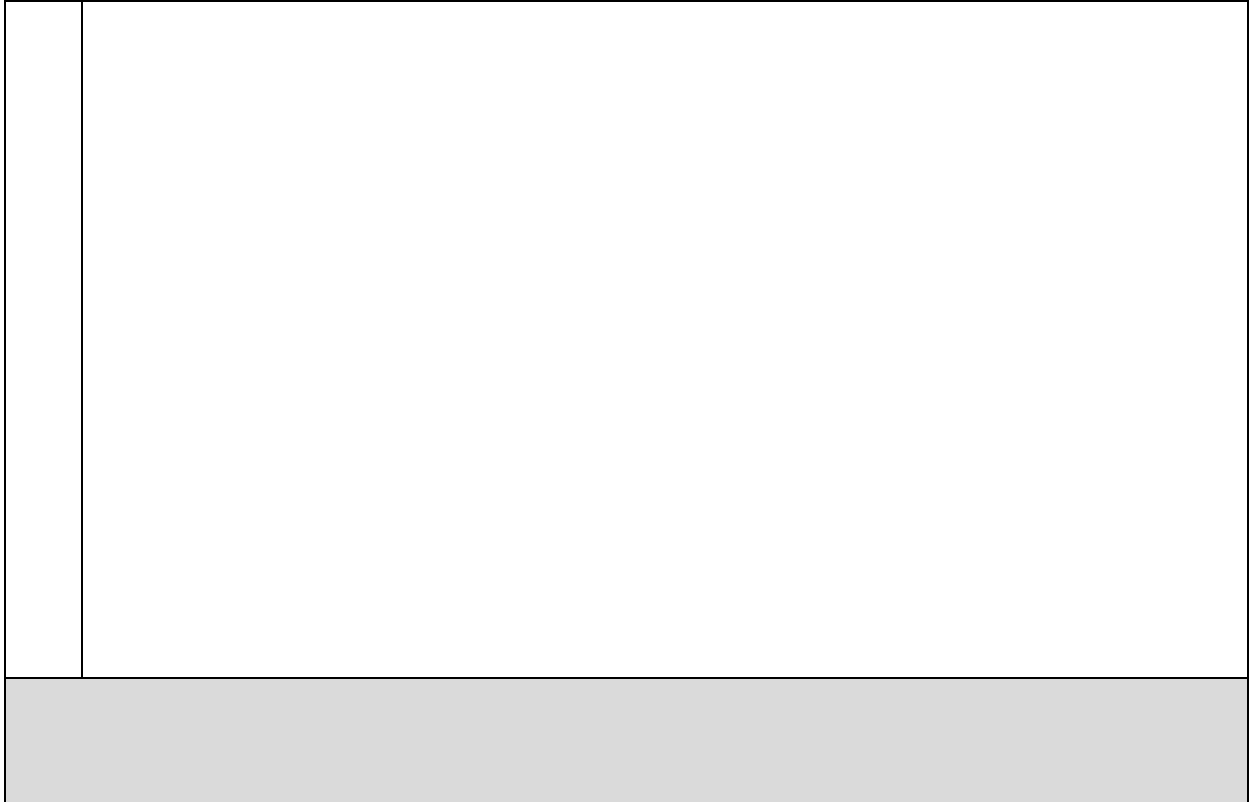


20	Did you receive written confirmation of that advice?	
21	Did anyone agree to take on your case after 30 minutes?	
22	If you spoke to a lawyer or lawyers and you were not given any legal advice or representation, what reason was given?	
If there was any time when you did not have help from an immigration 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? If yes , did they experience any delays or issues organising this?	
Finally,		
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?	





BiD Bail for Immigration Detainees

BID welcomes the reproduction of this report for the purposes of campaigning and information, provided that no charge is made for the use of the material and the source of information is acknowledged.

Bail for Immigration Detainees (BID) is a registered Charity No. 1077187. Registered in England as a Limited Company No. 03803669. Accredited by the Office of the Immigration Services Commissioner Ref. No. N200100147. We are a member of the Fundraising Regulator, committed to best practice in fundraising and follow the standards for fundraising as set out in the Code of Fundraising Practice.