

BiD Bail for Immigration Detainees

Legal Advice Survey

March 2025



Legal Advice Survey July 2024-February 2025

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.

BID is entirely reliant on charitable donations, and we are not in receipt of legal aid funding. BID does however call for the automatic provision of legal aid funding to everyone held in detention under administrative immigration powers, without the requirement of a merits test.

BID operates a telephone advice helpline for people in detention to be able to contact us and receive support on submitting their bail applications. 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, or people who are primary 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 people in detention. 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 – known as the 'Legal Advice Survey'. We would like to thank the BPP law students who carried out the interviews, and the people who agreed to share their experiences of accessing legal advice in detention.

Introduction

"I know about DDAS [the Detained Duty Advice Scheme] but I've heard it is so bad, there is no point in even trying. So that's why my family saved up to pay for a lawyer for me..."

Interviewee currently held in an IRC, February 2025

The UK is the last country in Europe to operate a policy of indefinite detention of people who are subject to immigration controls. Even people who have committed the most serious crimes in the UK are given fixed release dates, and yet every year upwards of 20,000 people¹ are held in detention for solely immigration reasons.

¹ Home Office, *Detention Summary Tables, year ending December 2024, 2025*

Despite the devastating effect detention can have on people's lives,² there is no judge involved in the decision to detain people – this is entirely at the discretion of the Home Office. This discretion-based approach to immigration detention is only being further entrenched, with current policymakers seeking to expand the Secretary of State's powers to detain pending deportation decisions.³

Given the broad powers to detain vested in the Home Office, access to sufficient, appropriate and quality legal advice for people in immigration detention is essential. In fact, the very legitimacy of the UK's 'indefinite' detention system rests on the guarantee of procedural safeguards such as an individual's capacity to bring a judicial review claim against the Home Office.⁴

However, individuals in detention are not offered automatic legal support in order to bring such claims, to apply for bail, or to progress their immigration cases. In theory, some of these applications can be made by individuals on a self-represented basis; in reality, most legal processes are opaque and difficult to navigate, making access to lawyers a necessity. Although everyone held in immigration removal centres (IRCs) is eligible for free legal advice via the Detained Duty Advice Scheme (DDAS), most people experience significant issues with the service. Unlike criminal legal aid, in which individuals retain their lawyer throughout the criminal process regardless of their crime, individuals in immigration detention need to pass a merits test for duty lawyers to take them on. Cases are often incorrectly assessed as not having merit: in one year, close to 90% of cases that BID assisted were granted bail, including cases previously assessed as having no merit.⁵

In light of these issues, and other barriers to accessing legal advice faced by people in immigration detention, BID's six-monthly legal advice surveys consistently demonstrate that provision of legal advice in IRCs is inadequate and urgently in need of improvement. At the end of this report, we propose eight recommendations to address this urgent need.

² see Medical Justice, *Failure to Protect from the Harm of Immigration Detention*, 2019; Brook House Inquiry, *The Brook House Inquiry Report, VOLI-III*, 2023; BID, *Every Day Is Like Torture*, 2021; Detention Action, *Introduction to Immigration Detention: 2024 Briefing Series*, 2024; British Medical Association, *Locked up, locked out, health and human rights in immigration detention*, Nov 2017

³ see Clause 41, Home Office, *Border Security, Immigration and Asylum Bill*, 2024

⁴ ECtHR, *J.N. v. the United Kingdom*, Application no. 37289/12, 2016

⁵ During its reporting year of 1/8/22-31/7/23, of 377 cases that BID prepared: 334 were granted bail or bail in principle (e.g. pending the provision of bail accommodation); 43 were refused bail; and 26 were applications were withdrawn.

Methodology

The report is designed to evaluate the levels of access to appropriate legal advice for those detained in the UK under immigration powers, in Immigration Removal Centres (IRCs). We produce separate reports for those detained under immigration powers who are in prison.⁶

The sample was therefore taken from people who fitted the following criteria:

- Had open files with BID from 1st July 2024 until 31st December 2024
 - Had signed letters of authority consenting to the disclosure of their anonymised information; and
 - Were detained in IRCs
- Or
- Completed the survey with a BID representative in person at an IRC in January and February 2025⁷; and
 - Gave verbal and written consent to complete the survey in person.

Participants completed the surveys via one of two methods. The first method was by phone, the second in person.

Telephone interviews were completed between 27th January and 8th February 2025 by BPP law students with supervision from a BPP staff member. Volunteers telephoned 42 people who fitted the first set of criteria listed above. Of those contacted, 30 went to voicemail, were the wrong number, or the phone was switched off. One answered but hung up when asked for consent for the interview. 10 respondents gave verbal consent for the interview and to complete the survey. Respondents were also given the option to terminate the interview at any point if they wished, as well as the option to only answer questions with which they felt comfortable responding to. As a result, some interviewees left certain questions blank, or their answers were not sufficiently clear to record any answer. One interview required a Latvian interpreter, and five interviews were carried out in Punjabi without a translator as the volunteer was fluent in English and Punjabi.

Due to several reasons, including increased standards of consent gathering for clients to be contacted for surveys such as this where anonymised data is gathered, we had record low numbers of respondents for our telephone surveys. To ensure our findings are based on sufficient data, we undertook further surveys in person at Tinsley House, Brook House, Yarlswood and Harmondsworth IRCs. These took place at the same time as our legal clinics where we offer in-person bail advice. 16 people gave verbal and written consent to fill in the surveys in person. They were also given the same option to terminate the interview at any point, and to only answer questions with which they felt comfortable.

⁶ see BID, *Prison Legal Advice Survey – August 2024* for the latest report

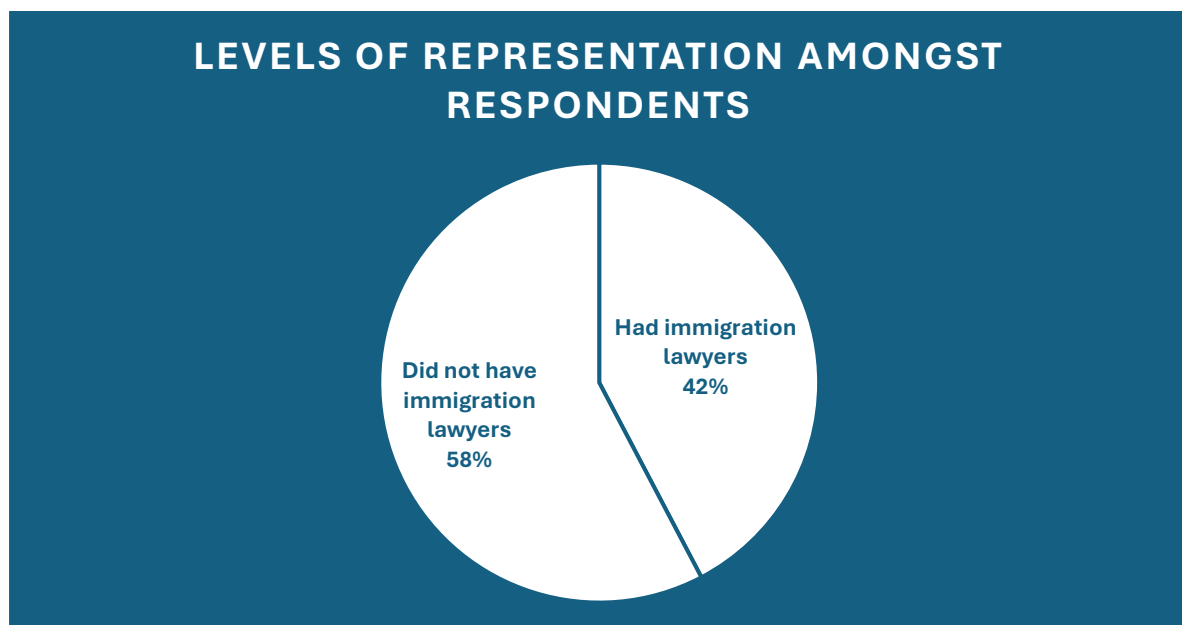
⁷ Additional surveys were carried out in person due to low numbers of respondents after the initial telephone surveys were carried out, in order to ensure the data was representative and sufficient.

Out of the 26 respondents who completed surveys, five were held at Colnbrook, nine at Harmondsworth, six at Brook House, five at Yarlswood and one at Tinsley.

Survey findings

Levels of representation

In the survey, only 11 out of 26 respondents said that they have an immigration lawyer working on their case (42%). This percentage echoes the low levels of representation of the previous BID report in summer 2024; together, they represent a significant drop from the 2023 BID Legal Advice Survey, in which 55% of respondents had lawyers.



These figures are concerning, and this is further corroborated by the fact that four out of the 11 respondents with lawyers were paying privately. This means that in total, only seven out of 26 respondents (27%) had lawyers through legal aid – despite the fact that all detainees should have access to lawyers through the DDAS.

12 years on from the 2013 cuts to legal aid for non-asylum immigration cases, as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), it is clear that the impacts have been disastrous. In BID's Legal Advice Survey in November 2012, before the Legal Aid cuts came into force, 79% of respondents had legal representation, of which 75% were legal aid. In comparison, today's levels of representation hovering consistently lower than 50% should set off alarm bells.

Reasons for representation levels

Of those who were unrepresented, respondents cited various reasons for not being able to find a lawyer. 53% cited reasons related to funding – including figures of £3000+ being asked from them – while one third said they do not know or are uncertain because the legal aid lawyer they had seen through the DDAS simply had not replied or followed up on their attendance. One also explained he did not have a lawyer because he also had an upcoming date in a criminal court, and he thought this meant he could not have a lawyer for his immigration case. However, every person detained under immigration powers is entitled to legal aid advice via the DDAS, which demonstrates there is a general lack of clarity for people in detention around their right to access legal advice.

Of the third who said they do not know or are uncertain, respondents went on to detail their experiences with trying to get a lawyer at some point during their detention. One said *‘I tried and talked to many people on the phone who told me that they will get back to me and help me, but actually nobody turned up and no one helped’*, while another recounted that they had previously had a lawyer, but they had said they would have to drop it due to being informed they would have to pay privately.



Only six out of 11 respondents with representation said their current lawyer had applied for bail for them. One person said they had applied for bail with the support of BID, demonstrating the reliance on BID's services even for people with lawyers. One said they applied themselves without additional support, and three said they were unsure whether their lawyer had applied for bail or not. This reflects a common pattern that legal aid lawyers are not meeting standards of client care that should be in place to guarantee recipients of advice understand the advice being offered and undertaken. This should be communicated via client care letters confirming a client's instruction; confirming the advice that has been given, and advising on the next steps that clients should take.

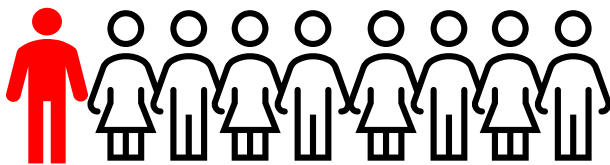
When given chance to further explain, some respondents said that their lawyer said they could not apply for bail based on factors such as 'insufficient financial condition' or not having a financial conditions supporter. This is an unsatisfactory reason not to submit a bail application as someone's legal representative, and immigration lawyers should be aware of this. Along with other experiences, this gives BID reason to believe that the legal advice some clients are receiving is simply not up to the standard that is to be expected from a lawyer tasked with advising people in immigration detention on how and when to apply for bail.

Of the 15 respondents who were unrepresented, four said they had worked with BID on their bail applications and two said they had submitted bail applications themselves.

52% of all people in detention in the last quarter of 2024 were released on bail⁸, which demonstrates that there is a high chance people making applications will be granted bail. However, without the appropriate support to make these applications, people are being deprived of their liberty for far longer than if they were accessing sufficient and consistent legal advice.

Immigration Legal Advice in Prison

BID publishes frequent reports on legal advice in prisons⁹. However, we also ask respondents in IRCs about their access to legal advice in prison if they came to the detention centre directly from prison. Out of 18 respondents who said they had been in prison, only five said they received any sort of immigration legal advice while they were there. Of those five, only two received this advice from an immigration lawyer, while the other three said the advice came from a Home Office staff member; someone from the Offender Management Unit, and charities.



Only one in nine people who had been in prison received advice from an immigration lawyer whilst there

One person said that they had tried to speak with an immigration lawyer in prison after being served a deportation notice but was told there was ‘no such service available’. However, this should not be the case. In the 2021 case *SM v Lord Chancellor*¹⁰, in which BID intervened, the High Court found that the lack of immigration legal advice for people held in prison was discriminatory and unlawful. This led to the creation of a prison-adapted duty scheme, the Telephone Legal Advice Service, through which people held in prisons under immigration powers should be able to have access to similar legal advice as those held in IRCs. However, this report along with previous BID Legal Advice and Prison Legal Advice Surveys clearly demonstrate that the service is not adequate and must be reviewed.

Detained Duty Advice Scheme (DDAS)

The DDAS was introduced in 2010. Through the scheme, people in detention can access 30 minutes of free legal advice either in person or by telephone. During the appointment, lawyers try to establish if they can take on people’s cases (if they qualify for legal aid). They should also give advice on bail to all those they advise during these sessions, as legal aid advice is available for all bail matters regardless of the merits of individuals’ immigration cases.

⁸ Home Office, *Detention Summary Tables, year ending December 2024*

⁹ see BID, *Prison Legal Advice Survey - August 2024* for the most up to date report.

¹⁰ *R (SM) v Lord Chancellor [2021] EWHC 418 (Admin)*, 2021

Out of 26 respondents, 23% were not aware of the existence of the DDAS scheme at all, and one person said they had heard of it but were told it was a waste of time so there was no point even trying to see a DDAS lawyer. This shows that even within immigration detention centres, people have a sense that the legal services they are being provided with are insufficient and not worth spending time on. Out of the 18 people who knew about DDAS, three people had not made appointments at all for various reasons from not having any hope about their case to preferring to wait while their family saved for a private lawyer for them as they felt it would be more effective.

15 people said they had made a DDAS appointment. Of these, many could not recall how long they had to wait between booking an appointment and talking with a lawyer. One person said they had waited more than two months, but most people waited for less than a week. On the whole, this is a positive trend in comparison with BID's summer 2023 Legal Advice Survey.

When asked how the appointments went, four people said they were given no advice at all. Two said that the advice given was general and not related to their individual case. Two people said the lawyer listened to them but then told them they could not take their case and gave them no further advice about their immigration case. One person said that it was 'all nonsense', and that the lawyer just said they could not take on their case after talking for 30 minutes.

More than half of those who had appointments said they were by phone, with one saying their first appointment had been by phone but their second was in person. Only six out of the fifteen people who had appointments were given the lawyers' contact details after the appointment, which varied between email and telephone.

Out of 15 people who had a DDAS appointment, only three answered a definitive yes when asked if the lawyer had taken their case on. The rest of the respondents said they were not sure; that the case had been taken but since dropped; or that they think it was taken on but the lawyer had not since replied to them. This further demonstrates a significant issue with communication between clients or potential clients, and the lawyers who provide legal advice in IRCs, often leaving people uncertain of their status. The fact that only one person was given advice in writing is additional evidence of this communication problem.

When asked why the lawyers from DDAS had not taken on their cases, six (50%) people said it was because their case was not covered by legal aid funding. One person said the lawyer had told them their case was too complicated, whilst the rest said the reason had not been explained to them.

Exceptional Case Funding (ECF)

After the 2013 Legal Aid cuts, Exceptional Case Funding was introduced to enable people to apply for legal aid on specific and limited grounds: where the absence of legal aid would result in serious unfairness, a breach of human rights and/or denial of effective access to justice. Out of everyone who was asked about ECF, only two people said their lawyer told them about the

funding. No one said that their lawyer had agreed to apply for ECF for them. This may be because the process of applying for ECF is time-consuming for legal representatives and there may be a lack of clarity among lawyers about whether lawyers can be paid for the time spent on this application.

However, BID's report on ECF found that ECF applications are too complex for people to complete without legal assistance¹¹, so there is an urgent need for lawyers to support with the applications. The report also found that when people do have legal support to apply for ECF, they are largely granted the funding, supporting the argument that legal aid should be restored for all these cases to simplify the system and reduce the number of people falling through the gap.

ICT Access

One of the key differences between prisons and IRCs is the availability of access to internet and communication services. In the past, high numbers of people had reported having important websites blocked such as BID's website, solicitor websites, government websites and more (see BID's December 2022 Legal Advice Survey). Out of the respondents to this survey, only two mentioned issues with blocked websites relating to their legal/immigration cases: one said that 'some case law websites are locked including some criminal solicitors', and another said that some government sites were blocked.

However, there are other issues with access to internet and communications. One respondent mentioned technical issues such as two-factor authentication meaning he couldn't access his emails, as he did not have access to his usual phone. There is also little clarity around the lack of access to social media sites. Social media websites fall within the 'prohibited lifestyle categories' of blocked material under *DSO 04/2016: Access to the internet within the immigration removal estate*¹²; however, there is no justification for the restriction within this order, or in any other Home Office policies or documents. In the Detention Centre Rules (2001), it is stated that detention centres should 'provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible' (para. 3(1)). The prohibition of social media is not consistent with this statement and thus should be urgently reconsidered.

Conclusion & Recommendations

¹¹ Bail for Immigration Detainees, *Hurdle After Hurdle: The Struggle for Advice and Representation through Exceptional Case Funding*, 2023

¹² Home Office, *Detention Services Order 04/2016: Access to the internet within the immigration removal estate*, updated 2024

BID believes immigration detention is inhumane, unnecessary and unjust. At BID, we campaign for an end to the deprivation of individuals' liberty for the purposes of immigration control. Through our research, we aim to demonstrate the ineffective and inefficient nature of the immigration detention system, as well as the inadequate support for individuals' rights at all stages of the process.

However, while the detention of individuals for immigration purposes continues, it is crucial that they have access to quality, timely and consistent legal advice in order to challenge their detention and to progress their underlying immigration case. Early legal representation is crucial for individuals who are being held under immigration powers, especially if they have already been served with deportation notices. Delays in securing legal representation can be highly detrimental to the individual and their families.

For example, for those at the Stage One Notice of Liability to Deportation, legal submissions by a lawyer and appropriate expert evidence will assist the Home Office in making an informed decision on whether to proceed to issue a Stage Two deportation decision and deportation order. If an individual remains unrepresented throughout the entire process of detention and deportation, then it is likely they would not be aware of various processes, applications or requests that would have been available to them to challenge their situation.

This report, along with other BID reports, clearly demonstrates that people in urgent need of legal advice and representation are falling through the gaps. The following recommendations must be implemented as a matter of urgency.

1. We recommend that all immigration cases be brought back into the scope of legal aid, reversing the effect of the 2012 Legal Aid, Sentencing and Punishment of Offenders Act (LASPO).
2. In the interim, we recommend that immigration lawyers receive legal aid funding for ECF applications, even if not ultimately granted.
3. We recommend that legal aid lawyers be permitted to self-authorise grants of ECF without needing to complete and submit application forms to the Legal Aid Agency. This will encourage take up of the ECF process and it will reduce unnecessary administration (and expense) on the part of the lawyer and the Legal Aid Agency. However, grants of ECF will remain subject to audit to ensure the procedure is being properly applied.
4. We recommend that every individual being detained under immigration powers should be automatically allocated an appointment with an immigration lawyer through the Detained Duty Advice Scheme, unless the individual opts out. Individuals should be informed about this appointment in good time, with required confirmation of receipt.

5. We recommend the end of the use of prisons for detaining people under immigration powers. This practice means that people being held under immigration powers do not have equal access to justice compared to those held in IRCs.
6. In the interim, we recommend an urgent review of the Telephone Legal Advice Service and the introduction of face-to-face legal advice for those held under immigration powers in prisons. This will ensure that people held under immigration powers have access to legal advice on their immigration case at the earliest point possible.
7. Following from the above, we recommend that any legal advice scheme in prisons must offer advice to individuals from the moment that the Home Office engages with their immigration matter or takes steps to do so. This includes individuals who are still serving a criminal sentence.
8. We recommend that the DDAS should be reviewed in the following ways:
 - a. The LAA should review the number of providers on the rota with a view to increasing the number of cases being taken on and reducing waiting times
 - b. The LAA should carry out an in-depth review of the quality of advice on the surgery rota and remove providers that are not providing sufficiently high-quality advice and client care, or routinely not taking on cases.
 - c. In light of the lack of trust in the DDAS surgeries expressed by people in detention, the LAA should enable and assist detainees to seek advice from any non-surgery legal aid lawyer of a person's choosing.
 - d. There should be automatic entitlement to legal aid representation at bail hearings at least every 28 days
9. We recommend that legal advice providers are encouraged to send lawyers to surgeries in IRCs in person, based on feedback that the quality of advice is better in person.
10. We recommend that the literature on all legal advice matters in IRCs – in particular the right to have free legal advice on bail regardless of your immigration matter – must be improved to increase accessibility and awareness.
 - a. The literature should be available in all necessary languages for the population of the IRC. If a translation for an unavailable language is requested, it should be provided as soon as possible.
11. We recommend that the decision to prohibit social media in IRCs be reconsidered.