

BiD

Bail for
Immigration
Detainees

www.biduk.org



Bail for Immigration
Detainees is an independent charity
that exists to challenge immigration
detention in the UK. We work with
asylum seekers and migrants,
in removal centres and
prisons, to secure their release
from detention.

Annual Report 2014

“States’ legitimate interests in securing their borders and exercising immigration control cannot override their obligation to respect, protect and fulfil the human rights of all persons in all areas under their jurisdiction, regardless of their migration status”

Francisco Carrion Mena,
Chairperson of the UN Committee on the Rights of Migrant Workers and their Families (CMW)

3071

individuals provided with assistance

Bail for Immigration Detainees

What is immigration detention?

Anyone subject to immigration control in the UK can be placed in immigration detention pending a consideration of permission to enter the country or pending deportation or removal. There are currently 12 immigration removal centres (IRCs) in the UK, including Cedars, 'pre-departure accommodation' for families. The centres are like prisons and detainees' movements, including access to outside space, are extremely restricted. The power to detain an individual has been conferred on the Home Secretary under a number of Immigration Acts and that power is devolved to immigration officers. This means that a court does not authorise the decision to detain, continued detention is not subject to a time limit (unlike many other countries in the European Union), and individuals in detention are not entitled to an automatic bail hearing.

What does BID do?

BID's overall aim is to challenge immigration detention in the UK through the provision of legal advice, information and representation on release from detention, alongside research, policy and advocacy, and strategic litigation focusing on detention policy and practice. Specifically, we:

- Provide information and advice to detainees through a telephone helpline, workshops and legal advice surgeries to help them make their own bail applications;
- Prepare and present bail applications or applications for temporary release for some of the most vulnerable individuals;
- Undertake research and use evidence gathered from our legal casework to advocate for changes to policy or practice;
- Provide information to decision-makers, including civil servants, parliamentarians and the judiciary through policy advocacy;
- Raise awareness of immigration detention through the media, including social media;
- In partnership with other lawyers, prepare cases which challenge unlawful detention practices.

"Bail for Immigration Detainees, to which I am sure many of us are grateful for its experience and for what it has shared with us in its helpful briefing"

Lord Judd

Director and Chair's report

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Adam was serving a 12 month prison sentence. He was determined to rebuild his life on release and was eagerly anticipating a reunion with his partner and two small children, who had found his absence unbearably difficult. The day before his release he was handed a piece of paper by the prison. This informed him that, as a foreign national, he was now subject to automatic deportation. He was to be sent to the country of his birth. Pending deportation he would continue to be held in prison. No time limit was set for his continuing incarceration. Adam had lived in the UK since the age of 2, had grown up, been educated, met his partner and had his children here. Having come to the UK so young, he had no idea he was not British until the point at which he was served with immigration detention papers. In shock at this unexpected turn of events, Adam discovered that, although he had been granted 'indefinite leave to remain' with his family as a child, this was not the same as being a British citizen and that he was indeed therefore subject to automatic deportation for convictions of 12 months or longer. He then discovered that there was no immigration advice in prison and that, under new laws passed in 2013 and 2014, he was no longer entitled to legal aid to make a case to remain in this country on the basis that his deportation would be disproportionate because he had established a private and family life in the UK. Worse, he could be deported before he even had a chance to appeal.

BID sees many clients like Adam – people held in immigration detention at the end of a prison sentence pending deportation. If you met them in the street you would assume they were British. This is the other side to the lurid headlines and politicians' pronouncements about 'getting rid' of 'foreign criminals'. Many of our clients have served short sentences for non-violent crimes and have never returned to the country in which they were born.

Since the 'foreign national prisoner' scandal of 2006, after which John Reid infamously pronounced the Home Office 'not fit for purpose', successive governments have ensured that the laws are weighted in favour of deportation of foreign nationals, irrespective of the length of time they have lived in this country. The UK Borders Act, which came into force in 2008, provided for all foreign nationals who served sentences of 12 months or longer to be subject to automatic deportation provisions at the end of their sentences. The decision to deport needed to be weighed up against the individual's right to a family and private life in the UK. If the public interest in deporting someone was disproportionate because they had established a family and private life in the UK, then deportation could not go ahead. However, the right to legal aid to enable an individual make that argument in an appeal was removed by the Legal Aid, Sentencing and Punishment of Offenders Act which came into force in 2013. And, in a further measure to ensure an individual subject to deportation will be further disadvantaged, the Immigration Act 2014 now provides for a 'deport first, appeal later' regime.

OVER 440

people released

“Decisions to detain were made by relatively junior Home Office staff, while the decision to release ex-prisoners could only be made by very senior staff. This sat uneasily with the presumption in favour of release. Difficulties in obtaining travel documents and deciding asylum claims caused lengthy detention. The former were sometimes outside the control of the Home Office, but the latter were not.

HM Chief Inspector of Prisons for England and Wales Annual Report 2012–13 (October 2013)

These two legislative developments have formed the backdrop to BID’s work over the last twelve months. As an organisation we have done our best to respond to offset the worst effects and to reduce their impact on our clients. Our research and policy managers provided briefings to parliamentarians on various aspects of the Bill throughout its passage, including providing evidence of the potentially devastating impact of the new law on long-term residents and their families. And research was undertaken to demonstrate the impact of the legal aid cuts on families that we followed up for a year after the cuts came into force. 11 of the 47 parents we followed up were deported without their children. The report was sent to Parliament’s Justice Committee and BID was invited to give oral evidence. We also carried out research into the use of prisons to hold immigration detainees which clearly demonstrated the degree to which clients are disadvantaged by being held in a prison rather than transferred to a detention centre.

We have established two new projects. First, a Prisons Project, which focuses specifically on detainees held in prisons, providing them with legal advice and representation on release; and our new Article 8 & Deportation Advice Project (ADAP) which was created to provide limited legal advice and representation to people in relation to deportation. Its aim is not to fill the gap left as a result of the decimation of legal aid, but to distribute self-help materials, give advice and take on limited cases for representation at the same time as gathering evidence to be used in policy advocacy for a re-instatement of legal aid.

As well as facing the challenge of adapting our services to cope with the increasingly hostile legislative and policy environment in which we operate, we have undergone a major change in structure. A strategic planning process and consultation with staff and volunteers, which began in the autumn of 2012 and finished in the middle of 2013, resulted in a decision by trustees to streamline BID’s operations into one centre. This meant the closure of our two smaller offices, BID South in August 2013, and BID Oxford in July 2014. There was inevitably some disruption in services and to the organisation as a result while the strategic and practical matters of closing offices were attended to, but, despite the upheaval, we still managed to reach almost as many people as the year before. We actually managed to increase the number of represented cases we prepared. Our thanks go to the staff and volunteers who contributed so much to BID’s work and especially their work on behalf of clients.

There is no doubt that the future is uncertain. Organisations like BID will find it hard to survive, especially relying, as BID does, on private funding for its existence. We are immensely proud of our achievements which you can read about in the following pages, none of which could happen without our amazing staff and volunteers. To them, to all of you who support our work, to our dedicated trustees, and to our loyal funders, we thank you.



**Celia Clarke,
Director**



**Rajeev Thacker,
Chair of the Board
of Trustees**

Bail casework and outreach

BID provided legal advice, information and representation to a total of 3,071 individuals over the last twelve months, and we prepared a total of 231 applications for bail, an increase on last year's total. Of the 231 applications for bail, out of the 183 actually heard, 101 were granted bail, a success rate of 55% as compared to a national success rate for bail for 2013 of 22%. This figure is all the more impressive given that BID does not apply a merits test, and takes on the most complicated and difficult cases for representation.

We carried out 51 bail workshops or legal advice sessions in six detention centres and four different prisons. A total of 864 individuals attended these sessions, fewer than last year. This reduction in numbers attending can be attributed to an increase in the provision of one-to-one advice sessions rather than a generic bail workshop. With individual advice-giving we see fewer people but they benefit from specific advice on their case. This is particularly important in prisons where a generic workshop model of advice delivery is not appropriate either for the client group or the setting.

Of the individuals provided with advice, of those that we have been able to follow up, a total of 440 were released from detention.

55%

success rate for represented cases

"The woman was not moved using approved techniques. She was placed in a wheelchair to assist her to the departures area. When she resisted, it was tipped up with staff holding her feet. At one point she slipped down from the chair and the risk of injury to the unborn child was significant. There is no safe way to use force against a pregnant woman, and to initiate it for the purpose of removal is to take an unacceptable risk."

HM Chief Inspector of Prisons for England and Wales Annual Report 2012–13 (October 2013)

What clients say about our workshops:

I did find your organisation so helpful and so caring, and I am so grateful

They are good listeners and supporters and advisers

It is always great to know that there are people who could help people like me. Being detained for not doing wrong was very distressful and an awful feeling. I hope you can help more people

Thank god for you people and please get more workers so you can go to court with everyone. Bless

Yes, it has been helpful to me as before I did not know about my situation

I hope I get bail. My health is very weak. Please help me to get out of here.

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Made me understand a lot about my bail

Come every week and help more detainees. Thank you so much.

First I did not have knowledge about bail, but after attending the workshop I got some answers. Thank you so much.

I learned a lot of things which I never knew

And what they say about our representation

It was very well prepared. Couldn't be any better

The barrister was thorough based on BID's work.

We kept in touch always so he prepared very well

Strategic litigation

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BID's legal strategy consists of two elements: referring cases for judicial review or civil actions for unlawful detention; and acting as a 'third party intervener' or providing expert witness statements to the higher courts on issues concerned with different aspects of immigration detention policy and practice. Our interventions and witness statements draw together our legal and policy work to provide the courts and decision-makers at the Home Office with evidence to help all parties understand the challenges faced by immigration detainees. Combining evidence from legal and policy work in this way enables BID to put forward powerful, evidence-based information and legal arguments to support change.

We referred 11 cases for judicial review in the last year. In four of the cases we were able to secure bail. We intervened in two cases: (a) the case of **David Francis ([2014] EWHC Civ 78)**: this legally complex case resulted in a partial victory for Mr Francis and people in his position. While the Home Office was able to argue that persons who have been recommended for deportation by a criminal court are required to be detained under the Immigration Act 1971, the court found that the Home Office still has to show that it is acting reasonably when exercising this power, and when justifying continued detention; and (b) the case of JN which is before the European Court of Human Rights. In this extremely important case BID is arguing that the lack of any time limits in

immigration detention cases combined with the lack of any automatic and independent judicial oversight means that the human rights of immigration detainees are being breached.

In the case of **Fouad Idira (CO/129/2013)**, which included a claim of unlawful detention and a challenge to his detention in prison under Immigration Act powers, we provided a witness statement on behalf of the claimant that described the problems and difficulties faced by immigration detainees in prisons compared to those held at an Immigration Removal Centre.

11

cases referred for
judicial review

"My utmost gratitude and worthiness of award (Justice Human Rights). Please pin this letter on your notice board as a token of your achievements in securing bail for me today. Well done and I am ever so grateful to you and your team members."

CASE STUDY

Ms C, 61 years old, had lived lawfully in the UK since 2000, her latest leave being as a student nurse until 2009. She had two sisters in the UK who were British nationals. Alongside her studies she worked as a care assistant for the number of hours that her visa permitted. Her college had taken responsibility for renewing her visa each year. However, in 2010, her college applied 4 days out of time and then informed her that they were no longer providing visa renewal services. This left the client to her own devices. She applied for a student extension and when this was refused, applied for further leave to remain outside the rules. She was identified by the Home Office as an overstayer in 2011. Her passport had expired and it was contended by the Home Office that she did not have a valid travel document and was frustrating her removal by her further applications for leave to remain and a Judicial Review application thereafter. She was required to report to Beckett House and was detained on reporting. BID represented the client in her bail hearing and she was granted bail after four months in detention.

"I will be eternally grateful to BID. You have made my life."

CASE STUDY

Mr A was a Vietnamese national who had been trafficked into the UK in 2009. He had borrowed a large sum of money to travel to the UK. His gang masters forced him to work in a drug production farm to pay off his debt. When he tried to escape, he was caught and beaten by the manager of the farm. He eventually escaped and started a new life in the Vietnamese community. Unfortunately, he was found by the manager of his farm and subjected to a frenzied knife attack involving 12 stab wounds. Whilst recuperating in hospital, he came to the attention of the police as an illegal immigrant and was told to notify the Home Office. This he did, claiming asylum, which was refused, but he was subsequently granted Temporary Admission. He was then charged and convicted in 2012 for being involved in drug production when his fingerprints were found in a police raid at the drug farm. He was sentenced to 2 years imprisonment and issued with a notice to deport. He was then detained under immigration powers in November 2013. While in detention he received death threats from Vietnam. BID represented the client in his bail hearing and he was granted bail after five months in detention post-sentence. BID also referred his case to immigration and criminal solicitors.

Quotes

“Thank you so very much for your incredible work in ensuring ***** was released on bail. Your passion, dedication and drive is admirable. ***** , your written argument was excellent and ***** your helpful pointers invaluable. I have been sincerely touched by the work of you both where you clearly care and empathise with your clients. The past almost 4 years have been incredibly trying and it was refreshing to come across people who we felt for the first time were genuinely on our side. It has been one battle after another, yet this time we had allies. You assisted in bringing us happiness, and for the first time in year I feel truly happy.”

“I have to show my sincere gratitude to you, your colleagues and your charity organisation for what you have done in the life of people in detention centres all over the UK, especially me in particular. Former President of the USA, George W Bush said “Freedom is the permanent hope of mankind.” To be honest, BID has done much for me in my life and I am praying and wish to be in a position of somebody who can be paying back to this charity organisation as soon as possible.”

“I do not have the adequate words to express my profound gratitude for all the help you gave me in my dire days of turmoil under detention; your selfless voluntary crucial assistance rendered me in obtaining bail was not only a life-saver for me but also for my family. Your charitable help of justice for the weak and afflicted families is a shining light of hope to the helpless, also uplifting to the human spirit and faith in the potential goodness of humanity.”

Challenging long-term detention; Increasing access to justice: Research and policy

BID's research and policy in support of these objectives aims to identify the factors that deny detainees access to justice and that contribute to long-term detention (no accommodation on release, lack of legal representation, use of prisons to hold immigration detainees), and address these through policy work underpinned by evidence gathered through research and casework.

'Section 4' accommodation on release: Without friends or family in the community who might be willing and/or able to have them to stay on release, many detainees are reliant on the Home Office to provide them with accommodation. Over recent years, Home Office delay in providing accommodation addresses has meant that significant numbers of detainees are denied access to justice as they need accommodation in order to apply for release. These delays are even longer for detainees who have served prison sentences who may be held in prisons post-sentence. Those under licence must have any address approved by probation services, and delays in checking addresses contribute to further delays in the process.

BID's Accommodation & Release Project was set up to gather evidence on and analyse the delays to use in policy work with civil servants, and for litigation, in conjunction with the production of leaflets and information principally targeted at detainees but also for use by other organisations that support detainees, or other lawyers.

Interim findings were shared with the Home Office in an effort to resolve the problem and reduce delays. In May 2014 BID met with the Head of Support and Integration at the Home Office Asylum Casework Directorate, and a number of Home Office operational and policy staff. We were able to reveal that the average (mean) time taken by the Home Office to grant a dispersal Section 4 (1)(c) bail address was 114 days (16 weeks), with a range of 15 to 428 days (2 weeks to 61 weeks). Information from the project was also used in the Home Office-convened National Asylum Stakeholder Forum (NASF) Asylum Support Sub-Group in which BID participates.

In September 2013 we published a Factsheet for detainees and legal advisors: *'Getting Probation approval for your immigration bail address: I'm a foreign national ex-offender, I'm still on Licence, and I want to apply for immigration bail. What do I need to do?'* We provided training to prison staff and orderlies at HMP Huntercombe on making Section 4 bail accommodation applications, and address-related aspects of immigration bail applications specific to ex-offenders. We then produced specialist materials on Section 4 bail address applications for the prison which have also been translated into Russian and Polish.

BID's regular legal advice/representation in detention surveys

During the last year we carried out the 7th and 8th telephone survey of detainees held in IRCs on access to immigration legal advice. We also administered the 2nd and 3rd postal survey to detainees held in prisons. We routinely share findings from these surveys with the Home Office, the First-tier Tribunal (IAC), and the Legal Aid Agency.

The latest survey showed that:

- just 55% of those interviewed had a legal representative (either private or legally-aided) at the time
- 15% of respondents had never had a legal representative during their entire time in detention to date.
- For those with a legal rep, in 54% of cases, their legal rep had not made a bail application.
- The percentage of detainees who had served a custodial sentence prior to detention but had received no immigration advice, was 87%.

Challenging the use of prisons as a place of detention

The number of immigration detainees being held in prisons during 2013-14 reached a peak of 1214 (on 31st December 2013). These are individuals who have served custodial sentences but, instead of being released, continue to be held in prison post-sentence under immigration powers. We do not believe prisons are an appropriate place to hold immigration detainees. We have been gathering data on the experiences of our prison-held clients who are severely disadvantaged in relation to the conditions of their detention, their access to justice and in the excessive lengths of their detention. This data formed the basis of a witness statement for a High Court case, and a report containing our findings will be published in September. We continued to press the Home Office to publish both the number of people held in prisons under immigration powers and their lengths of detention and for headline Home Office-published statistics to be adjusted to reflect this.

As a casework response, we established our prisons project which focuses specifically on the provision of legal advice and representation to individuals held under immigration powers in prisons. As part of the research referred to above, our Research and Policy Manager accompanied BID's new Legal Manager to workshops in HMP Peterborough, HMP Brixton, HMP The Verne and HMP Huntercombe, to carry out research with detainees as well as serving foreign-national prisoners liable to deportation, and meet with prison staff to identify problems faced by prison-held detainees in gaining access to legal advice, the courts and tribunals, and the Home Office.

231

bail applications prepared

Article 8 Deportation and Advice Project (ADAP)

April 2014 saw the launch of an exciting new legal advice and representation project at BID, the Article 8 Deportation Advice Project, (ADAP), working in collaboration with the University of Law (ULaw). Funded by the AB Charitable Trust and Unbound Philanthropy, the project provides free legal advice and representation to individuals who have been convicted of criminal offences in the UK and who are challenging deportation on Article 8 human rights grounds (right to respect for family and private life in the UK), who would otherwise be without legal assistance due to the lack of legal aid for immigration matters.

The project was established in response to cuts in legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2014, which coincided with calls to the BID bail advice line from long-term British residents needing legal assistance to challenge their deportation. Many of these callers have a strong private and family life in the UK, being long term residents, and many have partners and children who are British Citizens.

Mr X was sentenced to 42 months in prison and has lived in the UK for 15 years. He has a partner and two young children in the UK, all of whom are British Citizens. He also has an ex-partner and child with leave to remain in the UK. He has a very close relationship with all of his children. He was a model prisoner with excellent commendations from all of the prison officers on his wing for his hard work to tackle his past offending behaviour. Mr X is appealing the decision to deport. Through ADAP representation, an Independent Social Worker report setting down the detrimental impact of his deportation on the well-being of the children can be presented in his appeal.

The Immigration Act 2014

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The Act contains a number of provisions that will have a seriously detrimental impact on our clients. Two provisions in the Immigration Bill related to immigration bail, and residential tenancies (with the potential to affect the use of such accommodation as bail addresses). We worked closely with the Immigration Law Practitioners' Association (ILPA) leading the team on the bail provisions and provided a number of parliamentary briefings during the passage of the Bill.

We also briefed on the repeal of an existing statutory ground for the restriction of the grant of bail on mental health grounds, which we argued is inconsistent with the purpose of the statutory detention powers and the overall statutory framework for the detention of the mentally ill where that is necessary in their interests or for the protection of others. In the light of several recent findings by the courts that mentally ill immigration detainees have been detained unlawfully and their Article 3 rights (prohibition on inhuman and degrading treatment) breached, we sought to remove a provision in the Immigration Act 1971 that allows Tribunal judges to refuse release only on the ground that a detainee is "suffering from mental disorder and continued detention is needed in his interests or for the protection of others".

We spoke about the bail-related provisions in the Immigration Bill on a panel at a parliamentary meeting on the Immigration Bill held in January 2014.

The Act will greatly exacerbate the problem of separation of migrant families. For example, Section 17(3) of the Act allows that 'foreign criminals' and people the Home Secretary deems not conducive to the public good 'can be deported first and appeal after, unless that would cause serious and irreversible harm.' BID is concerned that, in practice, this may prevent very many people, including parents, from accessing justice. This would have grave consequences for children who are settled in the UK and face separation from their parent (see below for outcomes). Section 19 of the Act seeks to restrict the circumstances in which people can appeal their removal or deportation on the basis of the right to private and family life.

During the Bill's passage through parliament, which was largely unopposed in the Commons, BID briefed parliamentarians at every stage, and met with key targets including: Simon Hughes MP (Justice Minister); Baroness Hamwee (Lib Dem spokesperson on Home Affairs); David Hanson MP (Shadow Immigration Minister); Baroness Smith (Labour spokesperson on Home Affairs); Emily Thornberry MP (Shadow Attorney General) and Nick Clegg's Special Adviser on Home Affairs. We were invited to give a presentation on the Bill to the Liberal Democrat Home Affairs, Justice and Equalities Committee, and this was attended by a number of MPs, peers and advisors in the Whip's office, including Norman Baker MP (Home Office Minister of State). We attended several parliamentary briefing events and helped to organise a Refugee Children's Consortium event for MPs and peers. Ahead of Report Stage in the Commons, BID sent an e-newsletter to members & supporters, which included a standard letter for supporters to email to their MPs highlighting concerns about the Bill.

Following this, peers tabled a number of amendments to the Bill concerning family separation. While these were not passed, they provided an opportunity for debates where some limited concessions were made by the Government. Peers repeatedly quoted from BID's briefings in parliamentary debates, citing case studies of BID clients.

4

children of former clients awarded compensation because of the detrimental impact of separation from their parent(s)

As a result, we believe, of BID's and the Refugee Children's Consortium's lobbying, in July 2014 the Home Office produced guidance on how Section 17(3) would be implemented. This provides that, in the 'initial test phase' of implementation, the 'deport first, appeal later' provisions will not normally be applied to parents where there is evidence that they are 'playing an active role in a child's life.' This means that, at least for the moment, if a parent can provide evidence that they are actively involved with their child's life, they should normally be able to appeal their deportation from the UK, rather than being deported before their appeal.

In response to the overwhelming concerns expressed by peers about the impact of the Bill on children, including in speeches based on briefings by BID and the Refugee Children's Consortium, the Government agreed to insert a Section 71 into the Act which states:

'Duty regarding the welfare of children- For the avoidance of doubt, this Act does not limit any duty imposed on the Secretary of State or any other person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children).'

In response to amendments tabled by Lord Judd, the Lord Taylor of Holbeach (the Home Office Minister) stated in parliament that families would only be separated in specific circumstances:

'I assure noble Lords that we will always seek to ensure that families remain together during their return. I am sympathetic to the amendment, but there are exceptional cases.... Splitting families would never be done for tactical reasons to achieve compliance.'

Following this, Sarah Teather MP tabled further amendments to the Bill. Immigration Minister James Brokenshire stated on the record that families in the Family Returns Process would only be separated temporarily:

'We will always seek to ensure that families remain together during their return, but there are exceptional circumstances in which temporary separation may be necessary. For example, where there is a public protection concern or, indeed, a risk to national security, a dangerous individual might not be considered a threat to their own children but could be a risk to the wider public.'

51

legal workshops
or advice sessions
delivered to 864
individuals

Prisons project

In January we set up a new project to focus on the needs of people held in prisons under immigration detention powers. Priority for representation was given to those detained for longer than a year, parents separated from their children, and people with mental and/or physical ill-health. In its first six months, the project advised 41 clients and prepared 22 bail applications. Six clients were released, and six cases were referred to solicitors, three for unlawful detention actions and three for deportation appeals.

Six workshops and legal advice sessions were carried out in prisons attended by 149 people. Feedback from clients showed that 90% found the advice given very helpful, with the remainder finding it helpful.

Pan-European project on alternatives to detention

BID has been funded by the European Refugee Fund to take part in a pan-European project on alternatives to detention. We provided a detailed 80 page report on how alternatives to detention operate in the UK, and attended four days of meetings to coordinate our work with that of our European partners. The second phase of the project will involve training and advocacy across Europe.

Separated families' project

The project provided support to 149 parents with approximately 338 children. We prepared 75 bail applications as well as 11 applications to the Home Office for temporary release. 17 applications were withdrawn (withdrawals often relate to problems on the day, such as the surety not turning up) 15 were refused, and 43 were granted. The project's success rate is 74%, as compared with an overall success rate of all bail applications in the UK of 22%. The total number of clients that were released who had received support from the project was 64. In addition we supported six expectant parents, five of whom were released and one voluntarily departed from the UK.

64

parents reunited with their children

CASE STUDY

*John was detained for a second time in October 2013 and separated from his partner, Hope and baby, Olly. Hope struggled to cope as she was the main breadwinner for the family and prior to John's detention he had been their son's main carer (John could not work as he did not have permission to work in the UK). John found being in detention, unable to support his family extremely difficult and began to suffer from mental health problems. It was not clear why he was detained, as he was judged a low risk of absconding as he had been on bail since 2011 and had complied with all his condition, and he could not be removed as he had a High Court injunction against his removal. What made it even more difficult for John and his family was that the Home Office, in all their reviews of detention, did not take into consideration the fact that he had a family. Home Office policy states: **'If there is a subsisting relationship between the parent and child the best interests of the child will almost always be in the liberty of the parent, unless there are child protection concerns around the parent.'** There were and are no child protection concerns in this case. In BID's experience, the Home Office pays scant regard to the welfare of children when detaining parents and rarely follow their own guidance. BID represented John in a bail application and he was released having spent 5 months in detention away from his family.*

Eight months after his release, John was re-detained, despite Hope now being pregnant with their second child and John having complied with all his reporting conditions and with an outstanding High Court case. The Home Office refused to release him despite health professionals writing to the Home Office expressing their concerns for the welfare of Hope and Olly, who had stopped eating properly and had become very insecure.

BID wrote twice to the Home Office requesting temporary release but both applications were refused with no explanation as to how detention could be justified. John was detained for a further three months before he was granted bail again, represented by BID and pro bono counsel. The trauma of John's third detention has taken its toll on all of the family and the long term repercussions for the unborn child, Olly and the parents are as yet unknown.

We received feedback from 22 clients during this period which helps ensure we continue to provide the best possible service to clients. Their responses confirmed that our service is highly valued:

- 100% of respondents said the advice received had been helpful;
- 86% rated BID's preparation of the case as 'excellent'
- 96% said that the barrister understood the case well;
- 91% said their understanding of bail had increased since being represented by BID
- 96% said that working with BiD and being active in challenging their detention had helped them personally.

Strategic litigation: A total of 7 family cases were referred for unlawful detention challenges. Some of the cases that had been referred in previous years also reached their conclusions. BID provided draft witness statements to solicitors in two cases where mothers were seeking damages for unlawful detention. One of these was one of the three mothers mentioned below – her case settled and she was awarded damages. The second case for which we provided a witness statement has been stayed behind another case concerning immigration detention, and an outcome is still awaited.

Three mothers whose cases we had referred in previous years were awarded compensation for their unlawful detention totalling £82,500, and four of our clients' children were awarded damages because of the detrimental impact that separation from their mothers had on them. This compensation totalled £28,500. We are of course pleased that our clients' trauma has been recognised by the courts, but equally appalled that the Home Office should have to be taken to court to ensure redress for vulnerable individuals.

Research and policy: Since 2008, any foreign national who has served a criminal sentence of 12 months or more has been subject to automatic deportation, regardless of length of residence in the UK. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed the vast majority of immigration cases from scope of legal aid. As a result, large numbers of detainees are no longer able to challenge decisions by the Home Office to deport or remove them from the UK, even where these decisions are unlawful.

In an effort to demonstrate the devastating effects of the cuts (which came into force in April 2013), BID carried out a small-scale monitoring exercise in 2013/14, with a sample of 47 parents with 101 children. Parents in the study were detained for an average of 286 days. In 33 out of 47 cases, parents were eventually released on bail or temporary admission. Shockingly, 11 of the 47 were removed or deported without their children. In one case, a parent who was illiterate represented himself in a deportation appeal at the Upper Tribunal. His case was refused but he has not yet been deported. In two of the 47 cases, parents had no criminal convictions and 38 of the parents had only been convicted of non-violent offences including theft and false documents.

BID provided a summary of its research to Parliament's Justice Committee's inquiry on the impact of the April 2013 legal aid cuts. We provided case studies, including one concerning a mother who has been subjected to domestic violence and speaks limited English, who had been refused Exceptional Case Funding. The Ministry of Justice is currently reviewing the impact of the removal of legal aid for the majority of immigration cases. BID met with the Ministry of Justice to feed in evidence of the impact on families. We responded to the Joint Committee on Human Rights' Inquiry into 'The implications for access to justice of the Government's proposed judicial review reforms.'

We responded to the Joint Committee on Human Rights' Inquiry on Human Rights Judgments, setting out our concerns about the Home Office's failure to implement changes to decision-making processes on the detention of parents, despite cases where the courts have found that parents have been detained unlawfully.

Statement of Financial Activities

For the year ended 31 July 2014

	Restricted Funds £	Unrestricted Funds £	2014 £	2013 £
Incoming resources				
<i>Incoming resources from generated funds:</i>				
<i>Voluntary income:</i>				
Donations and grants	-	337,581	337,581	340,985
<i>Activities for generating funds:</i>				
Investment income	-	1,901	1,901	2,813
Other income	-	2,028	2,028	1
<i>Incoming resources from charitable activities</i>	319,343	-	319,343	218,949
Total incoming resources	<u>319,343</u>	<u>341,510</u>	<u>660,853</u>	<u>562,748</u>
Resources expended				
Costs of generating voluntary income	-	19,536	19,536	14,552
Charitable expenditure:				
Right to liberty	54,529	62,511	117,040	87,859
Bail casework	70,495	170,473	240,968	232,750
Families project	58,749	4,414	63,163	75,159
Research and policy	72,274	47,067	119,341	114,399
Deportation project	10,248	-	10,248	-
	<u>266,295</u>	<u>284,465</u>	<u>550,760</u>	<u>510,167</u>
Governance costs	-	23,600	23,600	19,482
Total resources expended	<u>266,295</u>	<u>327,601</u>	<u>593,896</u>	<u>544,201</u>
Net incoming resources	53,048	13,909	66,957	18,547
<i>Reconciliation of funds</i>				
Total funds, brought forward	29,811	179,767	209,578	191,031
Total funds, carried forward	<u>82,859</u>	<u>193,676</u>	<u>276,535</u>	<u>209,578</u>

Balance Sheet

For the year ended 31 July 2014

	2014		2013	
	£	£	£	£
FIXED ASSETS				
Tangible assets		1,203		233
CURRENT ASSETS				
Debtors	8,804		8,155	
Cash at bank and in hand	299,760		341,489	
	<u>308,564</u>		<u>349,644</u>	
CREDITORS: amounts falling due within one year				
	<u>33,232</u>		<u>140,299</u>	
NET CURRENT ASSETS		275,332		209,345
NET ASSETS		<u>276,535</u>		<u>209,578</u>
INCOME FUNDS				
Restricted funds		82,859		29,811
Designated funds		25,000		-
General funds		168,676		179,767
		<u>276,535</u>		<u>209,578</u>

BiD Bail for Immigration Detainees

Research carried out into the impact of legal aid cuts on

47 Families

Grateful thanks to our funders, without whose financial support our work would not have been possible

Esmee Fairbairn Foundation
Trust for London
Richer Charitable Trust
The Tudor Trust
J Paul Getty Jr Charitable Trust
29th May 1961 Charitable Trust
Volant Charitable Trust
Unbound Philanthropy
Joseph Rowntree Charitable Trust
Comic Relief
The Law Society Charity
Oak Foundation
AB Charitable Trust
Allen & Overy London Foundation
MADE-REAL Project
Trust for London
London Legal Support Trust
John Ellerman Foundation
Stark Bunker Sands Trust
Peter Stebbings Memorial Charity
University of Oxford

The year in headlines

- 3071 individuals provided with assistance
- 231 bail applications prepared
- 55% success rate for represented cases
- At least 440 people released
- 51 legal workshops or advice sessions delivered to 864 individuals
- 11 cases referred for judicial review
- 64 parents reunited with their children
- 3 former clients separated from their children awarded compensation for unlawful detention
- 4 children of former clients awarded compensation because of the detrimental impact of separation from their parent(s)
- Research carried out into the impact of legal aid cuts on 47 families
- Research carried out into the use of prisons to hold immigration detainees
- Research carried out into systemic delays in provision of Home Office Section 4(1)(c) accommodation
- Lobbying on Immigration Act 2014
- 2 surveys conducted into access to legal representation in detention



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