

BID



Helping people navigate
the UK immigration system

www.biduk.org

Annual Report 2021

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.

**Bail for
Immigration
Detainees**

“The difficulties faced by TSFNOs who require specialised accommodation are often caused by slow decision-making at the point at which it is confirmed they will be further detained under immigration powers. This detention decision can mean that an opportunity for release with effective management in the community is missed”

“Once a man is time-served, on an immigration warrant, quite frankly he gets forgotten about until we get the next update [on his immigration case].”

(the words of one prison officer quoted)
“the blinkered approach to cases which require nuance and the failure to effectively rise to the challenge of managing individuals who are both vulnerable and potentially dangerous had created conditions for very extended stays in detention. At the time of writing, the longest held detainee had been in a category B prison, under immigration powers for over three years, since February 2018.”

From ICIBI report: Second annual inspection of ‘Adults at risk in immigration detention’
July 2020 – March 2021

Bail for Immigration Detainees



What is immigration detention?

Immigration detention is the process of incarcerating individuals subject to immigration control in the UK either pending permission to enter the country or to await removal or deportation. It's an administrative, not a criminal, process, and powers to detain are exercised by officials acting on behalf of the Home Secretary. There are none of the safeguards that there should be when depriving someone of their liberty. First, the decision to detain an individual is neither approved by nor overseen by a court. Second, there is no automatic legal advice or representation. Third, there is no time limit. Given these three factors, people can be detained for weeks, months and even years. People can also be re-detained, but the Home Office treats these as separate periods of detention and does not count cumulative lengths of detention. Many people experience repeated periods of detention.

What does BID do?

BID's vision is of a UK free of immigration detention, where people are not deprived of their liberty for immigration purposes. We aim to challenge immigration detention in the UK through the provision of legal advice, information and representation alongside research, policy advocacy and strategic litigation.

Specifically, we:

- Run a telephone helpline four mornings a week to deliver legal advice and information;
- Deliver legal advice sessions and workshops in detention centres and prisons;
- Prepare, update and disseminate self-help materials on detention and deportation so that detainees have the tools to represent themselves if they don't have a lawyer;
- Prepare court cases for release on bail and deportation appeals;
- Carry out research, gather evidence from casework, and prepare reports and briefings for civil servants, parliamentarians and the general public about different aspects of immigration detention;
- Refer cases for unlawful detention actions;
- Act as a third party intervener, or provide evidence to the higher courts on detention policy and practice;
- Raise awareness of immigration detention with the wider public.

“The most disturbing effect of the restrictions was the decline in prisoners’ emotional, psychological and physical well-being... Prisoners described being “chronically bored and exhausted”; “drained, depleted, lacking in purpose” and “frequently compared themselves to caged animals”.

HM Inspector of Prisons “What Happens to Prisoners in a Pandemic? A Thematic Review” February 2021

Chair's Report

There have been significant developments and changes in the use of detention over the past year. We welcomed the reduction in the numbers of people held in immigration detention, albeit because of COVID rather than a change in government policy.

However, the numbers of people detained under immigration powers in prisons has increased, while those people have been subject to extremely restrictive lockdown conditions effectively amounting to prolonged solitary confinement.

In this BREXIT year we saw many EU nationals being detained under immigration powers and were particularly concerned that the Home Office was systematically failing to acknowledge our clients' applications under the EUSS and opposing bail on the grounds that there were no barriers to removal. We are also deeply concerned by the lack of suitable accommodation for people to be bailed to with almost ¾ of our successful bail applications not leading to immediate release.

This pandemic year also saw the government using decommissioned and dilapidated barracks to house asylum seekers in sites that replicate many of the features of the detained settings and can be more accurately described as 'quasi-detention'. We are also monitoring the creeping surveillance and the use and abuse of data acquired

through the application of GPS monitoring which has recently been made mandatory for everyone facing deportation.

I am proud of the achievements outlined in the report and I want to thank my fellow trustees, our funders, our staff and our volunteers for their support.

**Maggie Pankhurst,
Chair of the trustees**

"The most disturbing effect of the restrictions was the decline in prisoners' emotional, psychological and physical well-being... Prisoners described being "chronically bored and exhausted"; "drained, depleted, lacking in purpose" and "frequently compared themselves to caged animals".

HM Inspector of Prisons "What Happens to Prisoners in a Pandemic?
A Thematic Review" February 2021

"As it stands, the UK Nationality and Borders Bill would penalise most refugees seeking asylum in the country via damaging and unjustified penalties, creating an asylum model that undermines established international refugee protection rules and practices"

UNHCR statement on the Nationality and Borders Bill

Director's report

Being offered the job at BID was a dream come true for me personally and professionally as BID's values very much align with my own. Detaining a human being for administrative purposes is for me, a fundamental breach of a person's human right to liberty and should be abolished.

With so much happening in 2021 it hardly seems possible that I have been in post less than a year and I very much want to thank Celia Clarke for the help she has given me to make the transition as seamless as possible. I also want to thank my new colleagues who have made me so welcome and have tolerated some of my clumsiness as I have settled into the role.

I took up post ten months into the COVID pandemic. A pandemic that has changed BID both organisationally and in the type of cases we are dealing with. The team have had to adapt to a very different model of working and they have carried this additional burden with equanimity and good grace. Before covid, a legal manager would supervise a team of legal volunteers who would triage enquiries as well as help prepare bail and accommodation applications. Because of the logistical and technical difficulties of remote supervision they have had to do the work themselves, although we are now reintroducing volunteers (big thank you to Paul Hamlyn foundation and Griffsome Trust). Their work has been made harder by the shift from representing clients detained in IRC's to representing clients detained in prisons where access to clients is more restricted and the cases generally more complex.

As the year has progressed it became apparent that people were spending

significant amounts of time locked in their cells to the detriment of their mental health. Together with Medical Justice we prepared a report highlighting the harm done to clients by prolonged cell confinement arguing that such conditions are in breach of the Mandela Rules.

BID exists to get people out of immigration detention and bail applications form the bulk of our work. However, whilst we continue to be very successful in getting grants of bail, for many of our clients this does not lead to them being released immediately. A lack of suitable accommodation means that clients are often held for significant periods after being granted bail and we have to go back to court numerous times. The government has repeatedly demonstrated its unwillingness to resolve this problem and we are working with other law firms to evidence the delays and their impact in the hope of securing change through strategic litigation.

Human migration is a fact of life and all of us have an immigrant ancestry be it through the first settlers to arrive 25,000 ago or more recent arrivals. Up until 1982 more people emigrated than immigrated almost entirely through colonialism and empire which at its height turned 23% of the world's population into British Subjects. However, in a series of post war immigration laws Britain's colonial and Commonwealth citizens from the Caribbean, Asia and Africa were reframed as immigrants ultimately leading to the Windrush Scandal. Long standing anti-immigrant rhetoric from large sections of the press and politicians feeds into a perception that there is an immigration 'crisis' that needs solving

and this perception has culminated in a sprawling web of immigration controls as exclusionary as any physical wall. It has embedded border controls into public services and created so many barriers that people fleeing persecution are being forced into ever more dangerous journeys. Undeterred by the recent deaths of 27 people in the English Channel the British government has embarked on a truly draconian legislative agenda that will cause more distress and suffering to the distressed and suffering.

The Nationality and Borders Bill will criminalise and deny due process to asylum seekers. With sentences of up to 4 years for clandestine entry people fleeing persecution will be excluded from the Refugee Convention and could face automatic deportation under the 2007 UK Border's Act. It creates the legal basis for offshore detention centres and quasi detention in so called 'accommodation' centres. Similarly the Police, Crime, Sentencing and Courts Bill contains provisions for irregular migrants to be issued with 'diversionary' cautions requiring them to leave the UK for minor offences and will increase sentences bringing ever more people into the ambit of automatic deportation. The upcoming review of the Human Rights Act will make it impossible for people to appeal against deportation on the basis of family ties or length of residence. Meanwhile the increasing use of deprivation of citizenship powers for criminality means that even British Citizens are no longer safe.

This onslaught will create more and more legally detainable and deportable people and BID's vision of a world free of immigration detention looks to be a way off.

**Annie Campbell Viswanathan,
Director**

Achievements and performance

Bail casework and outreach

96% of those who returned feedback forms rated our work as either “excellent”/“very helpful” (83%) or “helpful”.

“I actually get to be with my family whom I thought I would [not] see for some time”

Achievements

4,792

In the past year BID staff has supported a total of 4,792 people. Most clients receive legal advice with a small proportion being directly represented by BID.

3,024

We answered 3024 calls to our advice line and the remaining numbers were made up of referrals from other agencies, 2nd tier advice a small amount of outreach work and through our enquiries e-mail.

406

Legal managers prepared 406 bail applications. Of these, 361 were actually heard (excluding 45 cases that were withdrawn before or during a hearing).

309

309 cases were granted bail or bail in principle, an astonishing success rate of 86%.

309

A minimum of 309 people provided with assistance from BID were released, however many more benefited from one off advice and our self-help materials to secure their own release.

107

We provided deportation advice to 107 people.

15

Exceptional Case Funding (ECF - applications for legal aid in deportation cases) assisted 15 people on making ECF applications and finding legal representatives.

Prisons' project

Our Prisons' Project focuses on the provision of legal advice and representation to time-served prisoners detained in prisons under immigration powers and facing deportation action. No one in prison has access to mobiles or internet, at least not legally. All access to clients over the last reporting year was by telephone or by post or in some cases via the emailprisoner.com website.

There is significant crossover and collaboration between this project, BID's Separated Families' Project, and our Article 8 Deportation Advice Project. Evidence from these projects also feeds into our policy work and helps with preparing witness statements for strategic litigation. The project also refers cases out to other lawyers to mount unlawful detention challenges. It recently emerged that the Home Office was forced to pay out £9.3m in compensation in 330 cases of unlawful detention last year. This was a 35% increase from the year before, when £6.9 million was paid out to 272 individuals. The figures are immense, but the significant rise from the previous year suggests that the Home Office is not learning lessons from past wrongful decisions.

“BID provided good solicitors and chased my case good”

- The project assisted **315** people.
- **53** bail applications were prepared of which 50 were actually heard.
- **47** were granted bail.
- **42** referrals were made for judicial reviews for unlawful detention or for advice on their substantive immigration matters.

“BID provided good solicitors and chased my case good”

“He gave me advice, step by step”

“Since all my bail applications were excellent, nothing else was needed”

“My case worker referred my case to other solicitor to help me more get out of the detain”

CASE EXAMPLE

Client is a vulnerable 34 year old who left his non EU country of origin at the age of 2 where he settled and acquired Italian residency. The family (all naturalised Italians) then moved to the UK where they acquired settled status. In 2019 our client entered the UK to work however things did not go well for him and he lost this job and his mental health deteriorated. During a bout of psychosis he assaulted a family member, for which he was convicted and sentenced. At the end of his sentence he was served with a decision to deport him to the country he had left at the age of 2. At that stage his mental health condition was undiagnosed and he did not respond to the Notice. His health deteriorated and he was eventually diagnosed with schizophrenia and transferred to a prison hospital ward where, with treatment, his condition stabilised.

At the start of 2021 he was served with a Deportation Order and Deportation decision however because he had not responded the first stage deportation notice there was no right of appeal. When he completed his custodial sentence BID assisted with an application for bail which was granted on the condition that he was provided with a suitable address by the Home Office. The psychiatrist recommended an address local to his family to ensure support and compliance with his medication however the Home Office sourced accommodation in Wigan. To date his case is ongoing as the Home Office refuse to cede to the psychiatric assessment for him to be housed close to family. The client has been referred to a public law solicitor to progress the case through a legal challenge to the decision to refuse to accommodate him near his family.

Separated families' project

The Home Office has a legal duty to safeguard and promote the welfare of children and to take into account the child's best interests when making decisions that affect them. At BID we do not believe that separating children from their parents purely for immigration purposes can ever be in a child's best interests. Our project provides legal advice and representation to parents held in immigration detention to enable them to be reunited.

- **113** bail applications were heard, and **106** were successful.
- **Twenty-seven** cases were referred for unlawful detention challenges or immigration-related claims.
- Feedback from clients showed that **90%** rated the service "excellent" with the remainder "good" or "satisfactory".

"Made the judge understand my case."

"Great thanks and gratitude to Marina for helping so thoughtfully, professionally, and kindly"

"I was depressed and never thought I get out of prison now my life is on the up"

"Were honest and help me gather all relevant paperwork needed."

"Best of the best excellent work"

"Want to say thanks to Marina Desira"

"Everything was done on a very high level"

CASE EXAMPLE

Our client is a 24 year old Afghan refugee who entered the UK when he was 15 Years old. He was convicted and sentenced to 18 months imprisonment for a crime that was subsequently overturned on appeal to the Court of Appeal. Prior to his conviction he was detained on remand and at the point that he was due to be released he had served the entire custodial element of his sentence in prison. He was then detained under immigration powers and subsequently spent his entire licence period also detained in a prison.

The client has 2 children and suffered from serious mental health problems so much so that he was subject to ACCT (Assessment, Care in Custody and Teamwork) having been deemed at risk of self-harm or suicide. We applied for bail for him on 3 Feb 2021 and he was released having spent more than a year in prison under immigration powers.



**We supported
124 parents separated
from their children**

“Being in a detention centre is likely to act as a painful reminder of their past traumatic experiences and to aggravate their fears of potentially imminent return. Family integrity is a crucial factor in maintaining mental health and separation should be avoided wherever possible. Separation from social and professional support is also likely to have a negative impact on detainees’ mental state. Under these circumstances, therefore, most existing mental health disorders are likely to deteriorate significantly in detention.”

Royal College of Psychiatrists Detention of people with mental disorders in immigration removal centres

Right to Liberty Project (DIY)

Responding to the changes in the detention population

Our lawyers can only take on about 10% of the people who contact us and difficult decisions have to be made. Our DIY scheme provides advice and support to help people make their own applications for bail. We provide tailored advice and depending on spare capacity we also assist with preparing bail applications, drafting detailed grounds for bail and supporting people in their evidence gathering.

“No one helped me like this before.”

“They were able to answer most of my questions and point me in the right direction.”

“Fast!”

“It was perfect that I got released.”

- We answered **3,024** calls to our advice line.
- We sent out **1,599** outreach packs.
- We opened **965** DIY cases that we continued to work on.
- We provided one off advice to **392** people.

In addition to developing the DIY project the Right to Liberty (R2L) project prioritised cases for full representation of vulnerable people and those who have been held in detention for the longest periods:

- The project prepared **191** bail applications, of which **39** applications were withdrawn during or before a bail hearing and **16** people were released without a hearing.

CASE EXAMPLE

On 28 May 2021 long standing client AA was released prison after being detained since July 2020. AA instructed us in December 2020. As he was locked in his cell for upwards of 23 hour a day it proved difficult to take his instructions. A major stumbling block was that he did not have any accommodation to be released to. We applied for bail in early January 2021 but the application was refused, the judge stated “the Respondent states that they have an expired passport for the Applicant. The Respondent states that as it stands removal directions should be set within the next ‘month or a little bit more”.

Needless to say no removal directions ever materialised.

On 12 January 2021 the Applicant submitted an application for Home Office accommodation and in February 2021 we went back to court and AA was granted bail in principle pending the provision of Home Office accommodation. In March 2021 the application for accommodation was refused. We appealed the refusal, prepared the asylum support appeal and arranged for our client to be represented at the hearing and his appeal was allowed. Despite being granted bail in principle no accommodation was sourced and it was only after Judicial Review proceedings were issued and he was granted interim relief and his release was ordered that he was provided with accommodation. During this we had returned to court three times for bail review hearings. This case illustrates the hurdles that exist to securing release for our clients and the scope of work that we have to undertake given Home Office incompetence and delays.

EEA Project

This is a new project set up specifically to deal with EEA cases post Brexit. The bulk of the work has been assisting people detained under immigration powers in prisons. Throughout the year we have been supporting clients to make applications under the EUSS and to support bail applications.

We have also highlighted evolving issues involving EEA nationals, which includes administrative incompetence and inconsistency on the part of the Home Office. We continue to make the case that Brexit has caused a levelling-down of migrants' rights but also work to ensure that the rights and protections afforded under the EU- UK Withdrawal Agreement are protected. This work is assisted by working with other organisations such as The 3 Million and the Public Law Project.

During the year we opened a total of 165 new cases.

“BID have been honest and help to me. You were perfect professionals.”

“Nothing [could have been done better]. Everything was perfect.”

- During the year we opened a total of **165** new cases.
- **57** bail applications were prepared of which 48 were granted bail and **9** were refused.

CASE EXAMPLE

A entered the UK in 2017 and does not have settled status. He was arrested on suspicion of an offence in 2020 but not charged, however police checks discovered that he had been convicted of serious offences in his own country and he was moved into immigration detention where he received a stage 1 deportation decision. A duty solicitor secured his release on bail but had no capacity to assist with his deportation matter. He was subsequently re-detained when it was alleged he had broken a bail condition which, it later transpired, was actually down to a technical hitch with his electronic tag.

Our client's mental health drastically declined in detention and he was hospitalised after self-harming. During this time the Home Office claimed they had attempted to serve him with a stage 2 deportation decision of which he had no recollection but in any event the deadline for appeal had lapsed which left him effectively appeal rights exhausted and therefore vulnerable to being removed.

BID took on his case and immediately lodged an out-of-time appeal. We also referred him to a Public Law solicitor to challenge the loss of his appeal right. When he received removal directions his solicitor successfully obtained an injunction after which we applied for bail. This application was initially refused due to non-compliance with bail conditions after which he attempted suicide. We applied for a Rule 35(2) report (detained person whose health is likely to be injuriously affected by detention) and made a referral to Medical Justice to prepare an urgent medico-legal report addressing the impact of detention on A's mental health. In the meantime his out-of-time appeal was accepted by the Tribunal and the Rule 35(2) report found his suicide risk could not be managed in detention. We immediately re-applied for bail which was granted. Sadly within 2 weeks of release he was re-detained after he failed to comply with his bail conditions whilst hospitalised. During this detention he was held in prolonged cell confinement where he self-harmed and attempted suicide. Once again we applied for bail and once again bail was granted. He should never have been detained given his vulnerabilities and certainly not for so long (5.5 months in total). With our assistance, he now has a valid appeal outstanding, an outstanding JR, the support of medical justice and is legally represented for his deportation case.

Article 8 & Deportation Advice Project (ADAP)

The project provides advice and representation to people facing deportation from the UK. Under the provisions of the UK Borders Act 2007, any foreign national with a criminal conviction of 12 months or more is subject to automatic deportation, regardless of length of residence in the UK. Until 2013 when legal aid cuts removed deportation from scope of legal aid, it was possible to get legal aid to argue that a private and family life had been established in the UK and that deportation would be disproportionate. However, with the passage of two Immigration Acts (2014 & 2016) together with the removal of legal aid, it is now very difficult to win a deportation appeal.

The project prioritises long-term UK residents with British families and those with particularly compelling circumstances. It also prepares and disseminates a range of self-help leaflets about deportation. This is a small project which comprises a Legal Manager with occasional volunteer support.

- **107** people were provided with advice or representation in the last year.
- We received **54** referrals of cases during this period of which all were fully merits assessed to see if it was a matter we could assist with, and **26** were taken on.
- We also provided one off advice in **46** cases.
- We currently have a total of **19** active cases at ADAP.
- Of the remaining 136 bail applications that were heard **118** were granted bail.

Of five full appeals heard by the First Tier and Upper Tribunals one was allowed with no onward appeal by the Home Office, one was allowed but the Home Office have appealed the decision, one was dismissed and we have appealed the decision. The remaining two were dismissed.

In one case the Home Office withdrew the decision under appeal just before the hearing date and granted the appellant status. Whilst this saved the appellant the stress of a full hearing, earlier reconsideration by the Home Office would have benefitted all parties. Another case was finally resolved in the appellant's favour, following the Upper Tribunal's refusal the grant the Home Office permission to appeal against the original decision.

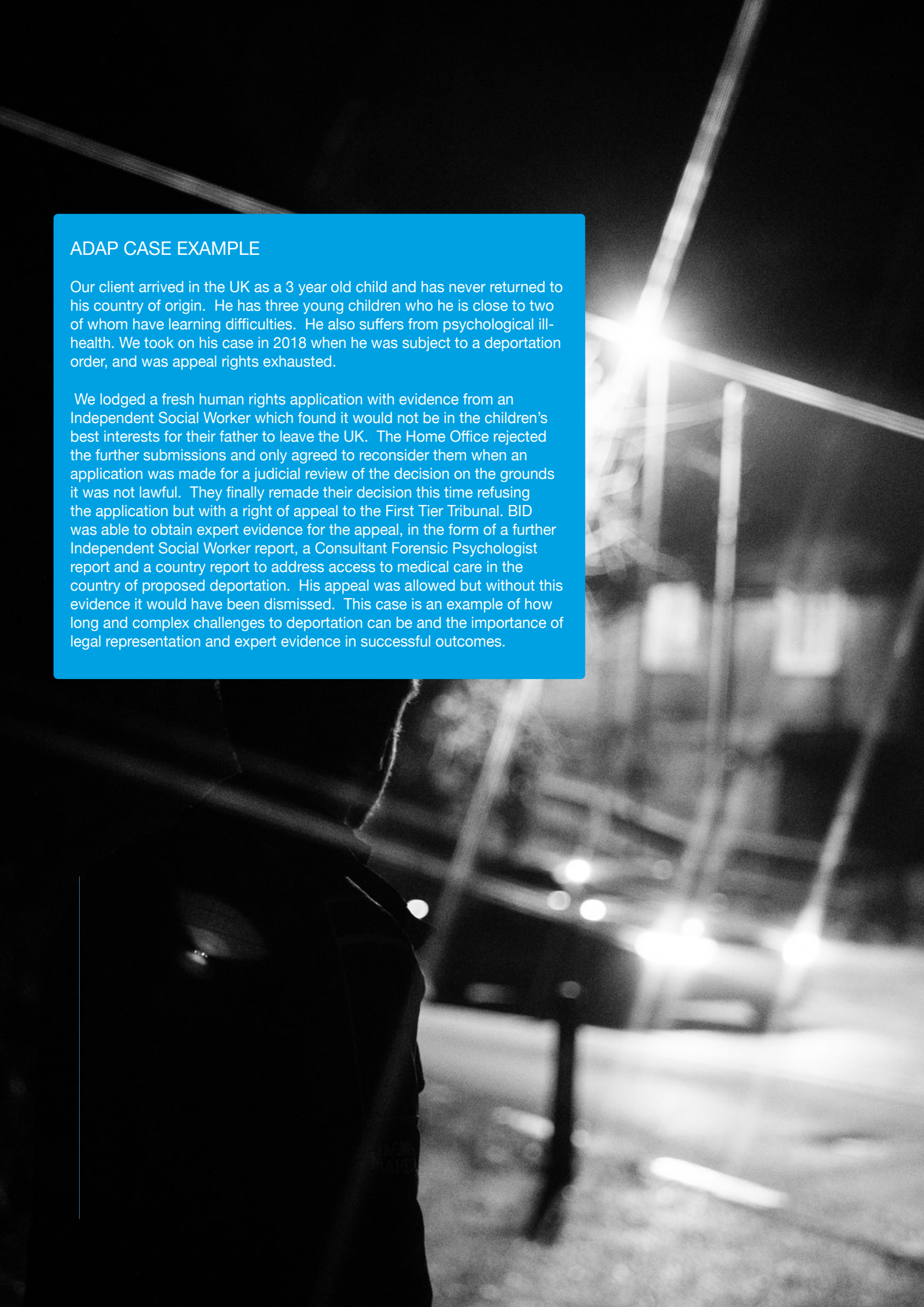
ADAP Judicial Review referrals

There were 8 referrals for judicial review. The JRs referrals covered a wide range of issues, including challenges to certification, where an appellant can be removed before their appeal is finally determined, EUSS refusals, delays in Home Office decision making on further submissions, unlawful detention, refusal to grant exceptional funding legal aid and suitability of Schedule 10 accommodation for a severely unwell client

Exceptional Funding Applications (ECF)

The partnership with 4 commercial firms to make applications for ECF, which began in April 2019, continued. Under this project cases are assessed and suitable cases are referred to the commercial firms to prepare an ECF application, supervised by ADAP. Once an application is granted, ADAP refers the case to a legal aid lawyer to represent. There were 15 new referrals to project and 12 applications for funding were lodged. All were successful.

“Absolutely superb at marshalling barristers, volunteers to get people out on bail; interventions at all levels of court; advocacy in parliament, responses to consultations; thinking strategically about key issues in policy, legislation and litigation.”



ADAP CASE EXAMPLE

Our client arrived in the UK as a 3 year old child and has never returned to his country of origin. He has three young children who he is close to two of whom have learning difficulties. He also suffers from psychological ill-health. We took on his case in 2018 when he was subject to a deportation order, and was appeal rights exhausted.

We lodged a fresh human rights application with evidence from an Independent Social Worker which found it would not be in the children's best interests for their father to leave the UK. The Home Office rejected the further submissions and only agreed to reconsider them when an application was made for a judicial review of the decision on the grounds it was not lawful. They finally remade their decision this time refusing the application but with a right of appeal to the First Tier Tribunal. BID was able to obtain expert evidence for the appeal, in the form of a further Independent Social Worker report, a Consultant Forensic Psychologist report and a country report to address access to medical care in the country of proposed deportation. His appeal was allowed but without this evidence it would have been dismissed. This case is an example of how long and complex challenges to deportation can be and the importance of legal representation and expert evidence in successful outcomes.

Self-help materials

We prepared a number of self-help leaflets in areas in which we identified a particular lack of awareness was causing significant disadvantage to our client base, particularly those in prison or immigration detention centers.

We found that there was a general lack of awareness amongst EU nationals, especially those in prison, of the requirement to make an application under the EUSS before the deadline. We prepared a basic self-help leaflet on the EUSS and Criminality. We also found a general lack of awareness amongst non-EEA national joint primary carers of British citizen children that they may be able to make an application under the EUSS as a Zambrano carer. We prepared a basic guide to explain who could apply and the application process.

We also prepared a leaflet on the best interests of the child in immigration law relating to deportation which could be used by individuals to support their challenges to deportation based on their family life with dependent children.



Strategic litigation

We have a two pronged approach to strategically challenging immigration detention. We refer individual cases for public law challenges and we intervene in higher court cases where there is a significant point to be addressed relating to bail or detention.

BID's referrals for judicial review

Over the past year BID referred 73 cases to solicitors for the purpose of investigating and making applications for judicial review. In the last year most of these challenges related to people who were granted bail in principle and were still detained whilst awaiting Home Office accommodation. Of the 73 cases BID referred to solicitors the outcomes were as follows:

- **44 (60%)** people were released (of whom **37 (50.5%)** were granted bail by the First-tier Tribunal and **7 (9.5%)** were granted Home Office bail or bail by the High Court).
- **7 (23%)** cases where the solicitors also took on the bail matter (and the BID file was therefore closed)
- **4 (5.5%)** were deported or removed
- **5 (7%)** (remain in detention)
- We lost contact with **3**

“I see BID as a UK ‘anchor’ institution in the immigration detention field. Its operating model is solid (casework which then feeds into research, advocacy, and litigation). A particular strength is its advocacy-orientated research, and its collaborative approach to working with others in the sector”

“ In our view the restrictive lockdown regimes in prisons, YOIs and STCs have left prisoners in solitary confinement for long periods in conditions likely to engage the right to freedom from inhuman and degrading treatment (Article 3 ECHR).”

Joint Committee on Human Rights *“The Government’s response to COVID-19: human rights implications”*

Interventions

Majera [2021] UKSC 46 (formerly SM (Rwanda)). BID is pleased that the Supreme Court has found in favour of the appellant in this case of In this rather remarkable case, the Home Office, having decided to ignore and replace a grant of bail issued by the court, had to be reminded that it is required to obey court orders. This adds to the growing concern that the department has become a law unto itself. BID intervened in the case, with submissions which the Supreme Court ‘found to be of assistance’ (28).

To summarise briefly, the First-tier Tribunal had granted Mr Majera bail without a restriction on him being able to take up voluntary employment. The Home Office had then reversed this decision and it rejected repeated submissions by Mr Majera’s representatives at Birnberg Pierce solicitors to have this restriction lifted, or in the alternative, to return to the Tribunal to seek an amendment to its original order granting bail so as to impose this restriction.

Despite requests by the solicitors and indeed an invitation by the Upper Tribunal, the Home Office refused to return to the First-tier Tribunal to ask it to amend its decision, arguing that as the original decision of the court was incorrectly issued, it was invalid and the Home Office was therefore entitled to issue its own decision in its place.

The Supreme Court stated that the Government’s position ‘risked administrative chaos’ and exposing ‘innocent third parties to legal liabilities.

“It is a well established principle of our constitutional law that a court order must be obeyed unless and until it has been set aside or varied by the court (or, conceivably, overruled by legislation). (44)”

Interventions

SM [2021] EWHC 418 (Admin):

BID was granted permission to intervene by the Administrative Court in the case of SM that related to the discriminatory aspect of the detention regime for people held under immigration powers in prisons compared to those held in detention centres. SM’s case arose from a refusal to grant legal aid to an immigration detainee who argued that obstacles to obtaining legal advice in immigration and asylum matters while in prison had prevented him from accessing fairness and justice from the courts. The Court found in the appellant’s favour, ruling that the lack of a legal advice scheme in prisons that would allow people facing possible deportation to access initial legal advice without the need for a merits or financial means assessment (as with the Detention Duty Advice Scheme in Immigration Removal Centres) is discriminatory under

Article 14 of the ECHR and a violation ‘of his ‘Convention rights’ (Articles 2 and 3 in relation to the appellants’ asylum claim and Article 5 and 6 in relation to his detention and bail matters). The Ministry of Justice has as a consequence of this litigation undertaken a review of advice provision in prisons, and indeed across the whole detention estate. We are in correspondence with the MJ whose review is due to be published this autumn.

Other litigation

BID continues to work with a number of different solicitors' firms and pro bono counsel as it seeks to develop challenges, and contributions to assist courts' understanding of the situation faced by people held in immigration detention. We have contributed witness statements and evidence arising from our case work in a number of cases. These have included witness statements outlining the long delays faced by people who have been granted bail in principle but who are waiting the allocation of bail accommodation (sometimes for many months) to enable them to be released to either Section 95 or Section 4(2) accommodation (for asylum and refused asylum seekers) and schedule 10 accommodation (for those who have not applied for asylum). Witness statements were provided to Deighton Pierce Glyn solicitors, Wilson LLP solicitors and Duncan Lewis solicitors. We also contributed evidence to Turpin Miller solicitors in relation to a case where the Home Office is insisting that applicants for bail must first be granted conditional bail with a residence requirement (or 'Bail in Principle') before they can make an application for accommodation (in contradiction of the Home Office's own policy).

"In my experience of working with BID on strategic litigation (primarily public interest interventions), BID's greatest strengths are its expertise, commitment, reputation and dedication. These all enable it to make an impact which consistently exceeds the relatively small size of the organisation. This is apparent in frequency with which BID's expertise is sought by claimants to intervene in cases of real significance to its clients, and the effectiveness of those interventions. Building on the legal expertise of BID and its advisers, and the evidence that BID can draw upon from its client base, BID can make a real impact on those cases, even if it is not always explicitly recognised by the judiciary. I also see from those cases the effectiveness of publications issued by BID in terms of them assisting BID present its evidence and also to enable third parties to rely upon that material without BID's need for direct involvement in litigation. I also think BID's approach to those cases which it does take on is very measured as BID is realistic about where it can have the most impact and also recognising the resources required to launch an evidence-heavy intervention."

Research and policy and campaigning

Parliamentary

BID worked in coalition with other organisations to challenge changes to the detention of victims of trafficking in parliament, through producing joint briefings for MPs, submitting [evidence](#) to the Secondary Legislation Scrutiny Committee and meeting various MPs and other stakeholders. Our Early Day Motion received 77 signatures and was debated in parliament on 27 April 2021.

We submitted evidence to various committees including the Parliamentary Justice Committee and the All Party Parliamentary Group on immigration detention. We continued to provide briefings to the Home Affairs Committee and the Joint Committee on Human Rights. We responded to the [Human Rights Act consultation](#) and the Independent Review of Administrative law. In both cases we joined a chorus of voices overwhelmingly in support of the Human Rights act and Judicial review. We also produced a [briefing](#) on the Police, Crime, Sentencing and Courts bill, about its implications for migrants.

We developed a strong working relationship with the previous shadow Immigration Minister Holly Lynch who we briefed and met with on a number of occasions. This has continued with her successor, Bambos Charalambos, who has put BID forward as a key witness for the committee on the Nationality and Borders Bill, for which we are currently working on briefing MPs and drafting amendments. We responded to the consultation on the bill and also wrote a letter calling out flaws in the consultation process.

Legal Aid

Since 2010, BID has been carrying out 6-monthly surveys with people held in immigration detention to document their experiences of accessing legal advice while in detention, and to better understand the barriers they face. The upheaval caused by COVID-19 has meant that in 2020 it was not possible to carry out a legal advice survey. Instead, we decided to take a look at the data that we have collected over the last decade. We analysed the trends and continuities in access to justice in immigration detention, within the broader context of shrinking legal aid and the hostile immigration policy.

Access to Justice:

The 'detained fast track' is being reintroduced with deemed 'unfounded' claims being processed through accelerated times frames. The bill will restrict access to justice by making it harder for people to prepare their cases whilst simultaneously introducing more onerous procedures and processes. There are systemic issues with a lack of quality legal aid providers to refer clients to despite the case of SM finding that the lack of free initial legal advice for people detained under immigration powers in prisons was discriminatory. The MOJ has subsequently introduced a free 30 minutes consultation for people detained under immigration powers in prisons to remedy this and we are monitoring both the accessibility and quality of this scheme.

Research

"Every day is like torture": Solitary confinement & Immigration detention

Over the course of the year our legal managers were reporting that clients detained in prisons under immigration powers were being held in their cells for prolonged periods often for days on end. With no end date for their detention and the Home Office having effectively abandoned them they were reporting deterioration in existing mental health conditions and the emergence of enduring mental health problems for previously healthy people.

We worked with Medical Justice to produce a [joint report](#) documenting the immense harm caused to our clients being held in extremely severe prison conditions as a result of the pandemic. Most of our clients have been locked in their cells for 23 hours per day or more in conditions that may amount to 'prolonged solitary confinement', which is prohibited by the UN and may amount to torture or cruel, inhuman and degrading treatment, according to the UN Special Rapporteur on Torture. Our research was based on the incredibly powerful testimonies of five clients, alongside evidence drawn from expert medical evidence.

Unsurprisingly we found that that this practice had very severe consequences for our clients' mental and physical health, yet the Home Office failed to engage with the issue, both in official

“Absolutely superb at marshalling barristers, volunteers to get people out on bail; interventions at all levels of court; advocacy in parliament, responses to consultations; thinking strategically about key issues in policy, legislation and litigation.”

correspondence with BID and in individual cases where we had made representations relating to the conditions of detention in bail hearings. The incredibly harsh nature of the conditions was not factored in to the decision to detain. The report received a considerable degree of interest on social media and was covered in *The Independent*. We produced another ‘write-to-MP’ [tool](#) which 81 people have used. We are continuing to push the report to shine a light on this hidden practice.

BID launched a [campaign](#) to push for the release of immigration detainees held in prisons. We wrote an open letter to the Home Secretary and the Justice Minister and this has been co-signed by 40 organisations. Alongside this open letter we created a template for people to write to their MPs about the issue, which 123 people used

Family separation and deportation

BID have long been concerned with the vicarious punishment meted out to children by permanently separating them from a parent through immigration legislation. We believe that immigration legislation should not be used to punish people and that there is a direct link between institutional racism within the police and the criminal justice system and deportation of people through structurally racist immigration policies. Automatic deportation is a drag net that sweeps up people regardless of their ties to the UK and contrary to the rhetoric from government most are not ‘rapists, murderers or

paedophiles’. This year we held two online events exploring this issue. ‘Deporting Black Britons’ written by Luke De Noronha and based upon his PhD thesis shows how structural racism culminates in the deportation of black men. The second held in conjunction with the Universities of Birmingham and Bristol launched an academic research paper written by Dr Melanie Griffiths. ‘Deportability and the Family: Mixed-immigration status families in the UK’ (Birmingham University) looking at detention, deportation and the impact on families, which coincided with the publication of our own research ‘[Excessively Cruel: Detention, Deportation and Separated Families](#)’. The report was based on the testimonies of fathers facing deportation and highlighted the devastating impact of the system on those individuals as well as their families and children, as well as demonstrating the numerous interlocking barriers to justice that people face after the removal of legal aid and successive legislative changes.

Bail in principle:

A lack of suitable accommodation means that the majority of people being granted bail are not actually released because of the Home Office failure to source suitable accommodation. We have continued to collect evidence relating to this problem and have recorded asylum support applications made from within detention to evidence systemic delays. We have used this data as evidence for a number of

systemic legal challenges brought by different firms including for Turpin Miler, DPG solicitors, and Wilsons Solicitors and have worked with barristers from Doughty Street chambers to produce a witness statement evidencing the Home Office’s failure to comply with its policy, based on our casework evidence.

Detention in the community

Any restriction on liberty is a form of detention. From August 2021 all foreign national offenders given bail will be subject to electronic monitoring (GPS tags) unless they can show it will breach their human rights. In January 2022 all people granted bail prior to August 2021 will have their conditions reviewed so that they can be fitted with tags. This was legislated for in the Immigration Act 2016 and has just been commenced, however what is really concerning is that the data obtained can be used for article 8 claims. BID and Liberty worked together on a joint letter raising concerns about creeping surveillance. We campaigned to oppose the implementation of GPS monitoring for people on immigration bail subject to an electronic monitoring condition. We produced a briefing and wrote to the Home Office with the support of 42 organisations, and our letter was covered in an article in *The Guardian*. This continues our work gathering evidence to expose problems with the system for imposition of bail conditions, to apply pressure on the Home Office and for use in strategic litigation.

“BID strengths are its ability to consistently reach the most vulnerable people and offer help always. It is never been heard off where BiD has intervened and not done anything for the individual. BID is also able to offer premium representation to the most vulnerable for free which is effectively priceless. The Home Office have creates a space not just to make immigrants/immigration an unfair battle field but a place where they use their huge resources to (deny) immigrants their basic rights simply because they have been detained simply because they have been detained. BID is the only charity that genuinely impacts and changes the life of any detainee for the better. None other prepares and represents anyone at a hearing, in my opinion BID has not been given the recognition it deserves because for such a small team, the reach is incredible.”

Research and policy and campaigning

BREXIT

The full impact on EU citizens is yet to be felt but BID is seeing an increase in demand from EU citizens. We are watching carefully and monitoring bail hearings as the Home Office are frequently failing to notify the tribunal when EUSS applications have been submitted (which can only be submitted on paper forms for people held in prison). This can lead to bail being refused on the grounds there are no barriers to removal.

Telephone bail hearings

We also carried out research monitoring the operation of telephone bail hearings during the Covid-19 pandemic, based on observations carried out by BID volunteers. We found that in many instances the system falls short and there are insufficient safeguards to prevent wrongful and prolonged detention.

Media

Over the past year BID has seen audience growth across all its communication channels. While raising the profile of immigration detention as a human rights issue, this is also enabling us to communicate with more people than ever. Our Tweets made over 2.3 million impressions, up from 1.7 million the previous year. Despite the pandemic, we exceeded our individual & community fundraising target again this year. We received generous legacy donations this year which helped to balance income lost from challenge events which were postponed due to the pandemic.

This year has been largely focused on raising awareness with some asks both financial (donation) and participatory (events & write to your MP) encouraging people to take action. Regular online events have served as face to face touch points to engage with our audience.

“BID is an expert organisation so I feel its interventions are really highly respected. I was always blown away by how much work got done with such a lean team and so many volunteers. I think it's probably also an amazing training space for legal practitioners, which is really valuable in a sector that is facing such a gulf of advice/advisors. In recent years public facing communications and fundraising have been really impressive.”

Some highlights

New research: "Every day is like torture": Solitary confinement & Immigration detention



New research documents the devastating impact upon immigration detainees in prisons of conditions amounting to indefinite solitary confinement.

13 Jul 2021 • Access to Justice, Policy and Research, Prisons, Vulnerable Adults

New research published today by Bail for Immigration Detainees (BID) and Medical Justice documents the devastating impact upon immigration detainees in prisons of conditions amounting to indefinite solitary confinement.

People held for immigration reasons (including torture survivors and those with serious vulnerabilities) are locked in their cells for over 22 hours a day, most often 23.5, with people sometimes being held in their cells for days at a time and unable to take a shower. Some are self-harming, attempting suicide and unable to sleep or eat. They report existing in a state of endless despair. Physical symptoms include involuntary shaking, memory loss and physical pain. As one man told us:

"I didn't enter prison with mental health problems but I'm not the same person I was. My mind is not the same. I'm not sure if what has happened to me can be repaired."

Another said:

"I just feel illegal because of what it's doing to my mind and body. If this isn't breaching my rights, then what will it be as though the police into a truck that the Home Office wanted and I can't get out."

The research released today is based on interviews with 5 immigration detainees and on medical reports produced by doctors, as well as reviews of case files that argue for the release of people held in prolonged confinement – either solitary or with a cell-mate.

August: BID [respond](#) to inflammatory and dehumanising discourse following a small number of people arriving to the UK in small boats.

September: [Landmark court case](#) for which BID gave three witness statements rules bail accommodation system ruled “systemically unfair”.

October: BID produce a video for [World Mental Health Day](#) on how detention affects mental health. The video is seen 4,000+ times on Twitter alone.

November: Our first BID reads event is a huge success. Over 150 people attend to [watch rapper and activist Lowkey](#) and writer Dr Maya Goodfellow discuss her book ‘Hostile Environment: How Immigrants Became Scapegoats’. The event raises £498 in optional donations and leads to 142 new email list sign ups.

December: BID [launch campaign](#) for the urgent release of people held in prison under immigration powers. Over 40 organisations sign our open letter and 122 people write to their MP using our template.

January: Over 170 people attend our online event ‘[Risky business: detention decision-making during the pandemic & the BID AGM](#)’ to hear from BID; a former BID client, Dr Juliet Cohen from Freedom from Torture and Zita Holbourne, Co-Founder & National Chair of Black Activists Rising Against Cuts (BARAC). The event raises £200 in optional donations.

February: Lack of legal aid advice for immigration detainees held in prisons [ruled unlawful](#) in landmark case in which BID intervened.

March: A busy month of evidencing and responding for BID. We [submit joint evidence](#) to the Secondary Legislation Scrutiny Committee, release briefings on the [Policing Bill](#) and on [Electronic monitoring](#) and [respond to the call for evidence](#) from the Independent Human Rights Review Panel.

April: 78 people attend our [2nd BID reads event](#) to hear black feminist writer and CREAM/Stuart Hall foundation researcher Lola Olufemi and academic and writer Luke de Noronha discuss his book ‘*Deporting Black Britons: Portraits of Deportation to Jamaica*’ the event raises £200 in optional donations.

May: Organisations across the UK defend The Human Rights Act. BID volunteer [Sigrid Corry reviews responses](#) to the Independent Review of the Human Rights Act.

June: 154 people attended our [event](#) with Birmingham University titled “*Excessively cruel: Detention, deportation & separated families*” which was chaired by Baroness Shami Chakrabarti.

July: BID [release a report](#) with Medical Justice documenting the inhumane conditions our clients endure while detained in prison under immigration powers. The issue is reported in the *Observer*, the *Independent*, the *Guardian* and the *BMJ*.

“Determined, courageous, knowledgeable. BID is amazingly supportive”

Financial Information

For the year ended 31 July 2021



STATEMENT OF FINANCIAL ACTIVITIES FOR THE YEAR ENDED 31 JULY 2021

	Unrestricted Funds £	Restricted Funds £	2021 £	2020 £
Income				
Grants and donations	461,657	-	461,657	461,721
Charitable activities	-	290,200	290,200	234,518
Investments	1,346	-	1,346	2,365
Total	<u>463,003</u>	<u>290,200</u>	<u>753,203</u>	<u>698,604</u>
Expenditure				
Raising funds	55,764	-	55,764	54,501
IT costs due to Covid-19	-	27,500	27,500	
Charitable activities:				
Casework and outreach	91,075	250,200	341,275	353,650
Separated families project	51,253	30,000	81,253	76,445
Deportation project	85,198	-	85,198	80,831
Research and policy	66,423	-	66,423	65,711
Total	<u>349,713</u>	<u>307,700</u>	<u>657,413</u>	<u>631,138</u>
Net income/(expenditure) and net movement in funds for the	113,290	(17,500)	95,790	67,466
<i>Reconciliation of funds</i>				
Total funds, brought forward	394,988	17,500	412,488	345,022
Total funds, carried forward	<u>508,278</u>	<u>-</u>	<u>508,278</u>	<u>412,488</u>

BALANCE SHEET AS AT 31 JULY 2021

	2021		2020	
	£	£	£	£
Fixed assets				
Tangible assets		8,319		8,187
Current assets				
Debtors	15,770		31,084	
Cash at bank and in hand	550,704		405,613	
	<u>566,474</u>		<u>436,697</u>	
Liabilities				
Creditors: amounts falling due within one year	66,515		32,396	
	<u></u>		<u></u>	
Net current assets		499,959		404,301
Net assets		<u>508,278</u>		<u>412,488</u>
Funds of the charity				
Restricted funds		-		17,500
Unrestricted funds:				
Designated funds		30,000		30,000
General funds		478,278		364,988
Total charity funds		<u>508,278</u>		<u>412,488</u>

The trustees have prepared accounts in accordance with section 398 of the Companies Act 2006 and section 138 of the Charities Act 2011. These accounts are prepared in accordance with the special provisions of Part 15 of the Companies Act relating to small companies and constitute the annual accounts required by the Companies Act 2006 and are for circulation to members of the company.



*“BiD is the most
effective body at limiting
immigration detention”*

Hugh Southey QC

A LEGAL VOICE FOR
IMMIGRATION DETAINEES

BiD Bail for
Immigration
Detainees

www.biduk.org

Email: enquiries@biduk.org

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