New Research

No Accommodation, No Freedom

July 2026

The Impact of Accommodation Delays on Release from Immigration Detention

BiD Bail for Immigration Detainees

CONTENTS

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With thanks to all BID staff, volunteers and clients who made this report possible.

FOREWORD

by former BID client

Bail for Immigration Detainees

The first time I was detained by the Home Office, although it took over 11 months for me to be granted bail, my address was never an issue for the Home Office, Probation, or any relevant party. As far as I can tell, the only reason I wasn't granted bail sooner was due to the Home Office repeatedly stating that I was due to be removed "imminently".

When I was granted bail, I complied with all my conditions including reporting until I was notified that I was no longer on bail.

The second time I was detained under immigration powers I was informed by Probation that the address wasn't suitable, even though I hadn't ever been arrested at that address or even convicted of any offences in that borough, they wouldn't approve it. There was no process for reconsideration and no clear reason why they wouldn't approve it.

I put forward other addresses, but each one was rejected by Probation, there were no clear reasons why, I would be told "there is known drug use in that area" or "there has been previous criminal acts in this block of flats" - this of course can apply to anywhere in the UK.

As Probation had rejected options available to me, I requested they provide me with hostel accommodation. This was also rejected, and I was informed that Probation hostels are only available to high-risk offenders, and I didn't meet the criteria.

I did point out the insanity of this, that I was forced to stay in prison longer because I didn't pose a high enough risk to be granted accommodation, but it fell on deaf ears.

I also applied to my local council for accommodation, but this was also rejected, as because I was in prison and not street homeless, I didn't meet the criteria for priority housing.

For over 3 months after I was granted bail by a judge, I was still being held in prison and stuck in a ridiculous administrative loop that made no sense at all.

It was only after multiple review hearings, a direct order from a Tribunal judge to release me within 72 hours and the threat of escalation to a high court, that I was finally provided with an accommodation at a Probation hostel and was finally released.

2 months after my release, probation reviewed my address and approved my initial address, and I was allowed to go live with my family.

I wasn't the only person stuck in this loop while detained under immigration powers, I have seen it affect many, and despite my story seeming bad, I know of people who were stuck in this limbo for much longer periods.

Is it an intentional strategy to wear people down, discouraging them from fighting their detention? Or is it simply a systemic failure that no one has bothered to fix? The truth is, for those caught in this cycle, the reason doesn't matter. Their families, waiting anxiously for their release, don't care whether this is an act of policy or an oversight. All that matters is that this issue is resolved immediately.

"As those representing immigration detainees sadly know all too well, the Home Office continues to automatically detain individuals indefinitely despite there being no prospect of removal, and then compounds matters by failing to source accommodation for their release even where bail is granted.

BID's comprehensive report and its clear recommendations shows none of this is inevitable and the system that causes it can be fixed.

It can only be hoped that the Home Office, Judges and the Probation Service work together to take action on these recommendations, and end the dehumanising consequences of the Home Office's detention and accommodation systems detailed in this report."

Ben Goldberg, Head of Public Law, Turpin Miller

EXECUTIVE SUMMARY

There are widespread and excessive delays in securing post-immigration detention accommodation, resulting in individuals remaining in detention despite having been granted bail. In these circumstances, detention is being used solely for the purpose of accommodation. This is not a lawful justification for the deprivation of an individual's liberty.

This report examines the factors causing such delays as well as the impacts on individuals' legal cases, physical and mental health, and fundamental rights.

"For over 3 months after I was granted bail by a judge, I was still being held in prison and stuck in a ridiculous administrative loop that made no sense at all."

Former BID Client

Key Findings:

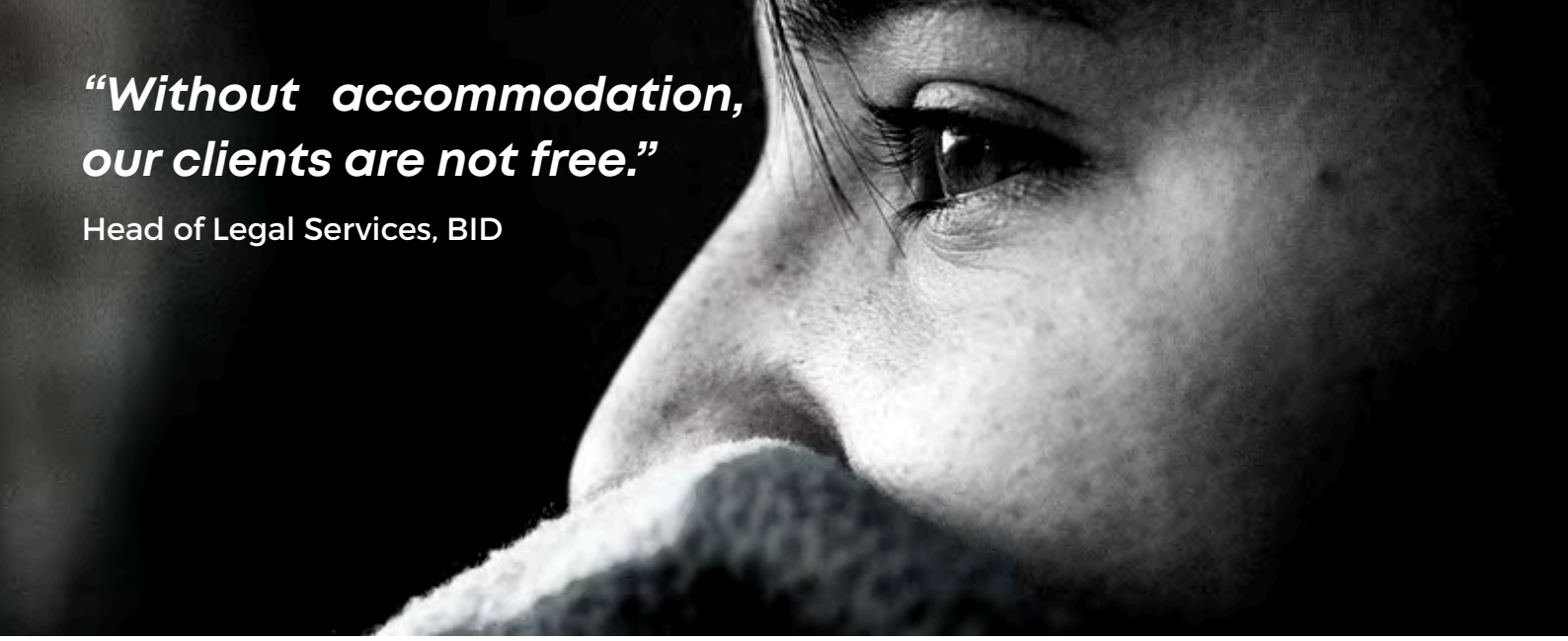
People are being detained for months after they are granted bail due to failures to secure appropriate post-detention accommodation.

- 23% of BID's clients in 2023 and 2024 who were granted bail in principle, yet remained detained due to accommodation delays, faced additional detention periods of more than 3 months post-bail grant.
- 81% of those individuals had known barriers to removal, and 38% had pending asylum claims.
- 81% of the individuals facing delays of longer than 3 months had known vulnerabilities, with 42% assessed as Adults at Risk in detention. The extended periods of detention had a significant impact on vulnerable individuals' mental and physical health, especially as many people lose hope after being granted bail yet remaining detained.
- There are multiple, interacting factors causing the significant delays in releasing individuals with bail grants to appropriate post-detention accommodation. These issues occur at all stages of the process across different accommodation pathways. They can broadly be categorised as reasons related to Home Office (in)action and policy, and those arising from the involvement of the Probation Service, as well as a small number of additional reasons.

BID believes immigration detention is inhumane, unnecessary and unjust. We campaign for an end to the deprivation of individuals' liberty for the purposes of immigration control. However, while detention for immigration purposes continues to exist the following recommendations must be implemented as a matter of urgency.

Key Recommendations:

1. The Home Office should introduce a monitoring mechanism to ensure the progression of post-detention accommodation matters for individuals in detention with a grant of bail.
    - This should include target timeframes for accommodation support decisions, sourcing and release, with appropriate escalation steps if targets are not met.
    - The Home Office's case management system and staff training must be improved to meet these target timeframes.
2. The Home Office should introduce a monitoring mechanism to ensure the progression of post-detention accommodation matters for individuals in detention with a grant of bail.
    - Individuals should only have to make one application stating need for accommodation, with the Home Office determining which policy provision they are entitled under and progressing the application accordingly.
3. The threshold of evidence required to meet the destitution criteria for Home Office accommodation support should be lowered.
4. Any individual who would be left destitute post-detention should be entitled to Home Office support, even if only as an interim measure, to ensure their right to liberty is upheld.
5. Prior to address sourcing beginning, the Probation Service should set out a list of requirements for an address to satisfy licence conditions. The Home Office should share this with accommodation providers, who must only propose potential addresses which fulfil these requirements.
6. An inquiry should be commissioned into how Probation Service address approvals and release plans are progressed for British nationals in comparison with 'Foreign National Offenders' (FNOs).
7. The Probation Service should source Approved Premises for eligible foreign national individuals in time for their Conditional Release Date (CRDs), as is standard procedure for eligible British National Offenders (BNOs).
8. The Home Office should make a detailed assessment of the prospect of removal and therefore lawfulness of detention prior to issuing and serving IS91 (authority to detain) forms.
    - When IS91s are issued without such consideration, Approved Premises bedspaces can be lost, which is both a waste of public money and prolongs the detention of individuals.
9. Support for all accommodation matters – including appeals at the asylum support tribunal – should be brought into scope for legal aid, as bail is not effective without access to appropriate post-detention accommodation.
10. Individuals assessed as likely to be harmed by detention due to their vulnerabilities should be released to a form of interim accommodation as a matter of urgency upon being granted bail, regardless of their eligibility for Home Office support.



"Without accommodation, our clients are not free."

Head of Legal Services, BID

INTRODUCTION

Detaining an individual for the purposes of immigration control is a serious infringement of their right to liberty and can only be legally justified for very limited reasons: primarily, to effect their removal from the UK.[1] If it is not possible to remove or deport an individual within a reasonable time period, the Home Office must release them on bail.[2] As the Guidance on Immigration Bail for Judges of the First-Tier Tribunal states,

"*Liberty is a fundamental right of all people and can only be restricted if there is no reasonable alternative. This principle applies to all people in the UK, including foreign nationals".*[3]

If an individual is granted immigration bail, this means their continued detention is no longer justified. However, hundreds of people remain in detention every year despite having been granted bail, because they do not have anywhere to go upon release. This means that detention is being used solely for the purpose of accommodation – which is not a lawful justification for the deprivation of an individual's liberty.

Access to post-detention accommodation is, therefore, a crucial issue, and one which receives very little attention despite its bearing on many individuals' freedom. BID frequently finds that individuals are detained for months after their initial grant of bail in principle, a finding corroborated by detention watchdogs such as the Independent Monitoring Boards (IMB) and His Majesty's Inspectorate of Prisons (HMIP).

In the IMB's 2024 Annual Report, it noted that '[m]any people continued to be detained for months after they had been granted bail due to delays in securing or approving accommodation',[4] which had a concerning impact on individuals' wellbeing and distress levels. BID also finds that individuals tend to lose hope when bail is granted yet delays in sourcing accommodation leave them detained, as they lose the energy to continue fighting for their liberty when they are not given clear reasons for the delays or a realistic timeline for their release.

BID has also experienced an increase in the amount of time spent on work related to post-detention accommodation issues as opposed to bail itself. .

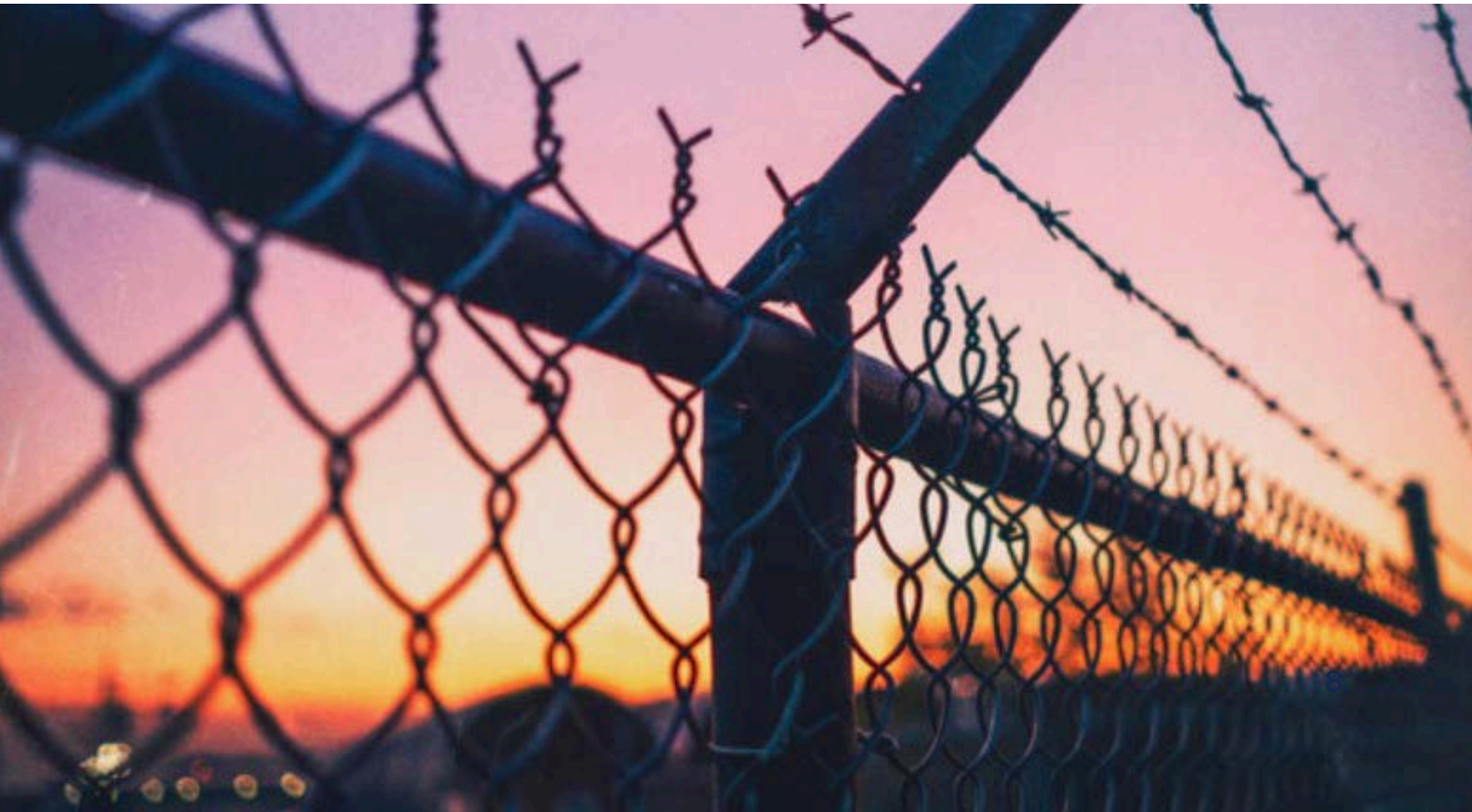
In BID's experience, one bail application may be followed by multiple bail reviews while accommodation sourcing is underway, as well as applications for Home Office accommodation, appeals or judicial reviews, and communication with the Home Office and the Probation Service to progress an individual's case.

Being released to appropriate post-detention accommodation is not only a matter of attaining liberty for individuals. It has great bearing on their stability, their health, their rehabilitation and risk management where they have offending histories, and therefore the overall trajectories of their lives. In turn, this is also a matter of public interest.

BID produced this report over the course of two years for two reasons: to document the significant delays people are facing in securing post-detention accommodation, and to investigate the reasons behind these delays in order to make evidence-based recommendations to the Home Office and other relevant authorities such as the Probation Service.

As this report is published, the Home Office has recently laid new measures in Parliament to revoke the duty to provide accommodation to people seeking asylum,[5] which many of BID's clients and other individuals leaving immigration detention fall under.

While the government continues to chip away at provisions to support individuals most in need, it is more important than ever that they are held to account and that individuals' right to liberty is upheld, particularly where the courts have ordered their release on bail.



A BACKGROUND ON POST-DETENTION ACCOMMODATION

The UK Home Office has broad powers to detain individuals for an indefinite period for the purposes of immigration control, pending their deportation or removal from the UK.[6]

Whilst there are no statutory limits on the power to detain, it is long established that the exercise of this power is subject to limitations, known as the *Hardial Singh*[7] principles. As confirmed by the Supreme Court in *Lumba*,[8] these are as follows:

1. The Secretary of State must intend to deport/remove the person and can only use the power to detain for that purpose;

2. The individual may only be detained for a period that is reasonable in all the circumstances;

3. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation or removal within a reasonable period, he should not seek to exercise the power of detention;

4. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention.

Thus, there must remain a reasonable (and reasonably imminent) prospect of removal taking place in order to justify detention;[9] by inference, the Home Office must release someone if and when it becomes apparent that it will not be possible to remove or deport a detained individual within a reasonable time period.

In the case of J.N. v. the United Kingdom, it was held that "in principle the system in the United Kingdom should not give rise to any increased risk of arbitrariness as it permits the detainee to challenge the lawfulness and Convention compliance of his ongoing detention at any time".[10] In other words – individuals held under immigration powers in the UK have the right to apply for bail or to apply for judicial review to challenge the lawfulness of their detention. It is these rights which were deemed by the courts to prevent the exercise of the power to detain indefinitely from being arbitrary and therefore unlawful.

Under Schedule 10 of the Immigration Act 2016 ('the 2016 Act') (which replaced the bail and 'temporary admission' provisions in the Immigration Act 1971), any individual pending examination, removal or deportation can be granted bail by the Secretary of State for the Home Department (SSHD) or, if they are in detention and have been in the UK for at least eight days, by the First Tier Tribunal (FTT).[11]

According to Home Office policy, there is a presumption in favour of granting bail,[12] and thus there must be 'strong grounds for believing that a person will not comply with conditions of immigration bail' and no reasonable alternatives to detention, in order for detention to be justified.[13]

Further, in deciding whether to grant bail, judges are not deciding whether continued detention is lawful but whether it is justified, taking into account a number of factors.[14] If there is no matter sufficient to refuse bail, and where there are reasonable alternatives to detention, bail must be granted.

The role of accommodation within the bail process

Securing post-release accommodation is a vital part of the bail process. Whilst it is not a mandatory requirement to have a release address to be granted bail, it can be a key factor in determining the success of a bail application. An approved release address is considered by both the Tribunal and the Secretary of State as a factor that could lower the risk of absconding and, for those with convictions, the risk of re-offending and causing harm. These are both mandatory issues to consider when making a grant of bail, as provided by paragraph 3 of Schedule 10 to the 2016 Act.

It is also common for people to be given a residence condition as one of the mandatory conditions of a bail grant. Residence conditions specify an exact address, or type of address, that someone must be released to. Paragraph 3(8) of Schedule 10 to the 2016 Act permits a grant of immigration bail being conditional on arrangements being put in place, resulting in a grant of conditional bail or 'bail in principle'.[15] Individuals with 'bail in principle' with a residence condition therefore remain in detention until the appropriate accommodation is sourced and/or approved by the Probation Service (if they are on licence).

Generally, the Tribunal allows 28 days for an appropriate address to be found.[16] After this period, bail may expire unless it is varied or reviewed and subsequently extended. If bail expires or is withdrawn, a full bail application must be submitted again.

The Home Office provides accommodation for individuals at risk of destitution under a number of statutory provisions. Accommodation support can only be granted if an individual already has a grant of bail in principle in order to prove risk of destitution, as otherwise the Home Office takes the view that the individual's living needs, including accommodation, are met in full in the detention centre.[17] Grants of bail in principle (conditional bail with a residence condition) are therefore the only means by which some individuals can exercise their right to challenge their own detention without placing themselves at risk of destitution and/or an inadvertent breach of their conditions.

TYPES OF POST DETENTION ACCOMMODATION

Private Addresses

Many individuals provide private addresses in their bail applications – either their own address where they resided prior to being detained, or accommodation belonging to friends or family members. If an individual is still on criminal licence, that address must be approved by the Probation Service. Addresses are usually submitted to Probation Services for approval prior to bail applications being made, as a bail grant is more likely with an approved address. However, it is also possible for individuals to apply for bail with an address pending approval, and to be granted bail conditional on the specific address being approved, or conditional on 'an address approved by probation'.

Probation Officers, in making assessments of address suitability for those on criminal licence, have a duty to consider multiple factors that may increase potential risk posed to the individual in question, another known individual, or to the public. These factors may include things such as proximity to areas with a high crime rate, or presence of a victim. Current guidance states that the timeframe for HMPPS to consider an address is approximately ten working days.[18] This 10-day timeframe is also stated in HMPPS guidance implemented from 29th August 2024.[19] Previously however, the timeframe for HMPPS to consider an address was set at 9 weeks.[20] [21] As well as assessing the suitability of private addresses, the Probation Service is also required to approve addresses provided to individuals on licence by the Home Office.

Home Office Accommodation

Many people in immigration detention rely upon the Home Office to provide them with post-detention accommodation, as they may not have any friends or family who are able to support them once released or their private addresses may not be approved by Probation Services. The Home Office provides accommodation for people in this situation who do not have recourse to public funds and would otherwise be destitute upon leaving detention.

Individuals can apply for Home Office accommodation through different statutory provisions dependent on their circumstances – primarily differentiated by whether they are a person seeking asylum, a 'failed asylum-seeker', or have never sought asylum. The process of applying for and obtaining Home Office accommodation is complex, and the difficulty of navigating this process is compounded by the lack of legal support available, as legal aid only covers limited work relating to post-detention accommodation. This does not include, for example, representation at asylum support appeals.

Asylum support accommodation

Asylum seekers and refused asylum seekers can apply for Home Office Asylum Support accommodation from within detention, if they can prove that they would otherwise be destitute upon release.[22] These applications are made via 35-page-long ASF1 forms, which are submitted to the Home Office via Migrant Help, the charity mandated to help asylum-seekers access support under the Home Office's Advice, Issue Reporting and Eligibility (AIRE) contract.[23] For applicants to succeed, they need to show that they will be left destitute within 14 days of the ASF1 application being made and therefore applications are likely to be successful only if a grant of bail in principle has already been made. If bail in principle has not yet been granted, the Home Office often refuses accommodation applications based on the grounds that the individual's 'essential living needs' are being met in detention.

Accommodation under section 95

Accommodation for asylum seekers is provided under section 95 (s.95) of the 1999 Act.25.[25] Anyone who has made an asylum claim or a claim under Article 3 of the European Convention on Human Rights (ECHR) is eligible, as long as they are still waiting for a decision on their claim[26] and the Home Office deems they are destitute or likely to become destitute within 14 days. In order to prove destitution, individuals are required to provide various forms of evidence, from bank statements to letters from people who had previously supported them. The Home Office must be satisfied that the individual is currently, or within 14 days, not able to secure accommodation and meet their essential living needs.[27]

Foreign national offenders (FNOs) are also eligible for asylum support accommodation. The Home Office caseworkers who handle FNO cases are from a specialised team called FNORC (the Foreign National Offenders Returns Command). The allocation of suitable asylum support accommodation is handled by the FNORC Accommodation Team or FNORCAT.

If applications for asylum support accommodation are refused, individuals have the right to appeal the decision at the First-tier Tribunal as provided in Section 103 of the Immigration and Asylum Act 1999 (the 1999 Act).[24]

Accommodation under section 4(2)

Accommodation for refused asylum seekers is provided under section 4(2) (s.4) of the 1999 Act.[28] Aside from proving destitution, individuals also must show that they are a 'failed' asylum seeker, their appeal rights are exhausted, and that they satisfy one of the following criteria listed in Regulation 3 of the Immigration and Asylum Regulations 2005:

1. They are taking all reasonable steps to leave the UK or facilitate their departure

2. They are unable to leave the UK due to a physical impediment to travel or for some other medical reason

3. In the opinion of the Secretary of State there is no viable route of return to their country of origin

4. They have been granted permission to proceed with an application for judicial review of the decision on their asylum claim

5. The provision of support is necessary to avoid breaching their human rights[29]

According to the Home Office's Asylum Support: Section 4(2) policy guidance, 'in ordinary circumstances a decision that would result in a person sleeping rough or being without food, shelter or funds, could well be considered inhuman or degrading treatment contrary to Article 3 of the ECHR'. [30]

Accommodation under section 98

Under Section 98 of the 1999 Act, individuals who have pending s.95 or s.4 applications may be eligible for emergency accommodation. For those with s.4 applications, this only applies for up to 21 days after receiving a negative decision on their asylum claim (or receiving notification of a dismissal of their appeal).[32] Section 98 support is provided on an interim basis while the individual's eligibility for longer-term support is established, which can take time as it often requires investigation of their financial and other circumstances. Where this would leave someone detained for an unreasonable, and therefore unlawful, length of time, people should be assessed for s.98 accommodation eligibility.

Foreign national offenders with pending s.95 and s.4 applications are also entitled to s.98 support.

This was found in Limbuela v SSHD.[31] Whilst the Home Office therefore has a duty to provide accommodation in order to prevent a breach of Article 3, this does not apply where an individual is able to leave the country freely or where there are no barriers to enforced removal. Aside from the obstacles to departure covered in 3(2)(a), (b) and (c), this leaves a number of other possibilities as legal obstacles that would satisfy 3(2)(e), such as: the individual has submitted a late appeal against the rejection of their asylum or Article 3 claim and is waiting to hear whether it will be heard; the individual has been referred into the National Referral Mechanism and is awaiting a positive Reasonable Grounds decision as a potential victim of modern slavery.

However, up until 16 August 2024 the Home Office did not have any system in place which allowed FNOs in immigration detention with a grant of bail in principle to be assessed for s.98 accommodation. This was revealed in the case HP & MA v SSHD [2024],[33] in which the court ruled that prior to updating their guidance in August 2024,[34] the Home Office acted unlawfully as their policy/practice "in effect resulted in detained foreign national offenders who were entitled to s. 98 accommodation not being considered for such accommodation".[35] The since updated policy[36] makes clear that detained FNOs whose s.95 or s.4[37] applications cannot be decided quickly should be assessed for eligibility for s.98 support by the FNO Returns Command Accommodation Team.[38]

Accommodation under Schedule 10

Under paragraph 9 of Schedule 10 to the 2016 Act, individuals who are granted bail with a residence condition and would be unable to support themselves but are ineligible for s.95 or s.4 accommodation, can also be provided with Home Office accommodation. However, this applies "only to the extent that the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power."[39] There are three categories listed as justifying the provision of Schedule 10 (sch.10) accommodation: Special Immigration Appeals Commission (SIAC) cases, Harm cases and European Convention on Human Rights: Article 3 cases.

SIAC cases involve individuals granted bail by the Special Immigration Appeals Commission, with very strict bail conditions due to the risk posed by the individual. Harm cases are individuals granted bail who are assessed by HMPPS as being at high, or very high, risk of posing serious harm to the public, and FNOs at high risk of reoffending against an individual, assessed on the Offender Group Reconviction Scale (OGRS) with a minimum score of 70%. Article 3 cases are those in which an individual cannot obtain adequate accommodation, and provision of accommodation is necessary in order to avoid a breach of their human rights under Article 3 (which provides that individuals should not be subject to torture, inhuman or degrading treatment, or punishment).[40]

The Home Office also has the power to grant sch.10 according to discretion for individuals who do not fit within the listed categories; however, this should only be used 'sparingly'.[41]

Although the Home Office has recently conceded in litigation that in certain circumstances it "has the power to provide accommodation to [a detained person] for the purpose of avoiding a breach of section 6 of the Human Rights Act 1998 as a result of detention in breach of Article 5" this has not been reflected in any updated guidance.[42]

When Schedule 10 of the 2016 Act came into force in January 2018, significant issues arose with accessing sch.10 accommodation, which were distinct from the prior issues with Section 4(1)(c) accommodation.[43] There was no formal process of applying for 'exceptional circumstances accommodation', which meant it was almost impossible to be granted sch.10 support. When judicial review proceedings were raised to challenge the absence of an adequate application process,[44] the Home Office published a revised version of the Immigration Bail policy with details of a new form 'Bail 409' which individuals could use to apply for sch.10.[45] However, the new form still could not be used by individuals with offending histories who are defined as FNOs.

Through practice, BID made applications for sch.10 accommodation within bail applications (on the grounds that by the time the Home Office made a decision on sch.10, bail would already be granted). While policy guidance now states that foreign national offenders or SIAC (Special Immigration Appeals Commission) cases can set out their needs for accommodation either in the Bail 409 form or the bail application[46] BID is frequently told by the Home Office that no accommodation has been provided as no Bail 409 form was received – in direct contradiction to the Home Office's policy.

In practice, BID submits Bail 409 forms to the Home Office as well as stating intention to apply for sch.10 support within the grounds supporting bail applications to ensure applications are not lost.

The Home Office's policy on eligibility for sch.10 accommodation is circular and is contradicted by its own policy guidance. Under paragraph 9, schedule 10 of the Immigration Act 2016 it is stated:

"*To be eligible for the provision of accommodation, you must be granted immigration bail with a condition that requires you to reside – or live – at a specified address. "*

However, the policy guidance clarifies that:

"An "address specified" for the purposes of paragraph 9 of Schedule 10 must be read to mean an address that is known at the time of the grant or variation of immigration bail, or an address that is yet to be specified. "

In the case of Bounar v SSHD,[47] the judge interpreted the law literally and ruled it lawful that the applicant had been rejected sch.10 accommodation on the grounds that her bail grant did not specify an exact address. As was warned by the judge in Humnyntskyi,[48] this became a 'gordian knot': it was impossible for the applicant to be granted sch.10 accommodation and be provided with an address, which meant she could not specify an address for her bail grant, which thus meant she couldn't be granted sch.10, and so on. The reasoning in this case has not been widely applied in subsequent cases, but it is concerning that the statutory law and policy guidance do not align.

While policy dictates that decisions on eligibility for sch.10 accommodation for non-detained people should be made within five days,[49] the timeframe for decisions for detained people is not specified. The guidance leaves determination of what constitutes a reasonable period up to discretion, stating that decisions on eligibility for sch.10 for those who are detained with a grant of bail 'should be made as soon as is reasonably practicable'.[50]

Unlike for s.95 and s.4 asylum support accommodation, there are no appeal rights for sch.10 refusals. The only remedy to challenge a refusal is raising a claim for judicial review.

Probation accommodation – Approved Premises

If an individual presents a high risk of serious harm, they may be considered for Probation Approved Premises upon release on bail.[51] Approved Premises are provided under Section 13(1) of the Offender Management Act 2007. FNO status, or lack of recourse to public funds, does not render individuals ineligible. The Probation Service FNO manual specifies that applications for Approved Premises must be made in a 'timely' manner - i.e. 4-6 months prior to an individual's Conditional Release Date (CRD), in order to ensure a bed is available at CRD.[52] If they are then detained under immigration powers, this is supposed to minimise delay as the referral and acceptance for a space is already complete. However, in practice, once someone has lost their Approved Premises placement due to being detained under immigration powers, the waiting time for another space is lengthy.

This was clarified in an FOI response to BID from HMPPS:

'I can confirm that a waiting list does not effectively exist in relation to referrals for Approved Premises (AP) places. Once referred by the probation practitioner an individual will be allocated an AP placement once they are assessed as being suitable. The internal target for deciding on suitability is within 10 working days of the referral being made.

If an individual is not being released at their Conditional Release Date and a new date for release has not been set, any agreement for placement at an AP would be withdrawn. When a new date for release is confirmed the probation practitioner will be required to submit a request for a new placement. There would not, however, be a need for a new referral or assessment to be conducted.

METHODOLOGY

The purpose of this report was two-fold. Firstly, to expose the systemic problem of unreasonable delays in sourcing post-detention accommodation, resulting in detention being used solely for the purpose of accommodation which is not a lawful justification for detention. Secondly, to identify and understand the specific reasons for these delays, and to make evidence-based recommendations for how these issues might be addressed.

Past BID clients with lived experience of detention were consulted through a series of meetings in the early stages of the report planning to ensure that the scope and purpose of the report were informed and directed by those with lived experience.

The period of analysis for the report was initially set from 01/01/23 until 31/12/23 but was later extended to 31/12/24 to incorporate a period following the May 2024 general election, to track any changes in patterns of detention under the new government. The cases selected for analysis were all opened as BID client files within this period, and by the time the data was analysed all but one had been closed. The case which was still live was removed from the data set.

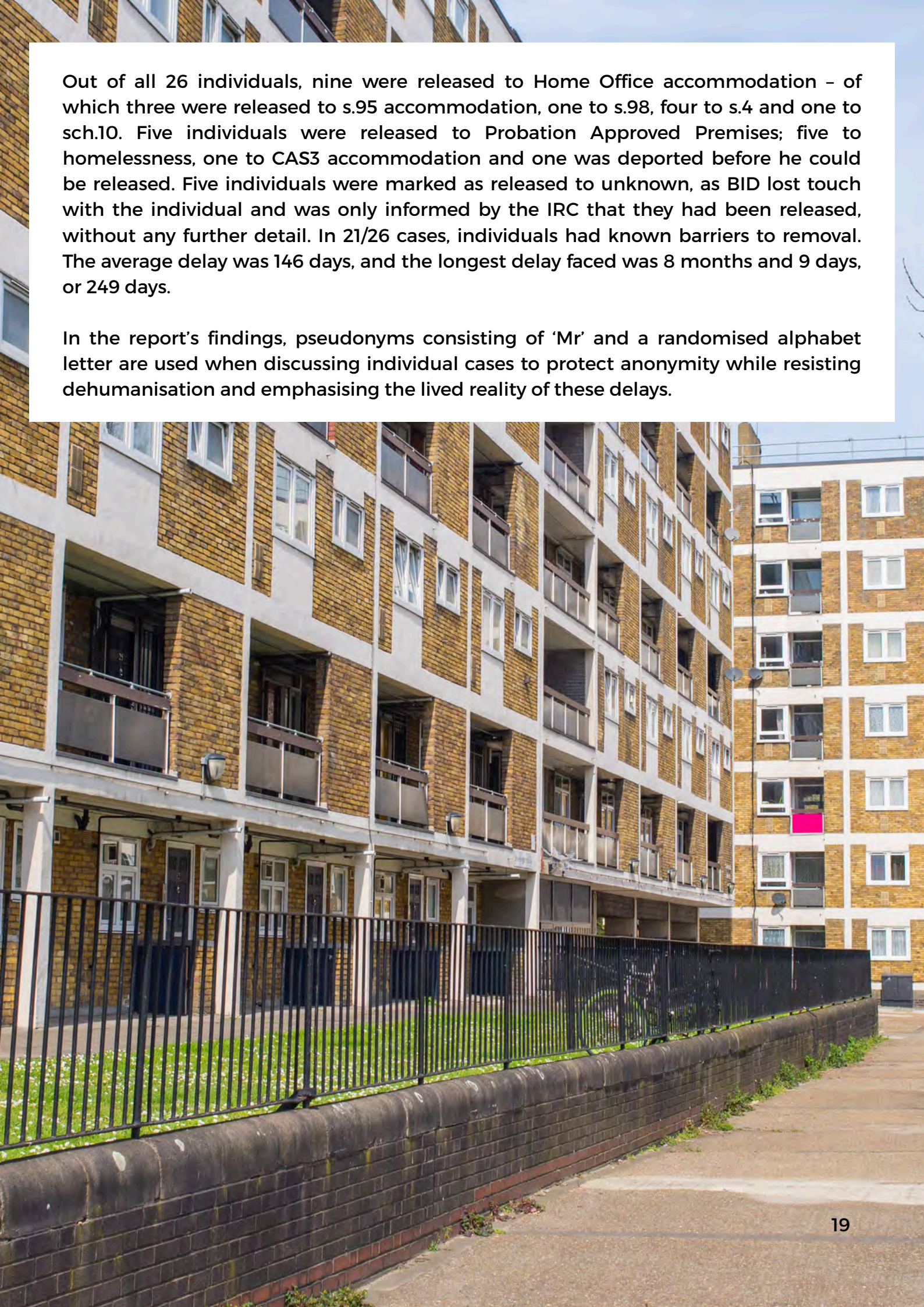
In order to understand the systematic delays in post-detention accommodation, all cases selected for analysis were BID clients who had been granted bail in principle and had remained detained for a further period. There were 113 such cases opened in the relevant period who had all signed a letter of authority granting permission for the use of their data in BID research.

Of those 113 cases, the cases selected for in-depth analysis were those who had been detained for longer than three months after they were first granted bail in principle. This threshold was selected as, according to official guidance, a detention period of longer than 3 months is considered a 'substantial period'.[53] In all cases, this 'substantial' period of prolonged detention was additional to the time spent detained prior to their grant of bail in principle.

26 individuals (or 23% of all 113 cases) had experienced delays of longer than 3 months between their grant of bail in principle and their release. The report draws on a depth analysis of each individual's case notes, documents, correspondence with the Home Office, HMPPS and other parties, and official reports such as Offender Assessment System (OASys) reports and Rule 35 reports. This material was used to map a detailed timeline of developments in each case between the point they were granted bail in principle and their release, which were analysed to identify specific reasons for the long delays.

Out of all 26 individuals, nine were released to Home Office accommodation – of which three were released to s.95 accommodation, one to s.98, four to s.4 and one to sch.10. Five individuals were released to Probation Approved Premises; five to homelessness, one to CAS3 accommodation and one was deported before he could be released. Five individuals were marked as released to unknown, as BID lost touch with the individual and was only informed by the IRC that they had been released, without any further detail. In 21/26 cases, individuals had known barriers to removal. The average delay was 146 days, and the longest delay faced was 8 months and 9 days, or 249 days.

In the report's findings, pseudonyms consisting of 'Mr' and a randomised alphabet letter are used when discussing individual cases to protect anonymity while resisting dehumanisation and emphasising the lived reality of these delays.



LIMITATIONS

As these cases were all studied in retrospect, some of the dates from the case note data are approximate, as BID does not have a full view of all cases due to the nature of BID's self-represented project. Where possible, this has been mitigated by cross-referencing verbal reports of different stages e.g. a telephone call from an individual saying they were released 'a few weeks ago', with other correspondence and official documents.

It is important to note that the data used in this study was obtained from bail accommodation applications where BID was actively involved in the process of applying for accommodation – preparing applications, following up with Home Office and Probation Service, and where possible securing representation for bail reviews. For individuals who are not supported by BID, it is likely that the delays in release to appropriate accommodation are far longer than the data in this report suggests.

Finally, BID made multiple FOI requests to the Home Office concerning the numbers of people released to different categories of Home Office accommodation, as well as the numbers of individuals detained with grants of bail in principle. These requests were not returned for various reasons, which limited our ability to draw on broader figures for data analysis.

FINDINGS

The study found that there are multiple, interacting factors causing or prolonging the significant delays in releasing individuals with bail grants to appropriate post-detention accommodation. These occur at all stages of the process across different accommodation pathways, from the processing of accommodation support applications and referrals to the sourcing and approval of addresses. The reasons for prolonged delays can be separated into two broad categories: those related to Home Office (in)action and policy, and those emerging from the involvement of the Probation Service, as well as a small number of additional reasons.

1. DELAYS RELATING TO HOME OFFICE (IN)ACTION AND POLICY

Slow processing of accommodation applications by the Home Office

Across the 26 individuals in this study who experienced over three months of delay between their grant of bail in principle and their release from detention, every individual made at least one application for Home Office accommodation, under sections 95, 98 and 4 of the Immigration and Asylum Act 1999 or paragraph 9, schedule 10 of the Immigration Act 2016 (schedule 10 support). The Home Office decision-making process alone took an average of 95 days, or approximately three months and four days. This did not include time taken for address sourcing or allocation, but simply the time taken for the Home Office to decide whether an individual was granted support. The longest time taken by the Home Office to determine someone's eligibility for accommodation support was 242 days, and in eight cases its slow processing prolonged individuals' detention by over 100 days.

In many cases, these delays in decision-making could be attributed to lack of staff capacity. In Mr C's case, the Foreign National Offender Returns Command Accommodation Team (FNORCAT) explained in email correspondence that 'low staff capacity' was the reason for the lack of progression on an individual's application for s.95 support. It took a total of 117 days for his application to be determined - in this case refused - by which time he had already been released to homelessness after the judge varied the bail grant to remove the residence condition.

Mr C went on to make a successful unlawful detention claim, reflecting the fact that slow Home Office processing constitutes an unreasonable and unacceptable reason for an individual to remain deprived of their liberty.

This slow processing occurred repeatedly across the cases, despite the Home Office's target time of five working days to make decisions (for s.95 and s.4 support).[54] In Mr I's case, it took four months for the Home Office to process his s.95 application, which also resulted in his residence condition being lifted and his subsequent release to homelessness, despite his vulnerability as a young care-leaver with poor mental health which had significantly deteriorated in detention.

FNORCAT told Mr U that his s.4 support application was still 'awaiting allocation to a decision-maker' two months after submission, meaning that the decision-making process had not even been initiated. After four months, the application still had not progressed and thus the residence condition was lifted, despite this putting Mr U at risk of breaching his licence conditions. Mr R waited a month before FNORCAT assigned a caseworker to his sch.10 application, before waiting an additional five months for a decision. During this period, BID chased FNORCAT for updates on four occasions.

The Home Office's slow decision-making is also exacerbated by the fact that people in detention have limited access to the documents and other forms of proof necessary to support their accommodation applications. Requests for Further Information (RFIs) issued to applicants by the Home Office often require complex responses with which individuals need support to answer sufficiently. In many cases in this study, responding to RFIs required following up with other authorities and entities such as banks. This is difficult for any detained individual and almost impossible for those detained in prisons, as many banks require verification processes that are not feasible for reasons such as lost/confiscated phones or unstable addresses. Furthermore, the Home Office failed to make RFIs in a timely manner; in Mr F's case, it took six weeks for FNORCAT to make an RFI after he had applied for sch.10 support. In the interim, there was no further communication despite BID chasing FNORCAT twice.

Delays are also caused by the duplication of accommodation support applications. As different types of support are granted under different statutory provisions, individuals are required to submit a new application if one type of support is refused, despite the Home Office already holding all of the necessary information to make a decision to grant support under another provision. This prolongs the overall time taken to grant accommodation. For example, Mr O lodged his sch.10 application in December 2023.

This was refused two months later, at which point the Home Office suggested starting a new application for s.4 support even though they were already aware of his need for accommodation and had all of the information necessary to make a s.4 grant. He was only released to s.4 accommodation in late March 2024, despite having serious medical vulnerabilities and a Rule 35 report from December confirming that his health was likely to be injuriously affected by continued detention.

No effective monitoring of accommodation decisions

Although the First-tier Tribunal of the Immigration and Asylum Chamber often directs the Home Office to provide an update on accommodation two days ahead of bail reviews to assess the progress of arrangements for release on bail, they have very little power to do anything beyond this to ensure accountability on the progression of accommodation matters. There is also no internal monitoring by the Home Office of how accommodation matters are progressed, and individuals are rarely provided with sufficient updates on their case. This finding is corroborated by the IMB's 2024 Annual Report, which noted that two men waited at least three months after being granted bail before being allowed to leave detention, 'receiving little in the way of updates in the meantime'.[55]

On average across all cases in this study, BID made five follow-up requests to the Home Office to chase the status of the accommodation application. In one case, BID chased the Home Office on ten separate occasions regarding the progression of an individual's s.95 application. However, even where BID was actively making follow-up requests, there was a lack of consistency in the provision of regular, clear updates to individuals explaining the status of their accommodation application and there appears to be no mechanism to monitor their progress. It is likely that without BID's involvement in these cases, the delays experienced would have been significantly longer.

RECOMMENDATION: The Home Office should introduce a monitoring mechanism to ensure accountability for the progression of accommodation matters for people in detention who are granted conditional bail, and monitoring data should be made publicly available.

RECOMMENDATION: The Home Office should set target timeframes for accommodation support decisions, with escalation steps if those targets are not met.

Suggested targets:

- Accommodation decisions should be made within 7 days (from the point of the Home Office receiving an application from Migrant Help).
- Addresses must be sourced by accommodation contractors within a reasonable period (we suggest 7 days), with Probation Service checks completed within ten working days of receiving an address as per current policy. If an address is refused by the Probation Service, the reasons for this should be explained in writing and another address sourced within a reasonable timeframe.

RECOMMENDATION: The Home Office should simplify the accommodation support application process to enable individuals to make a single accommodation application. It would then be for the Home Office to determine which kind of support the individual is eligible for on the basis of that application instead of requiring multiple separate applications which result in unnecessary administrative burden and delays.

Home Office inconsistency , maladministration and errors

This research found that delays were also prolonged in many instances due to inconsistency, maladministration and errors on the part of Home Office staff. Some form of maladministration was recorded in almost half of the cases analysed.

Home Office staff across different teams frequently failed to correctly advise people in detention of the appropriate accommodation to which they are entitled and should apply. For example, Mr O's Bail Summary form advised that he was eligible to apply for sch.10 accommodation; however, upon applying he was denied support under sch.10 and was eventually obliged to apply for, and was granted, s.4 support. This created a further two-month delay, as he waited for the sch.10 decision [refusal] before realising he was eligible to apply for s.4. Although these erroneous assessments of eligibility may arise due to a lack of training, the complexity of the different provisions for accommodation support may also be a key factor in creating uncertainty around entitlement.

Similarly, Home Office caseworkers take divergent – and sometimes erroneous – approaches to the accommodation support application process, particularly when it comes to sch.10 support. Mr O was refused sch.10 support on the grounds that he did not have a grant of bail in principle, which was incorrect – he had been granted conditional bail with a residence condition two months earlier. This error was likely due to issues with the sch.10 application process for Foreign National Offenders (FNOs), which, according to policy[56] should be made within the bail application, as was done in this case. However, the Home Office erroneously claimed that no accommodation support application had been made, and that a Home Office caseworker had to complete a sch.10 application themselves, which led to confusion about whether the individual in question had already been granted conditional bail as the new sch.10 application was not made within the bail application.

In another case, Mr T was directed by FNORCAT to apply for sch.10 support by submitting a Bail 409 application form for support to Migrant Help when he had already set out his need for sch.10 support in his bail application. This mistake happens frequently in BID's experience, which is why over time BID has developed a practice of submitting Bail 409 forms to apply for sch.10 accommodation as well as setting out the need for sch.10 within bail applications. However, this is only a workaround solution emerging from a lack of consistent policy and practice regarding sch.10 applications, which has led to multiple legal challenges since the Immigration Act 2016 came into force in 2018.[57]

Errors resulting from poor - or absence of - communication between different Home Office caseworkers and teams were also common. For example, Mr B was denied s.95 support with the following reasoning from Asylum Support: 'I note that you are in an Immigration Removal Centre. I am therefore satisfied that your essential living needs, including accommodation, are being met in full. You may submit a fresh application for support if you are released from detention'. As in Mr O's case, this reasoning was made on the erroneous grounds that the individual did not have conditional bail (also known as bail in principle), when in fact he did.

This mistake - arising from lack of communication and coordination of information sharing within the Home Office - significantly delayed his receipt of s.95 support, which was eventually granted more than three months later. In another case, the Home Office rejected Mr J's s.95 application as it claimed he had not provided further information upon request – this decision was overturned as the Home Office recognised this was incorrect, and that the Mr J had sent all requested information on time as evidenced by BID. However, this error was only rectified due to BID's involvement and may otherwise have led to even more significant delays.

RECOMMENDATION: All Home Office caseworkers should be given regular, detailed training on post-detention accommodation, with proof of completion.

RECOMMENDATION: The Home Office's case management system should be improved to facilitate smooth information-sharing across different teams.

RECOMMENDATION: The policy enabling FNOs to set out their need for sch.10 support within their bail application should be followed, or it should be changed to prevent further inconsistency.

RECOMMENDATION: Provisions for post-detention Home Office accommodation support should be simplified to minimise errors and further deprivation of liberty resulting from the wrong accommodation applications being submitted. If someone will likely be destitute upon release from detention, the Home Office should have a duty to provide accommodation.

In the interim, if the Home Office finds that the wrong application has been made, they should use the applicable information from the application to grant the correct form of support instead of re-directing an individual to make a new application.

‘Middle-man-ism': the shifting of responsibility between the Home Office and Migrant Help

Delays in progressing accommodation applications are also exacerbated by the shifting of responsibility between the Home Office and contractors. In 2019, Migrant Help was awarded a £100 million contract to run the Home Office’s Advice, Issue Reporting and Eligibility (AIRE) services. The contract has since risen to £235 million and runs until 2029.[58] Migrant Help is responsible for supporting people (non-detained and detained) to make applications for asylum support accommodation and preparing these applications before transferring them to the Home Office’s decision-making teams. The Contract’s Statement of Requirements stipulates that a successful service will ensure that ‘Service Users who are eligible for Asylum Support are assisted to access support in a timely and efficient manner’ [emphasis added].[59] However, its services are not fit for purpose; in multiple cases, its involvement led to increased delays and reduced efficiency, while obfuscating the chain of responsibility.

In at least three cases, Migrant Help followed up on individuals’ applications with requests for additional information it deemed necessary to submit them to the Home Office. While this is supposed to support individuals in the application process, these requests often acted as a form of gatekeeping as applications were prevented from progressing to the Home Office for significant periods of time. In both Mr L and Mr U’s case, these follow-up requests for information resulted in a three-week delay between Migrant Help confirming receipt of the application and it being submitted to the Home Office.

Mr S was asked for basic information such as his date of birth and nationality almost one month after he had sent a s.4 application to Migrant Help, despite these details already being on his ASF1 form. Migrant Help informed Mr S that it could not process the application until this information was received – prolonging his detention for no reason as he had already submitted the requested information.

Poor coordination and information sharing both within Migrant Help and with the Home Office also resulted in applications being lost or significantly delayed. Mr F was told by the Home Office that it had not received a sch.10 application, despite email correspondence from Migrant Help to BID confirming that the application had been sent to the Home Office weeks prior. Mr M was advised to submit an ASF1 by immigration officials, despite having already submitted an ASF1 form six weeks earlier. When chased, FNORCAT asked MH to confirm the application had been submitted, demonstrating the shifting of responsibility that can occur due to the use of contracted middlemen.

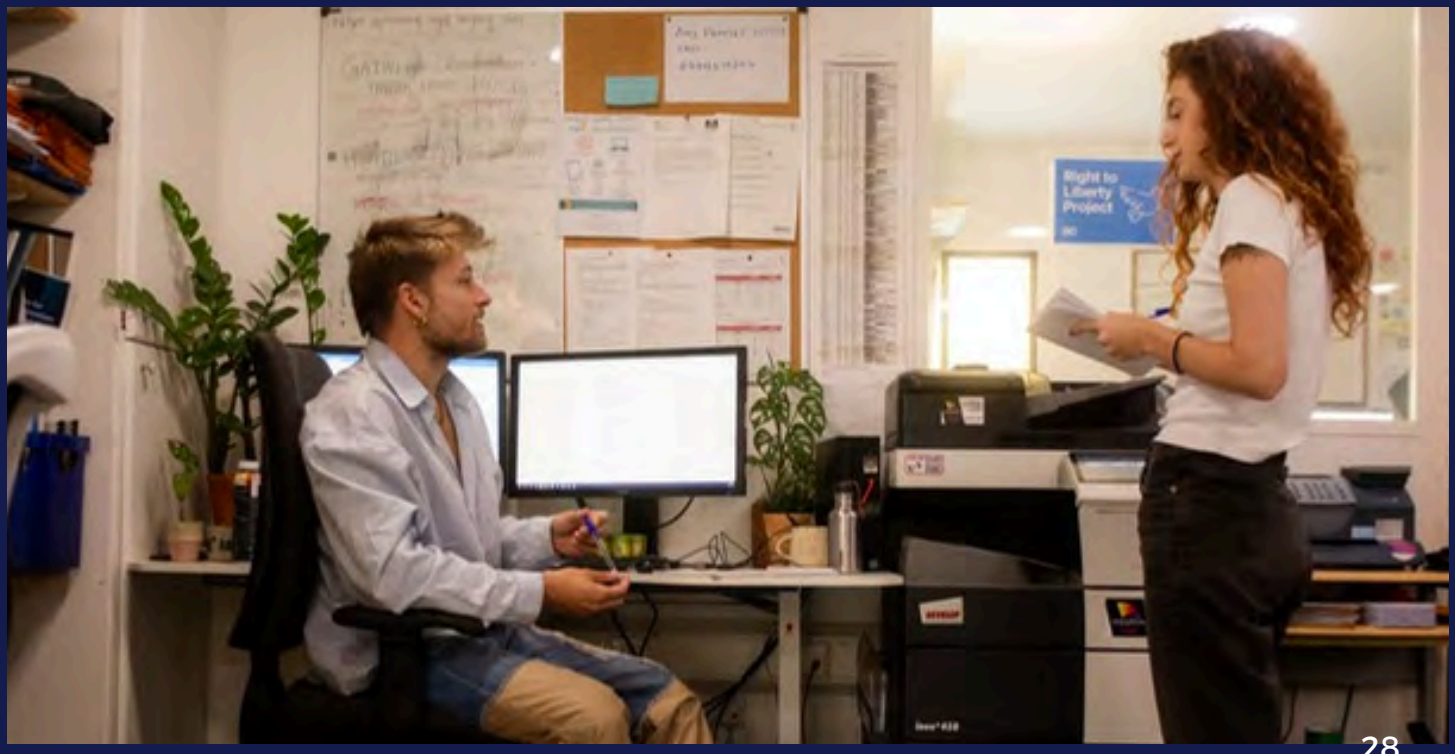
FNORCAT then informed BID that Migrant Help had not uploaded the form as further information had been requested from Mr M. However, he had never received this request, and FNORCAT also had no oversight of what had been asked and when. This led to a further two-month delay in the application progressing.

In general, the case analysis revealed a lack of clarity regarding Migrant Help's role, and it was not clear that its operations were fit for purpose. For example, on Mr B's s.95 refusal letter,[60] the letterhead contained a Migrant Help email address, despite refusals being outside of Migrant Help's remit – it is unclear whether this was an error, or whether that address was also being used by Home Office decision-making teams. Migrant Help's role has also expanded to include non-asylum support accommodation, namely sch.10, but this was an ad-hoc extension after it was found that there was no formal process to apply for sch.10 support.

This can be seen by the lack of a designated email for sch.10 applications; the s.4 address has simply been adopted, raising concerns that Migrant Help's capacity to facilitate sch.10 applications may not be sufficiently developed. Anecdotally, BID finds that Migrant Help is slow to reply via email, has lengthy wait times for its telephone helplines, and is often unable to locate information about a case when requested.

RECOMMENDATION: Migrant Help is contracted to enable people to access Home Office support, a role which BID and other visiting groups currently fulfil. The Home Office should introduce transparent monitoring mechanisms to ensure that Migrant Help is meeting its contractual expectations, as well as improving case management and coordination within Migrant Help.

RECOMMENDATION: The Home Office should facilitate better coordination and information sharing between Migrant Help and the relevant Home Office teams.



Issues with accommodation support eligibility criteria

In many of the cases analysed, certain elements of the policies outlining eligibility requirements for different types of Home Office support emerged as repeated issues. While this report is not an extended policy analysis, these issues arose as direct reasons for the prolonged detention of individuals with grants of bail, as details in the subsections below.

Strict destitution criteria

To be granted Home Office accommodation, applicants are required to show evidence of destitution. The burden of proof of destitution is high and inconsistently applied, and can be prohibitive to individuals securing release accommodation.

One of the criteria for proving destitution is evidence that you do not have adequate funds to support yourself for fourteen days. This is assessed in inconsistent and, at time, obstructive ways. For example, Mr B had his s.95 application refused because he had a phone, which was used as evidence of adequate funds. Mr U had £1300 in his bank account which meant he failed the strict destitution test (and was unable to deplete those funds as individuals are not able to access their bank accounts from detention).

However, he had no recourse to public funds so could not apply for council-funded housing, did not quality for Probation Approved Premises and charitable organisations had no capacity. Despite extensive efforts contacting hostels and other accommodation providers, BID was unable to find a temporary residence which would accept the individual to stay for a short period and would be approved by the Probation Service. BID resorted to applying for sch.10 accommodation in the knowledge it would likely fail, to exhaust all avenues to prevent the individual's indefinite detention as he was otherwise stuck in a catch-22 situation. Eventually, Mr U was released to homelessness.

In multiple cases, applications were rejected due to the assumption that people who had previously been identified as connections to the detained individual should be able to support them. Mr A had his s.4 application rejected on the grounds that he had mentioned people who had previously supported him in the application.

However, his appeal was upheld, as it was evidenced that he had been in receipt of s.4 support prior to his incarceration and the judge recognised that he has 'less opportunity to obtain support from [his family and ex-partner]' since then.

Given that the Home Office should have had oversight of this prior period of support, they should have found that he met the destitution test upon first application. Mr G was asked for proof of why the person listed as his Financial Condition Supporter (FCS) in his bail application could not support him with accommodation. This is not the role of an FCS; they pledge to pay a specified sum if an individual does not comply with the conditions of their bail, but they are not expected to provide full-time support including accommodation and subsistence payments to the individual applying for bail.[61] However, the time it took to explain this to FNORCAT further delayed the support application by three weeks.

Mr J was sent an RFI asking 'During your induction completed for Brook House IRC on 02 September 2023 when asked if you had a support network in the UK who you are in contact with, you stated that you had friends in Gillingham. Please can you provide more details about your friends and a written statement stating why they are unwilling to support you.' Being in contact with friends should not carry an assumption that they are able to support with accommodation.

This RFI, which relies on information shared in an unrelated and informal context, ultimately led to an increased delay to the individual attaining liberty. As the individual was vulnerable and therefore had lower capacity for communication, he missed the RFI response deadline and the application was not entertained. Similarly, Mr R's s.95 application was refused as the individual had a lot of family in the UK, despite him explaining that he could not stay with any of them. The strict destitution test makes assumptions about staying with family and requires evidence to show why it is not possible, instead of accepting the individual's explanation as sufficient. If an individual felt comfortable and able to stay with their family, it is very unlikely that they would pursue Home Office accommodation as they would not unnecessarily prolong their detention if they had somewhere to stay.

Across multiple cases, individuals were asked for documents such as bank statements which they struggle to access from detention especially as the mobile phones they are given in detention do not support functions such as 2-factor identification. This is even more difficult – bordering on impossible – for people detained in prisons.

RECOMMENDATION: There are multiple reasons that people in detention will struggle to meet the high evidentiary threshold for proving destitution. The threshold of evidence required to meet the destitution criteria for Home Office accommodation support should be lowered.

Meeting Regulation 3(2) for s.4 eligibility

Multiple cases studied in this report were assessed as failing to meet criteria under Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, which is one of the criteria for s.4 eligibility. In all cases studied which went to appeal, this was then overturned with the support of solicitors, but this is difficult without representation given the complexity of the regulation. For example, Mr M was deemed not to meet Regulation 3(2) as there was 'no record' of a Judicial Review being lodged, yet various legal proceedings including an appeal of an NRM decision and a fresh asylum claim were soon to be lodged. This was submitted in the individual's appeal, which was then upheld and he was granted s.4 support, after an unnecessary prolongation of his detention.

RECOMMENDATION: The criteria for s.4 support are too restrictive, particularly for people with complex immigration histories and identification documentation issues. The criteria should be applied more flexibly, or they should be changed.

'Exceptional circumstances' threshold for Schedule 10 accommodation

Many individuals in this study were not eligible for s.95 or s.4 accommodation, but they did not fall within the three 'exceptional circumstances' categories listed in policy guidance as qualifying individuals for sch.10 accommodation. These categories are Special Immigration Appeals Commission cases, Harm cases – people assessed as posing a high or very high risk of causing serious harm to the public, or people with an Offender Group Reconviction Scale (OGRS) score of at least 70% - and Article 3 cases. In the case Humnyntskyi v SSHD, the High Court found that the operation of sch.10 was unlawful as it was systematically unfair and 'in its operation it fetters the Secretary of State's discretion to consider whether the situation of an individual applicant amounts to exceptional circumstances'.[62]

As the original policy guidance listed only three categories of exceptional circumstances and used exclusionary language, it had falsely implied a closed list of what the Home Office could treat as exceptional. Updated guidance is now explicit that cases falling outside of these three categories may 'nonetheless warrant the grant of Schedule 10 accommodation' but that 'this discretion should be used sparingly'.[63] From this research, it appears that this exercise of discretion beyond the listed categories remains very limited, and accessing sch.10 accommodation remains a serious issue. Only one person out of all cases studied was granted sch.10 accommodation.

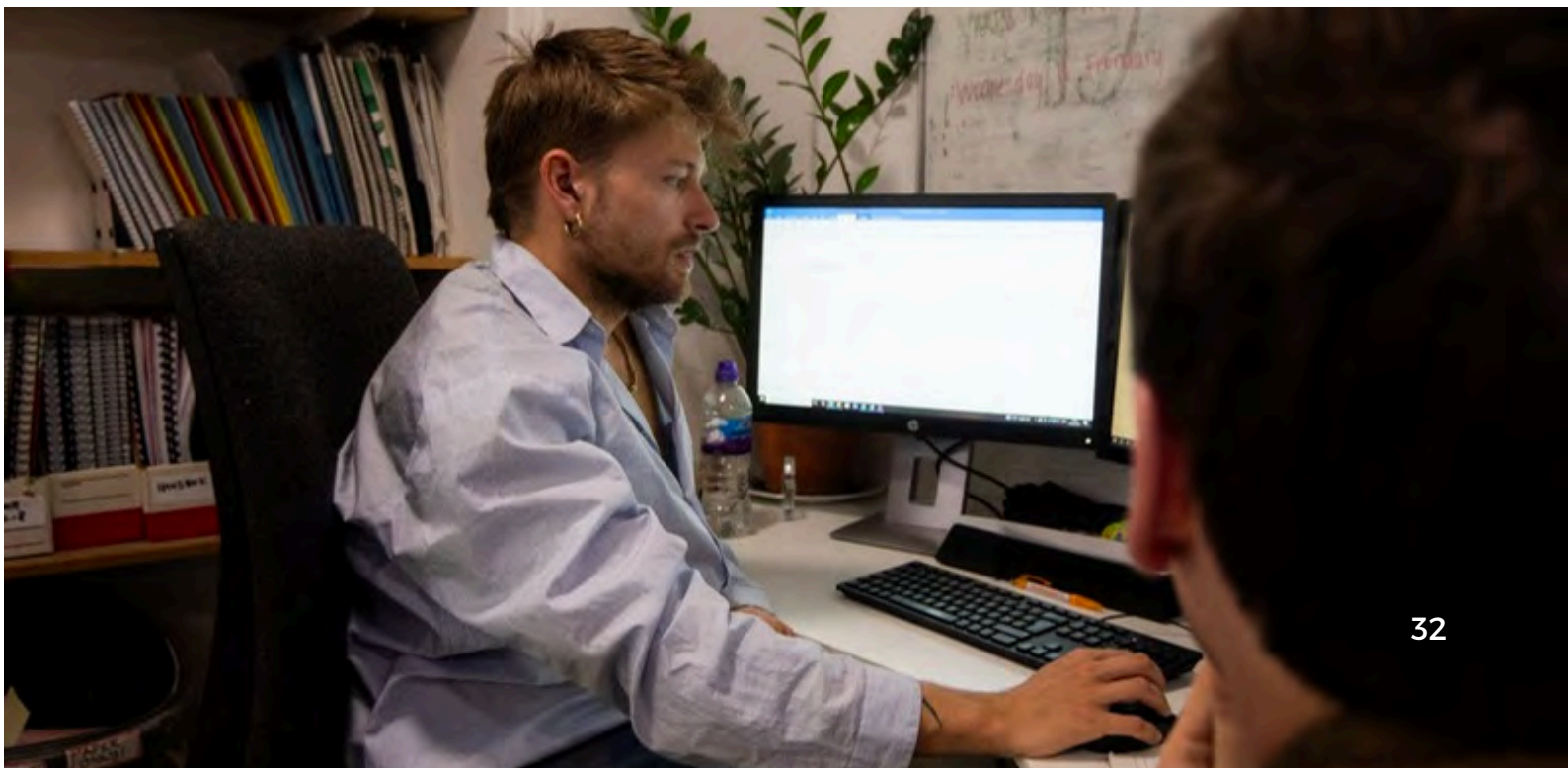
Mr T received a sch.10 refusal as he posed only a medium risk of harm to the public, had an OGRS score of 6% and had no barriers to removal therefore was told 'you do not meet the exceptional circumstances threshold for sch.10 to be granted, nor do we consider it appropriate to otherwise exercise discretion outside of the policy'. However, he did not have a passport and had not yet received a Stage 2 deportation notice (both barriers to his removal), hence should have been entitled to sch.10 accommodation. As a result of the refusal, Mr T lost his grant of bail in principle and was then refused sch.10 accommodation upon re-applying due to not having a grant of bail. It was only six months later that his residence condition was lifted, and he was released to homelessness. The fact that there is no appeals provision for sch.10 decisions means individuals struggle to challenge them even where they are erroneous, as the alternative remedy of making a claim for judicial review is complex and normally requires specialist legal representation.

Anecdotally, BID also finds that some individuals who have been granted Secretary of State bail with a residence condition are still assessed as ineligible for any type of Home Office accommodation, despite the Secretary of State acknowledging that there is no possibility of removal (a factor contributing to the decision of the Home Office to grant bail).

RECOMMENDATION: People are falling through the cracks in accommodation support entitlement. Anyone who would be left destitute post-detention should be entitled to Home Office support, as they had previously been under the now repealed s.4(1)(c) provisions. These provisions were replaced by sch.10 accommodation under the Immigration Act 2016.

RECOMMENDATION: If an individual is granted Secretary of State bail with a residence condition and will be destitute, they should be provided with Home Office accommodation automatically.

RECOMMENDATION: Introduce appeals for sch.10 accommodation refusals.



Immigration status in flux leads to decision-making paralysis

Individuals in detention are often engaged in ongoing matters relating to their underlying immigration status. This means their eligibility for different types of accommodation support is also in flux, as eligibility is dependent on factors such as the stage of an asylum claim or other immigration-related legal proceedings. In multiple cases in this study, this led to a point of decision-making paralysis as it was unclear whether an individual had or would continue to have recourse to public funds (RPF), and which type of accommodation for which they were eligible. Where someone has RPF, the Home Office no longer has primary responsibility for the progression of accommodation sourcing; this falls instead to Probation Services and local authorities.

Mr N was granted bail in principle while his appeal of revocation of leave to remain by virtue of a deportation order was in process. This led to confusion between multiple actors over whether he had RPF, resulting in his Home Office caseworker confirming that he should apply for sch.10 accommodation, before FNORCAT then denied his application days later as his leave to remain was valid and he therefore did have RPF. FNORCAT also informed Mr N that it had to wait for any potential appeal relating to his status to be decided before a sch.10 decision could be reached.

RECOMMENDATION: The Home Office should provide clear and consistent contact details for an individual's Home Office caseworker on their Monthly Progress Reports, to make it easier to ascertain details and documents relating to an individual's immigration status.

In a similar case, there was lengthy back-and-forth correspondence between the Home Office and local councils about whether or not Mr P had RPF; this led to a three-month delay in accommodation being sourced, culminating in the Government Legal Department insisting that s.4 support was offered despite the possibility that the individual may still have access to public funds. This decision was prompted by an application for interim relief in support of a judicial review claim made by Mr P's solicitor.

Mr W was in the process of reinstating his withdrawn asylum claim while in detention with a grant of conditional bail. This meant it was unclear whether he should apply for sch.10 or s.4 accommodation; he applied for sch.10 accommodation, but his asylum claim was rejected while his sch.10 accommodation application was still being decided and it was therefore denied on the basis that he was now a 'failed asylum-seeker'. This increased the delay in sourcing accommodation by two months, but had the sch.10 accommodation decision-making been faster he could have been granted sch.10 accommodation and released while the application was still pending. Alternatively, if he was found to meet the destitution and other criteria equivalent to those listed in Regulation 3(2), he should have been granted s.4 support.

RECOMMENDATION: If there is uncertainty regarding a detained individual's immigration status and their related access to public funds, the Home Office should grant accommodation according to their status at the point of application. The power under which they are granted accommodation can then be internally updated if the individual's status changes.

Delays due to accommodation providers

This report does not focus on breaking down the reasons for delays caused by accommodation providers in supplying addresses to the Home Office. In the studied cases, BID did not have the necessary level of detailed insight on the internal referral processes between the Home Office and its Asylum Accommodation and Support Contract (AASC) providers; this would require a separate investigation. However, in multiple cases the lack of accommodation capacity and slow timelines for providing addresses were clear, as well as issues with the Home Office's management of the providers.

In Mr M's case, a Home Office Presenting Officer (HOPO) opposed bail at a bail review where conditional bail had already been granted, using the reasoning that there was insufficient supply of s.4 accommodation to meet demand. At the time, Mr M's s.4 application was still pending, indicating that a decision had not been made due to the lack of available accommodation. Entitlement to accommodation support should not be dependent on supply, and continued detention cannot be justified on the grounds that the Home Office has an insufficient supply of accommodation. In this case, the judge maintained bail and at a later bail review removed the residence condition, with the individual released to homelessness. It took a total of 8 months after the original grant of bail in principle for s.4 accommodation to be provided.

The Home Office does not provide clear timeframes within which addresses must be sourced by its providers, despite a stated turnaround time of 14 working days in the Asylum Accommodation and Support Contract Requirements Statement.[64] Mr Q had received a grant of sch.10 accommodation, and after waiting a month for an address to be sourced was told by FNORCAT: '[we are] awaiting an address to be provided by one of our providers that fits the requirements. I am not able to give an estimation on how long this will take as it depends on when third parties are able to provide their services, and this is out of our control.' The delays in sourcing appropriate accommodation led to bail being refused after six bail review hearings – which put Mr Q's sch.10 accommodation grant at risk as sch.10 accommodation eligibility for people in detention is contingent on a grant of conditional bail (bail in principle).

RECOMMENDATION: There should be increased transparency regarding contractual expectations and standards for accommodation providers, for each category of Home Office accommodation.

RECOMMENDATION: Home Office policy should be updated to provide expected timeframes for addresses to be provided, with actionable consequences when timeframes are not met.

- Suggested timeframe: Addresses must be sourced by accommodation contractors within 7 days, with Probation Service checks completed within ten working days of receiving an address as per current policy.[65] If an address is refused by the Probation Service, reasons must be given and another address must be sourced within 7 days.

2. DELAYS INVOLVING THE PROBATION SERVICE

The Probation Service are involved in several ways within the post-detention accommodation process for individuals with offending histories. This study found that their involvement lengthens delays in release and therefore deprivation of liberty in multiple ways.

Overall, it was clear that individuals who were deemed high or medium risk based on their offending histories were detained for far longer periods, despite having finished their custodial sentences and having been granted bail by a judge. This shows that systemic issues related to the allocation of bail addresses to detained individuals with offending histories raised by cases such as Sathanantham & Ors v SSHD[66] have not been resolved.

Requirement for Probation Service approval of bail addresses

While grants of conditional bail often specify that an individual must live at an address provided by the Home Office, usually under a particular provision, others are made conditional on Probation Service approval of an individual's release address:

'The applicant will reside at an address approved by probation'.

This condition was present for 16/26 cases studied here, or 62%. However, the bail guidance for immigration judges[67] makes it clear that Probation Service address approval should be a distinct issue to the question of immigration bail, as the risk of someone breaching their criminal licence is not usually a matter for immigration judges.

'Foreign National Offenders who have completed their custodial sentence are usually subject to licence conditions requiring them to live at an address approved by a probation officer. It should usually be unnecessary to impose such a condition as a requirement of immigration bail (the purpose of which is of course to ensure the immigration authorities can affect immigration control) and therefore unnecessary to have a review hearing and unnecessary to continue the person's immigration detention. This is because the approval of the address and therefore the release of the applicant is a matter for the criminal authorities.'

'Judges should not be concerned as to whether release will breach licence conditions. This is not a matter that should affect immigration bail. The issue for the judge is whether the applicant will comply with the conditions of bail.'

This kind of condition often results in significant additional periods of detention while awaiting a probation officer's approval of an address. Given that the imposition of this condition appears to go against the guidance quoted above, these additional periods of detention could be seen as unlawful. Despite the frequency of this type of residence condition, judges do sometimes remove the condition despite an individual being assessed as high risk, as in Mr D's case in this study. This demonstrates the possibility of release to no fixed abode irrespective of whether this will put someone in breach of their licence, at which point they can attend a local Probation Service office to register the issue.

RECOMMENDATION: Bail grants conditional on an address approved by probation have become the default, not the exception. However, these types of grants of bail should be the exception, not the default, as per the bail guidance for judges.[68] There should be an explicit definition set out to clarify what the 'exceptional circumstances' are in which judges should make grants of bail conditional on probation address approval.

Address approval ping-pong

The average number of days delay caused by Probation Service address approval in this study (where the Probation Service was required to approve an address proposed by the Home Office) was 96. This equates to more than three months of additional detention as a result of poor coordination between the Home Office and the Probation Service as addresses are bounced back and forth. BID is told by individuals stuck in this cycle that it is demoralising and makes them lose hope, as they have been granted bail and accommodation support yet remain in detention.

Mr F had 17 different addresses rejected by the Probation Service, resulting in a further 6 months and 7 days of detention. This was despite the fact that the end of his Post Sentence Supervision (PSS) was imminent. He was only released to a s.95 address after a grant of urgent interim relief by the High Court, which was possible due to BID securing legal representation for him. In his judgment, the judge laid out the essential issue:

"It appears that the respondent should consider communicating with the applicant's offender manager to ascertain what type of accommodation would be considered suitable to minimise the risk that addresses identified in future will also be rejected."

Delays are significantly increased by repeat address refusals – yet this ping-pong is unnecessary. The Home Office should first ascertain the requirements that the Probation Service deems necessary for an individual's licence conditions, communicate these with accommodation providers, and only propose addresses for approval that fulfil these requirements, minimising the risk that multiple addresses will be rejected (sometimes for the same reason as before).

This would avoid cases like Mr Q's, whose criminal licence clearly stated he could not be near a school yet the Home Office proposed two addresses very close to schools, which were inevitably rejected, and Mr Q faced such delays that his bail in principle grant was revoked.

Mr K also experienced a long delay of four months due to repeated address rejections, and, like Mr F, was only released due to pressure applied by an interim relief order.

There were several cases that demonstrated a lack of urgency in progressing address approvals from the Probation Service, despite the stipulated 10-day timeframe for address checks.[69] This suggests an underlying perception that individuals held in detention under immigration powers have a less urgent need for assistance with sourcing or approving accommodation as compared with British nationals. Mr T's Probation Officer simply stopped communicating with him because he only spoke French, instead of using a translator. Mr K's Bail 506 (Conditional Bail Update form) stated that his Home Office caseworker and FNORCAT had sent 'many emails' to the Probation Service regarding an address and had not received any response. BID followed up, calling the individual's Probation Officer five times, and they hung up after we introduced ourselves. This resulted in confusion at a bail review in which the Judge ordered release to the address which was already rejected by the Probation Service.

Coordination and information-sharing between the Home Office and the Probation Service exacerbates the delays further. In Mr B's case, he had his application for s.95 support rejected as he hadn't explained why he could not stay at his father or friend's house – when the Probation Service had already rejected both addresses more than one month ago.

RECOMMENDATION: Prior to address sourcing beginning, the Probation Service should set out a list of requirements for an address to satisfy licence conditions. The Home Office should share this with accommodation providers, who must only propose potential addresses which fulfil these requirements.

RECOMMENDATION: Training should be introduced for Probation Service staff on FNO entitlements and rights, highlighting policies that FNOs are to be treated in the same way as British nationals and that detention is not appropriate for the purposes of accommodation.

RECOMMENDATION: An inquiry should be commissioned into how Probation Service address approvals are progressed for British nationals in comparison with FNOs.

Risk 'gap' and management

There is a significant issue with people being assessed as high risk on the basis of their offending history, but not high enough risk to the public to be deemed in need of Approved Premises – what this report terms a 'risk gap'. This means addresses are repeatedly refused by the Probation Service on the grounds of risk of harm or reoffending, but no alternative is proposed.

In all cases analysed in this study, the individuals had already been granted bail in principle. This meant that a First-tier Tribunal judge had also undertaken an assessment of risk and found that the individual should, regardless of their offending history and possible associated risks, be released. In assessing whether to grant bail, the court must have in mind that individuals' risk of harm or reoffending cannot be used as a "trump card" to justify any period of detention, as held in the judgment R (Lumba) v SSHD.[70] Yet as shown in multiple cases in this study, risk plays a significant role in justifying unreasonable periods of detention through the rejection of post-detention addresses.

Mr D and Mr F were both assessed as high risk (one to known adults, one to the public) and both experienced an additional 6 months of detention as a result of repeat address refusals. However, in both cases the Probation Service ruled out Approved Premises referrals. This left them stuck in a risk gap with no way out; in one case, the stagnation of his case was only solved through a claim for judicial review, while Mr D eventually lost contact with BID and was released to an unknown address after 191 days of additional detention. This reflects the issue that certain high-risk individuals are being discriminated against in the (non)provision of post-detention accommodation, as raised in BID's report 'No Place to Go' more than ten years ago.[71]

Probation release plans abandoned when individuals are authorised for immigration detention

At the point at which an individual serving a criminal sentence becomes authorised for immigration detention (i.e. when they are served an IS91), the Probation Service often stops progressing individuals' release plans as it assumes the individual will be detained or deported, even though it is more likely than not they will be granted bail according to official statistics.[72] When someone is granted bail in principle, the Probation Service does not automatically resume responsibility for release plans, even where someone is eligible for Approved Premises (AP).

In Mr C, Mr I, Mr V, and Mr Y's cases, their Probation Service officers did not make AP referrals for them in advance of their Conditional Release Dates (CRDs) despite eligibility for AP. Mr Y's Probation Service officer only made an Approved Premises referral after he had been refused bail on the grounds of not having AP, and was subsequently granted bail in principle conditional on 'the address provided and approved by the Probation Services' (emphasis added).

After the AP referral was accepted, there was a 14 week wait time for an address to become available, and the Probation Service confirmed there was no possibility of approving a private release address in the meantime.

In Mr C and Mr V's cases, their Probation Service officers demonstrated a clear lack of understanding of FNO entitlement to Approved Premises, reflecting the general lack of knowledge within the Probation Service about FNO rights and entitlements.

This was also the case for Mr I. Probation did not start sourcing AP prior to his CRD, and stated there would be a 'three month wait' due to the nature of his offence, which would be deemed a clear breach of habeas corpus had Mr I been a British national, not a detained FNO, despite policy stating that FNOs should be managed 'in the same way as British nationals while recognising their individual needs'.[73] Mr I's Probation Officer was slow to respond, and also expressed concern about the lack of move-on address after APs are sourced, despite the fact that the Home Office could not remove Mr I to his country of origin (Sudan) and therefore he was eligible for Home Office accommodation.

As BID informed the Probation Service on multiple occasions, AP entitlement should not be affected by whether individuals have RPF, as individuals can apply for Home Office support once in the Approved Premises. Yet in Mr L's case, his application for an AP release plan was rejected by the Probation Service 'on the basis that the placement is for two months only and with no recourse to public funds [the individual] has no finance while in the AP, nor finance for any definitive move-on plan.'[74] Despite his eventual release to AP, after which he applied for sch.10 accommodation, Mr L was detained for 7 months and 12 days after he was granted bail due to the erroneous decision on AP entitlement.

The failure to refer eligible FNOs for AP is clearly discriminatory, as British nationals who require AP are always referred in advance of their CRD to ensure that a placement is secured.

The lack of urgency in sourcing APs for FNOs demonstrates a lack of understanding that detention cannot be legally justified for the purposes of accommodation.

RECOMMENDATION: The Probation Service should retain responsibility for progressing release plans while individuals are on licence, even where they have been authorised for detention under immigration powers. It should continue to liaise with the Home Office on the assumption that the individual will be released, instead of the assumption that they will remain detained or be deported. This is especially important if the release plan involves Probation Service accommodation.

RECOMMENDATION: FNO entitlement to Approved Premises should be clarified to Probation Service staff through training to avoid confusion and prolonged detention. The Probation Service should not reject AP referrals due to individuals having No Recourse to Public Funds, as individuals can apply for Home Office accommodation once they are released to Approved Premises.

RECOMMENDATION: The Probation Service should source Approved Premises for eligible foreign national individuals in time for their CRDs, as is standard procedure for eligible British National Offenders (BNOs).

Lost Approved Premises places due to immigration detention upon CRD

It is likely that Probation Officers' reluctance to progress release plans for FNOs is exacerbated by the knowledge that the Home Office is likely to detain FNOs upon their CRD even if there is no possibility of removal. This leads to the loss of Approved Premises placements, which are sourced by the Probation Service in advance of individuals' CRDs. In an FOI response to BID from HMPPS, it was stated that:

'If an individual is not being released at their Conditional Release Date and a new date for release has not been set, any agreement for placement at an AP would be withdrawn. When a new date for release is confirmed the probation practitioner will be required to submit a request for a new placement. There would not, however, be a need for a new referral or assessment to be conducted.'

The loss of these placements means that Approved Premises bedspaces are ultimately being wasted and left empty, and that individuals are detained for significant periods of time as a new placement must be sourced. This can often take a long time, with waiting times of up to 5 months.

In this study, 21/26 (81%) of the individuals had known barriers to removal, 10 of which were pending asylum claims. This should have been considered by the Home Office in deciding whether to detain them upon CRD, enabling the Probation Service to progress with their release plan as intended – but instead, all individuals were detained.

Case study – Loss of Approved Premises

Mr L had been accepted for an AP release plan and a bedspace had been secured in time for his CRD. However, this was withdrawn upon Mr L being authorised for detention. In this instance, the IS91 was served on Mr L without any prospect of the Home Office removing him as he was born in the UK and the Ugandan High Commission did not accept him as a citizen, as shown in correspondence ten years prior to the individual's detention. There was no way of securing travel documents and removing him to Uganda or any other country, and therefore he should never have been detained by the Home Office – yet he remained in detention for an additional 10 months and 23 days after his CRD as a result.

In correspondence with another individual's Probation Officer (PO), BID was told that an Approved Premises address had been secured for them upon their conditional release date. However, due to the Secretary of State's decision to detain the individual, the address became unavailable to him, and he had to go through the process again. The PO also advised that he had applied for a new AP bed space for him, but the earliest possible availability was 6 weeks after the client secured bail in principle.

This pattern has also been recognised in reports by independent monitoring bodies. In the ICIBI's second report on the Adults at Risk policy, Probation Service staff cited lack of coordination between the Home Office and National Probation Service leading to wasted efforts to arrange appropriate accommodation and supervision of individuals due to be released. One Probation Officer was quoted: "You may have an FNO approaching conditional release date, and you see an automatic knee-jerk reaction [from the Home Office] – IS91 [a decision to detain] – where the Offender Manager has secured them an Approved Premises bed, with highest level of supervision available, to ensure compliance with licence conditions … That is a lot of work that gets scuppered. It's bonkers. This person isn't going to be removed."[75]

It should also be borne in mind that the longer an individual is retained in detention to be eventually released as they cannot be removed, the shorter the period they may be under licence and the supervision of Probation Service following release. That is not in the interests of the public good.

RECOMMENDATION: Individuals should be able to have bail hearings scheduled upon their CRD. This entitlement has been confirmed to BID by the FTT President, but a system should be in place to ensure this is applied in all cases, especially where Approved Premises are being sourced.

RECOMMENDATION: The Home Office should make a detailed assessment of the prospect of removal and therefore lawfulness of detention prior to issuing IS91s, as this leads to the loss of Approved Premises placements which is both a waste of public money and prolongs the detention of individuals.

3. ADDITIONAL REASONS FOR DELAY

Bail reviews

Grants of bail in principle are often time-limited – usually to a period of 28 days. At this point, bail reviews are held for a judge to decide whether to maintain the grant of bail, withdraw bail or vary the conditions. Bail reviews can serve as a way to encourage the Home Office to progress an individual's accommodation matter, as the judge can order the Home Office to provide an update on an application or address sourcing in advance of the bail review. But bail reviews can also result in bail being revoked or individuals being released to no fixed abode despite being entitled to Home Office support.

To progress accommodation matters, it is vital for bail to be maintained as accommodation support is granted only on the basis that someone has conditional bail and will therefore be destitute imminently, so bail being revoked has significant implications.

Mr Q had seven bail reviews, at which point his bail grant was cancelled due to difficulties sourcing suitable accommodation. This had a very detrimental effect, as the individual's Probation Officer was still in the process of sourcing him accommodation, but this was contingent on a grant of Bail in Principle. It also resulted in more work, as BID was required to submit a fresh bail application for the individual.

Similarly, Mr T's bail grant was refused upon review due to a sch.10 refusal and difficulty finding representation for a claim for judicial review. This then led to his new application for sch.10 being refused on the grounds that 'to be eligible for the provision of accommodation, you must be granted immigration bail with a condition that requires you to reside at a specified address...you have not been granted bail and so therefore have no avenue for release. You are therefore ineligible for assistance', forcing him into a cycle of refusals of bail and accommodation support.

In both Mr M and Mr P's bail reviews, the Home Office Presenting Officer (HOPO) opposed bail on the grounds that accommodation support had been refused, which is not a reasonable argument given that a grant of bail is required in order to receive an accommodation grant, not vice versa. In these instances, the judge did maintain bail, but counsel was required to argue why bail should not be revoked despite the Home Office position being flawed. This is ultimately a waste of court time, as well as time spent by legal representatives when capacity in the sector is already low.

In a sense, repeated bail reviews are both an outcome and a cause of prolonged detention, and BID maintains that bail reviews are vital to continue to pressure the Home Office and the Probation Service to progress accommodation matters.

However, the First-tier Tribunal is ultimately an inappropriate forum in which to resolve accommodation matters as – unlike in the High Court, where interim relief can be granted – the judge only has the power to instruct the Home Office to provide updates at the next review, or to lift the residence condition.

Regardless of the outcome, repeated bail reviews are resource-intensive for legal representatives and caseworkers, as well as taking up time at the Tribunal. BID finds that having to prepare for frequent bail reviews impacts upon our capacity to undertake other urgent legal work, a burden that would not be necessary if the Home Office were progressing accommodation matters at a reasonable pace.

RECOMMENDATION: Judges should not refuse bail upon review based on the Home Office's failure to progress the sourcing of accommodation, where the only bail condition is residence.

Insufficient legal support

Bail applications, accommodation applications, appeals, judicial reviews and bail reviews are all complex processes which require legal support to navigate. This is demonstrated by the amount of work BID, and other legal representatives, provided in the cases in this study, with additional anecdotal evidence from BID that in one case someone was supported through twenty-two bail reviews before they were finally released to accommodation.

It was clear across the cases studied that where people were represented, they were more successful in challenging their prolonged deprivation of liberty. For example, Mr P's s.4 application was at a point of seeming paralysis as the Home Office could not determine whether he had Recourse to Public Funds. Upon his solicitor, referred to by BID, making an interim relief application, the Government Legal Department directed FNORC to make an expedited response and to grant the Mr P s.4 accommodation 'even though [Mr P] may have access to public funds'. Mr F was also released to s.95 by way of an interim relief order, after detention was maintained for 6 months and 7 days after his grant of conditional bail; Mr K had a very similar experience.

However, there is simply not enough capacity within the sector to provide this vital legal representation, especially as much of this work is not covered by legal aid and must therefore be undertaken pro-bono. Even where BID is supporting individuals, it is difficult to find representation for repeated bail hearings as well as vital work such as judicial reviews for unlawful detention. For Mr Q's case, we made a referral for a judicial review claim of unlawful detention to seven different legal firms directly, but none had capacity to take on the case, despite the clearly unreasonable delay in sourcing accommodation that the individual was facing as well as his deteriorating mental health. In Mr U's case, we made an unlawful detention referral to more than ten firms, none of which could take him on.

RECOMMENDATION: Support for all accommodation matters – including appeals at the asylum support tribunal – should be brought into scope for legal aid, as bail is not effective without access to appropriate post-detention accommodation. The low capacity within the legal aid sector should be addressed by fee uplifts and investment into training for immigration and public lawyers.

RECOMMENDATION: Access to legally aided legal advice and representation should be ensured for all individuals from the point that their detention is authorised by the Home Office, whether they are in prison or an Immigration Removal Centre.

Findings: Secondary Impacts

The most egregious impact of accommodation delays is simple: people are deprived of their liberty for prolonged periods despite having been granted bail, resulting in detention being used for the purpose of accommodation, which is unlawful. Across the 26 people in this study, this resulted in an additional 3796 days of detention, an average of 146 days per person. The person detained for the longest time past their grant of bail in principle spent an additional 8 months and 9 days in detention, with eight people detained for longer than 6 months after being granted bail. In 81% of cases, individuals had known barriers to removal and therefore should not have been detained in the first place. Ten individuals had pending asylum claims.

However, the study also found a number of additional secondary impacts, which are summarised in this section.

Case study – Vulnerable adults harmed by prolonged detention

Mr J remained in detention for 8 months and 9 days after being granted conditional bail, and 6 months and 8 days after the judge made a full bail grant – which is a serious and unlawful failing. He, a young care leaver, had an outstanding asylum claim, had been assessed as an AAR Level 2 and Welfare expressed serious concern about his mental wellbeing deteriorating in detention. BID also struggled to maintain contact, demonstrating his low capacity and inappropriateness for detention.

Protection mechanisms for vulnerable individuals in detention failing

The minimal protection mechanisms in place in detention are designed to prevent detention of individuals whose vulnerabilities make them likely to suffer from harm because of being detained. The Rule 35 mechanism and assessment of individuals as Adults at Risk can prompt a review of detention, and risk factors such as likelihood of harm being caused by detention should be considered by judges when granting bail (balanced with immigration factors).[76] However, if a vulnerable adult is granted bail yet remains detained for months past their grant of bail due to delays sourcing accommodation, their risk of harm in detention has not been mitigated and therefore the protection mechanisms are rendered redundant by accommodation delays.

Out of 26 cases studied here, 21 individuals had known vulnerabilities relating to mental or physical health. 11 people were assessed as Adults at Risk, with four of those assigned AAR Level 3 which means, according to the guidance,[77] that 'there is professional evidence (e.g. from a social worker, medical practitioner or NGO) stating that the individual is at risk and that a period of detention would be likely to cause harm.' All four of those individuals assigned AAR Level 3 were detained for over 3 months past their grant of bail in principle, one of them 5 months, revealing a total failure of the mechanism.

Medical Justice, an NGO that sends independent doctors into IRCs, also noted this protection failure in their 2024 Annual Review. [78]

""Medical Justice is concerned that the ongoing Home Office accommodation delays result in Rule 35 assessments not having any real impact in terms of routing particularly vulnerable people out of detention. If someone at Adult at Risk level 3 remains in detention due to accommodation delays and no additional actions are taken to swiftly address those delays, that renders the safeguarding function of Rule 35 meaningless. It does not appear that there is any process by which a Rule 35 report being completed for someone who already has bail leads to additional action being taken to resolve any barriers to release, even if the person is found to be highly vulnerable with an AAR level 3."

RECOMMENDATION:
Individuals assessed as likely to be harmed by detention due to their vulnerabilities should be released to a form of interim accommodation as a matter of urgency upon being granted bail, regardless of their eligibility for Home Office support. Granting and sourcing suitable accommodation can be undertaken from this interim accommodation.

Vulnerable people released to homelessness

Unreasonably long delays granting or sourcing post-detention accommodation also led to multiple people with vulnerabilities being released to homelessness or inappropriate accommodation, after judges became frustrated and lifted or changed individuals' residence conditions.

Five individuals in this study were released to homelessness, all of whom had known vulnerabilities. Mr J was assessed by IRC Welfare staff as not fit to be released without support, yet the delay in sourcing accommodation led to the judge removing the residence condition and the individual was released to an unknown destination without sufficient liaison with Welfare and the organisations (BID, Gatwick Detainee Welfare Group and Medical Justice) who were supporting him, and without a care plan. Mr M was released to homelessness as the Home Office's four-month delay deciding the grant of s4 was deemed too long by the judge. This individual had various vulnerabilities related to mental health, had been assessed as an Adult at Risk Level 2 and was in the process of being assessed as a victim of trafficking under the National Referral Mechanism. After being released to homelessness, he was hospitalised for a short period, evidencing his vulnerability, and it took a further three months for him to be allocated s.4 accommodation. The delay was worsened by the individual being homeless, as it became difficult to maintain communication and respond to RFIs from FNORCAT.

Mr Q was released to homelessness despite serious physical vulnerabilities relating to cardiac health, and having missed multiple hospital appointments because of detention. His release was during winter, resulting in him sleeping in the cold outside. Mr W was released to homelessness despite being suicidal, resulting in him sleeping at a train station. He also went to the Probation Service once released but it said it could not help as he did not have Recourse to Public Funds.

Poor risk management due to inappropriate (or lack of) accommodation

Appropriate support post-detention is of vital importance, both for the safety and well-being of individuals but also for the purposes of rehabilitation and community well-being. From a risk management perspective, it is highly concerning that accommodation delays are such as to leave judges with no other option than releasing high-risk individuals to homelessness. It is vital that such individuals are placed in support accommodation to mitigate the risks they may pose to themselves and others, enable Probation Service supervision, as well as to maximise the chance of rehabilitation and adhering to their licence and bail conditions.

Mr Q was assessed as posing a serious risk of public harm but was released to homelessness after a four-month delay deciding his s.4 application (see above). Although he was later granted s.4 accommodation, confirming that he was indeed eligible, the Home Office's delay in decision-making resulted in him being street homeless for three months.

Mr U was released to homelessness after six bail reviews, in which time the Home Office made no progress finding accommodation for him. While he was homeless, he was at risk of breaching other conditions such as electronic monitoring as he was unable to find a regular way to charge his electronic monitoring device.

Some individuals are also released to inappropriate or emergency housing as a result of delays, despite being assessed as high risk, which are not equipped to support their rehabilitation sufficiently. For example, Mr V had his residence condition lifted after his s.4 application was not progressed for four months despite being assessed as high risk of harm to the public. Although his Probation Officer had previously said the Probation Service would not source Approved Premises for him, he was then placed into an emergency Approved Premises hostel. As this happened within a very short timeframe, it is unlikely a sufficient plan was in place to support the individual and he was shortly recalled to prison for breaching his licence conditions, demonstrating the negative impact accommodation delays can have on risk management.

Conclusion & Recommendations

This report sheds light on a wide range of issues with the post-detention accommodation system, each of which invite further investigation, attention and inquiry. The ultimate outcome of these (often mutually exacerbating) issues is deeply concerning: individuals are being stripped of their fundamental right to liberty for an unjustifiable and unlawful purpose.

BID believes immigration detention is inhumane, unnecessary and unjust. We campaign for an end to the deprivation of individuals' liberty for the purposes of immigration control.

However, while immigration detention continues to exist, it must not be used for the sole purpose of accommodation where someone has already been granted bail.

Recommendations to that end have been made throughout this report, corresponding with the relevant findings. These recommendations are directed at the Home Office, the Ministry of Justice and the Probation Service. They are summarised in a list below for reference.

DELAYS DUE TO HOME OFFICE (IN)ACTION AND POLICY

1. The Home Office should introduce a monitoring mechanism to ensure accountability for the progression of accommodation matters for people in detention who are granted conditional bail, and monitoring data should be made publicly available.

2. The Home Office should set target timeframes for accommodation support decisions, with escalation steps if those targets are not met. Suggested targets:

    - Accommodation decisions should be made within 7 days (from the point of the Home Office receiving an application from Migrant Help).

    - Addresses must be sourced by accommodation contractors within a reasonable period (we suggest 7 days), with Probation Service checks completed within ten working days of receiving an address as per current policy. If an address is refused by the Probation Service, the reasons for this should be explained in writing and another address sourced within a reasonable timeframe.

3. The Home Office should simplify the accommodation support application process to enable individuals to make a single accommodation application. It would then be for the Home Office to determine which kind of support the individual is eligible for on the basis of that application instead of requiring multiple separate applications which result in unnecessary administrative burden and delays.

4. All Home Office caseworkers should be given regular, detailed training on post-detention accommodation, with proof of completion.

5. The Home Office's case management system should be improved to facilitate smooth information-sharing across different teams.

6. The policy enabling FNOs to set out their need for sch.10 support within their bail application should be followed, or it should be changed to prevent further inconsistency.

7. Provisions for post-detention Home Office accommodation support should be simplified to minimise errors and further deprivation of liberty resulting from the wrong accommodation applications being submitted. If someone will likely be destitute upon release from detention, the Home Office should have a duty to provide accommodation.

    - In the interim, if the Home Office finds that the wrong application has been made, they should use the applicable information from the application to grant the correct form of support instead of re-directing an individual to make a new application.

8. Migrant Help is contracted to enable people to access Home Office support, a role which BID and other visiting groups currently fulfil. The Home Office should introduce transparent monitoring mechanisms to ensure that Migrant Help is meeting its contractual expectations, as well as improving case management and coordination within Migrant Help.

9. The Home Office should facilitate better coordination and information sharing between Migrant Help and the relevant Home Office teams.

10. There are multiple reasons that people in detention will struggle to meet the high evidentiary threshold for proving destitution. The threshold of evidence required to meet the destitution criteria for Home Office accommodation support should be lowered.

11. The criteria for s.4 support are too restrictive, particularly for people with complex immigration histories and identification documentation issues. The criteria should be applied more flexibly, or they should be changed.

12. People are falling through the cracks in accommodation support entitlement. Anyone who would be left destitute post-detention should be entitled to Home Office support, as they had previously been under the now repealed s.4(1)(c) provisions. These provisions were replaced by sch.10 accommodation under the Immigration Act 2016.

13. If an individual is granted Secretary of State bail with a residence condition and will be destitute, they should be provided with Home Office accommodation automatically.

14. Appeals should be introduced for sch.10 accommodation refusals.

15. If there is uncertainty regarding a detained individual's immigration status and their related access to public funds, the Home Office should grant accommodation according to their status at the point of application. The power under which they are granted accommodation can then be internally updated if the individual's status changes.

16. The Home Office should provide clear and consistent contact details for an individual's Home Office caseworker on their Monthly Progress Reports, to make it easier to ascertain details and documents relating to an individual's immigration status.

17. There should be increased transparency regarding contractual expectations and standards for accommodation providers, for each category of Home Office accommodation.

18. Home Office policy should be updated to provide expected timeframes for addresses to be provided, with actionable consequences when timeframes are not met. Suggested timeframe:
    - Addresses must be sourced by accommodation contractors within 7 days, with Probation Service checks completed within ten working days of receiving an address as per current policy.[79] If an address is refused by the Probation Service, reasons must be given and another address must be sourced within 7 days.

DELAYS INVOLVING THE PROBATION SERVICE

19. Bail grants conditional on an address approved by probation have become the default, not the exception. However, these types of grants of bail should be the exception, not the default, as per the bail guidance for judges.[80] There should be an explicit definition set out to clarify what the 'exceptional circumstances' are in which judges should make grants of bail conditional on probation address approval.

20. Prior to address sourcing beginning, the Probation Service should set out a list of requirements for an address to satisfy licence conditions. The Home Office should share this with accommodation providers, who must only propose potential addresses which fulfil these requirements.

21. Training should be introduced for Probation Service staff on FNO entitlements and rights, highlighting policies that FNOs are to be treated in the same way as British nationals and that detention is not appropriate for the purposes of accommodation.

22. An inquiry should be commissioned into how Probation Service address approvals and release plans are progressed for British nationals in comparison with FNOs.

23. The Probation Service should retain responsibility for progressing release plans while individuals are on licence, even where they have been authorised for detention under immigration powers. It should continue to liaise with the Home Office on the assumption that the individual will be released, instead of the assumption that they will remain detained or be deported. This is especially important if the release plan involves Probation Service accommodation.

24. FNO entitlement to Approved Premises should be clarified to Probation Service staff through training to avoid confusion and prolonged detention. The Probation Service should not reject AP referrals due to individuals having No Recourse to Public Funds, as individuals can apply for Home Office accommodation once they are released to Approved Premises.

25. The Probation Service should source Approved Premises for eligible foreign national individuals in time for their CRDs, as is standard procedure for eligible British National Offenders (BNOs).

26. Individuals should be able to have bail hearings scheduled upon their CRD. This entitlement has been confirmed to BID by the FTT President, but a system should be in place to ensure this is applied in all cases, especially where Approved Premises are being sourced.

27. The Home Office should make a detailed assessment of the prospect of removal and therefore lawfulness of detention prior to issuing IS91s, as this leads to the loss of Approved Premises placements which is both a waste of public money and prolongs the detention of individuals.

ADDITIONAL RECOMMENDATIONS

28. Judges should not refuse bail upon review based on the Home Office's failure to progress the sourcing of accommodation, where the only bail condition is residence.

29. Support for all accommodation matters – including appeals at the asylum support tribunal – should be brought into scope for legal aid, as bail is not effective without access to appropriate post-detention accommodation. The low capacity within the legal aid sector should be addressed by fee uplifts and investment into training for immigration and public lawyers.

30. Access to legally aided legal advice and representation should be ensured for all individuals from the point that their detention is authorised by the Home Office, whether they are in prison or an Immigration Removal Centre.

31. Individuals assessed as likely to be harmed by detention due to their vulnerabilities should be released to a form of interim accommodation as a matter of urgency upon being granted bail, regardless of their eligibility for Home Office support. Granting and sourcing suitable accommodation can be undertaken from this interim accommodation.

32. To prevent similar judgments as in Bounar, the schedule 10 policy should be amended in line with policy guidance, to clarify that 'a specified address' in a bail condition can mean an address yet to be specified.

END NOTES

1. Home Office, Detention General Instructions, v6.0, 1st December 2025
2. According to the Hardial Singh principles, R v Governor of Durham Prison ex parte Hardial Singh [1984] 1 WLR 704
3. Ministry of Justice, Guidance on Immigration Bail for Judges of the First-tier Tribunal, 2024
4. IMB, National Annual Report 2024 - Adult prisons, young offender institutions and immigration detention, June 2025
5. https://www.gov.uk/government/news/asylum-handouts-and-accommodation-removed-for-illegal migrants-abusing-britains-generosity
6. These powers are largely contained within Schedule 2 and 3 of the Immigration Act 1971.
7. R v Governor of Durham Prison ex parte Hardial Singh [1984] 1 WLR 704
8. Lumba [2011] UKSC 12; [2012] 1 AC 245 at [22]
9. R. (Khadir) v SSIHD [2005] UKHL 39 (Lord Brown summarising at [32] the effect of the post-Hardial Singh line of authorities.)
10. J.N. v. The United Kingdom (Application no. 37289/12) 19/5/2016 at [30]
11. Immigration Act 2016, Schedule 10, para. 1
12. Home Office, Detention: General Instructions, v6.0 (January 2026)
13. Ibid.
14. Ministry of Justice, Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber), 2024
15. Immigration Act 2016, Schedule 10, para 3(8)
16. Home Office, Immigration Bail, v22.0, June 2025, p.79
17. MAS v Secretary of State for the Home Department: AS/05/05/9315. See also Annex A for an example s.95 refusal letter stating this reasoning.
18. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016 v1.0, 2025
19. HMPPS, Address Checks (Post Custody) Policy Framework, 1st August 2024
20. see for example Home Office, Immigration bail – interim guidance, v 4.0, 16th August 2024, p12
21. Note - this longer turnaround time for HMPPS address checks was in place at the time of many of the cases analysed in this report.
22. Immigration and Asylum Act 1999
23. National Audit Office, The Home Office's asylum accommodation contracts, May 2025
24. Immigration and Asylum Act 1999
25. Ibid.
26. Note that EU nationals are not deemed eligible unless their asylum claim has been found to be admissible for exceptional circumstances – see Home Office, Asylum Support Applications from European Union Nationals or People with Refugee Status Abroad, v1.0, 18th December 2020
27. Home Office, Assessing destitution v5.0, 30th August 2023
28. Immigration and Asylum Act 1999
29. The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005
30. Asylum Support, section 4(2): policy and process
31. R (Limbuela) v Secretary of State [2005] UKHL 66
32. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016 v1.0, 2025
33. HP & MA v SSHD (AC-2023-LON-003800 & 003809)
34. Home Office, Immigration Bail – interim guidance v4.0, 16th August 2024

35. Court Order following HP & MA v SSHD

36. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016 v1.0, January 2025

37. Note - individuals awaiting a s.4 decision are only entitled to s.98 up until 21 days after an asylum refusal decision.

38. Note – for many of the cases assessed in this report, the interim policy guidance brought in from August 2024 did not apply.

39. Immigration Act 2016, schedule 10 para.9

40. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016 v1.0, January 2025

41. Ibid.

42. R (TY) v Secretary of State for the Home Department (AC-2024-LON-003145)

43. See BID, No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation, September 2014

44. https://gardencourtchambers.co.uk/home-office-publishes-additional-guidance-on-how-to-access schedule-10-accommodation/

45. Home Office, Immigration bail, 2024

46. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016 v1.0, January 2025

47. Bounar v Secretary of State for the Home Department [2024] NICA 83

48. Humnyntskyi v Secretary of State for the Home Department [2020] EWHC 1912 Admin

49. Accommodation under Schedule 10 of the Immigration Act 2016, p.10

50. ibid.

51. HMPPS, CAS1 – Approved Premises Policy Framework, 25th September 2015

52. Probation Service FNO Manual, HMPPS, acquired via FOI

53. Ministry of Justice, Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber), 2024

54. Asylum support application: help and guidance, https://www.gov.uk/government/publications/application-for-asylum-support-form-asf1/asylum support-application-help-and-guidance

55. IMB, National Annual Report 2024 - Adult prisons, young offender institutions and immigration detention, June 2025

56. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016, v1.0, 2025; Ministry of Justice, Foreign National Offenders on Licence, PSS and IS91 Policy Framework, 2024

57. See for example Humnyntskyi v SSHD [2020] EWHC 1912 Admin; https://gardencourtchambers.co.uk/home-office-publishes-additional-guidance-on-how-to-access-schedule-10-accommodation/

58. https://corporatewatch.org/migrant-no-help-the-home-offices-charity-gatekeeper/

59. Advice, Issue Reporting and Eligibility Support, Schedule 2, Statement of Requirements, accessed at https://data.parliament.uk/DepositedPapers/Files/DEP2018-1112/AIRE_Contract-Schedule_2-SoR__HOC_Published.pdf

60. see Annex A

61. see Judge Wilkin, Statement of Reasons at Asylum Support Tribunal, AS/20/08/42320P: "it does not follow that an individual acting as surety is also in a position to provide the same amount to meet an individual's living costs; a surety stands-up a sum on the risk that it may be lost if that individual does not comply with the conditions of their bail; this does not mean the surety is able, in addition, to hand that sum to the individual to meet their living needs; in particular, they may not be able to do so because that sum needs to be kept aside to be surrendered if the individual fails to comply with their conditions of bail." (Note – this is non-binding).

62. Humnyntskyi v SSHD [2020] EWHC 1912 Admin

63. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016, v1.0, 2025

64. Asylum Accommodation and Support Contract Requirements Statement, Annex A. Accessed at https://data.parliament.uk/DepositedPapers/Files/DEP2018-1112/AASC_-_Schedule_2__Statement_of_Requirements.pdf

65. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016, v1.0, pg 14 https://assets.publishing.service.gov.uk/media/679a0d01a77d250007d313f0/Accommodation+under+Schedule+10+to+the+Immigration+Act+2016.pdf

66. Sathanantham & Ors, R (on the application of) v The Secretary of State for the Home Department & Anor [2016] EWHC 1781 (Admin)

67. Guidance on Immigration Bail for Judges of the First Tier Tribunal Immigration and Asylum Chamber, accessed at https://www.judiciary.uk/guidance-and-resources/guidance-on-immigration-bail-for judges-of-the-first-tier-tribunal-immigration-and-asylum-chamber/ para 68-70

68. Ibid.

69. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016, v1.0, 2025; HMPPS, Address Checks (Post Custody) Policy Framework, 1st August 2024. Note that for many of the cases studied here, the longer 9-week timeframe was in place – see footnote 18.

70. Lumba (WL) v Secretary of State for the Home Department [2011] UKSC 12, at [144]

71. BID, No Place to Go, 2014 https://hubble-live assets.s3.amazonaws.com/biduk/redactor2_assets/files/155/No_Place_to_Go_Section_4_Delay_Report.pdf

72. In the years 2023, 2024 and 2025, over 50% of all individuals leaving detention were granted bail. See Home Office, Immigration System Statistics, Detention Summary Tables, year ending December 2025

73. Ministry of Justice, Prison Service Instruction - Immigration and repatriation and removal service - PSI 52/2011, 2011, para 1.1

74. email from individual's Probation Officer

75. ICIBI, Second annual inspection of 'Adults at risk in immigration detention', October 2021, p.107

76. Home Office, Adults at risk in immigration detention, May 2024

77. Ibid.

78. Medical Justice, Medical Justice Annual Review: The state of healthcare and harm in UK immigration detention in 2024, July 2025

79. Home Office, Accommodation under Schedule 10 to the Immigration Act 2016, v1.0, pg 14 https://assets.publishing.service.gov.uk/media/679a0d01a77d250007d313f0/Accommodation+under+Schedule+10+to+the+Immigration+Act+2016.pdf

80. Ibid.

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