

Bail for Immigration Detainee's submission to the APPG on Refugees and APPG on Migration's parliamentary inquiry into the use of immigration detention in the UK

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Bail for Immigration Detainees is a charity that provides legal advice and representation to asylum seekers and migrants held in immigration detention to secure their release.

Contact: Dr Adeline Trude, Research and Policy Manager, adeline@biduk.org

Introduction

1. This submission sets out BID's concerns about the inadequate provision of immigration legal advice to immigration detainees throughout the period of their detention, on both the fact of their detention and their substantive immigration case.

Access to immigration legal advice in IRCs

Immigration advice in detention: how does it work?

2. The use of immigration detention - the deprivation of liberty for administrative purposes - now forms a key plank of immigration enforcement policies of successive UK governments. But the use of immigration detention in the UK without any upper time limit, has never been accompanied by the provision of adequate immigration legal advice for all detainees throughout the period of their detention.
3. Publicly funded immigration legal advice is made available to detainees held in IRCs via on-site surgeries sometime referred to as the Detention Duty Advice scheme (DDA)¹. A number of firms holding immigration and asylum legal aid contracts with the Legal Aid Agency hold additional and exclusive² contracts to provide publicly funded immigration advice in IRCs, subject to the statutory means and merits test. Detainees who can afford to pay for immigration legal advice can instruct any firm they choose to outside the legal aid system.

¹ There is no equivalent provision by the Legal Aid Agency for the hundreds of immigration detainees held in the prison estate at any one time.

² These exclusive contracts have the effect of barring any other immigration and asylum legal aid contract holders from taking instructions from immigration detainees held in IRCs unless they have carried out more than 5 hours work for that individual prior to their being detained. Current exclusive contract holders are Duncan Lewis & Co, Lawrence Lupin Solicitors, Howe & Co, Turpin and Miller Solicitors, Wilson and Co, Fadiga & Co, Halliday Reeves, Thompson & Co, Parker Rhodes Solicitors, Community Law Clinic Solicitors (CLC) until April 2013, and Chartwell & Sadlers Solicitors until April 2013.

4. The DDA scheme is funded by the Legal Aid Agency, and organised independently in each IRC by the centre management. Between three and five provider firms operate the surgeries in each IRC on a rota system. The frequency and capacity of these surgeries is a matter for the LAA and IRC centre management. The Home Office currently has no responsibility for these general advice surgeries, but it does appoint legal representatives to detainees held in the Detained Fast Track.
5. Appointments are made by signing up at the IRC library. Access to an emergency or out of hours legal advice services (for example if Removal Directions are served), may be via welfare officers. Each IRC has slightly different arrangements for access to provider firms, and not all IRCs have out-of-hours legal advice cover. Some detainees or their family or detention centre visitor will contact exclusive contractor firms directly.
6. Detainees are allocated a 30-minute appointment, during which time the duty legal advisor must assess the merit of their case and their financial means, through an interpreter if necessary. Generally, detainees will then be advised at some point after that short meeting if the provider firm will “take on their case”.³
7. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) introduced a new round of cuts to immigration legal aid, removing from scope all general immigration work, including preparing and presenting claims to the Home Office, and appeals including deportation appeals. In 2014, only asylum and asylum appeals, immigration bail, detention-related matters, and certain immigration Judicial Review work remains within scope of legal aid.
8. Quality assurance by the Legal Aid Agency of immigration advice given in IRCs appears to be non-existent, and there is little attempt to examine the delivery of immigration legal advice from the perspective of detainees. In 2012 BID wrote to the then-Legal Services Commission to seek disclosure of

“The results of any and all client satisfaction surveys carried out in respect of detention centre work by [provider name] at any time during 2010, 2011 and 2012 to date.”

9. The Legal Services Commission replied:

“...Having considered the nature of the information you have requested and liaised with the Contract Management Team who deal directly with our service providers it has been established that the Legal Services Commission (LSC) does not directly hold the information you have requested. This is because the client satisfaction surveys to which you refer have not been the focus of recent LSC audit activity and this would be the purpose of any such information being obtained from providers.”

³ The Legal Aid Agency ‘2010 Standard Civil Contract – Specification, Section 8 Immigration Specification’ says at 8.123 “The purpose of the advice session is to ascertain the basic facts of the Matter and to make a decision as to whether the Matter requires further investigation or whether further action can be taken.” Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308928/LAA-2010-section-8-immigration.pdf

BID's detainee surveys on access to legal advice in detention

10. Since November 2010 BID has been asking detainees held in the UK to tell us about their experiences of seeking immigration legal advice during their time in detention. Since then we have carried out eight surveys⁴, one every six months, across the IRC estate, a total of 1026 separate interviews.⁵ Summary findings from the eight IRC surveys can be found at Annex B of this submission.⁶
11. BID's quantitative survey findings should not be taken as representative of the position of the detained population as a whole across the IRC estate, but only of BID's client group at the time of the survey. We do however make greater claims for the qualitative findings of the survey, and believe they represent the view of detainees on seeking and receiving immigration advice in the IRC estate.
12. BID's survey consists of a set of core questions intended to be quick and easy to ask and answer, followed by an opportunity for those detainees who wish to do so to speak more freely and in more detail about their experiences of seeking and receiving immigration legal advice in detention. These narrative comments reflect the concerns and experiences of detainees themselves rather than the categories of enquiry and issues of concern to those on the outside looking in who need to understand the provision of immigration advice in the context of their brief to provide advice, fund advice, support detainees, inspect the conditions of their detention, or indeed to enforce the removal from the UK of people held in immigration detention.

SURVEY FINDINGS

13. It is tempting to focus on headline statistics on the proportion of detainees who have an immigration legal advisor, though perhaps surprisingly neither the Home Office nor the Legal Aid Agency currently collect or publish data on the proportion of immigration detainees in IRCs or the prison estate who have an immigration advisor. We indicate below what these levels may be on the basis of data from HM Inspectorate of Prisons and from BID's own survey findings.
14. Growing numbers of detainees we speak to for these surveys do not know whether or not they are represented, as they are waiting to hear back after an initial appointment with a legal aid provider firm. Legal representatives for some detainees will only prepare a bail application if their client is able to offer a surety despite this not being mandatory, leaving them effectively unrepresented for bail and their ongoing detention. Some detainees are paying for immigration advice on their substantive case but cannot afford to pay for bail applications in addition to, for example, a deportation appeal.
15. It is important to note that over the course of time spent in detention, especially where detention extends beyond a couple of months, detainees' experiences may change, perhaps eventually finding a legal aid lawyer who will assist them after several months of trying to find one, or because their material circumstances have changed after further

⁴ November 2010, May 2011, November 2011, May 2012, November 2012, May 2013, November 2013, and May 2014.

⁵ Some detainees have been spoken to more than once if they have been detained for more than 6 months.

⁶ In May 2013 the high numbers of detainees being held in the prison estate prompted BID to begin running the same survey by post with detainees held in the prison estate and we have now completed three surveys on access to immigration advice for detainees held in the prison estate.

time spent in detention (which changes the result of a legal aid merits assessment), or because their family have scraped together enough money to pay for advice on one but not all aspects of their immigration case. Others detainees may have been taken on by a public law firm who can challenge their ongoing detention but which has no immigration & asylum legal aid contract, and so they may remain unrepresented for bail and any substantive immigration case.

Four key barriers to accessing immigration legal advice in detention

16. In this submission we focus on four barriers to immigration legal advice that we believe have the greatest potential to affect the ability of immigration detainees to progress their case and access the safeguards against unlawful detention offered by the courts and immigration tribunal. All but one of these barriers are a function of current contractual arrangements and funding levels of legal aid in the UK.

- Substantial delays in getting an appointment at IRC legal advice surgeries
- Poor communication by providers leaving detainees unaware whether they have a legal advisor
- Longer-term detainees left without ongoing legal advice on the fact of their detention
- The effect of transfers around the IRC estate on the ability to retain a legal advisor

Proportion of IRC detainees who have an immigration advisor has fallen since LASPO cuts

17. The only data published by any government department or agency on rates of legal representation among detainees comes from HM Inspectorate of Prisons (HMIP). During IRC inspections HMIP carries out a survey to determine how many detainees are receiving immigration legal advice. Taking Colnbrook IRC as an example, in 2007⁷ 57% of detainees interviewed by HMIP said they had a legal advisor (50% of these legal aid); in 2008⁸ “just over half” with 38% deemed eligible for legal aid; by 2010⁹ 61% of detainees interviewed by HMIP had a legal advisor (38% legal aid), and in 2013¹⁰ 62% of detainees in Colnbrook had a legal advisor (44% legal aid). In its 2010 inspection report on Colnbrook, HMIP repeated a recommendation made in its previous inspection report:

“3.1 The centre should undertake a legal services needs assessment and report the outcome to the Legal Services Commission. (3.7) Not achieved. We could find no evidence that a legal services needs assessment had been conducted. In our survey, fewer detainees than at comparator centres (61% versus 67%) said that they had a legal representative. In the short-term holding facility (STHF), only 52% of detainees reported having a legal representative. We repeat the recommendation” (HMIP, 2010: 29)

⁷ Report on an unannounced full follow-up inspection of Colnbrook Immigration Removal Centre 18–22 June 2007 by HM Chief Inspector of Prisons (page 17). Available at http://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/05/2007-Colnbrook_IRC.pdf

⁸ Report on a full announced inspection of Colnbrook Immigration Removal Centre 17–21 November 2008 by HM Chief Inspector of Prisons. Available at <http://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/05/Colnbrook-2008.pdf>

⁹ Report on an unannounced full follow-up inspection of Colnbrook Immigration Removal Centre 16–27 August 2010 by HM Chief Inspector of Prisons. Available at http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/Colnbrook_2010_rps.pdf

¹⁰ Report on an unannounced inspection of Colnbrook Immigration Removal Centre 28 January – 8 February 2013 by HM Chief Inspector of Prisons. Available at <http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/colnbrook-irc-2013.pdf>

18. And for Brook House IRC, HMIP inspection reports show that 60% of detainees interviewed for the inspection for which the report was published in 2010 said they had a legal advisor (39% legal aid); in 2011 that proportion was 67% (32% legal aid), and by 2013 61% stated that they had a legal advisor (31% legal aid).

19. The description by HMIP of the role of legal advice provision in the safety of the removal centre in the 2013 report is striking:

“... there was considerable frustration among detainees, which was reflected in high levels of self-harm. A significant impediment to the well-being of detainees was their inability to get information on or help with their immigration cases. This was a result of long waits for legal advice and an overwhelmed on-site Home Office contact management team” (HMIP, 2013: 5)¹¹

“In our survey, fewer detainees than in other centres said that they had a lawyer or that they received a visit from their lawyer. The legal advice surgeries were unable to meet demand, and some detainees were unable to seek legal advice before they were removed.” (HMIP, 2013: 14)

20. BID’s survey findings show that across the IRC estate the proportion of those interviewed for the survey who told BID that they have a legal advisor grew steadily from 51% in November 2010 to 79% in November 2012, before dropping to 43% in May 2013 (immediately after the introduction of LASPO cuts to legal aid), with a small rise subsequently to 55%. Since November 2010 the overall trend in the level of detainees interviewed who have a legal representative is downwards.

Proportion of detainees with publicly funded immigration advisor has fallen since LASPO

21. Prior to the devastating reduction in scope of public funding for legal advice introduced via LASPO which came into force in April 2013, between 68% and 75% of respondents to BID’s survey who had an immigration advisor were in receipt of legal aid.

22. Detainees who were instructing a legal aid solicitor in April 2013 could expect to continue with that solicitor even if some or all aspects of their substantive case were no longer within scope, so long as they continued to pass the statutory means and merits test which must be applied periodically by provider firms. But given the rapid population turnover in IRCs, we expected the proportion of survey respondents getting publicly funded immigration advice to drop immediately after April 2013. Provider firms would have to turn away detainees presenting with immigration matters now out of scope of legal aid, and by no means all those people would be able to marshal the funds to pay for advice, or sufficient funds to deal with a deportation appeal or other legal matter.

23. Since April 2013 the proportion of survey respondents held in IRCs with a legal advisor and who are in receipt of legal aid has dropped. In November 2013 just 52% of detainees interviewed for BID’s survey who had a legal advisor were in receipt of legal

¹¹ Report on an unannounced inspection of Brook House Immigration Removal Centre by HM Chief Inspector of Prisons. Available at <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/brook-house-2013.pdf>

aid, while in May 2014 the proportion was 54%. Both of these are the lowest rates of publicly funded legal representation since BID began these surveys.

Private clients: often insufficient means to pay for enough immigration advice to be effective

24. Some detainees are clearly able to find and pay for immigration legal advice quickly after being detained, but others who are either unaware of legal aid, or who have at some point failed the statutory means test for legal aid advice, must pay for immigration advice. Survey responses suggest that an obvious but fairly brutal equation is clearly at play: the less money you can muster the less immigration advice can be purchased, with obvious implications for outcomes.
25. Disbursements (e.g. expert reports for an appeal against deportation) may be unaffordable, which then handicaps the instructed legal advisor, rendering the advice and representation given partial at best, less than effective, less likely to fully resolve any legal matter, and generally unsatisfactory for all parties. Survey responses suggest that this latter group may have only very limited funds or only be able to amass funds via their family to pay a solicitor periodically to do work (for example a bail application).

“It was hard to get a solicitor, and... I had to settle for a private solicitor rather than a solicitor using legal aid. As a result of this I cannot afford a second bail application”.

“I ran out of money, I had £700”

“My husband [also detained] has a private lawyer but I don't know if he's helping me as well because we don't have enough money. I don't understand. We know about free advice but [provider firm] said they'll call us back and never did. The free lawyers have given up on us, and no legal aid seems to remain for us.”

“I had a private solicitor briefly, but he asked for 500, then 1000, then 1500 for more work. Who can afford that? The system of getting a lawyer to talk to you after initial 30 minute session is very very slow - barely ever give you updates and information and then tell you there is no hope”.

26. Another notable finding of recent (post-LASPO) surveys has been the number of detainees who state very clearly at an early point in a survey interview that they are represented by a private solicitor but who – it transpires later on in the interview - can no longer afford to pay the solicitor to do work on their case. This has the effect of rendering them, in effect, unadvised and unrepresented. It is of concern that such detainees remain of the belief that they have a lawyer despite being unable to continue to instruct their lawyer in the absence of funds. Such detainees may in fact be eligible for legal aid.
27. A refusal of legal aid in the past does not of itself imply that a detainee will be refused again on an application of the means and merits tests, but we suspect this point is not universally understood by detainees. IRC staff acting as gatekeepers for legal surgery appointments may be cultivating such thinking by refusing appointments to detainees who have already had an appointment, or who have had a legal representative in the past (see below).

Awareness of free legal advice surgeries in immigration removal centres

28. The level of awareness of the free legal advice surgeries among detainees BID interviewed was unacceptably low when we first started asking detainees in November 2010 (53% of interviewees). After this was brought to the attention of the then-Legal Services Commission and some IRCs the rate of awareness began to rise and has stayed relatively high ever since at around 90% of the detainees we interview for our surveys.
29. However, survey responses suggest that despite high overall awareness, understandable gaps in awareness persist, and education and information for detainees on access to free legal advice in IRCs must continue to be prioritised in all IRCs in such a way that will engage new and newly arrived detainees but also longer term detainees and those who have been transferred from another IRC.

“In Harmondsworth I was aware of the [legal surgery], but later in Dover I was not aware and was not told”.

“I was not aware of free legal advice in detention until informed by BID during this [interview]. My previous solicitor was private, and applied for bail for me but did not do my asylum claim due to a lack of funds”.

“Nobody told me about the free legal advice clinic at Brook House. Here they don’t explain anything to you. Things were better at Morton Hall. I knew of the free legal advice clinic but I did not use it”.

30. Detainees told us variously that they were unaware of the possibility of free legal advice, unaware of the surgeries in their centre, or unaware that legal aid is free advice. Detainees who had been transferred between IRCs told BID that while surgeries operated in their former IRC they had no idea they also operated in the next IRC, or that while they were generally informed about the legal surgeries on arrival post-transfer some assumed the surgeries were for newly detained people only.

Waiting times are too long for a legal surgery appointment

31. Waiting times for detainees to meet with a solicitor are too long, and despite the incremental addition of additional surgery slots in many of the removal centres by the Legal Aid Agency and provider firms, too many detainees still report having to wait for more than one week to see a solicitor in the legal advice surgery.
32. When asked “how long did you have to wait to get an appointment?”, in May 2014 60% of the detainees BID spoke to had waited more than one week, and of these respondents 26% had waited two weeks or two weeks to date (i.e. they were still waiting when we spoke to them), while 13% had waited three weeks or three weeks to date to see a solicitor. In BID’s IRC surveys the trend has been towards a gradual increase in the number of people waiting for a legal surgery appointment for over one week. In May 2011 when we first asked this question only 32% of respondents had waited more than one week for an appointment.

Delay in getting DDA appointment	Survey 2 May 2011	Survey 3 Nov 2011	Survey 4 May 2012	Survey 5 Nov 2012	Survey 6 May 2013	Survey 7 Nov 2013	Survey 8 May 2014
Respondents who waited more than one week for a DDA appointment (all delay periods)	32%	29%	47%	61%	69%	62%	60%
Of these, % delayed 2 weeks or 2 weeks to date	11%	12%	20%	31%	38%	30%	26%
% delayed 3 weeks or 3 weeks to date	10%	4%	15%	19%	21%	10%	13%
% delayed 4 weeks or 4 weeks to date	6%	8%	8%	8%	8%	3%	3%
% delayed more than 4 weeks	4%	5%	4%	5%	2%	2%	1%

33. *Recommendation: Detainees should not have to wait for more than one week from the date they make an appointment for the legal advice surgery in their IRC before they see a solicitor. Surgery capacity should be increased until waiting times decrease to an acceptable level.*

IRC staff reported to be preventing detainees from getting appointments at legal advice surgeries

34. In addition to delays in getting an appointment to see a solicitor, detainees tell us that they are sometimes prevented from having an appointment at all by welfare or library staff at the IRC. Some IRC staff are reported to be triaging the need for immigration legal advice in individual cases, making ill-informed and arbitrary decisions that could have life-changing consequences for individual detainees.

“I spoke to the welfare officer [at Colnbrook IRC] who looked at my case and said I can’t be helped by a legal aid lawyer as my case is not an asylum case”

“When ‘Jane’ put her name down to see a solicitor [at Yarl’s Wood IRC] the officer in charge of arranging the meetings did not arrange one for her as he did not feel she was eligible due to the advice she had previously been receiving from Wilson & Co.”

35. In other cases, IRC staff are preventing detainees from having legal surgery appointments because they had already had a legal surgery appointment on an earlier date.

36. This can never be acceptable. Library staff, welfare officers and other staff employed by the IRC management company should not question detainees about their immigration case and should never filter or triage requests for an appointment for the legal surgery. Only solicitors and relevant staff from provider firms attending the legal advice surgeries can determine whether the presenting detainee i) has an immigration or detention matter requiring advice and ii) apply the legal aid means and merits test to the specific case and individual. The surgery list on the day of the surgery should be managed by the provider firm on the rota, and capacity issues and waiting lists are a matter between the Legal Aid Agency and provider firms in the first instance.

37. *Recommendation: The Legal Aid Agency and the Home Office should jointly review contractual arrangements and guidance for IRC contractors which relate to the provision of legal advice and the role of custody officers and other centre staff in the booking and management arrangements for legal advice surgeries. Preventing a detainee from making a legal surgery appointment should be a disciplinary offence.*
38. *Recommendation: The Legal Aid Agency should cooperate with contracted advice providers to monitor appointment numbers and waiting list numbers. LAA contract managers responsible for IR surgeries should visit IRCs on at least an annual basis to observe practical arrangements in action.*

Poor communication by legal providers leaves detainees in limbo

39. A notable feature of more recent BID surveys on access to legal advice in IRCs has been the proportion of respondents who have had a 30 minute appointment with a provider firm at the legal surgery in their IRC, but still do not know whether or not they have a lawyer. In May 2014, 19 % of those detainees we interviewed were still waiting for their initial appointment or, if they had already attended a DDA appointment were still uncertain whether they had been taken on as a client or not by the contracted advice provider, or were waiting to hear back. Nearly one in five detainees we interviewed in May 2014 was therefore in limbo.
40. Detainees increasingly describe how they never hear again from the firm they met in the legal surgery, or they don't hear back for weeks or months. When they do hear they are generally told their case will not be taken on. It may take so long to hear back from the firm they first saw that a detainee will approach a second or even third provider firm via the legal surgeries, only adding to the capacity and delay problems at surgeries. Detainees report that they have no contact details for and therefore no means of contacting the firm they saw in the surgery if they don't hear back from them.

"I had an appointment with a female lawyer from [provider firm]. She said my case looked good and she would return to visit me with an interpreter - but she never came back. I thought she had taken my case, and tried to contact her repeatedly, but got no response - no call, letter, nothing. It's been 6 months since I saw her. It's happened to me twice now, with two different lawyers".

"All my friends in here have the same problem as me. We meet the lawyers, they tell us not to worry, and then they never come back or even tell us if they've taken our case or not - and for a few months we are hopeful and think they have. They don't respond to our calls and we lose hope. I have no money, so I have nothing to do but wait" [translated from Urdu].

"I tried contacting legal aid solicitors; they never respond to tell me whether they will take my case or not. No money to pay privately, no family in this country with funds".

"I heard nothing from [provider firm] since agreeing to take on case. In the beginning it seemed easy, then I got [provider firm], they did nothing after signing despite numerous phone calls I heard nothing for 11 months".

“One visit to Dover by my solicitor to get the legal help form signed two months ago. No contact at all since then”.

“No contact since the appointment 4 weeks ago. It’s not easy to get help or feedback”.

“Solicitors who are allowed into detention centres never get back in touch”.

41. It is not clear, precisely because these respondents were in limbo and had no information themselves, whether this poor communication relates to detainees whose immigration matters have insufficient merit in legal aid terms, or whose matters are now out of scope of legal aid, or whether these detainees have been deemed to have sufficient means to be ineligible for legal aid, or indeed any combination of the three.
42. Provider firms overall are failing to notify detainees who they have met in IRC legal advice surgeries quickly enough, and possibly clearly and explicitly enough, that having been seen in the legal surgery in the centre their case – or certain matters – will not be taken on by the provider firm, and that they will not be “opening a file” or doing any work on that matter for that person.
43. We think that if a provider can’t “take on” a detainee, for whatever reason, they should commit to telling the detainee this in writing at the earliest opportunity and certainly no later than one week after a surgery appointment. A clear explanation for not taking on the case should be provided to the detainee, making explicit where the firm considers their case to lack merit, or fall outside the scope of legal aid (it may still have merit).
44. Detainees repeatedly report that having been refused legal aid by one provider firm at their IRC, they approach a second or third firm with an exclusive contract for that centre and are then told their case does in fact have merit. We are not in a position to know how common this type of differential application of the statutory legal aid merits test is across all categories of law, but while this is the situation for immigration detainees BID considers that early notification of refusal of legal aid with reasons is essential so that detainees can seek help from other providers.
45. Where the provider deems the detainee to have failed the means test it may be in both parties interest for this to be made explicit at an early stage, and the cost of the work if carried out privately by the provider to be laid out.
46. Consequences of this poor communication by provider firms include:
 - a) For the individual’s substantive case or the fact of their detention: waiting in limbo to hear back from a provider firm may stop detainees from pursuing other options, such as persuading family and friends to try to find some funds for at least a minimum of legal work (however unsatisfactory this is), attempting to mount an appeal themselves (equally unsatisfactory), or even approaching another provider at the legal advice surgery DDA (this may in any case be required if the provider they met at the surgery has reached full capacity at that time).
 - b) For the mental health of the detainee: Uncertainty may trigger or exacerbate anxiety or depression, and undermine resilience.
 - c) Potentially wasted public funds on extended detention where resolution of a substantive case or release could have been achieved at an earlier stage.

- d) Congested legal advice surgeries.

Transfers around the IRC estate affect ability to retain a legal advisor & may increase detention periods

47. Transfer between IRCs is the norm rather than the exception for anyone held in immigration detention for more than a few weeks. Transfer may be unavoidable in some circumstances, for example to facilitate court appearances, embassy interviews for travel documents, although the reasons for transfers around the IRC estate are not always apparent.
48. Even when a detainee has a legal representative, if the Home Office transfers them any significant distance within the IRC estate, and out of the contract area of their legal aid provider, then that solicitor must cease acting for the detainee.¹² Only a few bigger firms that also have a contract to deliver legal aid advice in the receiving IRC can pick that client up post-transfer, enabling the firm to continue to act for the detainee and the detainee to benefit from continued advice. Most detainees who are transferred by the Home Office will lose their legal advisor on transfer, and must start all over again to find a solicitor, which may take several weeks.
49. From our legal casework we know that the Home Office often transfers detainees repeatedly between IRCs, and our legal advice survey findings also reflect this Home Office practice. Of the respondents to our Survey 5 (November 2012) 14 people had been transferred once between IRCs, 5 people had been transferred twice, and 2 people had been transferred by the Home Office three times. In Survey 6 (May 2013), 18 detainees had been transferred between IRCs once, 8 transferred twice, and 4 people transferred three times.
50. Over all eight IRC surveys between 2010 and 2014, an average of 19% of those we spoke to had lost their legal representative at least once as a result of transfer by the Home Office from one IRC to another during their detention to date (range 6% in Survey 7 to 32% in Survey 2).

"[Firm A] and then [firm B] took me on as a client. New representatives each time as I moved from Dover, to Oakington¹³, then Campsfield."

"I had a solicitor in Glasgow, then they moved me to London, and I saw the free solicitor and she said she might take my case on but I never heard back from her".

"I've changed solicitor three times, never able to keep the same solicitor when I was transferred to a different IRC".

¹² The Legal Aid Agency '2010 Standard Civil Contract – Specification, Section 8 Immigration Specification' says at 8.48 Detained Cases "Where you are providing advice and representation under Paragraph 8.47 you should continue to act for the Client until either the Client formally ceases to give instructions, is released from detention, dispersed from the area or is removed from the country. You should continue to consider the need to advise the detained Client in relation to Bail applications" Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308928/LAA-2010-section-8-immigration.pdf

¹³ Oakington IRC is now closed.

“I have had to write my own Temporary Admission application [to the Home Office] as no one is helping me get released. In 6 months I went to 4 different IRCs”.

“Always I had an issue about this matter, finding a solicitor, because of moving”.

51. High rates of transfer and subsequent loss of legal advisor have been shown in the USA to extend the length of time spent in immigration detention.¹⁴ Where a solicitor has been instructed prior to a transfer but that relationship is severed by a transfer, detainees lose their best means of gaining access to the courts and the immigration tribunal, and of defending their rights or challenging their ongoing detention. Getting access again to free legal advice and a new legal representative (subject to the statutory means and merits test) may take weeks. The resulting stasis in the immigration proceedings benefits no one, including the Home Office.

“They said could not represent me because I already had solicitor but I wasn't sure if I did have a solicitor because they said they were transferring papers to another solicitor because they could no longer represent me. Not sure if [provider firm] is doing bail. Now on my third solicitor.”

52. Detainees routinely report that they lost contact with their solicitors following a transfer. Phone numbers may be lost when IRC-provided phones are handed back prior to transfer, and detainees may not be fully aware of which firm is acting for them. Transfer of files between provider firms is not always done quickly enough, given that loss of liberty is at stake.

53. *Recommendation: To the Legal Aid Agency that under new contracts for IRC work to be tendered in 2015 if a detainee is transferred between IRCs and out of the contract area of the instructed provider firm that firm may continue to act for their client if they wish to.*

Longer-term detainees left without ongoing legal advice on the fact of their detention

54. Detainees may or may not have a substantive immigration case at the point at which they seek legal advice through the Detention Duty Advice scheme legal surgery. But they have all lost their liberty, and the fact of their ongoing detention and the need for periodic representations for release requires legal attention, including regular review of their circumstances, and regular applications for release to both the Home Office and the First-tier Tribunal (IAC).

55. In BID's experience, longer term detainees are more likely to have complex cases as a result of intractable travel document issues, unresolved family court or other family-related issues, challenges to the lawfulness of their ongoing detention, and mental illness. Yet our survey suggests that these are often the detainees who have no immigration legal advisor, because their file has been closed by a legal aid provider or they are appeal rights exhausted and unable to get a new advisor.

“It's never easy to find solicitors. I didn't have one for 8 months.”

“I think the legal aid system is good for those who are not appeal rights exhausted.”

¹⁴ Human Rights Watch, June 2011), 'A Costly Move: Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States' <http://www.hrw.org/reports/2011/06/14/costly-move-0>

"It is difficult to get a solicitor who will represent me. I want representation, I have been detained for almost two years."

"There are three [firms of] solicitors that attend the legal advice clinics at the IRC. The first is [provider firm], who will not reopen my case. The second is [provider firm], who will not take my case on. And I have not heard anything back from the third firm. I've been in detention for 18 months. Nobody is giving me advice. Nobody takes me seriously. Nobody listens to me."

"My head has gone. I'm taking antidepressants. I am on watch by the guards every day".

56. There appears to be a tension between, on the one hand the Legal Aid Agency instruction to provider firms to periodically apply i) a merits test for substantive issues and ii) a separate merits test for bail, either or both of which could lead to file closure; and on the other hand the obligation on provider firms with exclusive contracts for IRC work to continue to act for the client.

57. At present, exclusive contractor firms bear the cost of keeping client files open for extended periods if a person is not released from detention for months or years. There is no stage billing for the type of work that in BID's view should be carried regularly for as long as a person is detained, namely case planning, advice letters to clients, receiving calls from clients, reviews of their ongoing detention, making temporary admission applications and representations to the Home Office for updates on a case, including in relation to travel document applications.

58. Poor communication by provider firms around the closure of files leads many detainees to spend lengthy periods in detention without legal advice, as some are unaware that they can re-visit the legal surgeries if their circumstances change, or fail to understand that even though their substantive case may be exhausted they should still receive advice on detention and bail. Detainees commonly do not understand why their file has been closed, and are not in a position to challenge closure where this may have been done incorrectly.

59. This detainee was advised by BID for bail and was unrepresented following receipt of this file closure letter, which we later challenged:

"As your [bail] application was refused, the above matter has now come to an end. As this immigration matter is concluded, (bail matter) your Controlled Legal Representation at our office is now closed. We would like to explain the procedures at our offices for closing our file....Your file will now be placed in storage in our archives. We will keep closed files for 6 years from the date of this letter"

60. In BID's view the Legal Aid Agency should take whatever steps are necessary to ensure that longer term detainees are not left unrepresented on the fact of their detention for weeks or months, and certainly not while there is no upper limit on the length of immigration detention in the UK. Detention is a matter of urgency, and legal advisors should be in a position to engage with the detainee and escalate contact with the Home Office, rather than winding down engagement and closing files.

61. *Recommendation: Prior to agreeing new exclusive contracts for IRC immigration advice in 2015, the Legal Aid Agency should review arrangements for stage billing for Legal Help work, so that provider firms are not financially disadvantaged by keeping a Legal Help file open for a detained client for extended periods.*

Bail applications

62. Given the focus of our legal work, at BID we expect to have more contact with those detainees whose legal aid solicitors will not run bail for them, who cannot afford to pay their private solicitor for a bail application, or who have no legal advisor and may wish to attempt a bail application themselves. Nonetheless, we are surprised that our legal survey findings show that, for example in May 2014, only 46% of those we interviewed with a legal advisor had had one or more bail applications made for them while detained, especially since bail applications are still funded by legal aid.¹⁵

“It is difficult to get solicitors to do bail. My current solicitor has not done bail, not satisfied with sureties. A problem with legal aid.”

“I have no guarantor, they [solicitor] ask for 2 guarantors if I apply for bail. So how does the process work if no guarantor?”

“I have tried to get a solicitor and it has become very hard. I did have [provider firm] but they closed my file because they were asking for details of sureties. They gave me one week to find a surety then they closed my file. I saw someone in the legal surgery two times, I gave my MPR [Home Office monthly progress report to detainees] and information about my case and they never got back to me. Two weeks ago I phoned [provider firm] to say I might have a surety but they have not got back to me. I have never had a lawyer representing me, and I need this. It is spoiling my mind completely”.

63. Severe delays in the provision of Home Office Section 4 (1)(c) bail addresses to detainees with no access to private accommodation also act as a barrier to legal advisors who may otherwise wish to lodge a bail application for their client. In practice most HMCTS hearing centres will not list a bail application without a bail address.

64. Recent research by BID¹⁶ has found that where a detainee is deemed by the Home Office to require self-contained bail accommodation it is currently taking the Home Office an average of 103.13 days (14.7 weeks)¹⁷ to provide that bail address. Publicly-funded legal advice on asylum support issues, including Section 4 (1)(c) bail accommodation applications, must be carried out under housing and public law legal aid contracts. Any work done on asylum support issues by practitioners working under an immigration & asylum legal aid contract therefore has to be done *pro bono*.

¹⁵ The Legal Aid Agency ‘2010 Standard Civil Contract – Specification, Section 8 Immigration Specification’ at 8.40, “Even where a client’s substantive appeal lacks merit and therefore would not warrant the grant of CLR for the appeal, the case may still warrant the grant of CLR funding for a bail application. CLR can be granted for the sole purpose of making a bail application.” Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308928/LAA-2010-section-8-immigration.pdf

¹⁶ Bail for Immigration Detainees, (2014), ‘No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation’. Available at <http://bit.ly/YbJRKW>

¹⁷ Range 5-503 days (1-71.86 weeks).

65. It is clearly reasonable for a legal advisor to say that they advise against a bail application at a certain point, so long as they say when they expect to be able to proceed with a bail application (for example, once documentary evidence such as a medical report is received), or what steps need to be taken in order to proceed (for example, obtaining further evidence to support any aspect of a case). However, our survey findings repeatedly suggest that there are circumstances where provider firms are not actively considering bail for their detained clients, for example

- where they have not discussed bail with their client after having represented them for a number of weeks or months
- they fail to give reasons to their client for not making bail applications
- they give problematic reasons for not running bail e.g. 'because there are no sureties.'
- no advice letters are sent to clients

Conclusion

66. On a human level, communication problems with legal advisors add greatly to the levels of frustration, anxiety, and desperation among detainees. Something is going very wrong if detainees are sitting in detention for weeks or months without hearing from their legal advisor, or knowing what is happening in their case. Detainees routinely feel ignored by legal representatives.

67. It is sometimes hard to avoid the conclusion that immigration detainees are given inadequate treatment as a client group, exacerbated by the fact that they are even less likely than many other types of legal aid client to be able to make a complaint about their treatment for reasons of language, unfamiliarity with the UK system, fear, despair, or simply because they are no longer in the UK.

Annex A

THE EFFECT OF HAVING NO IMMIGRATION LEGAL ADVISOR: IN DETAINEES' OWN WORDS

At the end of each interview carried out with a detainee in our eight legal advice surveys carried out since 2010, we invite the respondent to tell BID in their own words about any aspect of their personal experience of seeking and receiving immigration legal advice in detention which they feel it is important for us to record. We also ask detainees without an immigration advisor to tell us about the effect of having no advisor on their immigration case. We have coded and analysed over one thousand of these comments in order to distil those aspects of legal advice in detention that have been of most concern to detainees over the last four years.

The list below is a synthesis of the concerns mentioned most frequently by detainees:

a. We are not able to exercise our rights effectively, or to secure our rights

- We are aware that we are not able to exercise our rights.
- We sense that trying to navigate the legal system by ourselves is likely to lead to failure.
- We can be deported or removed more easily.
- Having no solicitor will weaken our chances of success [this goes beyond the legal aid merits test, their legal matter, such as deportation, may simply now be out of scope of legal aid].
- We have no one to adequately challenge incorrect information about us provided to the courts and tribunal by the Home Office.
- We are not equipped to do anything when some of the things presented by the Home Office to the judge are incorrect (e.g. an allegation of non-cooperation with the re-documentation process, or failure to report regularly).
- In immigration bail hearings judges show no interest in investigating false evidence submitted by the Home Office if no solicitor is present.
- The Home Office responds faster when you have a solicitor.
- The Home Office gives more information to a solicitor; they take information but don't give it to us.
- The Home Office takes advantage of us when we have no solicitor.
- No one will listen to us without a lawyer; the Home Office refuses us because they know we are weak.

b. Progress in our immigration cases slows down or stops completely

- Our bail applications are delayed.
- Our substantive immigration cases take longer to conclude.
- Those of us who want to go home wait longer because nothing much happens without a solicitor.
- We can't get out from detention.
- We wait a long time in detention even after losing an appeal.

This is because of i) a lack of knowledge and understanding of law, process

- We just don't know what to do.

- We are confused over what steps to take as a result of a lack of understanding of Home Office documents, language and technical terms, timescales and deadlines, processes, and of course not knowing the law.
- We have the pieces of the jigsaw but can't put them together (for example lots of evidence); we don't know what to do next.
- Mental illness can make it difficult or impossible to focus on our situation and work out what to do for ourselves.
- Advocacy on our own behalf is difficult for reasons to do with language, confidence, and understanding our situation.
- We can't show or cite previous cases and information the way a barrister or solicitor can do.

Because of ii) practical barriers to obtaining documents, doing research

- We make mistakes (missing deadlines, not knowing when and where to send documents, dealing with the courts and the tribunal).
- Poor English weakens our case and our arguments.
- Problems specific to detainees held in prisons: getting medical reports, criminal justice documentation, and practical barriers to getting documents photocopied and faxed to the courts and tribunal.

c. Having no lawyer affects our well-being

- We feel overwhelmed; depressed; helpless; vulnerable; hopeless; stressed; lonely; desperate; lost; worried; frustrated; weak.
- We have physical symptoms as a result of stress (weight loss; not sleeping; chest pain; vomiting).
- The detention system is cruel and inhuman.

Annex B

Summary: BID surveys of levels of legal representation for immigration detainees across the UK detention estate carried out between November 2010 and May 2014

	2014 May (125)	2013 Nov (141)	2013 May (111)	2012 Nov (93)	2012 May (144)	2011 Nov (131)	2011 May (147)	2010 Nov (134)
Proportion of detainees with legal representation								
% of all detainees interviewed with a legal representative at the time of the survey	N=69 55%	49%	43%	79%	69%	69%	65%	51%
• % of those who have a rep who are using a private (fee-paying) solicitor ¹⁸	N=30 44%	48%	33%	25%	25%	30%	27%	32%
• % of those with a rep who are using a legal aid solicitor ¹⁹	N=37 54%	52%	67%	75%	75%	70%	73%	68%
• % of those with a rep who are using a mixture of legal aid and private ²⁰	N=2 3%							
% of detainees interviewed with no legal representative at the time of the survey (<i>though they may have had a representative at a previous point in their detention</i>)	N=56 45%	51%	57%	21%	31%	31%	35%	49%
% of the sample that had <u>never</u> had a legal representative while in detention	N=19 15%	23%	26%	9%	14%	9%	12%	19%
Awareness of the Legal Aid Agency legal advice surgeries								
% of detainees interviewed who were aware they could apply for free immigration advice in their IRC	N=115 92%	89%	90%	89%	88%	84%	42%	53%
% of detainees interviewed who had taken part in at least one 30 minute session with one of the contracted advice providers ²¹	N=80 64%	75%	77%	72%	69%	65%	49%	61%
% of those who had a DDA appointment who were subsequently taken on as a client by the contracted advice provider.	N=34 43%	48%	27%	67%	52%	52%	64%	14%
% of those who had a DDA appointment who were still uncertain, when interviewed, whether they had been taken on as a client or not by the contracted advice provider, or were waiting to hear back, or were still waiting for their initial appointment.	N=15 19%	7%	24%	9%	7%	8%	11%	
% of those who had a DDA appointment not taken on as a client by the contracted advice provider (OR who chose not to take up the service e.g. because they already had a solicitor).	N=31 39%	35%	40%	19%	41%	40%	25%	77%
% of the entire sample that was taken on as a client by the contracted advice provider after their DDA advice session	N=34 27%	36%	21%	48%	36%	34%	31%	8%
% of detainees we interviewed who were unaware of the DDA scheme ²²	N=10 8%	11%	10%	11%	12%	16%	57%	47%
Delay in getting appointment at legal advice surgery								
% of those detainees who made a DDA appointment who waited more than one week to see an advisor ²³ .	N=48 60%	62%	69%	61%	47%	29%	32%	

¹⁸ This group does not include those detainees who report they are reliant on a mixture of legal aid and private advice for their immigration matters.

¹⁹ Ditto.

²⁰ This was the first time detainees reported to us that they are reliant on both legal aid and fee paying advice providers.

²¹ Some detainees had met a legal aid provider at the legal advice surgery but were unaware of it as a scheme, hence the possibility in these surveys of a lower awareness rate than appointment rate, while other respondents were aware of the scheme but had chosen not to use it because, for example, they paid for legal advice.

²² Some respondents explained that they knew of the legal surgery in a previous IRC where they had been held, but were unaware that the same scheme operated in all IRCs and/or were unaware of it operating in the IRC where they were currently held.

²³ For those responses where an interviewee told us there was a delay in getting a DDA appointment but had cited a period of one week or less, this response was changed to 'no delay'.

Of these: % delayed 2 weeks or 2 weeks to date	N=21 26%	30%	38%	31%	20%	12%	11%	
% delayed 3 weeks or 3 weeks to date	N=10 13%	10%	21%	19%	15%	4%	10%	
% delayed 4 weeks or 4 weeks to date	N=2 3%	3%	8%	8%	8%	8%	6%	
% delayed more than 4 weeks	N=1 1%	2%	2%	5%	4%	5%	4%	
Bail applications								
% of detainees interviewed with a legal advisor at the time of interview that had had one or more bail applications made for them by their legal advisor.	N=32 46%	30%	44%	34%	42%	32%	42%	44%
• One bail application	N=18 26%	13%	25%	18%				
• Two bail applications	N=12 17%	12%	15%	12%				
• Three or more bail applications	N=4 6%	7%	4%	6%				
% of detainees with a legal advisor at the time of interview whose legal rep had not made a bail application made for them ²⁴	N=37 54%	74%	56%	66%	58%	68%	58%	56%
Losing a legal representative as a result of transfer between IRCs								
% of detainees interviewed who had lost their legal representative on one or more occasion as the result of a transfer between IRCs.	N=12 10% ²⁵	6% ²⁶	27% ²⁷	23% ²⁸	12%	20%	32%	23%
Immigration advice in prison								
% of detainees interviewed who came to detention from serving a sentence in prison	N=46 37%	26%	32%	62%	59%	53%	65%	60%
Of these % who received immigration advice while they were in prison (includes only advice from immigration lawyer, CAB, DAS, BID)	N=6 13%	24%	23%	26%	21%	32%	58%	22%
% of those detainees who had served a custodial sentence but had received no independent immigration legal advice while they were in prison (this category includes those who told us their legal advice came from UKBA, a prison officer, other prisoners, or a criminal solicitor).	N=40 87%	76%	77%	74%	79%	68%	42%	78%

²⁴ This includes those cases where a Section 4 bail address was pending, licence-related approval of the address from the probation service was pending, a legal representative had only recently been instructed, a first bail application was currently in preparation, and cases where a legal representative not willing to run bail without a surety. We decided against a 'not yet' category, even though that was the sentiment of some of the responses, because it is not possible to determine the intention of the advice provider, and given the delays with Home Office Section 4 (1)(c) bail accommodation provision, 'not yet' essentially means 'no'. Some detainees have had applications for Temporary Admission made on their behalf, but these are not counted in this exercise.

²⁵ In Survey 8, n=7 had lost their representative once following a transfer to a different place of detention, n=2 had lost a legal representative twice on transfer, and n=3 had lost their legal representative three times following transfer.

²⁶ In Survey 7, n=6 lost their legal representative once following a transfer to a different IRC, n=2 lost a legal representative twice on transfer, and n=1 lost their legal representative four times.

²⁷ In Survey 6, n=18 lost their legal representative once following a transfer to a different IRC, n=8 lost a legal representative twice after transfer, and n=4 detainees lost their legal representative this way on three occasions.

²⁸ In Survey 5, n=14 lost their representative following transfer once, for n=5 this happened twice, and for n=2 three times.