

# Immigration detention in prison



**Prison IMBs have been dealing for years with the problem of foreign nationals who have completed their sentences. Dr Adeline Trude, Research & Policy Manager with Bail for Immigration Detainees (BID) describes their plight**

Being detained on immigration grounds is bad enough in an immigration removal centre, but immigration detention in a prison is unfair and unjust. Immigration detainees held in the prison estate suffer from multiple, systemic, and compounding barriers to accessing justice. These will often have a crippling effect on their ability to progress their immigration case, seek independent scrutiny of their ongoing detention from the courts and tribunals, and seek release from detention. Their physical and mental wellbeing are also likely to suffer.

There are over 4,000 people held in immigration detention in the UK, including over 400 who are held post-sentence in prisons. Immigration detainees in the prison estate are administrative detainees within a criminal justice framework. Their detention is entirely outside the statutory detention centre rules, Home Office operating standards for immigration detention, and Home Office detention service orders which govern immigration detention. In BID's view prisons are not appropriate places to hold immigration detainees, including those who have previously served a custodial sentence. This view, confirmed by evidence from our legal casework, is one which is shared by the Prison Service, the Inspectorate of Prisons, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

In September 2014 we published *Denial of Justice: the hidden use of UK prisons for immigration detention*, based on our legal casework and policy work, and discussions in prisons with immigration detainees and prison staff.

## Home Office delays

Applications for release on immigration bail to the First-tier Tribunal (Immigration & Asylum Chamber) act as an independent review of ongoing detention, and are a crucial safeguard for detainees given the absence of an upper limit on immigration detention in the UK. Many immigration detainees rely on the Home Office to provide them with a bail address in order to make an application to the immigration tribunal for release on immigration bail, in the absence of friends or family in the community who are willing or able to accommodate them if released.

The immigration tribunal is supposed to list applications for release on bail within a target time of 3-6 days, in recognition of the urgency of an application for release from administrative detention. But over recent years delays of weeks or months in the Home Office providing bail accommodation have meant that many detainees have been denied timely access to justice because without a bail address they cannot apply for release.

Published research from BID last year showed evidence of systemic and significant delay at every stage of the application process for Home Office Section 4 (1)(c) bail accommodation. They were taking an average of 15 weeks from application to grant letter (from as little as 5 days to as long as 16 months) for detainees who are deemed to need self-contained accommodation.

These delays are often longest for immigration detainees who have served prison sentences. The absence of fax communication with detainees in prisons, and slow internal mail systems within prisons, mean

## What detainees say

Here are some of the things immigration detainees told us

'It is hard to find someone to help me with my immigration case because I am only allowed to leave my cell for one hour a day, which is never enough time for me to do anything.'

*'I am very upset. After my one month sentence was completed I have spent a further 10 months in the prison, which I feel was very unfair.'*

'While being in detention in a prison environment it is impossible for people like myself to gain access to phone calls at any given time of the day for the purpose of social or solicitor calls. Detainees in IRCs have access to mobile phones, the internet and other services, while I'm being made to follow a B Category prison regime where I was transferred 4 months after my sentence expired. Access to legal services is nil, there's been no surgery since my arrival in February and there is no way one can contact a solicitor without having it in your Pin.'

*'Association time is not suitable to call my solicitor as the offices are closed or not opened. Cost of phone call is expensive from the prison. Letters are not delivered promptly on some occasions.'*

'Having to put in application to call legal advice is a nightmare because it can take weeks if the PIN clerk has a back log like a lot of prisons do.'

*'When I ask officers to fax any paper work they say they are not allowed & this gives me difficulty with bail application and making photocopies.'*

that grants of Section 4 bail addresses, made for only 14 days where the detainee is deemed to need self-contained bail accommodation, routinely expire without the detainee being able to prepare, lodge and have heard their application for release on bail. Often these detainees have waited several months for the grant of a bail address from the Home Office. This is how it can work.

*Mr N is detained in a prison. He waited 8 months for a grant of a Section 4 address in the form of Standard Dispersal Accommodation. His grant letter was issued on 12th March 2014 and was valid for 14 days. He (and BID as his legal representative) received the grant letter on 18th March. By that time BID could not obtain a bail hearing date before the grant expired due to bail listing delays at Hatton Cross hearing centre, and so after 8 months waiting for a Section 4 bail address Mr N had to start*

## What we found

BID has uncovered a number of barriers for immigration detainees in the prison estate in accessing the courts and legal advice in order to seek release from detention and progress their immigration case.

- Immigration detainees are routinely held under serving prisoner regimes.
- There is no automatic access to on-site immigration legal surgeries like those provided for detainees in IRCs. Legal representation among detainees held in prisons post-sentence can be hard to get.
- There are financial disincentives to legal aid providers who wish to work with detainees in prisons under current legal aid contracts.
- Prison regimes and restrictions don't allow detainees to hold mobile phones alongside prisoners, there is restricted access to wing telephones during working hours, faxes only at the discretion of prison officers, and a slow internal postal system in prisons, which delay and frustrate timely communication with legal advisers, the courts, and the Home Office.
- Legal advisers cannot simply call their client in prison (instead they must send a letter and wait for a call) with the result that they are working blind at times or are even unable to take further instructions about developments in a case, or urgent matters.
- Lack of internet access in prisons hinders legal research for unrepresented detainees, and makes cooperation with the Home Office documentation and removal process very difficult

Then there were specific problems in relation to applications for release from detention on immigration bail.

- Home Office bail summaries and grants of



bail addresses get delayed as a result of slow internal mail in prisons.

- Detainees in prisons can lose their grant of Home Office bail accommodation, sometimes after several months waiting for a grant of a bail address, if it expires before it can reach them on the wing. Without these addresses they cannot apply for release on bail and have to re-apply for a further bail address.
- Home Office escorting failures result in failure to produce detainees at their bail hearings.

- Upper time limits on prison video links may be insufficient for immigration bail hearings

- No system has been put in place by the Home Office to ensure detainees held in the prison estate get travel warrants if bailed, leaving them at risk of being labelled an absconder and subject to recall if they breach NOMS licence conditions.

BID gave oral evidence on these problems to the parliamentary inquiry into the use of immigration detention in the UK.

*again with a fresh application for a Section 4 bail address before he could exercise his right to apply for bail.*

Inability to get a bail address in time lies behind some of the very lengthy periods of immigration detention endured by detain-

ees in the UK. However, no data on the length of time spent in immigration detention in the prison estate is included in the various tables on length of detention currently produced and published by the Home Office.

*BID is an independent national charity established in 1999 to improve access to release from immigration detention for those held under Immigration Act powers. BID provides immigration detainees with free legal advice, information, representation, and training, and engages in research, policy and advocacy work, and strategic litigation.*

## Monitoring and inspection

IMBs are well accustomed to dealing with the problems immigration detainees in prison have over deportation etc. The prisons inspectorate focused briefly on immigration detainees in prison in its most recent annual report. 'Their treatment and conditions, at best, equated to those of a remand prisoners, but fell far short of the facilities and regime they would experience at an immigration removal centre.' HMCIP plans to report specifically on the subject later this year.



*BID won the JUSTICE Human Rights Award 2010. It has a dedicated prisons legal team, and does outreach work in prisons in the form of legal surgeries, the distribution of self-help materials, and training for prison staff.*

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