All Party Parliamentary Group on Detention: enquiry into immigration detention in the UK: Submission from the Immigration Law Practitioners' Association

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations. Some of ILPA's previous work on detention is listed in Annex 1 hereto and should be read with this submission.

We have elected to answer

- **Are the current arrangements for authorizing detention appropriate?**
- **What are your views on the current conditions within UK immigration detention centres, including detainees' access to advice and services? Please highlight any areas where you think that improvements could be made.**
- **There is currently no time limit on immigration detention – in your view what are the impacts (if any) of this?**

We include three annexes:

Annex 1:	Previous ILPA work on detention
Annex 2	Case Studies
Annex 3	Minutes of a 2 May 2014 meeting with the Legal Aid Agency on legal advice and representation in immigration removal centres

The first two are contained within the body of this document.

Question: Are the current arrangements for authorizing detention appropriate?

No. Current arrangements for authorizing immigration detention, and for its continued authorisation thereafter, violate the rule of law.

> *"The fundamental right … to liberty … of person [is] expressed in all international and regional human rights instruments, and [an] essential component … of legal systems built on the rule of law."* (UNHCR Detention Guidelines (2012), Guideline 2, paragraph 12)

On 6 February 1998 ILPA produced a paper setting out its proposals for reform of detention, deportation and removal and said of detention:

Detention must be kept to an absolute minimum and only when removal is imminent, following an unsuccessful appeal. People must not be detained for more than 48 hours. If this is not accepted, there must be regular reviews of detention and the right to apply for bail.

That position is not radically different from current UK policy. It is very far from UK practice. The policy in the UK is that there is a presumption of release, with all alternatives considered before detention is authorised, and that detention is for the shortest possible time.[1] Practice in the UK is that increasing numbers of persons are detained, some for years on end, [2] including in circumstances where eventual release is to liberty calling into question the necessity for detention at all. According to UK Border Agency statistics, of detainees leaving detention after more than a year in 2011, 62% were released and 38% removed or deported. These proportions were exactly reversed, for detainees released after less than a year. Detention Action's September 2010 report "*No Return No Release No Reason*" monitored the cases of 167 long-term detainees, of whom only a third (34%) were removed or deported. Sixty-two per cent of those held for over a year were released in 2013.[3] Between 2007 and 2010, overall numbers of enforced removals and notified voluntary returns declined by 6%. Yet in the same period the number of persons detained at any one time increased by 38%.

Litigation exposed that the Home Office had been operating an undisclosed, unlawful practice of detaining foreign national former prisoners on a blanket basis, without permitting officials to consider release in any circumstance[4]. Persons are detained in the UK for longer periods than in other EU countries. [5] On 11 September 2013, in response to a parliamentary question, the Minister for Immigration stated that as of 30 June 2013, 27 people had been detained for between 18 months and 24 months, 11 for between 24 months and 36 months and one for between 36 months and 48 months[6]. According to Home Office statistics, 220 people had been detained for over six months at 31 December 2013. In the context of a stated intention to reduce to an absolute minimum[7] the detention of children in families, the shortest possible time is envisaged as seven to 28 days.[8]

Human dignity is inviolable. It must be respected and protected.[9] But the UK has repeatedly been found to have breached detainees' rights under Article 3 of the European Convention on

[1] Enforcement Instructions and Guidance, 55.1.3., 55.3.
[2] See, for example, *R (Sino) v SSHD* [2011] EWHC 2249 (Admin) (four years and 11 months) and *R (Mhlanga) v SSHD* [2012] EWHC 1587 (Admin) (five years two months). See *The effectiveness and impact of immigration detention casework: A joint thematic review,* Her Majesty's Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, December 2012, available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/immigration-detention-casework-2012.pdf (accessed 7 October 2014).
[3] Home Office, *Immigration Statistics January to March 2014,* table dt 06. See also *Immigration Statistics: summary points: April to June 2014*.
[4] *R (Lumba) v SSHD* [2012] 1 AC 245.
[5] See the joint Her Majesty's Inspectorate of Prisons/Chief Inspector of Borders and Immigration report, *The effectiveness and impact of immigration detention casework*, December 2012 at 2.7. In France there is a limit of one and a half months on immigration detention, which is subject to automatic oversight by the courts. The Netherlands too has a maximum time limit of one and a half months and Spain a limit of two months.
[6] HC Deb, 11 September 2013, c 723W.
[7] HL Committee, Immigration Bill, 3 March 2014, col 1125 per the Lord Wallace of Tankerness.
[8] Immigration Act 2014, s 2.
[9] Charter of Fundamental Rights of the European Union, 2000/C 364/01, Article 1.

Human Rights, the prohibition on torture, inhuman and degrading treatment and punishment.[10] Women in detention have been subjected to severe abuse by the staff of centres.[11] It was suggested in those cases that an attempt was made to remove the victims from the jurisdiction before they could bring a case. Such allegations are not new. We recall for example the comments of Mr Justice Munby in *R (Karas and Miladinovic) v Secretary of State for the Home Department* [2006] EWHC 747 (Admin):

> *I am driven to conclude that the claimants' detention was deliberately planned with a view to what in my judgment was a collateral and improper purpose – the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court. That purpose was improper. It was unlawful.*

HM Chief Inspector of Prisons has reported on an 84 years' old frail Canadian man suffering from dementia who died in detention in handcuffs having been kept handcuffed for five hours.[12]

Deaths, including suicides, and incidents of what is called "self-harm" but includes suicide attempts, are recorded. Home Office figures for the period July to September 2013 show 624 people on "self harm watch" (what would elsewhere be called suicide watch) in immigration detention and 94 incidents of "self-harm" (which includes attempted suicide). In 2012 there were 208 incidents of what statistics call "self-harm" requiring medical attention and 1804 detainees formally recognised as being at risk of such harm[13] . There no figures for self-harm not requiring medical attention. Persons are detained for administrative convenience, although not for correct and sustainable decisions on applications for international protection, in the detained fast-track. In the last two years, the courts have made unprecedented findings that mentally ill men have been subjected to inhuman and degrading treatment in contravention of Article 3 of the European Convention on Human Rights[14].

A case has revealed that the Home Office and its contractors had been operating an unlawful policy on the use of force on pregnant women and children in immigration detention.[15] The 2012 report of the Chief Inspector of Prisons on the Cedars centre in which families are detained found:

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[10] For example *R (BA) v Secretary of State for Home Department* [2011] EWHC 2748 (Admin) ;*R (S) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (5 August 2011, *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012), *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin) (20 August 2012); R(MD) V SSHD [2014] EWHC 2249 (Admin).

[11] Yarls' Wood affair is a symptom, not the disease, Nick Cohen, The Observer, 14 September 2013.

[12] *Report of unannounced inspection of Harmondsworth Immigration Removal Centre*, 2014, section 1, paragraph 1.3 available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf

[13] Response to Freedom of Information of information requests, see http://www.ctbi.org.uk/96 . See also the evidence of the Association of Visitors to Immigration Detainees to the Home Affairs Select Committee for its report on Asylum, Seventh report of session 2012-2013, HC 71, 8 October 2013 http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-73.htm . See also HL Deb, 27 June 2012, c71W.

[14] *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin) (5 August 2011), *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (26 October 2011), *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012), *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin) (20 August 2012).

[15] *Chen and Others v SSHD* CO/1119/2013.

HE.18 Substantial force had been used in one case to take a pregnant woman resisting removal to departures. The woman was not moved using approved techniques. She was placed in a wheelchair to assist her to the departures area.

When she resisted, it was tipped-up with staff holding her feet. At one point she slipped down from the chair and the risk of injury to the unborn child was significant. There is no safe way to use force against a pregnant woman, and to initiate it for the purpose of removal is to take an unacceptable risk.

The Inspectorate called for force not to be used. Instead the Agency offered a consultation. It was only in the face of a legal challenge that it backed down. The case of *R (on the application of Yiyu Chen and Others) v Secretary of State for the Home Department* (CO/1119/2013) was an urgent judicial review claim challenging the Secretary of State's failure to have a policy in place in respect of the use of force against children and pregnant women. The claim was issued on 31 January 2013 following the Secretary of State's rejection of the Her Majesty's Inspectorate of Prisons' recommendation that she use force against these two groups only in situations where there is a risk of harm to self or another.

The Claimants sought urgent interim relief in the form of an injunction, prohibiting the Secretary of State from using force against these two groups until the issues were determined. On 12 February 2013 Mr Justice Collins granted an injunction prohibiting the Secretary of State's from using force against the four claimants (a pregnant woman and three children, all at risk of an enforced removal).

On 22 February 2013 the Secretary of State reinstated the former policy from Chapter 45 of the Enforcement Instructions and Guidance, which states that the UK Border Agency cannot use force against pregnant women, save to prevent harm. On 10th April 2013, Lord Taylor of Holbeach told the House of Lords that:

> *The recommendation in the report by HM Inspectorate of Prisons on Cedars pre-departure accommodation that force should never be used to effect the removal of pregnant women and children was rejected by the UK Border Agency.* [16]

The Government response to the Home Affairs Select Committee Eighth Report of session 2012-2013: The work of the UK Border Agency (April - June 2012) states:

> *The UK Border Agency would prefer that pregnant women, vulnerable adults and under 18s who form part of family groups in Cedars left the UK voluntarily and compliantly. It would not be practical to consider a blanket ban on the use of physical intervention on pregnant women and under 18s as this might encourage non-compliance and render the Agency unable to maintain effective immigration controls.*

Bhatt Murphy solicitors, who acted for the claimants in Chen, wrote to the Home Affairs Select Committee on 28 March 2013, saying

> *We are concerned that the policy position set out in that response* [the government's response to the Committee*] directly contradicts the assurances which have been given to the Court and the parties in this action, which is now reflected in policy guidance published on the*

[16] HL Deb, 10 April 2013, c313W.

> *UK Border Agency's website, and upon which the Claimants have been invited by the Home Secretary to withdraw their claim for judicial review.*

Another case exposed "disturbing" evidence of systemic failures concerning the detention of survivors of torture.[17]

Detention has become "normalised" in the UK as is evidenced by the questions posed by this inquiry such as

> "*What are your views on the current conditions within UK immigration detention centres, including detainees' access to advice and services? Please highlight any areas where you think that improvements could be made.*"

> *"How far does the current detention system support the needs of vulnerable detainees, including pregnant women, detainees with a disability and young adults?"*

Answers to such questions provided in evidence should be brought to bear on the fundamental question of the legality of immigration detention in the UK. As detailed in the submission of Amnesty International UK to this inquiry, with which we agree, the UK's failings are known and extremely well-documented, having repeatedly been brought to the UK Government's attention by inspectorates appointed for the purpose and through legal challenges. Yet the UK detention system continues to fail by its own standards and by the standards of international law, which have been collected in the **Bingham Centre's *Immigration and the Rule of Law: safeguarding principles***[18], **an essential handbook for this inquiry.**

Anyone deprived of his/her liberty should be brought before an independent court or tribunal. This is in accordance with international standards. Article 5(4) of the European Convention on Human Rights provides:

> *'everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful'.*

The UN Commission on Human Rights Resolution 2004/39: *Arbitrary Detention* of 19 April 2004, E/CN.4/RES/2004/39:

> *"3. Encourages the Governments concerned: (c) To respect and promote the right of anyone who is deprived of his/her liberty by arrest or detention to be entitled to bring proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful, in accordance with their international obligations".*

[17] *R (EO, RA, CE, OE and RAN) v Secretary of State for the Home Department* [2013] EWHC 1236 (Admin).
[18] Michael Fordham QC, Justine N Stefanelli, Sophie Eser, British Institute of International and Comparative Law, June 2013. Available at http://www.biicl.org/binghamcentre/activities/immigrationdetention/final_documents/ (accessed 7 October 2014).

In 1999 the then Government introduced provision for routine bail hearings. At second reading Lord Williams of Mostyn for the then Government said

> *Part III introduces important new safeguards for immigration detainees. It introduces a more extensive judicial element into the detention process by means of a system of routine bail hearings, but the Government have decided that we should go further. The Government intend to bring forward amendments during the proceedings in this House to provide for a statutory presumption of bail, with exceptions to ensure effective immigration control and enforcement.*[19]

He later explained:

> *Perhaps I may set out our intention in setting time-limits for routine bail hearings and their determination. One element that is lacking in the present system—I do not disagree with what has been said in part—is any degree of certainty or structure with regard to bail hearings. We intend that the first routine bail hearing—to use the word "routine" is not to play down its importance, but to underline the fact that it must be regular—should take place about seven days after the original detention. In practice, the reference will normally be made much earlier.*[20]

What has changed since 1999 so that a sense the gravity of the shortcomings of the system of immigration detention, and the urgency of addressing them, has gone so entirely? In 2002 the then Government, decided to repeal that part of the Immigration and Asylum Act 1999 that would have introduced a new bail regime. Baroness Anelay of St Johns, with support from all around the house, tried to stop them. She said:

> *In another place the then Home Secretary, Mr Straw, said in a debate on 22nd February 1999 at col. 39 of the Official Report: Part III fulfils the commitment in the White Paper to introduce a more extensive judicial element in the detention process. That will be achieved by introducing routine bail hearings for those detained under immigration legislation." In this House the noble and learned Lord, Lord Williams of Mostyn, when moving the Second Reading of the same Bill on 29th June 1999, at col. 178, said, Part III introduces important new safeguards for immigration detainees. It introduces a more extensive judicial element into the detention process by means of a system of routine bail hearings, but the Government have decided that we should go further. The Government intend to bring forward amendments during the proceedings in this House to provide for a statutory presumption of bail, with exceptions to ensure effective immigration control and enforcement. Part VIII of the Bill provides a proper statutory framework for all aspects of the management and administration of detention centres and for the escort of detainees. Taken together, the provisions regarding bail and detention centres will provide significant additional safeguards for immigration detainees". I am sure Members of the Committee will recall that the noble and learned Lord moved the amendment of which he spoke at Second Reading on 19th July in Committee when he said, I hope that the amendment will meet with the universal acclamation of the Committee".—*[Official Report, 19/7/99; col. 725.]

> *That amendment is now Section 46 of the 1999 Act and it is those very provisions in Part III of the Act, so eloquently spoken to by the noble and learned Lord, Lord Williams, three years ago, which today the Government propose to repeal under Clause 57(6) of this Bill. We acclaimed it; the Government now dispose of it.*

[19] HL Deb 29 June 1999 vol 603 cc176-257.
[20] HL Deb 19 Jul 1999 : Column 707.

There was an extensive debate on this matter in Standing Committee in another place. But the justification given at that time by Miss Angela Eagle was unconvincing. Members of the Committee will note that the provisions have never been brought into force. The Minister said that they were not brought into force because we have been trying since the 1999 Act to work out the frequency and logistical implications of automatic bail hearings for each detainee. We concluded that it would be a logistical nightmare that would divert scarce resources from processing asylum applications … Implementing the Part III bail provisions would significantly increase the burden on the Immigration Appellate Authority".—[Official Report, Commons, Standing Committee E, 14/5/02; co1.256.] I cannot believe that the provisions in the 1999 Act which were described as important and significant by the noble and learned Lord, now the Leader of the House, and the implications of which were doubtless considered in detail by the Home Office when the White Paper was drawn up, when the 1999 Bill was drafted and when the amendments were proposed, are now to be dismissed as a logistical nightmare. I cannot believe that the noble and learned Lord, Lord Williams, would have put his name to such a measure 1259 and spoken in favour of it if he were not entirely certain that it was eminently workable and its implications had been fully thought through by the time the Act was passed by this House.

One final but important point on Amendment No. 173 is this. In another place my honourable friend Mr Malins moved an amendment which would have brought the provisions of Part III of the 1999 Act into effect. The Minister argued in response that to do so would be administratively unworkable and would cause chaos and catastrophe in the system. Amendment No. 173 meets the Government's point. It would not bring the provisions into effect but it would stop their repeal. The effect of that would be to allow the Government to bring them into force at a time when the administrative concerns which the Minister cited in another place had been allayed.

If the Minister were to resist the amendment, surely he would have to cast aside the mask of administrative unworkability that was taken up in another place and reveal the real policy reasons behind the Government's change of position. I invite him today to give us better justification on this matter than in another place. I beg to move[21].

In 1999 Lord Hylton[22] put forward an amendment that would have meant regular reviews throughout the period of detention. All speakers, with the exception of the Minister, supported him.[23] Contrast this with the current Home Office guidance on review, not by a court or tribunal, but by the officials detaining the person[24]:

There is a statutory requirement above, detention should also be reviewed during the initial stages, that is, the first 28 days. This does not apply in criminal casework cases where detainees come from prison, or remain there on completion of custodial sentence, and their personal circumstances have already been taken into account by the Home Office when the original decision to detain was made. However, criminal casework cases involving the detention of children must be reviewed at days 7, 10, 14 and every seven days thereafter…in practice, this

[21] *HL Deb 17 July 2002 vol 637 cc1257-305*
[22] HL Deb 19 July 1999 vol 604 cc693-724
[23] Ibid. col 704
[24] Enforcement Instructions and Guidance 55.8.

will apply only to those exceptional cases where an FNO under 18 is being detained pending deportation or removal.

Unless an immigration detainee applies for bail, s/he will never be brought before a court or tribunal to consider either release on bail or the lawfulness of detention. For those held in the prisons, there are no legal surgeries and the difficulties of obtaining any legal representation at all are increased. People with a mental illness are among the least likely to be able to take the necessary steps to instigate a bail hearing. **An essential recommendation is that provision be made for automatic bail hearings.**

The inquiry needs to isolate how the UK system has been so successful at containing, resisting and defeating improvement and propose how this can be overcome as a precursor to making any recommendations for change.

Question: What are your views on the current conditions within UK immigration detention centres, including detainees' access to advice and services? Please highlight any areas where you think that improvements could be made.

A person unlawfully detained, or treated in detention in a way that is unlawful, should be able to secure release through a legal challenge. In what follows we concentrate on the barriers to such challenges, not only in immigration removal centres, but also in the prison estate.

Law

Following Legal Aid, Sentencing and Punishment of Offenders Act 2012, legal aid is available for challenges to immigration detention, including by way of judicial review.[25] It is not however available for the substantive immigration, as opposed to asylum,[26] case, success in which would mean that the person is no longer liable to be detained.

Legal aid is available for inquests and associated civil actions;[27] civil actions where a public authority has abused its position or powers that is deliberate or dishonest and results in harm that is reasonably foreseeable;[28] civil actions concerning "significant" breaches of human rights;[29] and civil actions concerning discrimination contrary to the Equality Act 2010.[30]

Cases based on negligence and those in which the primary objective of the claim is financial compensation are expressly excluded. According to the 2010 consultation[31]:

4.53…We consider that cases where state agents are alleged to have abused their position of power, significantly breached human rights, or are alleged to have been responsible for negligent

[25] Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, paragraphs 19, 20, 25, 26 and 27 read with parts 2 and 3 of that Schedule.
[26] See the Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, paragraph 30.
[27] Ibid. paragraph 41.
[28] Ibid. paragraph 21.
[29] *Ibid*. paragraph 22.
[30] *Ibid*. paragraph 43.
[31] *Proposals for the Reform of Legal Aid in England and Wales,* Ministry of Justice.

> *acts or omissions falling very far below the required standard of care have an importance beyond a simple money claim. We consider that these cases are an important means to hold public authorities to account and to ensure that state power is not misused. We consider that the class of individuals bringing these claims is not necessarily likely to be particularly vulnerable and some cases will be suitable for funding through CFAs. However, we believe that the determining factor is the role of such cases in ensuring that the power of public authorities is not misused…*

According to the 2010 consultation[32], the determining factor requiring public funding in these cases is to ensure that public authorities do not misuse their powers. That justification applies irrespective of the immigration status or personal interest of the migrant who has been wronged. These claims also provide a valuable mechanism for exposing systemic failures and ensuring that public authorities make improvements and learn lessons.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2004 was debated in the House of Commons on 1 July 2014[33] but withdrawn from consideration by the House of Lords following a successful challenge in *R(PLP) v Secretary of State for Justice (Office of the Children's commissioner for England intervening)* [2014] EWHC 2365 (Admin) (currently under appeal) would have restricted detainees' rights to legal aid further, and may still do so if at any stage it is re-presented to parliament, in its current or an amended form and accepted. While immigration detention cases[34] and related judicial reviews[35] were to have been exempted from the test, access to legal aid would have been denied those who could not satisfy the residence test in cases of abuse of position or power by public authorities;[36] and breaches of a person's human rights by public authorities.[37]

There is a specific problem with the proposed residence test in the context of human rights claims. Claims under the Human Rights Act 1998 must ordinarily be commenced within 12 months of the events giving rise to the claim. Under the residence test proposals a person would have to accrue 12 months' lawful residence before becoming eligible for legal aid. Thus, by the time persons became eligible for legal aid, they would be barred from bringing a claim under the Human Rights Act 1998.

An increasing number of immigration detainees are held in prisons. Home Office concerns about the risk of absconding affect prison categorisation of foreign nationals. Access to rehabilitation programmes[38] and/or planning for release are affected by presumptions that the person will be removed at the end of the sentence, however strong the case against this may be and however unlikely it is in any event that a decision on return will rapidly be resolved. The Criminal Legal Aid (General) (Amendment) Regulations 2013,[39] cut legal aid from matters such

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[32] *Proposals for the Reform of Legal Aid in England and Wales, op.cit.*
[33] http://www.publications.parliament.uk/pa/cm201415/cmgeneral/deleg5/140701/140701s01.pdf
[34] Paragraphs 25(2) and 26(2) of Part 1 of Sch 1 to LASPO, introduced by regulation 3 of the order.
[35] Paragraph 19(2A)(a) of Part 1 of Sch 1 to LASPO, introduced by regulation 3 of the order.
[36] as fn. 39 in relation to paragraph 21 of Part 1 of Schedule 1 to the 2012 Act
[37] as fn. 39 in relation to paragraph 22 of Part 1 of Schedule 1 to the 2012 Act
[38] See Bail for Immigration Detainees' February 2013 submission to the Ministry of Justice consultation *Transforming rehabilitation: a revolution in the way in which we manage offenders 2013*, available at http://www.biduk.org/154/consultation-responses-and-submissions/bid-consultation-responses-and-submissions.html (accessed 28 May 2013).
[39] SI 2013/2790.

as categorisation, segregation, dangerous and severe personality disorder referrals and assessments, and resettlement matters. They are the subject of a challenge on appeal from *R(The Howard League for Penal Reform & Prisoners Advice Service) v The Lord Chancellor* [2014] EWHC 709 (Admin) (17 March 2014). The judgment of the High Court in that case details the evidence of the effect of the changes. The then Chief Inspector of Prisons, Dame Anne Owers, said in her foreword to her Inspectorate's 2006 report *Foreign National Prisoners: A thematic review*[40]*:*

> *The third essential building block of provision is to ensure that all foreign nationals are prepared for their eventual removal or release. All of them need to know, as early as possible in sentence, whether or not it is proposed to deport or remove them. They need to have access to appropriate regimes: not only to reduce the risk of reoffending, wherever they are released, but also because safety, security and decency within prisons depend upon prisoners having access to purposeful activity.*

Those tests of safety, security and dignity are not being met in the cases of foreign nationals detained under Immigration Act powers whether in the prison estate or in immigration removal centres.

Obtaining effective legal representation in practice

We are aware that the National Audit Office is examining civil legal aid at the moment and have provided it[41] with considerable information about the situation for those detained in the hope that its attention to the matter will have a positive effect on work in the short term, and its report in the longer term.

Fast track

Those in the detained fast track have an opportunity to be provided with legal representation as part of the process. However, the mere presence of a lawyer, without provision for that lawyer to make their work effective, is not enough.The judgment in *Detention Action v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin) (09 July 2014) details the shortcomings of the detained fast track and the barriers to those subject to the process obtaining a determination of their application for asylum that is sustainable.

Surgeries

Surgeries operate in immigration removal centres. However, it can be difficult in practice for detainees to access those surgeries. At a meeting at the Legal Services Commission on 2 May 2014, at which the Home Office was present, ILPA and others again highlighted the difficulties detainees have in gaining access to the surgeries and drew attention to the practice of "gate-keeping" that exists in some centres. What was striking at the meeting was that those officials present did not have clarity over the responsibility for sorting out problems of access as controlled by detention centre staff. There was no service level agreement and an acknowledged lack of contract management by the legal aid agencies. It took many months to

[40] Her Majesty's Inspectorate of Prisons, July 2006.
[41] ILPA submission 21 July 2014, http://www.ilpa.org.uk/resource/29091/ilpa-evidence-to-national-audit-office-legal-aid-21-july-2014

extract a note of the meeting from the Home Office, after those who had led it, John Facey and Stuart Hollings, two of its most experienced staff members in the field of detention under immigration act powers, were moved off this work. When eventually we obtained a note on 25 July 2014 it was cursory. It is appended hereto.

Especially with the removal of immigration from the scope of legal aid, many detainees will attend a surgery only to be told that they will have to pay for any legal representative. Not only the costs of a legal representative but disbursements, for example paying for an interpreter who will travel to the immigration removal centre or prison, and paying application and appeal fees, mean that access to justice is beyond the reach of many.

At the beginning of the year, it had been announced that HMP the Verne, on Portland Island in Dorset, would become an immigration removal centre. Pending its formal designation, the Verne was none the less used, as a prison, to house 100% foreign nationals. The Legal Aid Agency indicated that it would provide legal surgeries there, as it does in other immigration removal centres, when it became an immigration removal centre. However it was not prepared to such surgeries while the Verne remained a prison. The charity Detention Action visited The Verne and told ILPA:

> *"The majority of detainees we have met in the Verne are unrepresented and it is proving difficult to find solicitors willing to take on even strong cases. There are few if any firms within the local area and despite our efforts to engage representatives from further afield the travel distance and lack of a Detention Duty Advice Scheme [the surgeries] set up have led to our having very little success.*
>
> *Of the 42 people we have supported in the Verne so far only 15 have had legal representation. The majority of these have been served with deportation orders but have received no legal advice on their right to appeal or how to go about doing so. Of these we have met two recognised refugees who were unable to make in time deportation appeals due to their lack of access to such advice.*
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> *We are greatly concerned at the length of time many the Verne detainees have been held for. Around half of those we have met have been detained for at least 6 months while two have been for over 18 months."*

We and others continued to protest the lack of legal advice at The Verne. Eventually on 12 June 2014 the Agency announced that it would fund surgeries in The Verne until its reclassification and that these would commence within a few weeks of the announcement.

Immigration detainees in prisons

Lord Williams of Mostyn said in 1999:

> *Following David Ramsbotham's critical report, it is fair to say that the Government accepted the principle that no detainee ought to be kept in the prison regime. That cannot be brought about overnight, but we accepted the principle immediately and there was not the slightest demur. David Ramsbotham was absolutely right, and we said so at the time*[42]

[42] HL Deb 19 July 1999 vol 604 cc693-724

In 2002 Ministers claimed that the routine use of prison for immigration detainees had ended.[43] But this has changed. The Home Office Enforcement Guidance and Instructions now say

> *The normal expectation is that the prison beds made available by NOMS will be used to hold time-served F[oreign]N[ational]O[ffender]s* ***before*** *any consideration is given to transferring such individuals to the IRC estate.* [44]

HM Inspectorate of Prisons and the Independent Chief Inspector found in a joint report in 2012 that the "detention of ex-prisoners appeared to have become the norm rather than… a rigorously governed last resort."[45] Some quarter of those held under Immigration Act powers are now held in prisons, where detention tends to be for longer periods. Since 2008, the numbers of persons held in immigration detention have increased by 35%, excluding those detained in the prison estate who are not counted in the statistics. There is now no bar on holding detainees in prisons if there are spare beds there[46]. As of 26 August 2013, some 936 people, about a quarter of those detained, were held in prisons, 957 at the beginning of December 2013[47] and at the end of 2013 the figure was 850.[48] Some prisons hold high concentrations of foreign nationals, others only a very small number. In *Thi Ly Pham v Stadt Scweinfurt*[49] it was held that Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country must be interpreted as not permitting a Member State to detain a third-country national for the purpose of removal in prison accommodation together with ordinary prisoners even if the third-country national consents thereto.

Those detained in prisons are often those detained for the longest periods. They face immense barriers to obtaining legal representation.[50]

The Equalities and MBU manager at HMP Styall, a woman's prison in Lancashire, got in touch with ILPA about the lack of legal advice and representation on immigration for women detained there. We were able to identify members who would have been willing to provide surgeries were funding available. We got in touch with the Legal Aid Agency who investigated and responded as follows:

> *"As a snapshot – on day of our visit there may have been 15-30 women being detained who were[foreign nationals], of which two had come to the end of their criminal sentence and were being held under immigration powers…..*

[43] HC Deb, 27 January 2003, col 708W.
[44] At 55.10.1.
[45] Independent Chief Inspector of Borders and Immigration and HM Inspectorate of Prisons, *The effectiveness and impact of immigration detention casework*, December 2012
[46] Home Office *Enforcement Instructions & Guidance*, Chapter 55 at 55.10.1 'Criteria for detention in prison
[47] HC Deb, 12 December 2013, c319W.
[48] HC Deb, 13 May 2014, c 461W.
[49] Case C-474/13. See also joined cases C-473/13 and C-514/13 *Adala Bero v Regierungspräsidium Kassel, Ettayebi Bouzalmate v Kreisverwaltung Kleve.*
[50] Report: Denial of Justice, the hidden use of UK prisons for immigration detention, Bail for Immigration Detainees 15 September 2014.

What was not immediately clear to us is whether these two individuals had received legal advice prior to or after being served with the relevant immigration detention papers. It would seem to us that they are certainly entitled to be given legally aided advice, advice on detention and bail being in scope. I cannot be sure whether this had happened in these two cases; one of the individuals themselves indicated to me that she had possibly seen a legally aided lawyer as well as seeing a privately funded one. At the very least an individual under these circumstances should see a lawyer before an IS91 (or similar document) authorising further detention is served.

We certainly believe that the two individuals who were being detained under immigration powers should be seen by an advisor immediately. As to the other detainees, they appear to be at various stages of mid to long term criminal sentences having had the benefit of criminal legal aid. Immigration legal advice should be available for these individuals in relation to whether they wish to pursue asylum or article 3 claims (advice being in scope of Schedule 1, Part 1, LASPO 2012 paragraph 30), it was simply not possible or indeed appropriate for us to get a sense of this on our visit, even though we were able to meet with many (15 or so) of the detainees.

At present we do not believe the population is either stable enough or the numbers of those detained under immigration powers consistent to warrant formal on-going regular legal advice surgeries, we could not justify the sustainability of those, we will keep this under review though.

As a first step … is contacting the local supplier base this week to get an indication and details of a named individual at the firm who can be contacted by the prison welfare officer …by phone or email in order to facilitate a legal visit for those who request it and certainly as a priority for the two immigration detainees.[51]

The situation is in ILPA's view representative of the situation in many prisons. The outcome in this case is not. It is the result of considerable effort by an Equalities and MBU manager who has made this a priority and ILPA's own interventions, which included brining the matter to the attention of the National Audit Office.

Movement around the detention estate

Movement of immigration detainees around the removal centre (and prison) estate, like movement of persons seeking asylum between different accommodation, is often presented as the exception. In our experience it is the norm and **we urge the inquiry to try to obtain figures on this. Movement makes it more difficult to obtain and retain legal representation.**

Question: There is currently no time limit on immigration detention – in your view what are the impacts (if any) of this?

The impact of this is that detention in the UK does not conform to international standards including:

[51] Davinder Sidhu, Legal Aid Agency to ILPA 7 August 2014.

- UNHCR Detention Guidelines (2012), Guideline 6: "To guard against arbitrariness, maximum periods of detention should be set in national legislation. Without maximum periods, detention can become prolonged, and in some cases indefinite".

- UNHCR/Office of the High Commissioner for Human Rights Summary Conclusions from Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons (2011):

> 2: "Maximum time limits on … administrative [immigration detention] in national legislation are an important step to avoiding prolonged or indefinite detention".
> …
> 11: "Lack of knowledge about the end date of detention is seen as one of the most stressful aspects of immigration detention, in particular for stateless persons and migrants who cannot be removed for legal or practical reasons".

UN Working Group on Arbitrary Detention Annual Report 1999, E/CN.4/2000/4/Annex 2, 28 December 1999 (Deliberation No. 5), Principle 7: "A maximum period should be set by law".

The UN Committee Against Torture recommended in its concluding observations on the UK's fifth periodic report that the UK adopt a time limit and end "de facto indefinite detention." [52] The UK is not a party to Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country nationals, which sets a six-month limit on detention with the possibility of further detention for limited periods to a maximum of 18 months *in toto* where, despite the State's reasonable efforts, lack of co-operation by the detainee or in obtaining documentation from third countries had caused time to be extended[53]. In *Mathloom v Greece*[54] it was held that absent the time limits on detention, Greek legislation on detention under immigration act powers did not meet the "in accordance with the law" test laid down in Article 5 of the European Convention on Human Rights because it was not sufficiently precise or its consequences sufficiently foreseeable.

When Lord Hylton moved amendments in 1999[55] to set a maximum time limit on detention this was in the context of proposals that all detainees would be brought before a court or tribunal seven and 28 days after their detention started[56] and the number of persons detained beyond six months was 120[57]. In May 2013, the UN Committee against Torture urged the UK to "(i)ntroduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention."[58]

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[52] Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), paragraph 30(c). Available at http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf (accessed 8 October 2014).
[53] See Case C-357/09, Kadzoev [2009] ECR I-11189, 30 November 2009.
[54] Application 48883/07, judgment 24 April 2012.
[55] HL Deb 19 July 1999 vol 604 cc 693-724.
[56] Immigration and Asylum Act 1999 s 44.
[57] HL Deb 28 July 1999 vol 604 cc1611-66, letter of Lord Williams of Mostyn to Lord Avebury, to which reference is made by Lord Avebury.

[58] Committee against Torture, Fifth periodic report of the United Kingdom, (6-31 May 2013)

In the debates in on the bail provisions of the Immigration and Asylum Act 1999, Baroness Williams of Crosby said

> *One characteristic of a tyrannical or dictatorial regime is that it detains innocent people without any indication as to how long they will be detained. A few months ago, I had the obligation of visiting the last standing prison under the gulag archipelago system, Perm 65 in the Soviet Union as it then was, now Russia. I discovered that the most dreadful agony faced by people who had been at that detention centre was not knowing if or when they would ever get out. There was no clear procedure. An obligation rests upon those of us who are more privileged in a democratic society to limit that sense of being almost totally lost within the system—not knowing when, if ever, the procedures will be concluded. The main purpose of the new clause is to limit that period to a maximum of six months.* [59]

Lord Williams of Mostyn rebuked her gently

> *719 . The noble Baroness spoke of the Gulag. There is no automatic application after seven days paid for at public expense, nor after the further period paid for at public expense. No reasons are given in writing. There is no presumption of bail. I take the point, but we have produced a series of circumstances which are infinitely better than that. They are very significant advances. We seek to attack a machine which is not subject to judicial overview or written reasons without a presumption of bail. Without the automatic first and second routine bail applications, applications for bail can be made, or applications for judicial review*[60].

What would he say now? When detention is without limit of time, by administrative fiat, and the detainee will never ever be brought before a court or tribunal if s/he does not instigate this? Reasons for detention all too often take the form of tick boxes and inadequate or inaccurate bail summaries served at the door of the bail hearing. In *R (S) v SSHD* [2011] EWHC 2120 (Admin) the judge held that "subsequent reviews failed to grapple with the need to understand and apply the policy requirement of exceptional circumstances, to recognise properly S's mental condition and to consider properly objective evidence as to the effect of detention on it." S was detained despite a clear (and documented) history of severe mental illness, and contrary to the clear expert advice of a number of mental health professionals without detention having to be justified at the time before any court or tribunal.

Conclusion

We consider that the lack of procedural protection and effect access to a court or tribunal in the UK renders detention under immigration act powers in particular cases arbitrary within the definitions used by the UN Human Rights Committee in resolution 1997/50 and by the UN Working Group on Arbitrary Detention: where it is clearly impossible to invoke any legal basis justifying the deprivation of liberty of a particular individual[61] and where an asylum seeker, immigrants or refugees are subjected to prolonged administrative custody without any possibility in practice of administrative or judicial review or remedy.[62] and invite the inquiry to include a finding to this effect as one of its conclusions.

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[59] *HL Deb 19 July 1999 vol 604 cc693-724* Baroness Williams said
[60] *Ibid.* Col 719.
[61] Category One of the UN Working Group's criteria
[62] *Ibid.*, Category Four.

Adrian Berry
Chair
ILPA
8 October 2014

Annex 1

A selection from ILPA's previously published work on this topic.

ILPA Briefings on the Immigration Bill 2013-2014
http://www.ilpa.org.uk/pages/immigration-bill-2013.html

ILPA briefing for Lord Ramsbotham's topical question: UN Special Rapporteur on Violence Against Women denied access to Yarls' Wood Immigration Detention centre May 2014.
http://www.ilpa.org.uk/resources.php/26310/ilpa-briefing-for-lord-ramsbothams-topical-question-un-special-rapporteur-on-violence-against-women-

ILPA response Home Office consultation on Mental Health in Detention, 21 March 2014
http://www.ilpa.org.uk/resources.php/25708/ilpa-response-home-office-consultation-on-mental-health-in-detention-consultation-date-24-january-20

LPA to the Department of Health re immigration detention and release from detention and how this interacts with transfers under the Mental Health Act, 17 December 2013
http://www.ilpa.org.uk/pages/non-parliamentary-briefings-submissions-and-responses.html

ILPA evidence to the Joint Committee on Human Rights re implementation of human rights judgments, 6 October 2013 http://www.ilpa.org.uk/resources.php/21075/ilpa-evidence-to-the-joint-committee-on-human-rights-on-the-implementation-of-human-rights-judgments

ILPA evidence to the Joint Committee on Human Rights enquiry into the implications for access to justice of the Government's proposed legal aid changes, 30 September 2014
http://www.ilpa.org.uk/resources.php/21039/ilpa-evidence-to-the-joint-committee-on-human-rights-enquiry-into-the-implications-for-access-to-jus

ILPA Response to HM Inspectorate of Prisons (inspection criteria: immigration detention), 12 April 2012,
http://www.ilpa.org.uk/pages/non-parliamentary-briefings-submissions-and-responses.html

ILPA Submission to UN Special Rapporteur on the Human Rights of Migrants (immigration detention), 12 January 2012
http://www.ilpa.org.uk/pages/non-parliamentary-briefings-submissions-and-responses.html

ILPA Submission to UK Border Agency (ending the detention of children), 2 July 2010
http://www.ilpa.org.uk/pages/non-parliamentary-briefings-submissions-and-responses.html

ILPA Briefing for House of Commons debate on 17 June 2010 (detention of children)
http://www.ilpa.org.uk/pages/parliamentary-briefings-other-than-bills.html

Submission to Joint Committee on Human Rights (Treatment of Asylum Seekers), October 2006
http://www.ilpa.org.uk/pages/parliamentary-briefings-other-than-bills.html

Annex 2 Case Studies

***BA v SSHD* [2011] EWHC 2748 (Admin)**

This is one of the series of cases in which the Home Office was found to have breached the prohibition on torture, inhuman and degrading treatment by its treatment of mentally ill men in detention. The judge found "...a combination of bureaucratic inertia, and lack of communication and co-ordination between those who were responsible for his welfare." The judge carefully enumerates the shortcomings

in the reviews "In common with the other detention reviews, no detention review checklist appears to have been completed" "The reasoning in this decision does not refer to BA's mental illness at all. It …does not comply with…the policy." He says "A crescendo of professional voices expressed the view in the course of July that he was unfit to be detained." He finds "…a deplorable failure, from the outset, by those responsible for BA's detention to recognise the nature and extent of BA's illness."

The case shows how much deterioration can happen in a short time:

> *57… It is of concern that when BA had been seen on 31 March, his condition had been seen to be getting worse, but that a little more than a week later, he was obviously unwell to a layman, and was saying both that his medication had run out three days earlier, and that he had not been able to see the healthcare staff. This suggests that no-one was keeping an eye on his welfare, despite the warning signs seen on 31 March 2011. This is all the more worrying when it is recalled that incarceration, stress, and lack of medication were factors which had led to BA's becoming ill in the past. The GCID note for 8 April 2011 says "subject came to the centre from hospital and his psychiatric illness is acknowledged on IS91RA". On 11 April 2011, the healthcare unit at Harmondsworth IRC were asked for an assessment of BA's mental health. There was then to-ing and fro-ing about consent forms.*
>
> *58. BA was reviewed by the Harmondsworth IRC GP on 15 April 2011. …*
>
> *59. On 27 April 2011, Mr Agbeni … asked for an assessment of BA's current mental health, his medication, and "the regularity of his appointments with the psychiatric doctor by return." Manuscript medical notes for 10 May 2011 record that an appointment to see the doctor was booked for BA for 12 May 2011 "as requested by UKBA". He was reviewed by a GP on 12 May 2011. He reported that BA was "disoriented, lying on the floor, keeps repeating 'I see demons'. H/O schizophrenia/on Olanzapine...Already on the waiting list to see psychiatrist (20.5.11)."*

BA finally saw a psychiatrist on 20 May. But it was not until 6 August that he was transferred to a mental health ward. The judge records

> *75. On 6 July 2011, Dr Agulnik provided a preliminary psychiatric assessment. He formed the view that BA's food refusal was related to his delusional ideas. His physical condition was "not my area of expertise....gives rise to grave concern, and without more intensive and sustained treatment, could result in a lethal outcome." His physical and mental state made him unfit for continued detention, a "view supported by the Healthcare Manager". The stress and uncertainty about his status had a role in his current "decompensation into a psychotic state". Dr Agulnik considered it highly unlikely that BA could be successfully treated in an immigration detention centre, and "indeed that continuing to do so courts a real risk that he could die." He needed urgent psychiatric care which must be outside detention….*
>
> *…*
>
> *84. A file note on the same date indicates that UKBA knew that BA was considered unfit for detention, …*

Even when the hospital told the Home Office that a bed was available for BA, no transfer took place for a further three days, despite the hospital's chasing.

***R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012)**

HA is schizophrenic. Again, a violation of Article 3 was found in his case. The judge observes:

> *"…under the heading 'Changes in Circumstances' the same words that had been used in the previous two reviews were repeated without in fact any record being given of any changes since the last review…" "The Defendant had no real answer to these submissions. In substance her response was to accept that the Claimant was in need of a transfer at about that time for assessment and, if necessary, treatment in*

a psychiatric setting but to deny that it was her responsibility that this did not happen as quickly as it might have done, that responsibility lying with others such as the Primary Care Trust."

R (D) v Secretary of State for the Home Department [2012] EWHC 2501 (Admin) (20 August 2012). Another case involving a schizophrenic in which a violation of Article 3 was found. Each review contains the formula "and as there are no medical or compassionate issues highlighted to date" despite the increasing evidence of mental illness. The judge describes the Home Office approach as "irrational" and "laisser-faire". The Secretary of State maintained throughout that there had been no error and no breach of Article 3 or even of Article 8 even though the Official Solicitor was acting as D's litigation friend by the time of the hearing because D's mental state was such that he could not instruct his solicitors.

Mr F

Mr F had been detained for nearly three years at the date of hearing. He was without travel documents and therefore could not be removed until this was resolved. He had a significant history of self-harm and suicide attempts in detention. He was refused bail at a hearing in 2012 because the First Tier judge did not know that Home Office initial accommodation ['Section 4 bail accommodation'] at Barry House in southeast London had the facility to monitor electronic tags where they were fitted as a condition of bail. The Home Office Presenting Officer did not enlighten the Tribunal. Counsel for the applicant had stated that monitoring was possible (Barry House was after all the release address for most detainees bailed in the south east), and was able to telephone Barry House and ask the manager to fax through confirmation of this to the hearing centre within minutes. Despite this bail was refused.

Counsel's attendance note stated: *"It was submitted by the HOPO in answer to a question by the IJ that Barry House did not allow electronic monitoring. I contacted Barry House while still at the hearing centre to confirm the tagging point but was told by the manager that they do permit electronic tagging and in fact they had residents with tags on there currently. I asked him to send a fax to the Tribunal* immediately confirming this since bail had been *refused on the false basis that tagging was unavailable at Barry House. He agreed to this and did indeed send the fax. I immediately told the usher of the Court to inform the IJ who was dealing with another application that this confirmation was coming through and that I wished her to reconsider the application in light of this. IJ received the fax but refused to reconsider the application stating that she would add the fax to the file for the next application. "When I told the HOPO about my telephone conversation and that I was awaiting confirmation she went and took instructions and maintained her position that Barry House does not permit electronic tagging. This is either dishonest or a very severe case of the left hand not knowing what the right hand is doing. Either way it is unacceptable…In my opinion the IJ should have reconsidered the application in light of the correct information about tagging at Barry House being provided within minutes of her refusal. She had commented that tagging provides certainty and she refused bail because she considered the applicant was a substantial risk of absconding"*

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Mr M

Liberian national Mr M was detained in November 2009 after serving a 42- month sentence. Two and a half years later on 23rd March 2012, in preparation for making a bail application, he applied for a Home Office Section 4 bail address. In July 2012, by which time Mr M had been waiting four months, Bail for Immigration Detainees wrote the first of series of letters of complaint at the delay, in line with the Home Office complaints process. A telephone call to a Home Office Section 4 caseworker on 20th November 2012 revealed that the Home Office was still unable to provide a bail address. Mr M was then granted a bail address on 28th November 2012 eight months after application, during which time he had not been removed by the Home Office.

Case of P.

Mr P had been detained for over two years at the time of the bail application, and had a longstanding history of mental illness. He had attempted suicide while in detention and had made "an enormous number of cuts" on himself in one day according to an independent medical report. During the bail hearing the judge was taken to photographic evidence of self-harm while in detention including a scarring

diagram, and an independent medical report detailing clinical evidence of multiple suicide attempts while in detention and the opinion that detention had caused deterioration in mental state rendering him unfit for detention. Mr P himself showed the judge the extensive scarring on his body via the videolink. The judge recorded that further evidence was required of both self-harm and suicide risk, and went on to note that Mr P had not been successful in any of his suicide attempts to date, saying "Well he has not actually done it though has he? Well he has not actually committed suicide, he has only tried to do it". Once the application had been withdrawn, counsel's attendance note shows that the judge then said that in his experience "suicide has the potential to be self-serving". Bail for Immigration Detainees wrote to the Tribunal to raise concerns about the conduct of the bail hearing, including comments made about Mr P's previous suicide attempts that had prompted counsel to withdraw the application in the belief that Mr P was not receiving a fair hearing. Bail for Immigration Detainees lodged a further bail application for Mr P without waiting for 28 days despite having no new grounds other than the passage of time and further time spent in detention

Mr A

Mr A had been in the UK since he was a child and has indefinite leave to remain. He was in prison and had received a notice of liability to deportation. He was a care leaver but the local authority was refusing to pay for his legal advice and he could not afford to pay. He raised no asylum ("protection") ground that would justify legal aid; the reasons why he wants to stay in the UK are out of scope for advice in legal aid. He filled in a deportation questionnaire by himself but did not submit sufficient evidence. He has two children of his own and should provide evidence about their lives and ties to the UK as well as letters of support from friends and family members, and his excellent record in prison. The strength of his case against deportation will also be relevant when it comes to deciding on his eligibility for release on Home Detention Curfew. If a decision is made to deport him it will be necessary for the local authority to pay and their failure to do so can be made the subject of a judicial review.

Francesca

Francesca is from Italy and is currently serving a six month sentence. She was of good character prior to this sentence. She had lived in the UK for 21 years had acquired rights of permanent residence in the UK. She cannot be excluded from the UK unless there are "serious" public policy, security or public health grounds for such exclusion. The Home Office has apparently ignored its own policy guidance which says that caseworkers must consider length of residence in the UK and length of sentence before deciding to pursue deportation action.

Francesca cannot afford to pay for legal advice. She does not qualify for legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In the circumstances an immigration solicitor in the same firm as Francesca's prison lawyer agreed to write a letter to the Home Office *pro bono* setting out the policy they should be following. Francesca has been released.

Michael

Michael is from Malta and is serving a prison sentence. He wrote to his previous criminal solicitor to say that he was under consideration for deportation and wanted some advice about this. He cannot afford to pay for help. He does not qualify for legal aid for his immigration case. He has lived in the UK for 10 years and has a four-year old daughter who is British. He wants to remain in the UK because of his child and the life he has made in the UK.

An immigration lawyer in the criminal solicitor's firm wrote to him to advise pro bono on how he could best prepare his case himself. He has good English and is literate, but he has written back with a lot more questions, about this complex process. The immigration lawyer is again replying, *pro bono*, but cannot conduct his case without some funding. As a European national who may have permanent residence in the UK he may have a realistic chance of avoiding a decision on deportation and thus avoiding an appeal if he makes representations to the Home Office before his conditional release date and supplies enough evidence to change the decision.