

Evidence submitted by Bail for Immigration Detainees (COR0019)

1. BID is an independent national charity established in 1999 to challenge immigration detention. We assist those held under immigration powers in removal centres and prisons to secure their release from detention through the provision of free legal advice, information and representation. We are accredited by the Office of the Immigration Services Commissioner (OISC). Between 1 August 2018 and 31 July 2019, BID provided legal advice to 4,161 people. Alongside our legal casework, we engage in research, policy advocacy and strategic litigation to secure change in detention policy and practice. Many of our clients are highly vulnerable, physically and mentally and are likely to be extremely adversely affected by COVID-19. Vulnerable adults include victims of torture, human trafficking and exploitation, those with mental health problem and language barriers.
2. This submission addresses our concerns about the Home Office's response to COVID-19 in relation to the continued use of immigration detention.
3. It is clear that COVID-19 could cause a serious crisis within immigration detention. It is likely that the disease will spread rapidly through the immigration detainee population, some of whom are likely to become seriously ill and may die. People in immigration detention are kept in crowded and unhygienic conditions and are not able to follow the government's advice and socially distance. The government's own guidance recognises the risks that infectious diseases such as influenza are likely to spread quickly across secure estates such as prisons and immigration removal centres¹.
4. These risks have been clear to us for some time. On 11th March we wrote to the Home Secretary expressing our concerns and arguing that immigration detainees should be released without delay in order to avert a public health crisis (I attach the letter as an annex to this submission). In our letter we raised serious concerns that COVID-19 was likely to create a crisis in immigration detention because:
 - Infectious diseases such as COVID-19 tend to spread more quickly in sites of incarceration
 - The risk is heightened by the fact that people in immigration detention may have entered the UK from countries where the incidence of COVID-19 is far more widespread (such as Italy)
 - Immigration detainees are frequently moved around the detention estate

¹ Prevention of infection and communicable disease control in prisons and places of detention
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/329792/Prevention_of_infection_communicable_disease_control_in_prisons_and_places_of_detention.pdf

5. We also raised concerns that the enforced removals system is likely to become increasingly difficult to operate, thereby undermining the lawful basis for detention.

We asked for clarification on a number of matters:

- the use of testing for COVID-19 in immigration detention (for detainees and staff)
 - whether people who are particularly vulnerable would be released
 - provisions to ensure detainees have access to legal advice and access to the courts during COVID-19 enforced restrictions
6. This letter was co-signed by 10 organisations. The Home Office responded on 26th March 2020. Their response did not engage with the issues we had raised in a meaningful way and simply referred us to guidance issued by Public Health England for all staff working in the immigration removal estate. They did not answer any of our questions about the use of testing, about detention decision-making and the release of detainees (particularly those who are vulnerable), or about access to legal advice and the courts. The response did not address the issue of obstacles to operating enforced removals.
 7. This is in keeping with a departmental response to the COVID-19 crisis that has lacked transparency and has failed to communicate with key stakeholders.

Current situation in immigration detention:

8. We are very concerned about a number of current issues in immigration detention. Many of the issues have been reported directly to us by our clients who are detained under immigration powers, but we are also concerned about a number of issues that have emerged in the media.

Concerns in specific centres:

9. Yarl's Wood:

One woman detained in Yarl's Wood IRC tested positive for COVID-19 on Sunday 22nd March². Detainees reported to *The Independent* that they had been prevented from leaving their rooms as a precaution. One detainee said "Now they are taking precautions, but they were taking no precautions until yesterday. So right now everyone is panicking. We know there is a pandemic going on and here we are not being given the means to protect ourselves". It was also reported by *Women for Refugee Women* that people in the centre who had underlying health conditions that would make them more vulnerable if they became infected with COVID-19 were not being given extra protection or information". They also report that since the 22nd March at least 5 women have been detained in Yarl's Wood.

² <https://www.independent.co.uk/news/uk/home-news/coronavirus-yarls-wood-immigration-detention-removal-centre-home-office-a9417056.html>

10. We have heard from a client detained in Yarl's Wood on 24th March that detainees can now move around the centre but have not been given gloves or masks.
 11. Harmondsworth:
 12. We spoke to a client on 24th March who told us that somebody has tested positive for COVID-19 in Harmondsworth IRC, and that individual has now been placed in isolation. However as of yet we have been unable to confirm whether that information is correct. That individual also reported that there were still 241 individuals being held in Harmondsworth.
 13. In addition, the BBC reported that one detainee who is a cleaner in Harmondsworth "said he was aware of a cell not being cleaned after a man with symptoms was moved elsewhere to be quarantined and a new detainee was moved in".
 14. He said "The way we're being treated is disgusting. People are moving in and out of cells.... without [the cells] being cleaned... "I felt sorry for the [detainee that was moved in], the person knew nothing about the cell".
 15. Gatwick IRCs (Brook House and Tinsley House):
 16. We are aware that immigration detainees were in 'lockdown' in Brook House IRC on 24th March. People held in Brook House received a note from the director under their door on 24th March which stated:
 17. "Following the instruction by Prime Minister Boris Johnson last night in relation to the lockdown of all people residing in the UK, the decision has been made to adhere to the same instructions across Gatwick immigration removal centres
 18. With immediate effect detainees will remain in their rooms with controlled access to showers and fresh air... at mealtimes you will be asked to come out of your rooms and go to the servery to collect your meal, returning immediately to your rooms". Detainees were not told how long the state of lockdown would last.
 19. We spoke to one of our clients on 24th March, FD*, to understand what was happening as a result of the lockdown. He is detained in Brook House IRC. FD has been in the UK for more than 20 years and is currently separated from his partner and British children as a result of being detained. FD is very anxious about the situation and told us "It is horrific and scary when I speak to my kids on the phone they're scared and I wish I was with them. I want to reassure them and comfort them and just be with them. I've been speaking with the whole family because they're all in the UK and it's quite serious."
 20. He reported a number of concerning issues:
-

- There isn't any hand sanitiser for detainees
- Detainees are required to clean their own rooms but they are running out of cleaning products – there aren't any new mop heads for example
- Staff are dressed normally with no protective clothing, no sanitiser or masks.
- Air is recycled. FD told us "If someone sneezes we'll get it, the air is recycled, there are no windows or fresh air, sometimes I struggle to breathe just because of the air being so dry and cold."
- Detainees are not being updated. FD told us that he follows the news and reads the papers and that is how he has learned about the symptoms.
- Prior to the lockdown, at the weekend, there was no enforcement of social distancing measures: "Over the weekend we got a notice saying that religious personal would no longer be coming to the chapel and that we should try and not congregate in groups of more than 4 but they're not enforcing it because around 60 of us eat together in the dining room and in the IT room there's usually 20 people at a time."
- Since the lockdown detainees have not had access to the computers, fax, post or photocopier. For FD, this had prevented him from putting in a bail application
- Signal is very poor in some of the rooms so it is very difficult for people to speak to their legal representative.

21. We understand that this lockdown regime has now been relaxed and as of 25th March detainees were no longer locked in their rooms. However we remain concerned about a number of the issues raised by FD, including the lack of cleaning products, hand sanitiser, and masks and other protective equipment, and the lack of ventilation. We are also concerned that the situation is not being explained properly to detainees, who are left to find out about the virus and symptoms from reading newspapers and watching the TV.

22. We are also concerned about the level of communication and the lack of information being supplied to detainees who are understandably anxious about the situation. One client we spoke to on 25th March told us:

23. "Before yesterday everything was normal. Yesterday we were in our cell all day 24 hours. Even the food they bring it to the cell you could ask the staff to get stuff for you but normally we help each other but I didn't have any change and I couldn't ask anyone for help. They took us for a shower one by one, 3 guards escorted me to the showers. They don't tell us anything, for example today someone told me that if you want to go gym you can put your name on a list but I never knew. We don't find out nothing from them we have to ask each other. Today we can move around but just within the wing. We don't have rights. Britain isn't civilised look what it is doing to people I would never have thought this would happen in Britain...they don't value people here."

24. A number of these concerns were also raised in an anonymous testimony from Brook House IRC posted by *Detained Voices*³.

25. It is our understanding that Tinsley House IRC is no longer holding any detainees
Immigration detainees held in prisons
26. We have particular concerns in relation to immigration detainees currently held in prisons. Eighty-eight prisoners and 15 staff have already tested positive for COVID-19, and three prisoners have died⁴.
27. There are likely to be many more cases and probably deaths. The government announced on 4th April that 4,000 prisoners would be temporarily released to limit the spread of infection and ease the pressure on prisons caused by the outbreak of COVID-19. Immigration detainees – all of whom have served the entirety of their custodial sentences – held in the prison estate should also be released urgently. We can only assume that these prisoners are British nationals or they do not have pending deportation cases or human rights appeals.
28. We have received reports of a number of highly alarming issues from our clients.
29. Three of our clients have reported enhanced lock-in regimes meaning that all those not in quarantine are held in their cells for roughly 23.5 hours per day and are required to eat their meals in their cells. In HMP Wormwood Scrubs we were told that inmates are only allowed out for 10-15 mins for shower and put credit on kiosk.
30. For those under quarantine, they are locked on their cells 24 hours a day. In HMP High Down one of our clients informed us that part of his wing has been under quarantine for three weeks now. That means he has had no opportunity to shower or exercise for three weeks. Although this client has a phone in his cell, for those without credit on their pin there would be no way to top up credit during this period.
31. This highly restrictive regime is inappropriate for immigration detainees who are held solely for administrative purposes.
32. Immigration detainees currently face additional barriers to accessing justice. People held in prisons already have highly restricted access to communications – there is no access to the internet, faxes or mobile phones. Reduced time out of their cells makes it difficult for detainees to contact their lawyer and progress their case, or to find a lawyer if they do not already have one. There are no longer any social visits and it is also be difficult for legal representatives to visit their clients in prison. We are aware of at least two prisons that no longer allow face to face legal visits and we expect this is the same for all prisons. Communication with people held under immigration powers in prisons relies on a prison

³ <https://detainedvoices.com/2020/03/26/its-really-hostile-right-now/>

⁴ <https://www.theguardian.com/society/2020/apr/04/up-to-4000-inmates-to-be-temporarily-released-in-england-and-wales>

postal system that is already very slow but this is likely to be made even more difficult by the COVID-19 crisis.

33. As solicitors are increasingly required to work from home, communicating via post is likely to become more difficult. As the crisis develops it is likely that the postal service itself will become highly disrupted.
34. People held in prisons are already facing increased difficulties accessing the courts and this situation is likely to worsen as the COVID-19 crisis develops. Frequently clients are not produced for bail hearings and unable to communicate with counsel prior to bail hearings.
35. Many are also no longer able to contact the Home Office about their case. One prisoner who is currently serving a sentence in HMP High Down and likely to be detained under immigration powers upon completion of his sentence informed us that he wants to go back to his country of origin but he has not been able to speak to the Home Office as they are no longer coming to the prison. He was told that he will have to wait. Given that this prisoner if cooperating with the removal process there would seem to be no reason why he could not be released at the end of his criminal sentence and given immigration bail. Instead he will almost certainly be held in prison under immigration powers at the end of his criminal sentence.

Release of detainees:

36. A considerable number of immigration detainees have been released from detention. It was reported in *The Guardian* on Saturday 21st March that 300 people had been released from detention centres, and that “it is believed that more than 900 people are currently in detention”⁵. This figure has since been revised down to 736 at the time of the High Court’s judgment on 26th March⁶. Whilst the release of detainees is welcome, we have received no information about the basis upon which these individuals were released, and whether the pattern of releasing individuals from immigration detention is continuing.
37. We do not know whether these individuals have been released on the basis that they have particular health conditions that would make them likely to suffer more severe symptoms if they were to contract COVID-19, or whether the decisions have been made on the basis of Home Office assessments of the risk of harm that an individual poses, or whether there was some other basis for the decisions to release.
38. The Home Office has not gone far enough. There remain large numbers of people held in immigration detention including people whose underlying health conditions would put them at great risk if they were to contract COVID-19.

⁵ <https://www.theguardian.com/uk-news/2020/mar/21/home-office-releases-300-from-detention-centres-amid-covid-19-pandemic>

⁶ <https://www.theguardian.com/uk-news/2020/mar/26/high-court-rejects-call-to-free-736-detainees-at-risk-from-coronavirus>

39. One of our clients for whom we recently represented in a bail application was at increased risk because of suffering from asthma. Despite having completed his criminal sentence the Home Office strongly opposed his bail application because he had previous convictions. Another of our clients who is asthmatic has been waking up with panic attacks and shortness of breath, and a feeling that he is suffocating. Another has hypertension and severe mobility issues and had been recognised, even before the outbreak of COVID-19, as being unfit to be in detention by doctors and medical experts examining his records.
40. We are also concerned that the government may be maintaining detention primarily on the basis that individuals have committed offences and whose release is considered by the Home Office to carry a high risk of public harm. In an article about the release of detainees in *The Guardian* a Home Office spokesperson said “our priority is to maintain the lawful detention of the most high-harm individuals, including foreign national offenders⁷”.
41. This is problematic for a number of reasons. Firstly, any ‘Foreign National Offender’ held in immigration detention will have served the duration of their custodial sentences and would have been released if they were British nationals. There is no reason to suggest that their release carries a higher risk of public harm than the release of a British national following the completion of their sentence. Secondly, it is our experience that Home Office assessments of risk of harm are frequently made on the basis of scant evidence and in some cases depart from assessments of the risk of harm or offending made by the probation service in OASys reports. It is in fact the Home Office’s decision to continue to hold people in immigration detention during the COVID-19 outbreak that carries a high risk of harm, rather than the release of time-served ‘Foreign National Offenders’.
42. The lack of transparency regarding who will remain in detention is at odds with the urgency of the situation. We should not be forced to piece together the government’s intentions from a few sentences given to a journalist by the Home Office’s press office. This situation is rapidly developing into a crisis and our clients are very nervous about the danger they are being forced to face in detention. The government urgently needs to provide clarity about its plans for the operation of immigration detention during the coronavirus outbreak.

Removability

43. The COVID-19 epidemic has made enforced removal impossible in the vast majority of cases. The government has released a list of 50 countries whose nationals will not be newly detained except in 'high harm' cases. This list was formulated on the basis that enforced removal is not currently possible to those countries. We understand this list to be dynamic and that it is constantly shifting.

⁷ <https://www.theguardian.com/uk-news/2020/mar/21/home-office-releases-300-from-detention-centres-amid-covid-19-pandemic>

44. We submit that nationals of these countries should also be released from detention. It is plainly unjustified and unlawful to use administrative immigration detention in cases where removal is not possible, especially given the risks of infection by COVID-19.
45. However, even for countries that are not on the list, there are numerous barriers to enforcing removals. The airline industry is currently in crisis and it is considered that it will be very difficult for the Home Office to ensure places on passenger planes to pursue removal, nor do we think that charter flights are an option at this time.
46. There is also no evidence that the Home Office intends to test people for COVID-19 prior to removal. The continued use of enforced removal would increase the risks of transmission of the virus to places that have not yet been severely affected and potentially lack the resources of the UK to deal with a widespread outbreak.
47. Enforced removal is also resource intensive and requires numerous escort staff to accompany the detainee. There is no possibility for this to be carried out in a way that respects the '2 metre rule'. During the current public health crisis enforced removal is not an essential service that justifies the risk of transmission of COVID-19 that it entails.
48. Enforced removals should be suspended.

Restricted access to legal advice and to the First-tier Tribunal

49. It is essential that if anyone were to face enforced removal at this time they have the chance to access legal advice prior to removal. The stakes are very high as wrongful removal can result in people being returned to dangerous and potentially life-threatening situations or permanent separation from family.
 50. In IRCs, visits have been cancelled and the Detention Duty Advice Service, through which immigration detainees can access legal advice, is currently operating a telephone service. This will present obstacles to accessing advice. It will be very difficult for practitioners to assess the merits of a case without a face-to-face appointment. Without the ability to properly assess a client's demeanour it is likely that vulnerabilities may be missed. Moreover, these face-to-face appointments are a way for lawyers to assess the detainee's paperwork, without which it is very difficult to assess the merits of a case. This increases the risk that people will be wrongfully removed, without having had the ability to access legal advice to pursue their claim to remain in the UK. These limitations call into question the lawfulness of enforced removal.
 51. In addition there is reduced access to the courts. Bail hearings are now being heard remotely and in some tribunals there have been significant delays of around 2 weeks in listing of bail applications. For deportation hearings and other immigration appeals that require live evidence to be given there is a real risk of procedural unfairness.
-

New detentions:

52. BID understands that people are still entering immigration detention. The BBC reported on 25th March that it had “been told by immigration lawyers that the Home Office has continued to arrest people and place them in IRCs, including in the last few days⁸”.

53. In addition people continue to be detained upon reaching the end of their custodial sentence. This practice should also end immediately as it places current detainees and people newly entering the centre at increased risk of infection.

New detentions of people who have completed criminal sentences endanger the public

54. The fact that people who have completed criminal sentences are being detained under immigration powers at a time when they cannot be removed means that there is now a growing group of people in prisons who may eventually be released after the expiry of their licence.

55. This means the **loss of protective measures** such as:

- regular supervision meetings with the Probation Service
- licence conditions such as curfews; prohibition on drinking; prohibition of entering certain areas or meeting certain people; monitoring of behaviour etc.
- the incentive to comply with licence conditions which if breached results in a person being returned to prison to complete a criminal sentence.

56. The policy to retain these foreign nationals in prisons after the expiry of their criminal sentences therefore risks losing an important element in the rehabilitation process. This encourages conditions of harm that the Government states it is its intention to prevent.

April 2020

Annex A

Joint letter sent to the Home Secretary from Bail for Immigration Detainees and other NGOs, dated 11 March 2020

⁸ <https://www.bbc.co.uk/news/uk-52017311>

We are writing to express our concern about the very real risk of an uncontrolled outbreak of COVID-19 in immigration detention and to ask what measures the Home Office has put in place to address this.

There is a very serious risk that the virus could spread quickly throughout all immigration removal centres. COVID19 is highly infectious and such diseases tend to spread more quickly in prisons and other sites of incarceration. The risk is heightened by the fact that people in immigration detention may have entered the UK in recent weeks from countries where the incidence of COVID-19 is far more widespread such as Italy. Immigration detainees are also frequently moved between different immigration removal centres and so the infection is likely to spread rapidly across the entire detention estate.

Many people in immigration detention are highly vulnerable and have pre-existing health conditions. This makes it more likely that they will be severely harmed by COVID-19.

We are concerned that measures to prevent the risk or spread of coronavirus in detention may undermine detainees' access to justice and/or access to medico-legal reports. This is because NGOs and duty solicitors that provide these services in detention may decide that the risk of contracting COVID-19, or passing on the disease to people in immigration detention, is too great. If this were to be the case then this would call into question the lawfulness of immigration detention and removals.

In order to prevent the disease spreading rapidly among detainees, custody officers, healthcare staff and all others in Immigration Removal Centres, the government should immediately release all immigration detainees. This is in the interests of public health. We are concerned that if the government does not act now, detainees will continue to be held in close proximity, in a high-risk environment, leading to a preventable spread of the virus and losses of life.

Detention can only be justified where there is a prospect of imminent removal and as borders close around the globe and strict travel restrictions are implemented, the removal system is going to become much harder to operate, making increased numbers of removals and detentions unlawful.

If there are not currently any plans to release people from immigration detention to prevent the spread of COVID19, please outline any steps that the Home Office is taking to mitigate the spread of COVID-19 within Immigration Removal Centres, while also maintaining their right to access legal advice and the First-tier Tribunal.

How many people in immigration detention have been tested for COVID-19?

Are there plans to test immigration detainees or people who work in Immigration Removal Centres for COVID-19?

What response is the Home Office taking when an immigration detainee or somebody who works in immigration detention tests positive for COVID-19?

Will people who test positive for COVID-19 remain in detention?

Will people who test positive for COVID-19 still face enforced removal from the UK?

Will people who test negative for COVID-19 be released from immigration detention?

Will people who have pre-existing health conditions be released from detention?

Assuming that you may decide not to release all people held in immigration detention, what steps are you taking to maintain access to legal advice and access to the First-tier Tribunal in the event of the spread of the Covid 19 virus?

We ask that you please respond to this letter as a matter of urgency.

Annex B

Response from the Director General, Immigration Enforcement Bail for Immigration Detainees and other NGOs, dated 26 March 2020

Thank you for your letter of 11 March to the Home Secretary on behalf of a number of NGOs, regarding your concerns about immigration detention and COVID-19. The Home Secretary has asked me to respond on her behalf and I apologise for the delay in replying.

The Home Office is, as always, mindful of our legal obligations in respect of immigration detention to ensure that it is used sparingly and only where removal or deportation is a realistic prospect.

We take the welfare of the detainees in our care very seriously. Immigration Enforcement and its commercial partners are taking the necessary precautions to ensure that any risk of COVID-19 in the immigration detention estate is minimised, including for those who may be particularly vulnerable.

Our work continues to follow national guidance issued by Public Health England (PHE), Health Protection Scotland and the National Health Service. In addition, all immigration removal centres have communicable disease contingency plans, based on PHE advice. These plans are tested on a regular basis in conjunction with NHS England and the local healthcare providers. PHE has issued interim guidance for all staff working in the immigration removal estate and for those engaged in escorting services. This interim guidance is for the benefit of healthcare and custody staff on the custodial management of prisoners and immigration detainees and can be found here: <https://www.gov.uk/government/publications/covid-19-prisonsand-other-prescribed-places-of-detention-guidance/covid-19-prisons-andother-prescribed-places-of-detention-guidance>

In addition, as you may be aware, one NGO (who is a signatory to this letter) has initiated legal action. The Home Office will continue to manage the development of appropriate strategies and procedures as well as formulating its response to the litigation.
