

## Written evidence submitted by Bail for Immigration Detainees (BID) (COR0243)

### Bail for Immigration Detainees

1. BID exists to challenge immigration detention and ensure access to justice for detained people. With the assistance of barristers acting pro bono, BID prepares and presents bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal. Since 2014 BID has also provided legal advice and representation to people challenging their deportation on the basis of Article 8 of the European Convention on Human Rights (ECHR). Our casework feeds into our policy and campaigning work providing a robust evidence base from which to challenge all forms of immigration detention. Our aim is to end immigration detention. This response addresses the Home Office's handling of the immigration detention system during the pandemic.

### Coronavirus in Immigration Removal Centres – first wave of Covid-19:

2. The Home Office was warned, on a number of occasions and by a wide range of stakeholders and experts, that outbreaks of coronavirus in Immigration Removal Centres would be likely to occur. On 11th March 2020 we wrote to the Home Office along with 10 other organisations warning that there was a very serious risk of an uncontrolled outbreak of COVID-19 in immigration detention and proposed that all detainees be released to safe accommodation. We warned that immigration removal centres (IRCs) would present fertile conditions for the spread of coronavirus. Immigration removal centres are poorly ventilated<sup>1</sup> and there is a steady stream of staff and detainees moving in and out of the centres, who can, and have, transmitted infection. Evidence provided by Professor Richard Coker in a legal challenge against the government brought by Detention Action found that Covid-19 spreads rapidly in 'congregate settings' such as prisons and immigration removal centres. Immigration detention does not just put those detained risk – he argued that detention centres would be likely to become 'epidemiological pumps' that can drive the spread of coronavirus in the wider community.

3. The Home Office did release a significant proportion of people – the population of immigration detainees in IRCs fell from 1,278 at the end of 2019 to 313 at the beginning of May 2020<sup>2</sup>. Instead introduced a series of measures including an 'enhanced cleaning regimes', enhanced screening and isolation procedures, and a commitment to review the detention of every individual held. These measures have not been sufficient to prevent the spread of the new, more infectious variant of Covid-19.

4. During the 1st wave of the pandemic, BID carried out research analysing the Home Office's approach to detention decision-making. During that period, BID had succeeded in 94% of bail applications made to the First-tier Tribunal, suggesting that the Home Office's use of detention during this period did not appear to be justified in the findings of the independent courts. The main focus of our research was assessments of "risk of harm" posed in individual case, vulnerability, and imminence of removal. We examined 42 cases, all of which were granted bail between 23/03/2020 and 01/05/2020.

5. We found serious and systemic flaws in the Home Office's approach to decision-making. Despite publicly justifying the continued use of detention during the pandemic on the basis that the individuals concerned

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<sup>1</sup> Stephen Shaw reported poor ventilation in Harmondsworth, Campsfield House (now closed) and Yarl's Wood in his 2018 report "Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons"  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728376/Shaw\\_report\\_2018\\_Final\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf)

<sup>2</sup> Statistics relating to COVID-19 and the immigration system, May 2020  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/887808/statistics-relating-to-covid-19-and-the-immigration-system-may-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887808/statistics-relating-to-covid-19-and-the-immigration-system-may-2020.pdf)

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represented a 'risk of harm', the Home Office claimed a high 'risk of harm' in only 21% of cases and rarely disclosed any evidence (such as probation reports) to support this claim. In only 17% of cases did the Home Office make reference to the current travel restrictions and the fact that these may have an impact on the imminence of removal. There were 9 individuals who had underlying health problems that under the government's own guidelines make them vulnerable to severe illness if they contract COVID-19 but whose detention was maintained<sup>3</sup>.

6. Rather than review its processes, seek to learn lessons and improve decision-making, the Home Office responded to the high rate of bail grants by writing to the tribunal to say that they were "somewhat surprised" at the rate of grants of bail, in what appeared to be an attempt to influence the judiciary. The President of the First-tier Tribunal, in response to this highly unusual and widely criticised<sup>4</sup> written enquiry, felt it necessary to remind the Home Office that, as an independent judiciary, the courts decide bail applications in accordance with the law (which he also felt it necessary to summarise).

*As [an] independent judiciary we decide bail applications in accordance with the law, which includes the guidance which has been issued. There has been no change in either the law or the guidance<sup>5</sup>.*

### **Outbreaks of Coronavirus in Immigration Removal Centres during the 2<sup>nd</sup> wave of Covid-19:**

7. In recent months Covid-19 has spread rapidly through Immigration Removal Centres. In early January Brook House Gatwick IRC was forced to close due to an outbreak of coronavirus that spread rapidly through the centre over a number of weeks. On December 11<sup>th</sup> 2020 the Home Office was [forced to cancel](#) a number of charter flights due to an outbreak at Brook House<sup>6</sup>, confirmed by Public Health England. Those detained were asked to stay in their rooms and social areas were closed. Rule 35 appointments – which identify people who may have been tortured or who have other vulnerabilities making them unsuitable for detention – were cancelled. *The Independent* reported that people held in Brook house are being kept in the dark over the number of positive Covid tests, with one individual stating "They're applying these restrictions but not telling us anything".

8. This is in addition to outbreaks at Morton Hall, Colnbrook and Harmondsworth. The Home Office's response to a Freedom of Information Request by Bail for Immigration Detainees (**Annex A**) confirmed that in the month between 9<sup>th</sup> December 2020 and 8<sup>th</sup> January 2021, there have been 26 confirmed cases of COVID-19 in IRCs, a figure that was correct at 8<sup>th</sup> January 2021:

<b>IRC</b>	<b>Number of confirmed cases</b>
Morton Hall	15
Brook House	6
Harmondsworth	3
Colnbrook	2

### **Home Office response:**

<sup>3</sup> Bail for Immigration Detainees: Risky Business: Immigration Detention decision-making during the COVID-19 pandemic [https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/1203/BID\\_COVID-19\\_Detention\\_research\\_report.pdf](https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1203/BID_COVID-19_Detention_research_report.pdf)

<sup>4</sup> <https://www.freemovement.org.uk/home-office-tries-to-lean-on-judges-deciding-immigration-bail-cases/>

<sup>5</sup> 1 <https://ilpa.org.uk/wp-content/uploads/2020/05/Letter-to-Home-Office-1.5.20.doc>

<sup>6</sup> Home Office forced to cancel deportations after coronavirus outbreak in removal centre <https://www.independent.co.uk/news/uk/home-news/deportation-coronavirus-outbreak-home-office-brook-house-b1769320.html>

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Continued enforced removals and deportations:

9. Given the risks and particularly in the light of the multiple outbreaks of Covid-19 in IRCs, the government should not be operating enforced removals at all. Continuing to do so places immigration enforcement over public health and undermines the efforts that the entire country is making to reduce the spread of the virus. However from August until the end of 2020 the Home Office carried out charter flights at a higher rate than we have ever seen<sup>7</sup>, with usually at least two charter flights per week, to remove asylum seekers to European countries under the Dublin agreement. Since the beginning of 2021, the UK has continued to carry out charter flight removals despite the imposition of a severe lockdown and the second wave of Covid-19 that has been far more deadly than the first.

10. It is not possible to ensure social distancing on charter flights, as found by the prison inspector's [report](#) into a charter flight to Germany and France, published in August:

“The operation was carried out in a manner very similar to those carried out before the pandemic, with a few changes to reduce the risks of infection. The need for staff to exercise physical control clearly made social distancing impossible during some parts of the operation, but the detailed measures and mitigations specified in ‘safe systems of work’ documentation were implemented only in part, and very little priority was given to wearing face coverings or maintaining distance.”

11. Not only does charter flight activity put the entire country at risk, it could transmit coronavirus from the UK to countries where coronavirus is not as widespread or healthcare systems are not as well equipped to deal with outbreaks. One individual deported on last month's charter flight [tested positive](#) after taking a test upon arrival to Jamaica<sup>8</sup>. We were informed that the Home Office's scheduled charter flight to Romania in early January was cancelled due to an individual testing positive for COVID-19, and we understand that other charter flights have also been cancelled.

Detention decision-making:

12. In addition to safety concerns, in many cases enforced removal is simply not possible. Many countries have imposed travel restrictions on the UK, particularly since the outbreak of a more infectious variant of Covid-19 emerging in the South-East of England. This calls into question the justification for continuing to hold people in immigration detention.

13. According to Home Office statistics, in the 2<sup>nd</sup> quarter of 2020, only 20% of people leaving detention were removed. In the 3<sup>rd</sup> quarter (the last period for which data is available) the figure was 25%. Therefore in the overwhelming majority of cases detainees were simply released, their detention having served no purpose. Arguably none of these individuals should have been detained in the first place. Our research during the first wave of the pandemic showed the Home Office's assessments of the likelihood and imminence of removal to be unrealistic. These figures suggest the problem persists.

14. Throughout the pandemic we have encountered people in detention who have COVID-19 related comorbidities and who are terrified of catching coronavirus and dying in detention. One of our clients had to be taken to hospital because they became seriously ill with coronavirus. In another case our client was detained for 10 months from February 2020. He presents a high risk of becoming seriously ill should he

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<sup>7</sup> These charter flights were primarily aimed at removing asylum seekers under the EU Dublin agreement. Such removals ceased to be possible on 31<sup>st</sup> December 2020 when the UK left the EU.

<sup>8</sup> <https://www.bbc.co.uk/news/uk-55197386#:~:text=One%20of%20the%2013%20prisoners,government%20has%20told%20the%20BBC.&text=The%20Home%20Office%20said%20he,in%20relation%20to%20the%20test>.

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contract COVID-19 due to his underlying health conditions and at the outset of the pandemic he was instructed by the NHS to shield. Despite this however, the Home Office does not accept that he is vulnerable. The Home Office agreed to release him but this was delayed for a period of time due to the lack of suitable release accommodation, during which he contracted coronavirus.

15. Since the first national lockdown on 23rd March, BID has provided representation in 295 bail hearings, of which 260 have been granted. This 88% success rate illustrates persistent poor decision-making and excessive use of detention by the Home Office during the pandemic, and a failure to learn lessons.

Lack of accommodation as a barrier to release:

16. The system for provision of bail accommodation to homeless detainees has been fraught with delays that have worsened as a result of the pandemic. As a result many more people have spent additional weeks or months in detention for no other reason than their lack of suitable accommodation; or have been released by the Home Office to the streets, potentially into destitution.

17. Homeless immigration detainees are able to apply for 'bail in principle' which, if granted, means that a judge agrees that the individual should be released, but release cannot take place until suitable release accommodation has been sourced. If this does not happen – in many cases due to Home Office inaction – the individual remains in detention. The number of people granted bail 'in principle' by an immigration judge has increased dramatically since the implementation of Schedule 10 of the 2016 immigration Act on 15<sup>th</sup> January 2018, but this has increased considerably during the pandemic. Since 1st August 2020, 62.1% of grants of bail for BID clients have been 'in principle' and have not led to release. The figure for 2018/19 was 31.5%<sup>9</sup>.

18. This puts the bail process effectively out of reach of many immigration detainees, and it is impossible to underestimate the frustration and suffering our clients are forced to undergo when they are finally granted bail by an immigration judge, only to languish in detention for many more months.

Lack of transparency:

19. The Home Office has repeatedly denied our requests to publish data on coronavirus in Immigration Removal Centres. The Ministry of Justice publishes monthly data on rates of coronavirus in UK prisons, and there is no reason why the Home Office should not do the same. Responding to a letter from BID raising this matter, the Home Office stated:

*"We are aware of the interest from Parliament, the media and the public with regard to data on COVID-19 in prisons and since November 2020 the Ministry of Justice (MoJ) has increased the frequency of reporting by introducing a weekly summary publication in addition to monthly statistics."*

20. However it did not agree to our request to publish equivalent data on coronavirus in immigration detention, instead referring us to their publication on 28<sup>th</sup> May 2020: "statistics relating to COVID-19 and the immigration system<sup>10</sup>". This was published more than 8 months ago. It is unclear why the Home Office is not willing to publish data on Covid-19 in immigration detention given that it explicitly recognises the public interest in such data for prisons.

21. In addition the forced closure of Brook House only came to light because an anonymous source reported the story to *The Sun* newspaper<sup>11</sup>. This only occurred on 7<sup>th</sup> January 2021, almost after the outbreak was first

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<sup>9</sup> Full statistics are available on BID's website here <https://www.biduk.org/articles/764-schedule-10-3-years-on>

<sup>10</sup> Statistics relating to Covid-19 and the immigration system, May 2020

<https://www.gov.uk/government/statistics/statistics-relating-to-covid-19-and-the-immigration-system-may-2020>

<sup>11</sup> Coronavirus outbreak forces Sussex immigration centre to close after bug 'spreads like wildfire' *The Sun*, 7<sup>th</sup> January

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declared on 9<sup>th</sup> December. The Home Office did not inform the public or stakeholders about what was happening and we are unsure when or how the story would have come to light if a disgruntled whistle-blower had not decided to approach the press. The Home Office needs to ensure that information about Covid-19 in immigration detention is publicly available.

### **Immigration detention in prisons:**

#### Rapid spread of Covid-19

22. Coronavirus is rapidly spreading through UK prisons. According to Ministry of Justice statistics the total cumulative number of prisoners having tested positive for COVID-19 since the beginning of the pandemic doubled in October, and doubled again in November, and increased by a further 2,357 during December. As of the end of 2020, there had been positive tests of Covid-19 in 91 different prisons and a total of 6,007 prisoners had tested positive since the beginning of the pandemic<sup>12</sup>

#### Lockdown regimes in prisons:

23. Prisons run a highly restrictive and punitive regime and do not provide an appropriate environment to hold immigration detainees at the best of times – immigration detention is an administrative, not a criminal process and immigration detainees are held without trial or time limit. During the pandemic, conditions have worsened as a result of severe lockdown restrictions. The majority of our clients are reporting that they are locked in their cell for at least 23 hours per day, and many are only allowed out of their cells for 30 minutes or less per day.

24. Some of our clients spend periods locked in their cells for 24 hours per day – particularly when there are outbreaks of Covid-19. This makes it very difficult to maintain a basic level of hygiene or physical fitness.

25. A report by Her Majesty's Inspector of Prisons (HMIP) published in August warned that "continued severe regime restrictions in prisons – at times amounting effectively to solitary confinement – have created a real risk of psychological decline among prisoners, which needs to be addressed urgently, so that prisoners, children and detainees do not suffer long-term damage to their mental health and well-being, and prisons can fulfil their rehabilitative goals."

26. This is bad enough for everybody in prisons but immigration detainees are held without a time limit and may be required to proactive steps to secure release from detention, such as apply for bail or challenge detention by judicial review. There is no fixed release date. Due to the restrictions of being held in a prison, exacerbated by the pandemic, it is very difficult for our clients to access any form of support or legal assistance. BID's legal advice surveys show that even prior to the pandemic immigration detainees in prisons had poor access to immigration advice<sup>13</sup>. For those with pre-existing language or mental health barriers it may be effectively impossible to challenge detention (or deportation) and people can languish in detention for many months without access to a remedy.

27. Unlike in Immigration Removal Centres, there is no system for booking appointments with immigration solicitors in prisons. Communication with the outside world is highly restricted – there is no access to the internet, faxes or mobile phones and is heavily reliant on a slow prison postal system. Immigration legal advice and representation which is scant during normal times is now virtually impossible to access. Most

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2021 <https://www.thesun.co.uk/news/13679721/coronavirus-outbreak-sussex-immigration-centre/>

<sup>12</sup> Ministry of Justice monthly statistics

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952359/HMPPS\\_COVID19\\_DEC20\\_Pub\\_Doc.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952359/HMPPS_COVID19_DEC20_Pub_Doc.pdf)

<sup>13</sup> BID legal advice surveys <https://www.biduk.org/pages/106-bid-legal-advice-surveys>

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prisons only allow phone conversations of 10 minutes at a time, and in most cases these calls must be made during the time a prisoner is allowed out of their cell. Legal visits – scarce prior to the pandemic – have been cancelled.

28. For our clients, the mental health impact has been particularly severe. Some of our clients with pre-existing mental health conditions have worsened significantly.

29. It is widely recognised and accepted by the government that the prison estate must shrink to control infection and it is in this context that the use of prisons for immigration detention appears ever more irrational. However, the number of people held in prisons under immigration powers has increased during the pandemic. The most recent data available demonstrated that on the 30th September 2020 there were 498 people held under immigration powers in prisons<sup>14</sup>, an increase of 109 from a year before.

#### **Conclusion:**

30. The Home Office has failed to learn lessons in its use of immigration detention as the pandemic has evolved. Multiple outbreaks of Coronavirus in IRCs could have been prevented if the government had followed the advice of experts and released all immigration detainees. Instead it has continued to use detention, including for those with Covid-19 related co-morbidities. There has been a lack of transparency about Covid-19 in immigration detention. The Home Office continues to make unrealistic assessments of the likelihood and imminence of removal, while in other cases it pursues removal by charter flight, putting staff and detainees at risk and potentially transmitting Covid-19 across borders. Lack of Home Office accommodation has exacerbated already prolonged periods of detention for many people. Finally, we are particularly concerned about the use of prisons for immigration detention which in many cases appears to amount to prolonged solitary confinement, causing unbearable suffering for our clients.

31. BID's position is that the government should suspend all enforced removals until it is safe for them to be resumed and should release all immigration detainees to suitable accommodation.

#### **February 2021**

##### **Annex – FOI response from Home Office**

Dear Mr Schulkind,

REF: FOI 61989

Thank you for your email dated 8 January 2021 requesting details concerning the closure of Brook House immigration removal centre (IRC) due to COVID-19. Your request has been handled as a request under the Freedom of Information Act 2000. Your full request can be found at **Annex A** and your questions are answered in turn below.

The data provided in this response is from 9 December 2020 (the date the outbreak was declared) to the 8 January 2021 (the date of your email).

All of the data being provided within this response is provisional management information which has not been assured to the standards of official statistics.

##### ***Question 1: How many detainees tested positive for coronavirus in Brook House IRC?***

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<sup>14</sup> footnote: Association of Visitors to Immigration detainees, Home Office FOI response available here: <http://www.aviddetention.org.uk/what-we-do/our-publications/prison-statistics>

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During the period 9 December 2020 to 8 January 2021, 1 individual detained at Brook House tested positive for COVID-19.

**Question 2: How many members of staff tested positive for coronavirus in Brook House IRC?**

A total of 34 staff members who work within Brook House IRC have tested positive for COVID-19.

**Question 3: How many people have been transferred from Brook House to Colnbrook IRC?**

4 individuals were transferred from Brook House IRC to Colnbrook IRC on 1 January 2021.

**Question 4: Were those individuals tested prior to being transferred?**

Prior to transfer, whilst at Brook House, 3 out of the 4 individuals who were due to be transferred were tested for COVID-19 on a voluntary basis.

**Question 5: Have those individuals been quarantined upon entering Colnbrook IRC?**

All 4 individuals were offered and accepted a COVID-19 test upon arrival at Colnbrook, prior to contact with any other residents. The individuals were not quarantined however they did partake in a 14-day reverse cohort process which all new residents to the IRC follow. This process is in line with HMPPS guidance and protects the IRC residents by isolating new arrivals in wing groups to eliminate the threat of COVID-19 infections before the new arrivals are permitted to mix with the existing population.

**Question 6: How many people are currently held in Colnbrook IRC?**

There are currently 51 individuals held at Colnbrook IRC. This figure is correct as at 8 January 2021, the date of your request.

**Question 7: Have people tested positive for coronavirus at other centres? Please inform us how many and in which centres.**

There have been 26 confirmed cases of COVID-19 in IRCs, correct to the 8 January 2021 (the date of request).

The breakdown of cases amongst residents below:

Morton Hall IRC – 15  
Brook House IRC – 6  
Harmondsworth IRC – 3  
Colnbrook IRC – 2

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to [foirequests@homeoffice.gsi.gov.uk](mailto:foirequests@homeoffice.gsi.gov.uk), quoting reference 61989. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

Yours sincerely,

**Detention and Escorting Services**

Immigration Enforcement  
Home Office

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**Annex A**

We understand that Brook House has been closed as a result of coronavirus and that all detainees have been moved to Colnbrook IRC.

This is an urgent matter, as we are very concerned about the welfare of all of our clients currently in immigration detention. Please provide us with answers to the following questions.

How many detainees tested positive for coronavirus in Brook House IRC?

How many members of staff tested positive for coronavirus in Brook House IRC? How many people have been transferred from Brook House to Colnbrook IRC? Were those individuals tested prior to being transferred?

Have those individuals been quarantined upon entering Colnbrook IRC? How many people are currently held in Colnbrook IRC?

Have people tested positive for coronavirus at other centres? Please inform us how many and in which centres.