'HIT AND MISS'? ACCESS TO LEGAL ASSISTANCE IN IMMIGRATION DETENTION

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Dr Anna Lindley, SOAS University of London
A.Lindley@soas.ac.uk

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Abstract
In the context of significant cuts to legal aid in the last decade in the UK, immigration detention remains in scope: indeed the argument that detention is legitimate rests partly on the claim that people can challenge it. Drawing on interviews with legal professionals combined with published data and reports, this article concludes that while the publicly funded Detention Duty Advice Scheme delivers advice and representation to many people held in detention, variations in access and quality give grounds for concern. Many people are also forced to rely on private solicitors, pro-bono provision and their own legal capabilities, raising questions regarding effective remedy and equality of access to justice. The article reviews the limited information available on representation types and rates, outcomes, and wider impact of access to legal representation or the lack of it. The conclusion summarises key points and explores ways forward.

Keywords
Migration, detention, legal aid, immigration removal centres, access to justice

1. Introduction

While political discourse emphasises the United Kingdom's strong legal system and human rights safeguards, the access to justice of people held in immigration detention has faced growing criticism in the last decade. In the context of legal aid cut backs in England and Wales, many people grappling with immigration status issues lack decent legal advice and representation. But immigration detention in fact remains in scope for publicly funded legal assistance: indeed the argument that detention is legitimate rests partly on the claim that people can challenge it. The Detention Duty Advice scheme was set up a decade ago to provide prompt access to free legal assistance and continuing advice to those eligible under legal aid rules. However, there are indications that people detained in immigration removal centres still encounter barriers to legal assistance. Yet the evidence available is scattered, primarily in official and NGO reports on wider themes. While acknowledged to be among the most marginalized and hence most relevant populations for studies of access to justice, immigration detainees are often excluded from legal needs surveys (OECD and OSF 2019; Genn 1999; Bedner and Vel 2010; Balmer 2013). This underscores the need for more focused research. Given that detention is in scope for legal aid, and there is a dedicated advice scheme in place, why are some people in Immigration Removal Centres still apparently struggling to get legal assistance?

This paper contributes to our understanding of legal assistance for people in immigration detention, examining how people access advice from the Detention Duty Advice scheme and other sources. First, I situate legal assistance conceptually as a component of access to justice, and map out the UK immigration legal services landscape. The empirical core of the article then explores the accessibility and quality of legal advice for people in immigration

detention, looking at first the Detention Duty Advice surgery appointment: second, legal aid advice and representation after that appointment; third, alternative routes to the courts; and fourth, evidence on representation rates and outcomes.

This analysis shows that many people do receive legal representation through the Detention Duty Advice scheme – but it also raises significant concerns about variations in access to and quality of legal support provided (summarised by one lawyer as 'quite hit and miss'[i]). It highlights the glaring omission of prisons (where some immigration detainees are held) from the scheme; the uneven landscape of private, pro bono and do-it-yourself alternatives; the additional challenges to legal representation brought on by theCovid-19 pandemic; and research gaps on representation, outcomes and the wider impacts of these processes. As one legal professional commented, 'The whole myth of legal aid, and "we're OK detaining people because they have access to legal remedies" just doesn't play out in practice.'[ii]

2. Note on methods

The analysis draws on a secondary sources, statistical data and interviews. The researcher reviewed relevant material published by government ministries, parliamentary committees, independent inspectors, civil society groups, legal media and academic researchers. Relevant data was analysed from the Legal Aid Agency, Freedom of Information Act (FOI) responses from Her Majesty's Courts and Tribunal Service, and the Legal Advice Survey of the charity Bail for Immigration Detainees.

In addition, 31 interviews were carried out in 2017 and 2020, focusing primarily on legal professionals working with detained clients, but also including some people on immigration bail, migrant support workers, three immigration judges, and people involved in managing and monitoring legal aid services (see Annex). In the first round of interviews, participants were asked about the substance of detention law, policy and practice and access to the courts, as well as access to legal assistance. The second round focused specifically on legal assistance, including experiences in IRC surgeries, the process of taking on and representing clients, and experiences of monitoring. The time lapse between interviews helped illuminate continuity and change in the provision of level assistance.

Interviews were digitally recorded and transcribed.[iii] NVivo was used to code interview transcripts for material relating to access and quality, and iteratively for additional sub-themes that arose in the process. Research participants consented for the information to be used in publication; anonymity is maintained, except where it is relevant to identify a participant or organisation, with their permission.

3. Situating legal assistance as a component of access to justice

Flowing from the observation that 'the possession of rights is meaningless without mechanisms for their effective vindication' (Cappelletti and Garth 1978, 185), access to justice has become a key theme in international comparative law and policy. In the 2030 Agenda for Sustainable Development, UN member states agreed to 'Promote the rule of law at the national and international levels and ensure *equal access to justice for all*' (UN 2015 Target 16.3, emphasis added), recognizing this as both a development goal in itself and an enabler of other goals. The experiences of socially marginalized and economically disadvantaged groups are a litmus test in this respect. The substance of the law, access to redress mechanisms and ability to participate constitute three key dimensions of access to justice.

First, the *substance of the law* encompasses the framework provided by international law, primary legislation, case law, policy and administrative guidance, religious or customary law or informal codes of conduct (OECD and OSF 2019). International law does permit immigration detention in particular circumstances. For example, Article 5 of the European Convention on Human Rights (ECHR) permits detention to prevent an unauthorized entry and of a person against whom action is being taken with a view to deportation. A comprehensive review of legal sources by the Bingham Centre for the Study of the Rule of Law highlighted important safeguarding principles, including that detention should be necessary to achieving one of the above-mentioned 'legitimate aims' and used as a last resort; there should be prescribed rules and authorities, appraisal of individual circumstances, protection of vulnerable people from unsuitable detention or conditions of detention; and detention should be as short as possible and within a prescribed maximum limit (Fordham, Stefanelli, and Eser 2013; UN 2018).

The substance of UK immigration and detention law, policy and practice has come in for growing criticism (Joint Committee on Human Rights 2019; Home Affairs Committee 2019). The immigration legal landscape involves 'layer upon layer of inadequately thought out, hastily drafted, legislation all too often incompatible with human rights' and rule of law guarantees.' (Alison Harvey quoted in Halsbury's Law Exchange 2016, 5) and the Law Commission has undertaken to simplify the highly complex Immigration Rules. Over the last decade, UK policy makers have sought to reduce 'unwanted' immigration via intensified border controls, a 'hostile environment', and reduced appeal rights, and there is a well-documented culture of disbelief in the Home Office, with targets and incentives gearing caseworkers towards refusal and removal (Campbell 2017; Yeo 2020). Since 2017, around 50% of immigration and asylum appeals have been upheld, a damning indictment of the quality of public decision-making (Grant 2020). Meanwhile, the government maintains broad statutory powers to detain people to prevent unauthorised entry and with a view to removal/deportation. These statutory powers leave much to be defined in administrative guidance or thrashed out in case law, which in turn provide considerable room for manoeuvre for Home Office decision-makers charged with enforcing immigration policy (Home Office 2018a; Costello 2015). There is no statutory time limit on detention and poor standards of public administration have been normalised (Bosworth 2014; Home Affairs Committee 2019; Yeo 2020). The National Audit Office notes that in 2019, 62% of those detained in 'Immigration Removal Centres' (IRCs) were released rather than removed from the UK (NAO 2020). Too much depends on redress mechanisms.

Second, *access to the courts* and other mechanisms to redress wrongs and assert rights is widely viewed as an inherent part of the rule of law (OECD and OSF 2019). In the criminal process, prompt and automatic judicial oversight is stipulated in key human rights instruments including the ECHR. Fordham et al. (2013, 112) note that 'There is no reason why immigration detainees, subjected to executive detention and not accused of any criminal offence, should have a *lesser* degree of protection than applies to criminal suspects,' and emphasise that this oversight not only protects the individual but also minimizes the scope for unlawful compensation claims against states. This study also emphasizes the importance of access to judicial review of the lawfulness of their detention, as a key protection (Fordham, Stefanelli, and Eser 2013).

In the UK, there are two ways that detainees may challenge their detention through the courts. The most prompt and accessible mechanism to obtain release is by making an application for bail, which is a summary process. Research over the last 10 years has

suggested that many detainees experience bail as a lottery, although there have been efforts in more recent years to improve judicial consistency and training (BID 2012; BID 2010; BOP 2013). In 2018, a year in which 25,499 people spent time in detention, 9,795 bail applications were made and 3,755 applications were granted (some of these will have been repeat applications by the same people) (HM Courts and Tribunal Service 2019; Home Office 2020a). Another way to challenge detention is by requesting Judicial Review of the lawfulness of detention, which might focus on questioning removability, or asserting vulnerability/unsuitability for detention – higher court judgements on these kinds of cases have checked some of the excesses of the detention system and also challenged some problematic features of detention policy (Lindley 2020). However, asylum, detention and removal proceedings are adversarial, and often characterized by dramatic power and resource disparities, raising the question of equality of arms (Burridge and Gill 2017).

This brings us to the third key component of access to justice: *people's ability to participate in the legal system*, i.e. to identify a problem with a legal remedy and participate in redress mechanisms (Genn 1999; Cowan 2004; OECD and OSF 2019). There is an internal and external element to this. *Legal capabilities* refer to the individual's ability to recognize and research legal issues and to the communication skills, confidence and resilience that enable people to navigate the legal system; these may be shaped by individual dispositions and agency as well as structural (dis)advantage (Beqiraj and McNamara 2014; OECD and OSF 2019). While it is blindingly obvious to people who are detained under immigration powers that they have a legal issue, they may be more or less able to do something about this. Navigating the UK's immigration and asylum system also often requires considerable agency and persistence (Burridge and Gill 2017). Available evidence suggests that people with strong social networks and economically better resourced appear to be more able to avoid detention in the first place, and if detained, better able to navigate the system. In contrast, people with intersectional vulnerabilities – where precarious migration status is compounded by poverty, language barriers, fear, mental health problems, and social isolation – seem to stand a much poorer chance of challenging their detention effectively (Bosworth 2014; Shaw 2016; Amnesty 2016). But effective participation in the legal system also depends on external support.

Legal assistance consists of external legal advice and often also representation in court (OECD and OSF 2019). In recognition of the importance of legal assistance for access to justice, civil society legal aid movements and public systems of legal aid have arisen around the world. International human rights instruments, legal systems and jurisprudence provide recognition of some rights to civil legal aid, to make sure that rights are practical and effective.[iv] Jurisprudence around Article 6 of ECHR, which guarantees a fair hearing, has been interpreted as requiring the state under certain conditions to ensure effective access to the court, by providing for the assistance of a lawyer – although not applicable to asylum, deportation and related proceedings (ECtHR 2020).[v] However, under EU law there are other circumstances in which people may have a right to legal assistance in immigration cases.[vi] Key parameters include: what is at stake in the proceedings; the legal, factual and procedural complexity of the matter; and the applicant's ability to represent themselves without legal assistance (Public Law Project 2018). Meanwhile, in the specific context of detention, the Bingham Centre concludes that the rule of law requires that people can access 'prompt, continuing, adequate legal assistance, state-funded if unaffordable' and 'communication with the outside world, legal representatives and relevant agencies' (Fordham, Stefanelli, and Eser 2013, 103 and 126; see also UN 2018; Grange and Majcher 2017).

The legal aid system was established in 1949 in England to provide public funding for legal assistance for individuals unable to pay. In the last decade, justice was one of the policy fields hardest hit by austerity, with the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) dramatically reducing the scope of civil justice matters eligible for legal aid in England and Wales. The government argued that 'individuals in immigration cases should be capable of dealing with their immigration application, and it is not essential for a lawyer to assist.' (Ministry of Justice 2011, 27). This assumes that people's legal capabilities are sufficient for most processes. Immigration and asylum 'matters started' dropped by two-thirds between 2008/09 and 2018/19.[vii] It is of course the government's responsibility to carefully steward the use of public funds; but the severity of these cutbacks, in the context of a hostile policy climate, a byzantine legal landscape and an adversarial court system, raises major concerns. The Joint Committee on Human Rights noted that 'There is now such a complex web of law and regulation that it is impossible for all except the most expert people to understand' (Joint Committee on Human Rights 2019, 4). The Windrush Generation was the tip of an iceberg of people struggling to challenge Home Office errors without access to legal aid (Yeo 2020).[viii]

Certain types of immigration cases are still eligible for legal aid, however, including asylum appeals, detention challenges, trafficking cases and judicial reviews. If someone has a case that is out-of-scope, but their basic human rights would be threatened by refusal of legal aid, they can apply for Exceptional Case Funding (ECF). Apart from being in-scope or eligible for ECF, there are also means and merits criteria that must be satisfied by individual clients to obtain various forms of legal assistance, outlined in Table 1. To hold a legal aid contract, a provider must hold a Law Society Immigration and Asylum Accreditation Scheme (IAAS) qualification to the required level, and is expected to maintain a threshold competence level if peer reviewed.[ix] They are authorized to take on a number of matters in a particular time period and remunerated with a standard fee for Legal Help and Controlled Legal Representation (CLR), with some exceptions. They may also apply for a public funding certificate to undertake Civil Representation, which if approved is hourly paid up to a certain limit. There are specific provisions for IRC work which are addressed in the next section.

Before we explore legal assistance in detention specifically, it is important to note that the legal aid industry has struggled in recent years. According to practitioners, standard CLR fees often do not cover the work required in all but the simplest cases, yet it is also common not to reach the threshold which triggers a switch to a hourly paid arrangement (Grant 2020; Amnesty 2016). Alongside the question of money, immigration legal aid work is recognized as a highly psycho-socially demanding (Graffin 2019). Some parts of the country have been described as 'legal aid deserts' with many lawyers preferring better-remunerated private work or leaving the sector altogether (Grant 2020). There are also 'legal aid droughts' whereby functional supply (contractors' capacity to take on new work) is constrained by their need to cross-subsidize legal aid fees with higher-paid legal work or (in the case of non-profits) grant funding; or because their qualifications prohibit them from undertaking higher-level work (Wilding 2019). Wilding (2019, 37) has argued that with the combination of standardized fees, fierce procedural compliance audit and limited quality scrutiny, the immigration legal aid market 'actively protects the market position of poor-quality suppliers.' People eligible for legal assistance are often turned away or suffer poor service due to provider capacity problems (Grant 2020). Indeed '[T]he first contact some migrants have with a lawyer is after they are detained, at which point it may finally emerge that they have a good case for remaining in the UK.' (Yeo 2020, 240). Detention may also be the last change the individual has to make that case before they are removed.

Table 1 Basic framework for immigration legal aid work

	Legal Help	Controlled Legal Representation	Civil Representation
Nature of work	**Advice and assistance**, e.g. reviewing client's documents, HO communications, advising on action, drafting communications	**Representation before First-tier Tribunal**, e.g. at bail hearings, immigration and asylum appeals.	**Higher level legal work** - all Judicial Review work and, since Sept 2018, onward immigration and asylum appeals beyond the First Tier Tribunal
Merits test	**'Sufficient benefit'** to the individual.	**At least 'moderate' prospects of success** (50%+). If borderline, can pass if of significant wider public interest, of overwhelming importance to the individual or the case relates to a breach of Convention rights.	**Same as CLR** plus cost-benefit test for work in higher courts.
Means test	**If below threshold, legal aid provided**, no contributions required. **Disposable income < £733 per month** or receipt of passporting Income benefit, including asylum support allowance **Disposable capital < £3,000** (cf. £8,000 for non-immigration matters) **Adjustments made for families:** dependent children and partner's income.		**Same as LH / CLR, except personal contributions may be required** (not for Upper Tribunal representation) if monthly disposable income £316-733, disposable capital exceeds £3,000, or owns home valued over £100,000.
Advisor qualification	**IAAS accredited**; permitted work only, supervised where indicated if less than Level 2. ***Immigration Removal Centre cases:*** *IAAS L2+*	**IAAS Level 2+ accreditation required** ***Immigration Removal Centre cases:*** *IAAS L2+*	
Provider quality	**Peer review minimum level 3** must be maintained by legal aid providers (threshold competence).		
Fees	**Delegated** to provider, subject to later audit **Fixed fees** for particular tasks. **Escape cases:** where reaches three times fixed fee can apply to switch to hourly rates. ***Immigration Removal Centre cases:*** *any case taken on via the DDA scheme is hourly paid up to costs limit of £500 (immigration), £800 (asylum). Beyond this, provider can self-grant up to £3,000.*	**Delegated** to provider, subject to later audit **Fixed fees** for particular tasks. **Some work hourly paid**, subject to cost limits. **Escape cases**: same as LH. ***Immigration Removal Centre cases:*** *any case taken on via the DDA scheme is hourly paid up to costs limit of £500 (bail only), £1,200 (immigration), £1.600 (asylum). Beyond this, provider can self-grant up to £3,000*.	**Public Funding Certificate** must be applied for – no work paid without this. **Delegated** emergency work determinations possible provided funding criteria met. **Hourly rates** up to cost limit set out in certificate. **Extension application** required if likely to exceed the cost limit. **Possibility** of winning costs and damages.

Sources: UK Government 2013a and b; LAA 2018, 2019, 2020; Wilding 2019, Grant 2020.

4. Prompt, free legal assistance for people in detention?

Given the gravity of depriving people of their liberty on administrative grounds, prompt contact with a legal advisor is important. Moreover, if they are refused asylum or given a deportation order, they have 14 days to appeal the decision, and if they are given notice of a

removal window, they have 72 hours before the removal could take place (Joint Committee on Human Rights 2019).

Prior to 2010, although any legal aid solicitor could represent people held in IRCs, it could be hard for people to make contact with solicitors. Since 2010, the Legal Aid Agency (LAA, formerly the Legal Services Commission) has funded a Detention Duty Advice (DDA) scheme to provide more structured access to legal advice in IRCs. Alongside their immigration legal aid contract, a number of firms hold additional contracts to run advice surgeries in designated centres, providing up to ten advice slots per day. From September 2018 to June 2020 nearly 19,000 such appointments were made with DDA providers by people in detention (LAA Information Governance 2019; 2020). Only solicitors with an IRC contract are allowed to take on detained cases as part of their immigration legal aid work; where another immigration legal aid solicitors has already done at least five hours work on a case, they may continue to represent them, although distance from the detention centre may make this impractical (LAA 2020a).[x] The LAA expects that providers will take on all eligible cases, although they can decline for 'good cause' (something explored more below) (LAA 2020a).

Prior to September 2018, surgeries were run by around eight providers, with the largest provider, Duncan Lewis Solicitors, responsible for around half of the surgery weeks in 2017/18, and all providers had to have someone qualified at IAAS Level 3 (advanced/supervising solicitor).[xi] My interviews suggested that there were a combination of pressures from different stakeholders to modify the system: access to justice concerns about waiting times and quality issues with some providers; commercial complaints about a limited number of providers having exclusive contracts for detention cases; and public sector contracting concerns about a high level of dependency on a limited number of providers. In the tender for DDA contracts starting in September 2018, the government lowered the qualification requirement for detention contracts to IAAS Level 2. This threshold is still higher than the requirement for mainstream immigration contracts, and providers at this level are supposed to be capable of undertaking the full range of legal work. The LAA awarded contracts starting in September 2018 to all eligible bidders, dividing surgeries among some 75 firms, thus dramatically diversifying provision.[xii]

Despite a more diversified list of providers offering legal advice in surgeries at IRCs, access could be improved. Any individual, regardless of financial eligibility or the merits of their case, is entitled to up to 30 minutes of free legal advice through these surgeries. When the individual arrives at the IRC, IRC staff are required to make sure that they know that there is access to free independent legal advice and how to sign up for an appointment. Although many people do sign up for a surgery appointment, NGOs still play a major role in signposting detainees (BID 2020), suggesting there may be some room for clearer communication at induction. In recognition of this, the LAA developed some training for staff in IRCs, but this activity was put on pause due to the Covid-19 pandemic. The Joint Committee on Human Rights (2019) has suggested making automatic appointments at induction to ensure access and cut through communication barriers.

There have also been many complaints over the years about long waiting times. With the contract changes, initially some providers failed to show up, prompting the LAA to call in back-up firms and introduce a reminder system. However, in the perception of migrant support organisations and solicitors interviewed in 2020, and among respondents to the Legal Advice Survey carried out by the charity Bail for Immigration Detainees,[xiii] waiting times for appointments subsequently moderated, with most people being seen within a few days. This is consistent with an overall reduction of the number of people detained in IRCs,

in the context of a growing campaigning to limit or end immigration detention (Lindley, 2019, 2020). However, for people with urgent removal cases, waiting a few days can still have serious consequences. While there are policy provisions that individuals facing imminent removal need to have 'reasonable opportunity to access legal advice and have recourse to the courts' asserting this requires individuals to know their rights (Home Office 2020c, 10; Home Affairs Committee 2019; LAA 2020b). For instance, at the time of writing, there is an intensification of efforts by the Home Office to remove people under the Dublin III Regulation[xiv]to other EU member states, before this possibility ceases with the end of the Brexit transition period (Guardian 2020). Solicitors have voiced concerns that the combined timescale and numbers of people lined up for these charter flights exceed detention surgery capacity, such that , despite the LAA increasing the number of surgeries, for example at Brooke House IRC, removals may occur without sufficient access to legal advice.[xv]

Moving on to the appointment itself, the purpose is for the solicitor to ascertain the basic facts of the person's case, offer some advice and decide whether the detainee qualifies for legal aid (Home Office 2018b). Lawyers interviewed were unanimous that it is hard to fit what they need to do into 30 minutes. First, the person has to be brought to the legal visits area by IRC staff. They may arrive distressed and/or mistrustful. They may be unable to communicate in English so the lawyer needs to arrange a telephone interpreter. They may show up with bags full of documents or none at all. The solicitor has a lot to do to get a grasp of the facts, advise on possible courses of action, and determine legal aid eligibility. Legal Advice Survey respondents generally do not describe the advice they received at this appointment as useful in itself which suggests often solicitors are either unable to get a grasp of the case or unable to communicate their advice effectively in the time available. In this context, it is particularly concerning that survey respondents reported appointments generally lasting less than 20 minutes and sometimes being extremely brief (BID 2020). Guidance from the LAA issued in 2020 now explicitly emphasizes that 'It should be borne in mind that this may be the client's only opportunity to see a legal representative before possible removal… the time should be used to ensure that information of the individual case has been gathered and that your advice has been explained to the client as thoroughly as possible' (2020b, 11).

During Covid-19 restrictions in 2020, legal visits have been cancelled (except in exceptional circumstances) and the DDA has run as a telephone service. Since March 2020, the IRC Welfare Teams were tasked with collecting the details of detainees wishing to have an appointment - including their phone number, whether they require a translator, and any relevant documents - and conveying these to the solicitor by email/fax in advance of the surgery. Solicitors interviewed found it harder to establish a relationship with the client and examine detainees' documents under these circumstances, reporting variability between detention centres in terms of how much welfare staff were willing to facilitate transmission of documents and letters for signature.

Sometimes the lawyer does need to check various things before deciding whether the individual can be taken on a client. But there have been long-standing and on-going complaints from detainees about poor communications by surgery lawyers. One person complained to BID 'All my friends in here have the same problem as me. We meet the lawyers, they tell us not to worry, and then they never come back or even tell us if they've taken our case or not…' (2014a; 2020). In response to these concerns, the LAA recently guidance that underscores the importance of providing individuals with a clear summary of the advice and outcomes of the appointment (LAA 2020b).

Moreover, it is important to note that the DDA scheme does not extend to prisons, where foreign nationals at risk of removal/deportation may be serving a sentence or may have served their sentence and remain detained under immigration powers. The UK's practice of holding immigration detainees in prisons has drawn international criticism (Council of Europe 2009; 2017). Although immigration legal aid practitioners can take on clients held in prisons, travel times and funding uncertainty put them off. People often learn late in their sentence – even on the day of expected release – that the Home Office plans to deport them. If they were informed earlier and there was better access to immigration legal aid advice in prisons, this could allow the case to be more promptly resolved (via either deportation order or regularization), minimizing the use of immigration detention (Joint Committee on Human Rights 2019; BID 2014b; HM Inspectorate of Prisons 2015). Given the increasing aggregation of non-citizen offenders in particular prisons, and expansion of telephone advice provision, some form of immigration advice provision would appear to be eminently logistically feasible. This situation has generated a legal challenge focusing on unlawful discrimination, with the case of an individual who was held under immigration powers in prison for nine months without access to a legal aid adviser (Duncan Lewis Solicitors 2020).

5. Continuing, free legal assistance?

To attract legal aid, the individual's case must be considered a worthwhile use of public funds, under the current legal aid rules. First, there is the question of scope and merit. There are indeed instances where the case is clearly out-of-scope, not eligible for ECF, has no merit and there is no barrier to removal. In these cases, the appropriate advice is that the person has exhausted their legal options. One solicitor commented that, in such cases, 'We're really realistic and can tell them some hard facts. Some people come to terms with that over the course of the appointment, others don't. Often they just want to know that nothing more can be done.'[xvi] But lawyers emphasized that the majority of people in detention do qualify for some legal aid funded support on scope and merits. The test for Legal Help is 'sufficient benefit', which is easily passed by a lot of people, and allows for further investigation and communications with the Home Office where appropriate. The test for Controlled Legal Representation (CLR) is moderate (50%+) prospects of success, and on this basis many people in detention qualify for CLR for bail applications. Indeed the legal aid guidelines explicitly state that even if the substantive immigration or asylum appeal lacks merit, the case may still warrant CLR for a bail application, and that when there is an appeal listed, the solicitor must always consider making a bail application (LAA 2020a). In addition, many people in detention have substantive immigration cases – appeals and judicial review claims – that are in scope/eligible for ECF (typically because there is an Article 8 claim because the person has family in the UK) and have merit.

However, interviewees raised concerns that DDA solicitors are not consistently identifying where people in detention are eligible for legal aid on merits. There were particular concerns about: (1) solicitors failing to recognize the merit of bail applications, demonstrating a poor understanding of the bail process; (2) a tendency to overlook the merits of more complex and challenging cases (e.g. 3rd country cases, trafficking, urgent removals), owing to lack of expertise in these kinds of cases; and (3) failures to apply for ECF applications, owing to the additional paperwork burden and poor awareness of the (now) rather high success rates (see also Grant 2020; Amnesty 2016; BID 2020; Wilding 2019). Migrant support organisations try to address these gaps by signposting detainees to other DDA providers, preparing ECF applications to help convince potential solicitors, and referring

them to BID, probono providers, and to firms with public law legal aid contracts for judicial review work (Grant 2020; Amnesty 2016; BID 2020).

In addition to the question of the scope and merit of the case, the individual must also pass the means test to secure legal aid, as set out in Table 1. For immigration clients, their disposable income must be less than £733 per month (although people in receipt of asylum allowances may be 'passported' through), and their disposable capital must be less than £3,000 (half the usual threshold). People of very modest means may still fail the means test. Practitioners commented that people who fail the means test often do so by very little and still struggle to pay for a lawyer privately. Moreover, gathering the necessary proof of means can be a challenging process, particularly if a partner's income must also be assessed, or a landlord has disposed of the person's belongings (see also Wilding 2019). The way the means test is enforced is the subject of frequent complaint among legal aid practitioners, albeit some solicitors noted that absence of evidence is not necessarily a problem if consistent with their situation and this is carefully recorded (Grant 2020; Wilding 2019). The Ministry of Justice is engaging in an on-going review of how the means test operates.

Thus, while many people each year are taken on as clients via the DDA scheme and represented effectively by legal aid solicitors, there are issues with consistency. In both 2017 and 2020, interviewees raised concerns and shared examples of encountering people in surgery or via NGO referral whose cases were eligible for legal aid, who had not been taken on by the solicitor at their first DDA appointment. UK Freedom of Information Act (FOI) data suggests that, collectively, the 50-60 providers carrying out surgeries from September 2018 to June 2020 opened Legal Help matters for around *a quarter* of the people seen in appointments (LAA Information Governance 2019; 2020). What is particularly striking, given the random allocation of detainees to appointments, is the variation between providers: eight firms opened Legal Help for more than 50% of people seen in surgery, but many had much lower rates with some appearing 'to be operating a blanket practice of avoiding taking on clients at the surgery' (BID 2020, 15; LAA Information Governance 2019; 2020).

A second concern is that where clients *are* taken on, representation can fall woefully short. An HMIP survey in Brook House IRC showed that only one third of those who *did* have a solicitor had received a legal visit (Joint Committee on Human Rights 2019). One solicitor interviewed had recently taken on a couple of clients who had been with other DDA solicitors for four to six months who had not submitted a bail application for them. Another solicitor shared a list of eligible cases they had picked up after other DDA solicitors had failed to act. These cases were with people who were considered vulnerable, had unlawful detention cases, or urgent removal cases.

In some respects this situation is puzzling. Many detained clients have 'good, worthwhile cases', some of which lead on to high-level, influential litigation. The LAA pays for work started while the client is in detention on an hourly basis, permitting the self-granting of extensions up to £3,000, where necessary. In this respect, taking on the cases of people in detention may compare favourably with cases taken on in the community.[xvii] Lawyers doing Civil Representation have to apply for a Public Funding Certificate, and to do so often have to do a significant amount of investigative work 'at risk' (such that it has been described as a 'semi payment-by-results regime'). However, if approved – the majority are in immigration - the payment is on higher hourly rates, up to a cost limit that is generally not difficult to extend where justified, and there may be the opportunity to win costs and bring damages claims (Packer 2019).[xviii] Thus by contrast with immigration legal aid in the community, when

it comes to legal aid in detention centres, the problems seems to be somewhat less about money, and more about other factors.

Interviews revealed two main factors that may discourage providers from taking on detained clients who are eligible for legal aid, or undermine the quality of the work carried out. The first factor is knowledge. Immigration detention is a specialist, complex and fast-changing area of law (for instance, it may require understanding of how the probation system intersects with accommodation, or EU free movement law which is outside the scope of legal aid). The previous requirement for DDA firms to have an Advanced/Supervising caseworker (IAAS L3) was dropped in September 2018,[xix] although firms are still required to deploy to surgeries an IAAS Senior Caseworker (L2), formally accredited to carry out the full range of immigration and detention work under legal aid. However, the adviser may still feel out of their depth in a detention surgery: one solicitor commented 'Running a surgery is *hard*, you have people coming with all kinds of problems, their lives are literally in your hands...'[xx] Another solicitor noted, 'A feature of detention is that the cases are more urgent, and people are more vulnerable.'[xxi] Removal cases, for instance, come with a lot of responsibility in terms of the impact on the client, as well as financial risks until a public funding certificate is obtained, and the risk of court sanctions for poorly prepared submissions. Research on the quality of legal work has tended to emphasise the benefits of specialization – it is plausible that within a complex and frequently changing legal field, such as immigration, there are benefits to specialization in subfields like detention and removal (Moorhead, Paterson, and Sherr 2003; Amnesty 2016). Yet with surgeries spread among so many providers, new practitioners may have limited opportunity to build up that expertise and there is a risk of deskilling more experienced lawyers (Wilding 2019; BID 2020).

A second factor that may discourage providers from taking on detained clients eligible for legal aid is human resources. During a surgery week, they may meet many people (up to a maximum of 50 potential clients in a 5-day surgery week) who may be eligible for legal aid, including people with urgent removal cases, and potentially a large number of them collected in the same detention centre prior to a charter flight. Running detention surgeries is attractive because it offers a reliable opportunity to pick up hourly paid legal aid work: indeed some current DDA solicitors set up in September 2018 and built their business up around the detention contracts. However, although the contract specification makes the scope of the work clear (LAA 2020a), the Immigration Law Practitioners' Association commented the many newer, smaller providers did not seem to have appreciated initially the capacity they might need to deliver on their obligations. Some DDA providers have even asked the charity BID to take on bail cases qualifying for legal aid, saying they did not have capacity (Wilding 2019). As with other legal aid contracts, there have been some withdrawals and churn since the contracts were awarded. Consultants have long been used in the sector, and unsurprisingly have often been deployed by DDA contractors to manage demand inDDA surgeries, but their deployment (particularly where working for different DDA providers in the same IRC) has sometimes prompted confusion about who is responsible for the case. Sole providers and consultants are also inevitably under more cashflow pressure than salaried solicitors to close matters and bill the Legal Aid Agency: this can act as a disincentive against taking on lengthy complex matters. Thus concerns have also been raised about smaller DDA providers' inability 'to run test cases to challenge structural illegality resulting from Home Office policies and practices' which affect a wider set of people and enable the court to consider a complex issue via one coordinated challenge (Duncan Lewis Solicitors 2018, no page).

If strained in terms of knowledge or human resource capacity, there is little to prevent solicitors turning people away. Although providers are required to fill out some basic paperwork for each appointment, the LAA does not check whether people are correctly *rejected* for legal aid – it works on the basis that if a detainee is eligible, the provider will take them on. Some interviewees pointed to the Civil Contract Specification (3.50) which allows providers to decline eligible cases for 'good cause' – including where they do not have the necessary skill/expertise or capacity to take on the case. Yet in terms of skill/expertise, they are required to be accredited at IAAS Level 2 which implies that they are able to undertake the full range of legal work with detained clients. And in terms of capacity, the DDA provider is only supposed to take on the contract if they have capacity and they are supposed to alert the LAA if they have problems with capacity. Some interviewees emphasized that legal aid solicitors on the DDA rota have a very strong duty to take on clients in detention who are eligible for legal aid, given their predicaments (incarcerated on administrative grounds, with often urgent removal cases). Providers are paid to run surgeries with the goal of ensuring that those eligible *do* get legal aid assistance. However, the LAA's monitoring mechanisms focus on other matters.

The LAA does monitor compliance with means and merits tests and expense procedures, via the audit process, and contract managers are able to visit and engage in dialogue with the providers whose contracts they oversee. The LAA can impose financial penalties, requirement to self-review a large number of cases, contract notices and terminations (Legal Aid Agency 2013). It is generally thought that a tough approach was adopted in part because the Legal Services Commission had its accounts qualified by the NAO in its final four years, leading its successor to emphasise vigorous stewardship of public funds, while also having less funds to steward in the wake of LASPO (see also Wilding 2019). Any means-tested public funding comes with administrative requirements, but practitioners complain that the LAA picks up on 'very minor errors' (Wilding 2019; Civil Contracts Consultative Group 2019). Some interviewees felt that the aim of audits is to trip them up, arguing that the process imposes a discipline that goes beyond assessing eligibility and has the effect of deterring lawyers from taking on less-than-completely-straightforward clients, for fear of not being paid. LAA auditing and contract management focus on procedural compliance rather than substantive quality of legal work, emphasizing that this is more of a matter for complaints to the Solicitors Regulation Authority and the professional bodies, or for Peer Review.

However, the Peer Review system also does not investigate whether people have been incorrectly rejected for legal aid, but rather focuses on assessing the substantive quality of legal work that *is* provided by a firm. A sample of 12 files are examined by a peer reviewer with relevant expertise and experience, against a five-point scale, with 3 as the threshold competence required to retain a legal aid contract (Legal Aid Agency 2017). Wilding notes that a relatively high proportion of immigration and asylum providers compared with other areas of legal aid, scored 'below competence' ratings on peer review – 5% in 2017-18 (Wilding 2019). The peer review methodology has been carefully developed and the possibility of peer review is reasonably expected to exert some discipline on providers (Legal Aid Agency 2017). When providers fall below the peer review threshold, they get a chance to improve their performance ahead of a second review. The legal aid industry has been struggling and given the sparse provision in particular areas and categories of work it is seen as important that the LAA adopts a collaborative approach. Few of the more severe penalties have been imposed on DDA providers in recent years.[xxii] Meanwhile, the focus is entirely on ascertaining competence - having scored a particularly high rating at peer review does not seem to put a firm in a more privileged position vis-à-vis the contract bidding process (Wilding 2019) in the context of the current public procurement practices.

By summer 2020, in the context of pressure from external stakeholders the Immigration Law Practitioners' Association and NGOs monitoring legal access in detention, the LAA had recognized some of the issues outlined above and embarked on several lines of action. Pre-Covid, the LAA agreed to prioritise peer review of immigration legal aid providers that hold IRC contracts. It initiated discussion with the Law Society regarding if/how the IAAS Level 2 qualification might be adjusted to ensure appropriate expertise for detention work (other solutions suggested by solicitors interviewed included reverting to the previous requirement that detention work is supervised by a Level 3 solicitor). In July, the LAA produced a 'Immigration Removal Centre Practical Guide' for DDA firms, underscoring that it would expect a bail matter to be opened if removal is not imminent and reminding providers about the possibility of applying for ECF (LAA 2020b). The Guide notes that while there are no Key Performance Indicators for conversion rates, contract managers will be reviewing low take-up rates, which could trigger contract action (LAA 2020b). In September 2020, the DDA scheme shifted from a weekly to a daily rota, which should mean providers are having to deal with up to 10 instead of up to 50 potential new clients per week, which is likely to make taking on clients more manageable in terms of small providers' staffing.[xxiii]

It is important to bear in mind that the root of the need for legal assistance is problematic immigration, detention and removal decision-making by the Home Office that makes recourse to the courts so frequent and necessary. It is also important to recognize that the LAA is an organization with less of a policy role and less institutional autonomy from the Ministry of Justice than its predecessor, administering funds that have been radically cut back in the last ten years, tasked with striking a difficult balance between access, cost and quality for those who are eligible for legal aid. Nevertheless, across the professional spectrum, legal professionals have reached some damning conclusions about legal aid in detention. A solicitor told a government committee: 'Everyone who works in this field knows that most instances of unlawful detention go unchallenged' (Duncan Lewis Solicitors 2018). A barrister remarked: 'It is nonsensical to say there is legal aid for detention, because the hurdles you have to go through… are so tedious and cumbersome... Loads of instances of unlawful detention are going by without any applications being made.'[xxiv] A judge stated: 'Legal aid cuts are having real consequences on quality. If you want to sneeze, a quality representative needs permission from the LAA but many people are having to fall back on their communities and it makes it easier for the charlatans.'[xxv] This brings us to the alternatives to legal aid representation.

6. Private, pro bono and do-it-yourself justice

Many people held in immigration detention turn to private, pro bono or self-representation. In some instances, DDA advisors explain that the client's case does not meet the criteria for legal aid, but that the advisor can take them on as a private client. While some observers were concerned that this is sometimes done without fully exploring legal aid possibilities, it is possible that someone might fail the means test, yet have a meritorious case worth pursuing privately. Some people find a private solicitor through family and friends, or recommendations from other people in detention, welfare officers and support groups (HM Inspectorate of Prisons 2015; BID 2017). Some people even prefer a private solicitor, perceiving this as the next logical step in a sequence of actors (e.g. work agents, language exam boards, Home Office immigration fees collectors, smugglers) to be paid to secure the ability to remain in the UK, and that payment secures higher quality advice, despite the fact that qualification requirements are higher for legal aid advisors. The cost is significant: bail

applications often cost £1,000, and immigration and asylum appeals double that, although the price range varies.

Some people in detention receive good advice and representation from a private solicitor. But there is little guarantee of quality. Despite the somewhat stricter regulation of immigration advice compared with other fields,[xxvi] and sanctions for wasting court time, a representative from the Immigration Law Practitioners' Association (ILPA) noted: 'There are people who are doing their incompetent best and it is not good enough.'[xxvii] A barrister commented, 'I have seen grounds which are an A4 page, no mention of any substantive law, just 'what I think' dressed up in legal language... it would be funny if it wasn't someone's life.' [xxviii] Indeed, poor advice and representation can have disastrous consequences: one DDA solicitor commented: 'you do see people who are incredibly upset, they have had terrible immigration representation, terrible advice, but there is no justice for that, things can't be remedied through some new application, it's gone.' [xxix] The desperation that many experience in detention can make people acutely vulnerable: 'You are dealing with people who will take a 0.1% hope of winning. They will take that and pay for that because what is at stake for them is everything… If the alternative is deportation or separation from your family or return to a country where you will be in poverty, a small grain of hope is better than nothing.'[xxx]

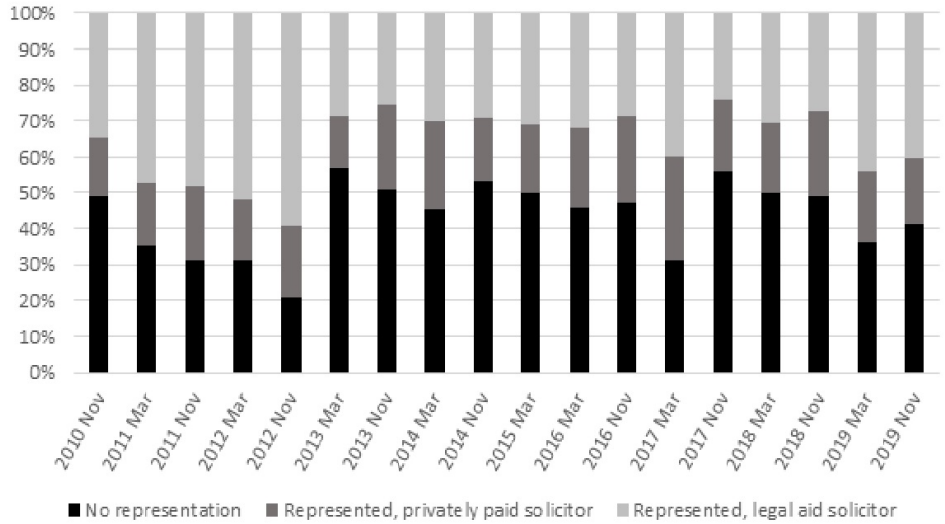
In this context, pro bono legal assistance plays a vital role. Welfare officers and volunteer visiting groups often refer people to charities and pro bono law clinics – most prominently, Bail for Immigration Detainees prepares and presents bail applications with the assistance of barristers acting pro bono (BID 2020). Some advisors have secured permission to run advice sessions in prisons, at the discretion of the governor (Wilding 2019). However, pro bono support has been squeezed, as lawyers are already often doing so much unpaid work within legal aid cases, and voluntary sector clinics are struggling to make ends meet, part of wider pressures and trends in civil society human rights work in an era of neoliberal austerity (James and Killick 2012; Samuels 2020; Wilding 2019). According to LAA data, non-profit providers of immigration and asylum advice dropped by 64% between 2005 and 2018 (Refugee Action 2018).

Thus, some people in detention have no professional legal support. A judge noted that since LASPO, 'We see far more litigants in person. It is shocking when you consider that this is about liberty, a key human right.'[xxxi] Many may not make it to court in the first place. When they do, the adversarial nature of the court system is a challenge: 'people are very hopeful that a judge will be sympathetic and that is the wrong approach – you need to put forward the legal arguments, and if you can't do that properly the judge will have to hand-hold you through all the issues and the tribunal doesn't have the time or resources for that.'[xxxii] In response to the need for guidance, Right to Remain (2018) has developed a toolkit for people seeking to remain in the UK and BID (2018) has a self-help guide for bail applications translated into key languages. Despite the Detention Service Orders requiring IRC managers to ensure access to websites to seek legal help, these are frequently blocked (McKinney 2019). Some people detained raise concerns that in monitoring PC, email and fax use, detention officers have been seen reading sensitive information and sharing this with other officers, and that more generally the facilities are insufficient to cater to hundreds of people detained (Detained Voices 2016). In prisons, meanwhile, there is even more restricted phone access and very little internet access (BID 2014b; HM Inspectorate of Prisons 2015; BID 2020). One person detained in prison commented 'It is hard to find someone to help me with my immigration case because I am only allowed to leave my cell for one hour a day, which is never enough time for me to do anything' (BID 2014b, 21).

7. Zooming out: representation rates and outcomes

Any failure to ensure that someone incarcerated on administrative grounds has access to legal assistance required to have effective access to legal remedy is concerning, and a public policy matter. However, it is also relevant to consider the *scale* at which this is happening, and the outcomes. In the absence of a statistically representative survey of the legal needs of immigration detainees, we have a limited understanding of the extent of met and unmet demand for legal services. Proportion of Legal Advice Survey respondents with legal representation dropped with the implementation of LAPSO, settling at around 50%. This seems to have somewhat improved in 2019, with around 10% more respondents retaining a legal aid solicitor; rates of private representation have remained in the region of 20% for most of the decade.[xxxiii] Access to immigration advice in prisons is much worse - of the Legal Advice Survey respondents in November 2019 who had been held in prison prior to being moved to immigration detention, only 15% had received advice on their case from a immigration solicitor while in prison (BID 2020; see also HM Inspectorate of Prisons 2015). According to HMCTS data, in 2017-mid 2019, around 20% of bail applicants did not have legal representation – but many of those with no representation will not make it to court in the first place (HM Courts & Tribunals Service 2019).

Figure 1. Representation Rates Among BID's Legal Advice Survey Respondents



Source: BID, Legal Advice Survey Reports, 2010-2020, Nov 2015 unavailable.

Turning to legal outcomes, over the last decade the success rate of bail applications climbed from 19% to around 34%[xxxiv], although in 2020 judges released people on an unprecedented scale in response to the health risk posed by COVID-19 (Home Office 2020b; HM Courts and Tribunal Service 2019). Table 2 shows that represented applicants' odds of securing a grant of bail averaged 36% in 2017 – mid 2019, compared with 21% for unrepresented applicants. We do not know what proportion of these outcomes were secured with a legal aid solicitor, but the broad pattern is consistent with patterns noted regarding asylum appeals (Burridge and Gill 2017). Empirical studies in the United States have also documented a positive relationship between legal representation and favorable legal outcomes at various stages of the immigration court process (Eagly and Shafer 2015).

Table 2. Success rates at represented and unrepresented bail hearings

	Represented applicants	Unrepresented applicants
2017	35%	18%
2018	37%	23%
2019 Jan-Jun	36%	21%

Source: HM Courts & Tribunals Service 2019. Analysis excludes applications dismissed without a hearing and where the appellant/respondent withdrew.

Ascertaining the nature of causality is another matter. Ryo (2018) warns of selection bias (where individuals with stronger claims are more likely to seek out, or be accepted as clients by lawyers) and omitted variable bias (if having a legal representative and having a successful outcome are both correlated with another factor, e.g. English language proficiency), and beyond this, one would want to investigate the underlying mechanisms (e.g. whether representation was associated with differences in measures of courtroom efficiency, judges' procedural behaviour, courtroom activity, quality of courtroom advocacy or the benefits of relational expertise) (Ryo 2018, 23). In the UK context, while it seems preeminently logical, more systematic research would be needed to confirm that representation causes more positive outcomes and by what mechanisms. Indeed, given the purported advantages of legal representation, one might ask why grants of bail are not *much higher* for represented applicants. It is also quite plausible that it is not just having representation that counts, but having *good* representation: 'In this system… poor quality representation is not going to tip the balance.'[xxxv]

While the impact of (lack of) access to legal assistance is typically considered in relation to specific legal outcomes (grants/refusals), we might also consider the wider impact. First, there may be a legal impact in terms of how other cases are dealt with, or the law itself, in the case of policy challenges. Second, there are financial implications, such that in some ways legal aid restrictions arguably amount to a 'false economy' (Joint Committee on Human Rights 2019, 19). Unrepresented litigants cost the courts in terms of time, transport and administration (Amnesty 2016; Bar Council 2014). Barriers to sound legal representation reduce checks on Home Office policy and practice and mean that some people are subjected to unlawful detention, which can cost the Home Office in terms of legal costs and compensation.[xxxvi] There may be also economic and psycho-social implications. The direct costs of private solicitors can be financially crippling for someone of low means, and thrusting some people into debt compounding the vulnerability of precarious immigration status. Without decent representation, detention may go unchallenged or be challenged ineffectively, with implications for relationships and children's welfare, lost income and education, as well as mental health (Bosworth 2014, Griffiths and Morgan 2017). Ryo points to the prevalence of legal cynicism in her study of US detainees 'characterized by the belief that the legal system is punitive despite its purported administrative function, legal rules are inscrutable by design, and legal outcomes are arbitrary.' (Ryo 2017, 999). It would be interesting to examine the consequences for legal consciousness and socialization of people who have experienced immigration detention in the UK, whether they remain and secure longer-term residence, or they are removed to another country (Kubal 2015).

8. Conclusions and ways forward

It is the Home Office's 'cavalier' approach to detention decision-making, against the backdrop of a dysfunction in the immigration and asylum system, that means so many people have strong legal grounds to challenge detention decisions through the courts (Home

Affairs Committee 2019, 3). This creates demand for legal assistance. It is clear that access to competent, free immigration advice much earlier could help many people resolve their immigration status or make plans to leave the UK, letting people get on with their lives sooner and avoiding detentions which cost both the state and the individuals affected dear.

In this context, synthesizing the scattered information which already exists with fresh primary research on the issue of legal assistance in detention, this paper contributes important insights into the state of legal assistance in detention. The state-funded advice scheme in Immigration Removal Centres has survived a decade in which assertive central government action has been taken to control the financial cost of legal aid and it has helped many detainees secure effective access to legal redress. However, despite detention being 'in scope' for legal aid, this paper raises significant concerns regarding variation in detainees' access to legal assistance and the quality of said assistance, demonstrating the value of a practice perspective (Dudai 2019). Waiting times remain an issue for people with urgent cases or acute vulnerabilities. Some DDA firms fail to take on clients eligible for legal aid, or fail to take obvious legal steps for those they do take on. While sometimes individuals rejected for legal aid or receiving poor service will manage to secure another legal aid provider, this underscores the 'hit and miss' quality of the process.[xxxvii] Alternative private and pro bono services are vital, but access to these, and what is offered, is variable. The Covid-19 pandemic has generated further challenges to effective provision to this population. The omission of prisons from the scheme – where a growing proportion of people detained under immigration detention powers are held - is highly problematic.

A repeated refrain among practitioners and NGO workers was that while the LAA has some means of monitoring what *is* done, the problem is more with what is *not* done. This suggests that there is a need to review how the DDA scheme operates. In terms of the first appointment, information provision to detainees could be improved and time slots extended. Expertise level and human resource capacity appear critical to providers' ability to deliver on detention contracts. The LAA has engaged with external stakeholders regarding concerns with the DDA contracts and some practical adjustments have been made. However, this analysis suggests that there needs to be some form of check on negative eligibility assessments worked into the system, to ensure that detainees eligible for legal aid are not left high and dry by overstretched providers. There is also a case for the LAA modifying future IRC contract requirements in terms of firms' capacity and qualification / quality indicators, to reflect more realistically what is needed of detention solicitors, to ensure access to justice for people held in immigration detention. Finally, there are also important information gaps on representation rates and outcomes: the implications of (lack of) representation of different types, in terms of legal outcomes, public finances and social impacts merit further research.

Notes

[i] Interview with barrister, 7.09.17

[ii] Interview with Bail for Immigration Detainees (BID) 10.08.17

[iii] With the exception of the three judges and most of the 2020 follow-up interviews, where the researcher took hand-written notes.

[iv] e.g. *Airey v Ireland* (1979) 2 EHRR 305.

[v] *Maaouia v. France* (2001) 33 EHRR 1037 see para 38-40.

[vi] Gudanaviciene and ors v Director of Legal Aid Casework and the Lord Chancellor [2014] EWHC 1840 (Admin); [2014] EWCA Civ 1622.

[vii] Legal Aid Statistics Oct-Dec 2019, Table 8.2

[viii] The Windrush Scandal involved people entitled to live in the UK, particularly from the Caribbean, who became vulnerable to detention and removal, due to administrative and financial barriers to proving their status.
[ix] It is anyway a criminal offence to provide immigration advice or services unregulated. Practising solicitors, barristers and legal execs regulated by their relevant professional body – other advisors regulated by the Office of the Immigration Services Commissioner (OISC) are allowed to provide immigration advice to particular levels. Legal aid requirements are higher.
[x] The legal aid system is different in Scotland, where one removal centre is located.
[xi] DDA surgery rota 10.2017-03.2018 downloaded from www.aviddetention.org.uk 1.10.17.
[xii] DDA surgery rota 10.2017-03.2018 and 09.2018-08.2020 downloaded from www.aviddetention.org.uk 1.10.17 and 24.07.20 respectively.
[xiii] BID has carried out its Legal Advice Survey twice a year since 2010. All detainees for whom it has open casework files are contacted. Sample sizes range between 77-147. It is not a representative survey, and may be somewhat biased to people experiencing problems and having longer stays in detention. However, in the absence of a representative legal needs survey of detainees, it provides extremely valuable snapshots of issues and trends in detention legal advice. Available at https://www.biduk.org/pages/106-bid-legal-advice-surveys accessed 10.08.20.
[xiv] The Dublin III regulation provides a mechanism for determining which country within the EU is responsible for considering an asylum application from a third country national.
[xv] Interview with solicitor, 23.09.20, email correspondence with solicitor 1.10.20, email correspondence with solicitor 2.10.20.
[xvi] Interview with solicitor 18.08.20
[xvii] Interview with barrister 13.09.17
[xviii] Legal Aid Statistics Oct-Dec 2019, Table 8.2
[xix] Except for the Detained Asylum Casework scheme.
[xx] Interview with solicitor 18.08.20
[xxi] Interview with solicitor 23.09.20
[xxii] https://www.gov.uk/government/publications/contract-terminations
[xxiii] DDA surgery rota 09.2020 onwards downloaded from www.aviddetention.org.uk 16.09.20
[xxiv] Interview with barrister 15.08.17
[xxv] Interview with judge 03.10.17
[xxvi] To provide Legal Help to detainees, an advisor must be a qualified solicitor or barrister without requirement for a specialist qualification, but those not qualified via professional bodies must be accredited Level 2 with the Office of Immigration Service Commissioner to provide Legal Help to detainees on a private/pro bono basis and accredited Level 3 to do bail applications and substantive appeal work (Grant 2020).
[xxvii] Interview with ILPA 05.09.17.
[xxviii] Interview with solicitor 05.10.17
[xxix] Interview with solicitor 05.10.17
[xxx] Interview with barrister 15.08.17
[xxxi] Interview with judge 02.10.17a
[xxxii] Interview with barrister 12.09.17a
[xxxiii] See Footnote 12 on sampling. This is consistent with more ad-hoc evidence e.g. a HMIP survey of Brook House IRC which showed that one-third of detainees did not have a solicitor (Joint Committee on Human Rights 2019).
[xxxiv] Refusals decreased from 46% to 27% in 2010-2018 and withdrawals held fairly steady around 40%.
[xxxv] Interview with barrister 15.09.17. See also (Amnesty 2016)
[xxxvi] in 2012-17 850 people were found to be unlawfully detained triggering compensation payments of £21m (Home Affairs Committee 2019)
[xxxvii] Interview with barrister 07.09.17

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Annex: list of interviews

10.08.17	Bail for Immigration Detainees (2 people)
15.08.17	Barrister
16.08.17	Bail for Immigration Detainees
05.09.17	Immigration Law Practitioners' Association
05.09.17	Solicitor (2 people)
06.09.17	Solicitor
06.09.17	Barrister
07.09.17	Barrister
11.09.17	Barrister Chambers' Clerk
12.09.17a	Barrister
12.09.17b	Barrister
13.09.17	Barrister
13.09.17	Detention Action
15.09.17	Barrister
18.09.17	Public Law Project (2 people)
02.10.17a	Judge
02.10.17b	Judge
03.10.17	Judge
04.10.17	Barrister
05.10.17	Solicitor (2 people)
13.08.18	People on immigration bail (3 people)
15.08.18	People on immigration bail (2 people)
24.07.20	Bail for Immigration Detainees
10.08.20	Migrant support organisation
17.08.20	Pro bono legal clinic solicitor
18.09.20	Solicitor
02.09.20	Immigration Law Practitioners' Association
23.09.20	Solicitor
23.09.20	Interview, Peer Review Committee
24.09.20	Solicitor
25.09.20	Interview, Legal Aid Agency

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