



association of **visitors** to
immigration detainees

Association of Visitors to Immigration Detainees

**Response to MoJ consultation paper: “Transforming Legal Aid:
delivering a more credible and efficient system”**

Submission by the Association of Visitors to Immigration Detainees

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AVID (The Association of Visitors to Immigration Detainees) is the national network of volunteer visitors to immigration detainees in the UK. Our 19 member groups provide emotional and practical support and advice as volunteer visitors to those held in immigration removal centres (IRCs), short term holding facilities (STHFs) and prisons. In this document we respond to the proposals outlined in the consultation document “Transforming Legal Aid: delivering a more credible and efficient system”. We are opposed to many of the proposals put forward in this document as we believe they undermine access to justice and government accountability. We are extremely concerned that, if they are brought in, these proposals will affect the most vulnerable in society and have a devastating impact.

Responses to consultation questions

Q1. No.

We do not believe any matters should be removed from scope. We have grave concerns on the impact this would have on foreign nationals held post sentence, who are often held in prisons without time limit.

Q4. No.

We strongly oppose the proposal to introduce a residence test. This would undermine the principle of equality before the law. It will allow the government to violate the rights of migrants with impunity. Denying access to legal aid representation will leave migrants unable to challenge abuses of their human rights and undermines the rule of law in the UK.

If this goes ahead, there will not be equality of arms between the government and individuals. The UK Home Office will continue to be represented by lawyers, funded by the public, leaving vulnerable migrants to defend themselves in what is increasingly an adversarial immigration system.

We are particularly concerned about the impact these proposals would have on those in immigration detention. Immigration detention is the deprivation of liberty for administrative purposes. Its stated purpose is to effect removal or deportation, or to establish the identity of someone- the overwhelming majority of whom will have irregular immigration status and will not meet the proposed residence test.

The proposed residency test also risks undermining the human rights protected both domestically through the Human Rights Act and internationally, including the right to fair trial and ensuring effective access to the courts.

In the almost 20 years that we have been working to support immigration detainees, we have noted that in recent years the length of detention has increased. The UK is unlike most of its European neighbours in not placing a time limit on detention. The overwhelming majority of detainees visited by our 19 member groups ask for help in finding legal advice. Many are detained for long periods of time, sometimes years, and the only way to challenge the removal of their liberty is through courts. The proposal would effectively remove this option, and enable the UK to detain foreign nationals for as long as they wish, leaving many without the means to access justice.

Most worryingly, this would have the most profound impact on the vulnerable in detention such as those with serious mental health problems and torture survivors.

Mental Health and Immigration Detention: Case Studies

Mr 'S' who suffered psychosis, was moved from prison to a detention centre despite evidence that detention caused a deterioration in his mental state. By making decisions to continue S's detention, the High Court found in August 2011 that the UKBA breached this man's human rights.

Three months later in October, 'BA's detention was also found to breach Article 3. The UKBA continued BA's detention despite a report from the Healthcare manager that he was not fit to be detained and could die imminently due to his refusal of fluids. In its summary, the High Court described "*callous indifference*" on the part of UKBA, alongside "*a deplorable failure....to recognise the nature and extent of BA's illness*".

In April 2012, 'HA', a man with paranoid schizophrenia, was also found to have suffered cruel, inhuman or degrading treatment. In its judgment, the Court also found that the changes to the above policy regarding the detention of the vulnerable were unlawful. The UKBA is currently appealing this case.

'D' was detained for 14 months despite having previously been detained under the Mental Health Act and having a history of paranoid schizophrenia. Although the UKBA was aware of this medical history, D was held without access to medication or a psychiatrist. The High Court found the absence of proper medical care constituted 'inhuman treatment' (August 2012).

These four cases in the High Court were heard within a twelve month period, representing only the tip of the iceberg in terms of the detention of severely mentally ill migrants. These cases would not have been brought without legal aid. Under the new proposals, the courts would no longer be able to scrutinise the Home Office in the same way, because individuals in these circumstances would not be able to bring the cases. These are the most vulnerable and who would suffer the most under the new proposals- we are concerned that the proposed residence test will increase the detention of vulnerable people.

Many of those who end up in detention are asylum seekers who have had their initial claims refused, and require fresh claims and judicial reviews to prove their cases. Under the proposals, these people will no longer be able to access Legal Aid to procure the services of a lawyer to undertake these courses of action. This is a particular concern under the 'Detained Fast Track' where accelerated deadlines and incarceration make it difficult for them to obtain evidence required for their claim, and who as a result are particularly reliant on fresh claims.

Like many NGO colleagues, we are concerned that the proposals will have a number of unintended consequences, which may well in the end cost the UK government more money than any savings they believe they will make by restricting Legal Aid. Many detainees we have worked with feel as though they have not been treated fairly or had their cases heard fairly. This is a major factor in refusing to return. Removing the opportunity to explore legal options would be, in our view, a source of great frustration and anxiety to those deprived of their liberty, and would make them far more likely to resist the government's attempts to remove them. We are also concerned that this would impact on the detention centres themselves, which may become much less safe environments. If detained migrants find that legal avenues are closed to them, we are worried that we would see increased frustration, and possible protests.

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Q5. No.

If the proposal goes ahead, this will effectively close off the avenue of redress for those who cannot afford to pay for it, again undermining the principle of equality before the law. Judicial reviews should be a vital remedy for many detainees, and many are currently either successful, or lead to a pre-action settlement in favour of the migrant. Judicial reviews are a crucial safeguard against the unconstrained power of the state, a means to hold the government and public bodies to account.

Q6. No.

It is often very difficult to assess the prospects of success in a particular case before substantial work is done preparing it. Borderline cases are therefore frequently impossible to identify before such work is done.

4 June 2013