No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation

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Diagram in Annex A by Ivar Rees

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1. About BID

BID is an independent national charity established in 1999 to improve access to release from immigration detention for those held under Immigration Act powers in immigration removal centres and prisons. BID provides immigration detainees with free legal advice, information, representation, and training, and engages in research, policy and advocacy work, and strategic litigation. BID is accredited by the Office of the Immigration Services Commissioner (OISC), and won the JUSTICE Human Rights Award 2010. Between 1 August 2013 to 31 July 2014, BID supported over 3,000 people held in immigration detention.

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 for the most vulnerable detainees, including long term detainees, people with serious mental or physical ill-health, detainees who have intractable travel document problems, or who are main carers separated by detention from their children, and who are unable to obtain legal representation. BID runs a bi-annual survey of legal representation across the UK detention estate, and aims to raise awareness of immigration detention through its research and publications, including "*The Liberty Deficit: long-term detention and bail decision-making. A study of immigration bail hearings in the First-tier Tribunal*", (2012), and "*Fractured Childhoods: the separation of families by immigration detention*", (2013). BID also works through advocacy with civil servants via a number of Home Office-convened stakeholder groups, and with parliamentarians.

The domestic and European courts have granted BID permission to intervene in a number of cases raising important issues regarding immigration detention policy and practice, including: Abdi v United Kingdom (European Court of Human Rights, Application 2770/08, judgment 9 April 2013)[1]; D and Others v Home Office [2005] EWCA Civ 38; [2006] 1 WLR 1003[2];R (AM) v SSHD and Kalyx Limited [2009] EWCA Civ 219[3];Razai & Others v SSHD [2010] EWHC 3151 (Admin)[4]; two landmark cases before the Supreme Court and Shepherd Masimba Kambadzi v SSHD [2011] UKSC 23, [2011] 1 WLR 1299[5]; Lumba and Mighty v SSHD, [2011] UKSC 12, [2012] 1 AC 245[6]; BA v Home Office [2012] EWCA Civ 944[7]; and most recently by the Court of Appeal in the case of David Francis v SSHD ((2013/2215/A)[8].

[1] In which the ECtHR considered the United Kingdom's administrative detention of foreign national former offenders for deportation.

[2] In which the substance of BID's intervention was specifically relied upon by the Court of Appeal in respect of the problems of access to justice for detained immigrants

[3] In which the Court of Appeal held that a disturbance and fire at Harmondsworth Immigration Removal Centre raised issues which triggered the state's investigative obligations under Article 3 ECHR

[4] In which the court considered evidence indicating systemic difficulties with the Secretary of State's policy of providing accommodation for immigration detainees who are considered to be high risk.

[5] Where the court considered whether a breach of public law duty involves non-adherence to a published policy (and delegated legislation) requiring periodic detention reviews.

[6] Established a breach of a public law duty involving non-adherence to a published policy identifying substantive detention criteria.

[7] Concerning the circumstances in which a claim for damages arising out of a historic period of detention could properly be struck out for abuse of process on the basis that it could have been included in an earlier challenge brought while the detainee still remained in detention; the Court of Appeal again expressly relied for its findings on BID's intervention concerning difficulties of access to justice for immigration detainees.

[8] The Court of Appeal dismissed arguments by the Secretary of State for the Home Department that detainees recommended for deportation should be prevented from claiming false imprisonment when they were detained in contravention of the Hardial Singh principles.

2. EXECUTIVE SUMMARY

Many immigration detainees are reliant on the Home Office to provide them with accommodation on release given the absence of friends or family in the community who might be willing or able to accommodate them on release. Over recent years, delay in providing bail accommodation on the part of the Home Office has meant that significant numbers of detainees are denied timely access to justice as they need accommodation in order to apply for release. These delays are even longer for detainees who have served prison sentences, and who may even be held in prisons post-sentence.

BID established the Accommodation & Release Project to gather evidence on and analyse these delays to use in policy work with civil servants, and for litigation, in conjunction with the production of leaflets and information principally targeted at detainees but also for use by other organisations that support detainees, or other lawyers. The project also undertakes specialist casework, outreach, and policy work on bail addresses more broadly, including NOMS Approved Premises and licence address checks, and supports BID's more complex applications for release from detention.

Inability to get a Home Office Section 4 (1)(c) bail address in a timely fashion is a major factor behind some of the very lengthy periods of immigration detention endured by detainees in the UK. Having to wait weeks or months to apply for a bail address before an application for release can be lodged adds to the length of time spent in detention. This research carried out by BID during 2014 has found evidence of systemic and significant delay at every stage of the application process for Section 4 (1)(c) bail accommodation.

For immigration detainees, lack of timely availability of Home Office Section 4 (1)(c) dispersal accommodation and the systemic delays inherent in the application process mean that it is availability of Home Office bail accommodation that determines access to the First-tier Tribunal (Immigration & Asylum Chamber) for consideration of release from detention rather than the facts of the case. Detainees with a material change in their circumstances (such as a development in their travel document application), which would otherwise justify a further application for release to the First-tier Tribunal, are in BID's experience often not able to act on those changes and seek release. Instead they may have to wait for several months for a new Section 4 (1)(c) bail address to be provided by the Home Office.

In our view, First-tier judges hearing immigration bail cases should not assume that if they refuse bail with a recommendation that the detainee return to the Tribunal after one month if no further progress has been made by the Home Office in their case, that the detained applicant will be able to do so if the applicant is reliant on a Home Office bail address. That detainee may be unable to apply again to the Tribunal for release for several months until a new Section 4 (1)(c) address is made available.

Slow processing and administration by the Home Office, unreasonable time taken by the Home Office simply to decide what type of accommodation is suitable for an individual, inconsistent performance against contractual requirements by accommodation providers, and poor management by the Home Office of the necessary involvement of probation services in some releases, taken together lengthen the bail cycle to an unacceptable degree.

This study has found that detained applicants, who are applying for Section 4 (1)(c) support because they have no other option if they wish to seek release from detention, typically encounter these delays at more than one stage in their application, each delay compounding the effect of the previous delay.

We found a clear and dramatic difference between the average (mean) time taken by the Home Office to make a grant of Initial Accommodation (IA) where facilities are shared between all residents, including women and children, and Standard Dispersal Accommodation (SDA) which is self-contained to a greater or lesser degree. While a grant of bail accommodation in IA took on average 9 days for applications in this study, the average time taken to get a grant of dispersal bail accommodation was 158 days (over 22 weeks) in cases where probation services were required to approve the accommodation in relation to the applicant and his or her release licence conditions, and 60 days (8 weeks) where licence address checks were not required.

The study also found systemic failure on the part of the Home Office to follow its own guidance on disclosure to the detained applicant of the reasons for determining that they are unsuitable for shared initial accommodation, and failure to engage with representations challenging these assessments. We found that the Home Office was incorrectly attributing risk to individuals whose applications were included in this study.

Risk assessment

The early stages in an application for a Section 4 (1)(c) bail address, during which the appropriate type of bail accommodation is determined by the Home Office, still takes far too long. Home Office guidance says risk assessment pro formas should be completed and returned to Section 4 staff by case owners "within 2 working days or within 10 working days if a new risk assessment is required". However, BID's research shows that:

> The average (mean) time taken by the Home Office simply to decide what type of bail accommodation is suitable for the applicant (before any request is made to contractors for this accommodation) is**: 46.29 days (6.61 weeks)**, **range 6 – 210 days (1 – 30 weeks).**

Performance of COMPASS accommodation providers

Performance by COMPASS providers against the 9-working day requirement in the contractor specification is inconsistent.

> The average (mean) time taken by COMPASS contractors to source an address at the request of the Home Office in this study (including pending applications) was **22 days (over 3 weeks), range 1-99 days.**

Although in 66% of the cases studied COMPASS contractors sourced a bail address within 7 days, in the other 34% of the cases studied (including applications currently pending) there were often significant delays (30 days, 84 days, 99 days).

Home Office management of probation and police address checks

Licence-related address approvals by probation services, where required, add a further step to the Section 4 (1)(c) application process which is to some degree outside the control of the Home Office. However, the management of these checks by the Home Office appears to be hampered by a lack of up to date information on licence dates. There is also a lack of consistency and direction in the Home Office approach to the need for police and probation approvals. In a number of cases BID has studied where probation or police approval has been refused once or more, the Section 4 (1)(c) application appears to be put on hold with no further progress taking place, often after the application has already been pending for several months.

Average time for a licence-related probation decision on a Section 4 (1)(c) bail address to be made: **57.5 days (8.2 weeks), range 2 – 154 days (3 weeks to 22 weeks)**

Average time for a positive decision (approval) to be made: **64 days (9.14 weeks), a**verage time for a negative decision (refusal) to be made: **53.7 days (7.6 weeks)**

How long do applications for Section 4 (1)(c) bail address take to conclude overall?

Taken together, the delays at each stage in the application process for Section 4 (1)(c) bail support have the potential to lengthen the amount of time spent in detention and lengthen the bail cycle, both to an unacceptable degree. It is not uncommon for a grant of Home Office Section 4 (1)(c) support to take several months to conclude, during which time the applicant is unable to exercise their right to apply for release on bail. Bail acts as an independent review of ongoing detention and a crucial safeguard for detainees given the absence of an upper limit on an individual's immigration detention in the UK.

It should be noted that the data collected in this study was obtained from bail accommodation applications where BID was, in effect, attempting to hold the Home Office to the timescales contained in its own guidance for staff and accommodation contractors. We closely monitored applications and requested specific actions from the Home Office the moment their own timescales were breached. Our findings on the time taken by the Home Office to grant a bail address reflect that effort to some degree. Applications made without this input can be expected to take longer to conclude.

INITIAL ACCOMODATION SECTION 4 (1)(C)BAIL ADDRESSES

Average (mean) total time taken by the Home Office to conclude the Section 4 (1)(c) application process from application to grant letter where Initial Accommodation was granted:

For all types of cases: **9.05 days (1.29 weeks), range 1-88 days (0 – 12.8 weeks)**

For ex-offenders: **8.75 days (1.25 weeks), range 1-67 days (0-9.6 weeks)**

For non-ex-offenders**: 9.33 days (1.33 weeks), range 1-88 days (0 – 12.6 weeks)**

STANDARD DISPERSAL SECTION 4 (1)(C)BAIL ADDRESSES
Average (mean) total time taken by the Home Office to conclude the Section 4 (1)(c) application process from application to grant letter (where standard dispersal accommodation (SDA) granted)

For all types of case): **103.13 days (14.7 weeks), range 5-503 days (1-71.86 weeks)**
Average (mean) time to grant an SDA address (with NOMS involvement): **180.86 days (25.83 weeks), range 82 – 503 days 11.7 to 71.86 weeks)**

Average (mean) time to grant an SDA address, (no NOMS involvement in case**): 59.28 days (8.46 weeks), range from 5 to 175 days (1 – 25 weeks)**

Delays related to the processing, administration, and delivery of Section 4 (1)(c) bail support
The end-to-end processing of applications for Section 4 (1)(c) support from acknowledgement of application through to grant letter does not consistently comply with timescales outlined in Home Office policies and specifications, nor is Home Office correspondence with applicants and representatives generated consistently across all applications. This state of affairs is not of course unique within the Home Office. However, while we were measuring the time taken for each aspect of the application process to conclude, and conscious that the applicant was waiting in detention for a bail address, we became acutely aware of the additional time applicants must spend in detention simply as a result of administrative time accrued between each stage of an application for a Home Office bail address.

Mr B waited 42 days between the refusal of his first Section 4 (1)(c) address by probation and the Home Office request for a second address from accommodation providers, and a further 24 days between the second refusal and the Home Office making a request for a third address (a total of 66 days or nearly 10 weeks during which time his application sat on a Home Office desk).

Communication with detainees held in prisons (in recent times up to one in four of all detainees in the UK[9]) does not take account of their highly restricted communication, and results in grants of Section 4 bail addresses expiring without use, often after an applicant has waited several months for the grant from the Home Office.

[9] "As of the 31 December 2013, 1,230 people were being held in prisons in England and Wales not in relation to criminal proceedings. Of these, 1,214 were being held as immigration detainees" (Source: Hansard 9 April 2014, c249W). Publicly available Home Office migration statistics (27 February 2014) show that at the end of December 2013, 2,796 people were held in immigration detention in immigration removal centres, in short-term holding facilities (STHF), and in pre-departure accommodation (PDA) Home Office 'Immigration statistics, October to December 2013'. Published 27 February 2014. Available at https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013#detention-1

3. Purpose of this research

The purpose of this research was to identify precisely where delays in the complex application process for Home Office Section 4 (1)(c) bail accommodation are occurring, how long the delays are, and why they are occurring. The intention is to share our findings with the Home Office and other agencies in an attempt to find solutions to the delays and bring the length of time taken for an immigration detainee to obtain a Section 4 (1)(c) bail address back down to a reasonable period. The Home Office has seen interim findings from this research.

We broke down the application process into separate steps and identified any relevant guidance on timescales contained in Home Office published policies relating to Section 4 (1)(c) bail accommodation and the provision of Section 4 accommodation in the UK under COMPASS contracts. When the indicated period had passed, if the relevant action had not been taken by the Home Office we contacted them to find out why and when they expected the action to be concluded. This contact with the Home Office was made by telephone or in writing, either informally or as part of the formal Home Office complaint process where appropriate.

Stage of the Section 4 (1)(c) application process	**What the guidance says**	**Reference for the guidance**
Completion of risk assessment pro forma Used by the Home Office to determine which type of Section 4 accommodation is suitable (initial accommodation, standard dispersal accommodation, or complex bail accommodation), or whether they should refuse to provide bail accommodation on the grounds of cost.	Home Office guidance says risk assessment pro formas should be completed and returned to Section 4 staff by case owners "**within 2 working days or within 10 working days** if a new risk assessment is required"	Home Office, (July 2014), '*Section 4 bail accommodation'*, Version10.0[10]
Provision of Standard Dispersal Section 4 accommodation for a named individual, to the Home Office by a COMPASS contractor.	Accommodation providers are required[11] to propose dispersal addresses to the Home Office **within nine working days**. This requirement covers Section 4 (1)(c) bail accommodation in the Standard Dispersal Accommodation category. "Annex A Dispersal:	Home Office, (2012), '*COMPASS Project Schedule 2: accommodation & transport - statement of requirements*'[12]

[10] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330524/Section_4_Bail_Accommodation_v10.pdf. This instruction was contained in earlier iterations of this Home Office guidance.
[11] Home Office, (2012), '*COMPASS Project Schedule 2: accommodation & transport - statement of requirements*'
[12] Provided to BID by the Home Office in 2012.

	A.1.1 The Authority expects that the substantial majority of dispersals shall take place within 9 Working Days of the Provider receiving the relevant Accommodation Request. However, the Authority may give notice of less than 9 Working Days (see 2.8.1) … A.1.4 The Provider must submit Accommodation Proposals to the Authority by the time required in the relevant Accommodation Request. " (Home Office, 2012: 72)	
Completion by NOMS probation staff[13] of licence address checks on proposed Section 4(1)(c) bail address	<u>"Accommodation provided by Home Office Immigration Enforcement</u> "2.7 HO IE is responsible for obtaining suitable accommodation for Foreign National Prisoners released from immigration detention, who wish to apply to the AIT[14] for Immigration Bail and who are unable to provide an address. Under HO IE "Section 4" accommodation arrangements, supervising officers will be contacted by the Criminal Casework case owner in order to provide risk related information for the appropriate type of "Section 4" accommodation to be allocated. As per the licence requirements, the supervising officer will later be required to confirm that the HO IE Section 4 accommodation allocated is suitable for the specific offender via a risk assessment. **This should be considered and completed in an expedient manner** as costs are incurred by HO IE whilst the bedspace is held for the Foreign National Prisoner." BID understands from the Home	National Offender Management Service, PSI 29/2014 & PI 26/2014, '*Release on licence for foreign national prisoners pending deportation'*. Interim instruction issued May 1 2014, effective June 1 2014.

[13] This reflects the situation prior to the restructuring of the probation service into a statutory National Probation Service (NPS) and contiguous regional Commercial Rehabilitation Companies (CRCs), and a slightly different model for managing foreign national offenders.

[14] Here, the National Offender Management Service is making reference to the former name of the First-tier Tribunal (Immigration & Asylum Chamber), which was the Asylum & Immigration Tribunal.

	Office Section 4 bail team that a working timeframe of 8 weeks is allowed for licence address checks. NOMS have confirmed to BID that this is reasonable. For the purposes of this research we have therefore used **8 weeks** as the benchmark timescale for completion of licence address checks.	

During the six month data collection period, from mid-January 2014 to the end of June 2014, our researcher/caseworker carried out all casework in the BID London office on applications to the Home Office for section 4 (1)(c) bail accommodation, and captured detailed information about every one of these applications. Working under the joint supervision of OISC Level 3 accredited BID legal managers and one of BID's Research & Policy Managers, all correspondence with the Home Office was signed off by our Duty Legal Manager of the day, and attendance notes were written on every action taken on such application, also signed off by the Duty Legal Manager.

Detailed records were kept on a spreadsheet of the start and end date for each element of the application process, enabling us to calculate the number of days taken for each step of the Section 4 (1)(c) application process, using the date on Home Office correspondence and information gathered from phone calls to the Home Office Section 4 bail team, Criminal Casework, and probation officers, to determine when a particular step had been taken by the Home Office. Where there were discrepancies between dates provided in letters and phone calls those discrepancies were investigated, and we always gave the Home Office the benefit of the doubt by entering a shorter overall time in our records if we were forced to choose between two differing accounts of time taken.

Where an application for Section 4 (1)(c) bail support was already underway when the data collection period began, we only collected data on those elements of the application that fell within the data collection period and for which we could ensure data quality. Similarly, many of the applications being monitored during the six month study were not concluded by the end of June 2014. As a result of this, analysis of data relating to each of the application elements was carried out only on those cases where the relevant element had been completed. Findings on the total time taken by the Home Office to conclude an application for Section 4 (10(c) bail support were based only on those cases in the study for which we had data on time taken to conclude each individual element in the application process.

It is not possible to give a total number of cases studied for this research, as many applications were studied in part only. However, we show the number of cases studied for each part in Annex C.

Where our clients had made more than one application for Section 4 (1)(c) bail support during this six month period, each application is recorded separately. Where we found duplicate applications we informed the Home Office of the duplicate, and for the purpose of the study selected only one application to monitor. Six applicants in this study were removed while waiting for a grant of Section 4 (1)(c) support.

4. FAQs: Home Office Section 4 (1)(c) bail support

What is Section 4 (1)(c) bail support for?

In order for an immigration detainee to be able lodge an application for bail with the First-tier Tribunal (Immigration & Asylum Chamber) they must have a bail address, since release will only be granted to a specific address. This can be a private address offered by family or friends, but, where this is not available, a detainee can apply to the Home Office for Section 4 (1)(c) bail support.

The grant of Section 4 (1)(c) support from the Home Office must generally be in place in order for a detainee to be able to lodge their application for release on bail. Detainees reliant on a Section 4 (1)(c) bail address must wait in detention for their application for support to conclude before they can lodge their application for release. Any delay in provision of a Section 4 bail address means that, even where the applicant's material circumstances have changed, they will be unable to make an application for release on bail.

In BID's caseload, for those detainees for whom we provided representation at bail during 2013, 53% of our clients were reliant on Home Office Section 4(1)(c) bail addresses, 46% were able to access private accommodation for a bail address, and 1% were bailed to NOMS Approved Premises. However, nationally the picture is the reverse. In the year to March 2013[15] 11, 971 applications for release on immigration bail were made to the First-tier Tribunal[16], but only 3,465 applications for Section 4 (1)(c) bail accommodation were received by the Home Office during the full year 2012[17], some of which were duplicates.

What is Section 4 (1)(c) support?

Home Office Section 4 (1)(c) bail support comprises accommodation provided on a no-choice basis somewhere in the UK, plus an Azure payment card[18] which is charged with £35.39 each week. People in receipt of Section 4 (1)(c) support get no cash. Section 4 (1)(c) bail support comes as a package, and it is not possible to apply only for the financial support element for use while bailed to private accommodation.

Who is eligible for Home Office Section 4 (1)(c) bail accommodation

To be eligible for Section 4 (1)(c) bail accommodation an applicant must be simply be detained under immigration powers, or be on immigration bail. Bailed detainees can also apply for Section 4 (1)(c) support post-release on the same basis as if they were detained if for some reason their original private accommodation arrangement is no longer available to them.[19]

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[15] Home Office response to Bail for Immigration Detainees 9th October 2013, Freedom of Information Act request number 28774.

[16] HM Courts & Tribunals Service, HMCTS Presidents' Stakeholder Group, '*Bail Management Information Period April 2012 to March 2013*'.

[17] Source: Home Office response to FOI request from BID in 2013. The response from the Home Office for disclosure of information in relation to Section 4 (1)(c) applications for the whole year 2013 is overdue at the time of writing.

[18] See Asylum Support Appeals Project, (April 2013), '*Factsheet 18: A guide to Azure Cards for families and individuals in receipt of section 4 support*'. Available at http://www.asaproject.org/wp-content/uploads/2013/03/Factsheet-18-A-guide-to-Azure-Cards-for-families-and-individuals-in-receipt-of-section-4-support..pdf

[19] See Home Office, (July 2014), '*Section 4 bail accommodation'*, Version10.0, Section 18: Section 4 Bail Address Applications by Applicants Already Released on Immigration Bail. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330524/Section_4_Bail_Accommodation_v10.pdf

Home Office guidance states that an application for Section 4 (1)(c) bail accommodation will be refused in the event that

> *"The applicant has adequate alternative accommodation and is able to meet his/her other essential living needs for a period of 14 days in the event he/she was released on bail" (Home Office, 2014: s11.1*

Are EEA nationals eligible?

EEA nationals held in immigration detention in the UK are not eligible for support under s4 of the 1999 Act, including Section 4 (1)(c) bail accommodation, unless a refusal of support would constitute a breach of the applicant's Convention rights or rights under the community treaties. In such cases the onus is on the applicant to show that support - in this case Section 4 (1)(c) bail support - is necessary to avoid a breach of a person's Convention rights. This is a complex and evolving issue, and is beyond the scope of this report. Immigration detainees in this position require specialist legal advice.

What type of housing is provided for Section 4 (1)(c) bail accommodation?

Bail accommodation is provided in the form of Initial Accommodation with shared facilities (followed by a move to dispersal accommodation within a couple of weeks), Standard Dispersal Accommodation which is self-contained to a greater or lesser degree, or Complex (bespoke) Bail Accommodation. Section 4 (1)(c) support can be refused by the Home Office where the cost of sourcing bespoke accommodation in any one case is considered too high, and such a refusal attracts a right of appeal to the Asylum Support Tribunal.

How many applications for Section 4 (1)(c) bail addresses are received each year?

For the year 1 January 2012 to 31 December 2012[20]		
Applications for Section 4 (1)(c) support		
3,465	Applications for Section 4 (1)(c) support (bail accommodation plus Azure card) were received by the Home Office/UKBA. Some of these are duplicate applications[21].	
1087	Applications appear to have been treated as duplicates.	31% of all applications for Section 4(1)(c) support
Grants of Section 4(1)(c) support		
1,961	Letters were sent offering Initial Accommodation as a bail address	82% of grants
382	Letters were sent offering Dispersal Accommodation as a bail address.	16% of grants
35	Letters were sent offering Complex Bail Accommodation as a bail address	2% of grants
0	Cases were assessed as being suitable for Complex Bail Accommodation but refused on the grounds that "suitable Complex Bail Accommodation cannot be found"	

[20] Source: Home Office response of 9th October 2013 to Bail for Information Detainees' Freedom of Information request no. 28774. The data provided has been taken from management information systems and is not held in a format compatible with National Statistics protocol. The response from the Home Office for disclosure of information in relation to Section 4 (1)(c) applications for the whole year 2013 is overdue at the time of writing.

[21] 2378 total grants for 2012.

What about detainees with criminal convictions?

If a detained applicant for Section 4 bail accommodation has been convicted of a criminal offence, at an early stage in the application process Home Office staff are required to determine the nature of the offence, make enquiries of the National Offender Management Service (NOMS) and IRC centre management, and then identify and allocate the appropriate type of Section 4 accommodation to be sourced. Health and access issues may also be considered by the Home Office at this stage.

Once the Home Office has obtained suitable Section 4 bail accommodation from a COMPASS contractor, and if an immigration detainee with a criminal conviction is still within the period of their release licence, then details of that address must then be referred to the relevant Probation Trust or Trusts[22] to check the suitability of that accommodation in relation to the terms of the licence, and any other facts of relevance to the effective and safe offender management of that individual. These checks may take several weeks. If the bail address is Standard Dispersal Accommodation, then the Home Office must pay rent on the COMPASS accommodation as well as the costs of detention until the address checks are concluded. If probation services are unable to approve a Section 4 (1)(c) bail address for the applicant then a further address must be procured by the Home Office, and rent paid on that address too until approval is granted.[23]

How long are grants of Section 4 (1)(c) bail accommodation valid for?

Grants of Initial Accommodation are valid for 28 days, while grants of Standard Dispersal Accommodation are valid for only 14 days. Extensions to a grant can be obtained on application to the Home Office - for example, if there are backlogs at a Tribunal hearing centre. Once lodged with the First-tier Tribunal (IAC), immigration bail applications are generally heard within 3-6 working days, though during 2014 this long-standing target is not being met at York House hearing centre at Hatton Cross, London.[24]

Grants for Section 4 (1)(c) support are not taken up if the detainee proves unsuccessful in his or her bail application. HM Courts & Tribunals Service management information shows that for Q2 2013, only 22.1% of immigration bail applications result in release.[25] Taking this quarter as an example, 77.9% of bail applicants were refused release by the Tribunal.

Immigration detainees may need to go through repeated cycles of application for Section 4 (1)(c) support followed by a bail application, if release on bail is repeatedly refused. It is of great concern to BID that long-standing and unacceptable Home Office delays in the provision of Section 4 (1)(c) bail addresses to detainees, which as this study shows may amount to months, delay access to the tribunal for detainees who wish to seek independent scrutiny of their ongoing detention.

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[22] This is the position prior to the completion of the major restructuring of the delivery of probation services under 'Transforming Rehabilitation'.

[23] For further information see Bail for Immigration Detainees, (September 2013), *'Getting Probation approval for your immigration bail address: I'm a foreign national ex-offender, I'm still on Licence, and I want to apply for immigration bail. What do I need to do?*'. Available at http://bit.ly/1e5Gpoo

[24] For further information refer to Bail for Immigration Detainees, (September 2014), '*Denial of Justice: the hidden use of UK prisons for immigration detention*'. Page 41-42. Available at http://www.biduk.org/971/news/new-bid-report-on-the-hidden-use-of-prisons-for-immigration-detention.html See also HM Courts & Tribunals Service, (January 2014), '*The Fundamental Review of the First-tier Tribunal Immigration and Asylum Chamber: A joint review by the judicial and administrative arms of the First-tier Tribunal (IAC) taking an in depth look at the operations of the Tribunal*'.

[25] HMCTS Presidents Stakeholder Group, Bail Management Information, Period April to June 2013.

Is there legal aid funding for legal work on Section 4 (1)(c) applications?

Publically-funded legal advice on asylum support issues, including Section 4 (1)(c) support, can be carried out under housing and public law contracts. Any work done on asylum support issues by practitioners working under an immigration & asylum legal aid contract therefore has to be done *pro bono*.

Can bailees apply for a Section 4 (1)(c) bail address if their private bail address becomes unavailable after they are released?

There is a provision for applications for Section 4 (1)(c) support by applicants already released on immigration bail (i.e. no need to prove eligibility but the same risk assessment requirements if an ex-offender). This may be used where an arrangement to use a private address for a bail application breaks down following release. This provision may also be used to provide move-on accommodation for foreign national ex-offenders who are required as a licence condition to reside in NOMS Approved Premises in the community on release.

5. Delays related to choosing the right type of accommodation for the applicant

This research has found that applications by ex-offenders for Section 4 (1)(c) bail addresses may generate delays in granting support amounting to months, which, in BID's view, unreasonably lengthen both the amount of time spent in immigration detention and the length of the bail cycle for such detainees. There are two main phases to decision-making in the Home Office Section 4 (1)(c) application process:

> Phase 1 – During this phase a decision is made on the type of Section 4 accommodation considered suitable for the applicant (Initial Accommodation, Standard Dispersal Accommodation, or Complex Bail Accommodation). This phase occurs before the Home Office makes a request to source accommodation for an individual applicant to a COMPASS contractor.
>
> Phase 2 – If the applicant is an ex-offender and still within the period of their release Licence, the Section 4 accommodation supplied by the COMPASS contractor must then be approved by probation services. Other accommodation-related arrangements may need to be approved in cases where a detainee is subject to an ancillary order requiring police involvement. This phase occurs once an address has been provided to the Home Office by a COMPASS contractor but before a grant is confirmed in writing to the applicant.

This chapter deals with Home Office decision-making in Phase 1 of the application process, during which the Home Office decides whether a detained applicant can be placed in Section 4 initial accommodation if released on bail, or whether they are unsuitable for such accommodation and must instead be found Standard Dispersal accommodation or, in a small number of cases Complex (bespoke) bail accommodation.

This element of the application process requires Home Office staff in the Section 4 bail team[26] to liaise with Home Office Criminal Casework[27] and with NOMS, and may involve a request to NOMS for a recommendation for the most appropriate type of Section 4 accommodation.[28]

Risk assessment pro formas consistently not completed by the Home Office within timescales indicated in its own guidance

Home Office guidance[29] says risk assessment pro formas should be completed and returned to Section 4 staff by case owners "**within 2 working days or within 10 working days** if a new risk assessment is required."

[26] These staff are located within the Asylum Casework Directorate in Home Office Visas & Immigration.
[27] These staff are located within Home Office Immigration Enforcement.
[28] Where the detained applicant is no longer within their Licence period and NOMS has no further interest in the case, risk-related information may in any case be sought by the Home Office from IRC management companies (or HM Prison Service in the case of Dover IRC and Haslar IRC), on the applicant's conduct while in detention.
[29] Home Office, (July 2014), '*Section 4 bail accommodation'*, Version10.0, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330524/Section_4_Bail_Accommodation_v10.pdf

In September 2013 Home Office guidance on Section 4 (1)(c) bail accommodation[30] was revised to state, among other changes:

> *"The Section 4 Liverpool Team will check the pro-forma to ensure that all relevant information has been included and that clear recommendations are made for the type of bail accommodation that is suitable. After the pro-forma has been quality assured by the Section 4 Liverpool Team, it will be forwarded onto the Section 4 bail team for accommodation booking to commence." (Home Office, 2014: 13)(emphasis added)*

The risk assessment pro forma is frequently not completed by the Section 4 Bail Team and Criminal Casework within the timescale contained in Home Office guidance (2 to 10 working days). This study found that completion of these risk assessments are subject to delay amounting to weeks, with the average time taken to complete the initial risk assessment in this study being 35.33 days or 5 weeks.

STUDY FINDINGS

The average (mean) time for the Home Office to acknowledge a Section 4(1)(c) application and issue (but not complete) the risk assessment pro forma: **9.36 days (1.33 weeks), range 0 – 81 days (0 – 11.5 weeks)**

The average (mean) time taken by the Home Office to complete and return the pro forma document to the Section 4 bail team: **35.33 days (5 weeks), range 1 – 183 days (0-26 weeks)**

Average (mean) total wait for the initial 'suitability' risk assessment to be completed (from the application being lodged through to the date of the Home Office letter informing the applicant whether they are suitable for Initial Accommodation or Standard Dispersal Accommodation**): 46.29 days (6.61 weeks)**, **range 6 – 210 days (1 – 30 weeks).**

During this six month study, BID's Accommodation & Release Project made 4 formal service complaints to the Home Office about delays in the completion of the initial risk assessment, and one pre-action letter was sent to the Home Office in relation to delayed completion of the pro forma.

Risk assessment pro formas are returned to the Home Office Section 4 Bail Team incomplete

Risk assessment pro formas may need to be sent back to Liverpool for completion, often on more than one occasion. Medical information is not sought early enough. The Home Office is not consistently ensuring that reasons for decisions about Section 4 (1)(c) accommodation type are provided to applicants[31], and that a clear recommendation for accommodation type is made.

Even if the pro forma is returned within 10 working days, if it is subsequently found to be incomplete and is returned to the Liverpool unit for completion then Home Office guidance is entirely silent on

[30] *ibid.*

[31] In other words that the bail accommodation-type decision will be Razai-compliant (though this is not the language used by the Home Office).

how long this step should take. It appears that once the 10 day upper limit has been breached then there is little concern as to how long this element of the application process takes. The longest time taken by the Home Office to complete a risk assessment pro forma for a case included in this study was 183 days (26 weeks).

> *The pro forma for Mr P was received incomplete on three occasions within one application between October 2013 and the end of January 2014. The applicant was not on licence any more (though he was a MAPPA nominal). It took 99 days in total for the Home Office to complete and return the risk assessment pro forma.*
>
> *Mr M's pro forma was sent to Liverpool on 20th March 2014 to be completed. On 3rd April 2014 it was returned to the Section 4 Bail Team but was incomplete. The Section 4 Bail Team then waited one week before returning it to the Liverpool office. On the 30th April 2014, the complete pro forma was eventually returned. Mr M waited 40 days for the Home Office to fully complete his pro forma document.*
>
> *The pro forma for Mr M's application was sent out by Home Office Section 4 staff on 7th December 2013 and received back on 8th April 2014, exactly four months later. No reason was offered to the applicant for the Home Office choice of bail accommodation, despite this being required by Home Office policy. BID made a service complaint to the Home Office, but the response to this complaint also gave no reason for the delay in making this decision.*
>
> *In the case of Mr F, it took 52 days to get a completed pro forma returned to the Section 4 team, and in the case of Mr I, after 49 days to date, a completed pro forma has yet to be returned.*
>
> *Mr A's pro forma was sent by the Section 4 bail team to Liverpool on the 7th December 2013. It was returned 4 months later, on the 8th April 2014, 6 days after BID had written a complaint letter to the Home Office. Mr A waited 122 days for the Home Office to complete his initial risk assessment, that is to say 12 times longer than indicated in Home Office guidance.*

In anything other than an apparently simple application, the handling of this early part of the Section 4 (1)(c) application process appears to be characterised by a lack of urgency on the part of the Home Office. The Section 4 bail team is failing to ensure that risk assessment pro formas are consistently returned within the timescales stated in Home Office guidance. There is poor quality control, despite the existence of a new Home Office unit in Liverpool which is tasked with ensuring that risk assessment pro formas are returned complete and promptly.

Delays related to obtaining medical reports at risk assessment pro forma stage

In a number of cases in this study, the Home Office has informed BID that the Section 4 Bail Team was waiting for a medical report or "health assessment". Home Office guidance does not refer to any additional time to be allowed for such enquiries to take place, so we assume that such enquiries must be completed within the time allowed overall for completion of the risk assessment pro forma.

Moreover, there appears to be little consistency in Home Office practice. In some applications, medical information is requested on the same day as the risk assessment pro forma is issued (which would appear to be good practice). In other cases, the Section 4 Bail Team wait for the pro forma document to be returned to them before then making a request for medical information, adding unnecessarily to the overall length of time taken to conclude the bail support application.

> *Mr N lodged his Section 4 application on 18th February 2014. On 22nd February 2014, a risk assessment pro forma was sent to the Home Office in Liverpool to be completed. By 24th March 2014, the pro forma had not been returned to the Section 4 bail team. BID wrote to the Section 4 manager but no response was received. On 7th April 2014, BID was again informed that the pro-forma was pending, but was also told that the Section 4 Bail Team had now requested a medical report on our client. On the 9th May 2014 our client was finally informed that he had been deemed unsuitable for Initial Accommodation. He had waited 46 days for a pro forma risk assessment to be completed, when the Home Office policy is that such reports should take a maximum of 10 days.*
>
> *Mr O lodged his Section 4 application on 19th February 2014. On 25th February 2014, a pro forma was sent to Liverpool to be completed. One week later, the Section 4 Bail Team requested a health assessment for the client. On 19th March 2014, as no progress had been made in completing the risk assessment pro forma BID wrote to the Section 4 Manager requesting a response. Five days later, the pro forma was returned to the Section 4 Bail Team. However, it took a further four weeks before the Section 4 Bail Team received the health assessment previously requested for Mr O, on the 28th April 2014. Mr O waited 27 days for a risk assessment pro forma document to be completed, and a further 58 days for a health assessment to be completed, a total of 85 days (nearly 3 months) just for the initial risk assessment.*
>
> *Mr G lodged his Section 4 application on 4th April 2014. On 11th April 2014, a pro forma was sent to Liverpool to be completed. On the same date, our client received a letter from the Section 4 Bail Team asking him to sign a consent form for a medical information form, in order to refer the case to the Home Office medical adviser. On the 14th May 2014, BID was informed that the pro forma had been referred to a senior manager to complete, as no Criminal Casework caseowner was available to do so. BID was also informed that the Section 4 Bail Team was waiting for information from another unit, which - according to the Section 4 Team - explained the delay in completing the Pro Forma. On 21st May 2014, BID was informed that, in fact, the medical adviser had already indicated the type of accommodation needed by our client on 6th May 2014. On 2nd June 2014, once again BID was told that the section 4 Bail Team was waiting for the manager to complete the pro forma. Our client was still waiting for his risk assessment pro forma to be completed on the date he was deported from the UK, nearly two months after it was requested by the Section 4 bail team.*

Delay due to absence of a caseowner allocated to a case

One of the reasons the Home Office has cited during 2014 for delays in provision of Section 4 (1)(c) bail accommodation is that no Criminal Casework caseowner is allocated to the case and therefore the case remains "on stand-by". In some cases our detained clients have waited several weeks for

their Section 4 (1)(c) application to be allocated to a caseowner in order for the risk assessment to be carried out so that a decision can be made of the type of bail accommodation required.

Typically in such cases we are told by the Section 4 Bail Team that they have eventually referred the case to a senior manager in order to complete the risk assessment pro forma, but in these cases those senior managers also seem unable to ensure that risk assessment pro formas are completed.

> *Mr Z lodged a Section 4 application on 9th April 2014. BID was told that no Criminal Casework caseowner was available to take on his case so it had been referred to a Senior Manager to complete on 17th April 2014. Just over one month later, BID was told by the Home Office that no progress had been made. BID then wrote to the Home Office to request that the pro forma be completed within seven days. The pro forma was completed by a senior manager on 2nd June 2014. Mr Z therefore waited nearly 2 months for the Home Office to complete his risk assessment pro forma, even though this process should have been done within a maximum of 10 working days.*
>
> *Mr I had been sentenced to a custodial sentence of 2 months. He has waited for nearly three months to date for a senior manager to complete the pro forma, as no Criminal Casework caseowner was available to do so. Home Office guidance requires this step of the application process to be completed in a maximum of 10 working days.*

It remains unclear why Home Office Criminal Casework are unable to fulfil this element of the Section 4 (1)(c) application process in a proportion of cases.

Home Office failure to disclose the evidential basis for decisions about the type of Section 4 (1)(c) bail accommodation considered suitable

There is a specific requirement in Home Office guidance to provide the applicant with the reasons for deeming them unsuitable for Initial Accommodation.

> *"Section 4 Bail Accommodation Update Letter: ….If an up-to-date NOMS1 form has been issued for the applicant, a copy of the form should be enclosed with the update letter. If an up-to-date NOMS1 form has not been issued, Section 4 Bail Team caseworkers should insert the explanation provided by the Home Office caseworker in the Section 4 Bail Accommodation Pro-Forma for why the applicant is not suitable for Initial Accommodation."*[32]

In addition the courts require this disclosure. In Razai & Ors v SSHD[33] [2010] EWHC 3151 (Admin) (02 December 2010), in which BID acted as third party intervener, the judge found that:

> *"A decision that a detainee is not suitable for an immediate offer of Initial Accommodation is of such significance that fairness does require the SSHD to tell the applicant what she has in mind and why. This is because of the stark difference between the time that it takes to offer Initial accommodation as a bail address (only a few days) and the delays that can occur if*

[32] Home Office, (July 2014), '*Section 4 bail accommodation'*, Version10.0. See Section 9.2.3. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330524/Section_4_Bail_Accommodation_v10.pdf Section 9.2.3

[33] Razai & Ors v SSHD [2010] EWHC 3151 (Admin) http://www.bailii.org/ew/cases/EWHC/Admin/2010/3151.html

Initial Accommodation is not offered (on the evidence, delays of weeks or months). Fairness also requires the SSHD to take into account any representations that are made in response" (§85).

"The reason why the detainee needs to know why he is regarded as a high risk case…is so that he can make submissions to the contrary to the SSHD or decide whether there are grounds to challenge the legality of the decision not to treat him as suitable for IA" (§87).

It is BID's experience that Home Office Section 4 bail team staff almost never spontaneously disclose reasons for their decisions in relation to bail accommodation suitability, despite this being specifically required by Home Office guidance. NOMS1 forms are not provided to Section 4 (1)(c) support applicants, nor are meaningful explanations offered for decisions to deem applicants unsuitable for initial accommodation. There is a general failure on the part of the Home Office to engage with issues around risk assessment and disclosure. For example, one BID client was told:

"Your caseowner has made an assessment of your bail accommodation requirements and concluded that IA is unsuitable for you" (correspondence from Home Office dated 25.2.14).

Where disclosure is specifically requested by legal representatives in the context of a S4 (1)(c) application, BID's experience is that there rarely comprehensive disclosure of the information relied on by the Home Office to make decisions about level of risk, and hence the justification for the type of Section 4 accommodation to be sought for that applicant. Again, this is in the context of such disclosure being specifically required Home Office guidance.

Typically requests to the Home Office for the evidential basis for risk assessment are met with a statement of the nature of the conviction(s) of the applicant, or simply the fact that the applicant has a criminal conviction, rather than a reasoned and evidenced risk assessment.

There appears to be no distinction made by the Home Office between the fact of a person's criminal conviction and an evidenced risk assessment for that individual which identifies the existence of any specific type of risk, at a specific level, to a specific type or group of person (e.g. women, authority figures, children, specific ethnic groups).

Furthermore, in BID's experience, where representations are made in individual cases on risk assessments carried out by the Home Office for Section 4 (1)(c) accommodation allocation, Home Office staff simply fail to engage with these representations.[34]

STUDY FINDING

In not one single application for Section 4 (1)(c) bail accommodation in this study made by an applicant with a criminal conviction and a custodial sentence of 12 months or more was a NOMS1 form provided to the applicant by the Home Office, despite this being required by the Home Office's own guidance.

[34] Detailed discussion on BID's experience of making such representations as legal representatives is beyond the scope of this report.

Inadequate reasons given to detainees by the Home Office to explain why they are not suitable for Section 4 (1)(c) initial accommodation

In this study, in 39 cases an applicant received a letter from the Home Office giving the reason why they were considered unsuitable for Initial Accommodation. Of the 39 letters received by applicants in this study:

- 3 letters detailed the criminal history of the applicant and offered what BID considers to be an adequately argued reason for their unsuitability for Initial Accommodation.
- 8 letters simply stated "*due to your conviction: [nature of the conviction, e.g. burglary*]"
- 3 letters stated " *You have been convicted of a number of offences*" without any further detail or attempt at explaining why these convictions made the applicant unsuitable for Initial Accommodation
- 15 letters of the 39 in total gave no reason at all for the selection of accommodation type
- 2 letters referred to a specific risk posed by the applicant (which in both cases was later acknowledged by the Home Office to have been attributed in error)
- 2 letters did not make it clear whether the applicant was deemed unsuitable for Initial Accommodation
- 6 letters were bad cut-and-paste exercises offering an incoherent explanation for the decision to deem the applicant unsuitable for Initial Accommodation (examples: "*Due to these convictions*", but no convictions are mentioned anywhere in the letter; "*you have been convicted of the following offence (blank). Due to these convictions*…")

- Overall, 0% of the letters offered any evidential basis for the decision based on a professional risk assessment by NOMS, 7% of the letters received provided an adequate reason, 20 % of the letters simply noted the existence of a criminal conviction, while 71% of these letters (which are designed to notify the applicant of the reason for selecting a particular type of Section 4 (1)(c) bail accommodation for them) entirely failed to give a reason.

The need for Home Office disclosure of reasons for accommodation decisions in order to identify & correct errors

At the very least, disclosure is required in order that errors in attributing type and level of risk can be corrected. Such errors are only human, but there must be an opportunity to identify and correct these errors which have the potential to impact adversely on time spent in detention waiting for a Section 4 bail address in order to apply for release, as well as on the substantive immigration case.

In this study we found a small number of applications for Section 4 (1)(c) bail accommodation were delayed unnecessarily by factual errors relating to the perceived type or level of risk posed by an individual. Failure to disclose the evidential basis and reasons for decisions about accommodation type mask such errors, which may take weeks to correct, or, in the case of unrepresented detainees, we can assume are never corrected.

> *Mr P received a letter from the Section 4 bail team, unusually giving some information about the reasons relied on to exclude him from initial accommodation as a bail address, stating:*

> *"Your case owner has made an assessment of your bail accommodation requirements. It has been noted that there are issues concerning: risk to women/children, latest conviction is 30 months for […]"*

Mr P denied to BID that he posed a risk to women or children, and this specific risk was not recognised by his probation officer either. BID wrote to the Section 4 bail team in February 2014. Following a partial response from the Home Office Section 4 bail team we sent a formal complaint and a further request for the source of information relied on in relation to the alleged risk posed by Mr P to women and children. On 4th March 2014, we received an answer to our complaint letter, acknowledging that the Home Office record of our client posing a risk to women/children was an error.

6. Delays related to the supply of bail accommodation by COMPASS contractors

Since 2012, the Home Office has procured Section 4 accommodation, including Section 4 (1)(c) bail accommodation, from three firms (G4S, Serco, and Clearel) under COMPASS[35] contracts[36].

Under those contracting arrangements, accommodation providers are required[37] to propose dispersal addresses to the Home Office **within nine working days**. This requirement covers Section 4 (1)(c) bail accommodation in the Standard Dispersal Accommodation category.

> *"Annex A Dispersal [38]:*
> *A.1.1 The Authority expects that the substantial majority of dispersals shall take place within 9 Working Days of the Provider receiving the relevant Accommodation Request. However, the Authority may give notice of less than 9 Working Days (see 2.8.1)*
> *…*
> *A.1.4 The Provider must submit Accommodation Proposals to the Authority by the time required in the relevant Accommodation Request" (Home Office, 2012: 72)*

STUDY FINDINGS

Average (mean) time taken to provide an address (including pending applications): **22 days (3.14 weeks)**

In **66% of the cases studied** (including pending applications) COMPASS contractors provided an address within 7 days of a request from the Home Office.

In **34% of the cases studied** (including pending applications) there was a delay in provision of an address by the COMPASS contractor and these were often significant delays **(for example, 30 days, 84 days, 99 days)**

Range of time taken by COMPASS contractors to provide a bail address to the Home Office (including pending cases): **1 – 99 days (0–14.1 weeks)**

During this six month study, BID's Accommodation & Release Project made 10 formal service complaints to the Home Office about delays in the provision by a COMPASS contractor of a Section 4 (1)(c) bail address.

[35] COMPASS stands for 'Commercial and Operating Managers Procuring Asylum Support'
[36] See the National Audit Office report (January 2014), *COMPASS contracts for the provision of accommodation for asylum seekers'.* Available at http://www.nao.org.uk/wp-content/uploads/2014/01/10287-001-accommodation-for-asylum-seekers-Book.pdf
[37] Home Office, (2012), '*COMPASS Project Schedule 2: accommodation & transport - statement of requirements*'
[38] The document states clearly "The provisions of this Annex A shall not apply to or be in respect of Initial Accommodation Service Users"

Performance by COMPASS contractors against the nine working day contractual requirement for allocation of Section 4 dispersal accommodation is inconsistent in relation to the provision of bail accommodation for detainees.

Accommodation was provided to the Home Office within the contractually required time in just over half the applications in our study (further steps such as licence address checks may still need to take place before a grant is made). However, in cases where the nine working day requirement is not met, the delays are often significant. The maximum delay logged in this research was 99 days.

> *The Home Office Section 4 bail team requested an address for Mr M from COMPASS contractors on 13th February 2014, and this request was still pending 11 weeks later. The applicant had a criminal conviction but was no longer on licence. Had the 9 day contractual requirement been met by the COMPASS accommodation provider, Mr M could have lodged an application for release on bail more than two months earlier.*
>
> *The Section 4 bail team requested an address for Mr S on 25th February 2014, and two months later this had still not been provided by the contractor. BID wrote to the Home Office on 17th March 2014 seeking both resolution of the delay and the provision of the evidence relied on by the Section 4 bail team for concluding that IA was not suitable for Mr S. The Home Office responded on 23rd April saying "we are currently waiting for accommodation to be offered by our provider and we are chasing this with them at this time." The response offered no response to BID's request for reasons for the accommodation selection.*

It is unclear what the consequences are for COMPASS contractors of this type of inconsistent performance.

7. Delays related Home Office management of licence-address checks on bail accommodation

Once a COMPASS contractor has allocated Section 4 (1)(c) bail accommodation and given details of the accommodation to the Home Office, if the applicant is still on licence then it is a standard condition of any release licence that accommodation must meet the approval of the probation service. Similarly an individual still within their licence period seeking release on immigration bail to Home Office Section 4 (1)(c) accommodation must have that accommodation approved by probation services.

For British nationals with a standard determinate sentence who are coming to the end of the custodial part of a criminal sentence, licence address checks will be carried out during the latter part of their sentence prior to release as part of discharge planning. BID has been informed by NOMS that these checks typically take about eight weeks, though there is no national guidance on this. These prisoners must be released from custody precisely at the end of the custodial element of their sentence.[39] There is no such imperative to conclude licence address checks for foreign national prisoners who go on to be detained under immigration powers, who can of course continue to be detained until the point at which such licence address checks are concluded, after which they can apply to the First-tier Tribunal (IAC) for release on bail.

We believe that this has enabled a less urgent approach to licence address checks for immigration detainees to flourish in certain parts of the probation service. Detainees waiting for such checks cannot lodge bail applications without probation approval of their address, nor will First-tier Tribunal judges release under these circumstances (quite correctly, since the bailee would be in breach of his or her licence conditions).

BID has had very fruitful discussions with NOMS on this issue over the last couple of years. Our standing position with NOMS is that we would like an upper timescale for licence address checks in national guidance on licences, and we remain hopeful that under the new dual commercial-statutory probation structure this may yet happen.

Notwithstanding the time currently taken by probation trusts to conclude these checks, which currently add several weeks to overall application times for licencees seeking Section 4 (1)(c) bail accommodation, this study has shown that Home Office management of licence address checks is hampered by inaccurate information held on licence expiry dates to the extent that weeks can be added unnecessarily to some total Section 4 (1)(c) application times. It seems clear the element of Section 4(1)(c) bail accommodation applications related to licence address checks could be concluded within shorter timeframes were these checks, and the requirement for these checks, to be managed better by the Home Office (both Criminal Casework and the Section 4 bail team in the Asylum Casework Directorate).

[39] It is BID's experience that foreign national prisoners liable to deportation, even those with a private address to be released to at the end of their custodial sentence, are not prepared for release (including licence address checks on release addresses) despite this being a NOMS requirement.

STUDY FINDINGS

Average time for a probation decision[1] on a Section 4 (1)(c) bail address to be made: **57.5 days (8.2 weeks), range 2 – 154 days (3 weeks to 22 weeks)**

Average time for a positive decision (approval) to be made: **64 days (9.14 weeks)**

Average time for a negative decision (refusal) to be made: **53.7 days (7.6 weeks)**

Home Office Section 4 bail team staff not always aware whether or not a detainee is still on licence

Home Office Criminal casework directorate guidance, (March 2013), '*Bail applications – action before and during a bail hearing or decision*'[40] suggests that case specific information on NOMS release licences is held on the offences screen of the Case Information Database (CID). It is not clear however that Home Office staff in the Asylum Casework Directorate's Section 4 bail team have access to this information.

This study has found that licence checks are being sought by the Section 4 bail team after the licence expiry date in a number of cases, or conversely are not being sought when they should have been. Both types of error prevent the detained applicant from making an application for release on immigration bail. For detainees in prisons and those detainees without support or legal advice this can be very difficult territory to navigate[41].

In cases where the NOMS licence has expired but licence address approval is nonetheless being sought by the Home Office, by the time BID has managed to provide evidence from NOMS that the licence has indeed expired to the satisfaction of the Section 4 Bail Team, our detained client has been held for additional days or weeks in detention.

Moreover, when such errors are eventually recognised by the Home Office, BID has on occasion been told that the proposed address cannot be granted to the applicant, but that the Section 4 Bail Team must obtain another address for the client from COMPASS contractors. It is not clear why it is not possible for the Home Office to simply grant the address already available on these occasions.

Neither is it clear why the burden should be on BID or any other legal representative to prove to the satisfaction of the Home Office that detainee's NOMS licence has expired. Information on licence expiry dates should be easily available to the Section 4 bail team, and if it is not it is surely the responsibility of Criminal Casework to provide accurate information.

Home Office does not always seek probation approval when it is needed

> *Mr M was granted an initial accommodation bail address by the Home Office, but though he was still on licence no NOMS check of the address was requested. The applicant applied for bail but was refused: the judge quite correctly made it clear that in this case he could not*

[40] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257911/40-bail-action.pdf (page 15-16)

[41] See BID factsheet 2: (September 2013), 'Getting Probation approval for your immigration bail address: I'm a foreign national ex-offender, I'm still on Licence, and I want to apply for immigration bail. What do I need to do?' Available at http://www.biduk.org/171/bulletins-for-detainees/factsheets-leaflets-and-bulletins-for-detainees.html

release Mr M to a bail address that had not been approved by probation. Mr M had to make a further application for Section 4 (1)(c) bail support.

Mr W was granted an initial accommodation address without the Home Office seeking NOMS approval, even though his licence had not expired. When BID became aware of this four days after the grant was made we contacted the Section 4 Bail Team to explain the error made. The Section 4 Bail Team then retracted the grant but conserved the address for the client and forwarded it to probation for approval. One month later, the address was refused by probation.

Home Office seeks probation approval after the licence has expired and NOMS has no further interest

In early 2014 the Section 4 bail team sought NOMS approval of a Section 4 (1)(c) bail address for Mr A, even though his NOMS licence had expired two years earlier in 2012. At some point after 2012 Mr A had been granted a Section 4 bail address by the Home Office without the need for probation approval. The Section 4 bail team were clearly aware during the earlier application he was licence-expired, but by the time Mr A applied again in 2014 they were not in possession of accurate information about his licence expiry date.

Mr X has been waiting 9 months to date for a Section 4 address. Two proposed addresses were refused by probation, though the second check was not necessary as Mr X's licence had expired some days before the second address approval was sought. On numerous occasions, BID called the Section 4 Bail Team to point out that probation approval was no longer necessary. BID then made a service complaint to the Home Office about the fact that they continued to seek probation approval when none was needed, and had provided no explanation for this position. The Home Office responded to our complaint:

> *"…as his application for bail accommodation was made while he was on licence, any proposed address would require approval from Probation Services for this particular application. If Mr […] wished for his application to be considered on the basis that he is no longer on licence, it would be open to him to make a further [Section 4 (1)(c)] application at this time"*

In its response to our formal complaint about this case the Home Office seemed to be suggesting that it would seek:

i) Probation approval of a Section 4 address even if the licence has expired so long as the application for Section 4 (1)(c) support was first made while licence in force – the Home Office should have known that NOMS has no further licence-related interest in any release address once a licence has expired, and this was an inaccurate response.

ii) A new application for Section 4 bail support must be made where a licence expires part way through an application. It was not clear to us why the Home Office could not simply withdraw the licence approval request (if the Probation Trust had not already noticed that the licence had expired) and grant the bail address already provided by the accommodation contractor on which the Home Office was already paying rent.

Eventually the Section 4 Bail Team Manager agreed and stated that the bail address was going to be issued the following day. Three days later BID called the Section 4 team and was informed that a new property had been requested, instead of simply granting the address that had been withdrawn from probation. A Section 4 (1)(c) bail address was then found and granted to Mr X one week later but BID was not informed of that grant to our client who was detained in a prison. By the time we were aware, delays in bail listings at Hatton Cross also meant that we could not obtain a hearing date before the address' expiry date. Mr X had spent 9 months waiting for a Section 4 (1)(c) bail address from the Home Office at that point.

Delays arising after probation and police refusal(s) to approve Section 4 bail accommodation

At a meeting convened by BID in May 2013 on licence address checks, and attended by the Home Office, NOMS, and the FTT judiciary it was clear that at that point the Home Office Section 4 bail team were not factoring in or even seeking reasons why NOMS was refusing approval of bail accommodation in particular cases. This had led to a cycle where further similar bail accommodation was being obtained by the Home Office via COMPASS contractors, only for that too to be refused by probation, each attempt taking several weeks. This is still the case.

In other cases in this study, BID found that for certain applications for Section 4 (1)(c) bail accommodation where two proposed bail addresses have already been refused approval by probation, we are told that the case must be referred to a Section 4 manager. At this point the applications for bail accommodation seem to be put on hold, no further bail addresses are sought by the Home Office, and no explanation for the stasis is provided to the applicant who must simply wait in detention.

The reasons for probation refusals are varied: in addition to offender management and risk management factors relating to the individual applicant, refusals may result from error on the part of probation (e.g. two different addresses in the same street proposed by the Home Office and assumed by probation to be the same address), or error on the part of the Home Office (such as seeking probation approval when none needed, or proposing a clearly unsuitable type of accommodation).

In some cases in this study it has taken four weeks for the Home Office Section 4 bail team to lodge a further request to COMPASS contractors for a second or third bail address after an earlier address has been refused by probation.

Delays arising where non-standard address checks are required and police requirements

Home Office guidance on Section 4 (1)(c) bail accommodation is silent on procedures and timescales in relation to checks and approval on accommodation over and above licence address checks. During this study, BID has found that it is rare for the Section 4 Bail Team to notify applicants or us as representatives that - even if a licence address check is not necessary - other checks on the proposed address must be made. In certain cases, Home Office staff have seemed unclear about what checks might need to be made, or seem reluctant to make a grant despite no obvious need for non-licence address checks.

During his second Section 4(1)(c) application, Mr L was not on licence anymore. However, within a few days, two addresses sourced for him were successively sent to probation for approval. BID called the Home Office Section 4 Bail Team to seek clarification. They stated that the two addresses were sent to NOMS for approval because the pro forma risk assessment indicated that due to a health issue, our client posed a high risk to the community. However, while it may or may not have been appropriate for the Home Office to disclose to BID the nature of the health risk, they were unable to explain why this was of relevance to NOMS post-licence, provide any information on the nature of the check requested, any timescale for such checks, nor the guidance they relied on which suggested this type of check was required.

Mr Y has not been on licence since 2011. However, in June 2014 he received a letter stating that while Section 4 (1)(c) accommodation had been sourced for him it needed to be approved by the Police Public Protection Officer. The Section 4 Bail Team told BID that they were not familiar with this kind of police check and were unable to give any timescale. Three months after the police check request, Mr Y is still waiting for a grant of a Section 4 (1)(c) bail address.

Mr F received a letter informing him that an address had been found for him but it had yet to be approved by probation. However, Mr F's licence had expired three weeks earlier. BID wrote to the Section 4 Bail Team and to ask about the nature of the checks requested for the client, as they could not be licence-related. The Section 4 Bail Team responded in a letter apologising for the error made and stating that the address would be issued quickly. Ten days later, without any further update on the client's case progress, BID called the client's Section 4 caseowner. She explained to BID that the address has not been granted yet, because she was awaiting confirmation about whether other approvals were needed, as the client was required to sign the Sex Offenders Register. BID explained that pre-release address checks were not needed under these circumstances, only that the individual should make himself known to the police once released. The caseworker asked BID to send written confirmation of this. On the same date, a grant of Section 4 (1)(c) bail accommodation was received by Mr F.

8. Delays related to the processing, administration, and delivery of Section 4 (1)(c) bail support

Poor communication with applicants throughout the application process generates duplicate applications

For the full year 2012, 1087 applications for Section 4 (1)(c) support appear to have been treated as duplicates (31% of all applications).[42] We believe this is due in part to late acknowledgement or lack of acknowledgement of applications, prompting detainees to submit a further application. In BID's view duplicate applications for Section 4 bail addresses are also likely to be submitted by detainees if the Home Office takes several weeks to complete the initial risk assessment pro forma and make a decision about the type of Section 4 accommodation required. During this period the detained applicant will typically receive no correspondence from the Home Office about their application for a bail address, and given the urgency of the need to seek release from detention many applicants assume their application has been forgotten.

Inconsistency in acknowledgment of applications

This study found that not all applications for Section 4 (1)(c) bail addresses are being acknowledged by the Home Office. However, where applications for Section 4 (1)(c) support are acknowledged this is generally done promptly (within a week or two).

Inconsistency in provision of updates to applicants

Encouragingly, communication from the Home Office Section 4 bail team to Section 4 (1)(c) support applicants is now more likely to contain information or instructions about the next step in the process, or a request to applicants not to submit further applications while the decision is pending.
However, this practice is not consistent between applications, nor is it consistently applied throughout all stages of the Section 4 (1)(c) application process. BID recommends that at the end of the application process, grant letters should indicate the steps needed to extend a grant.

Update letters fail to indicate what type of bail accommodation is being sought.

Home Office guidance[43] requires that where an applicant has been assessed as being unsuitable for initial accommodation, the applicant must be updated by letter:

> *"9.2.3 Section 4 Bail Accommodation update letter*
> *If the use of Initial Accommodation as a bail address has been assessed as being unsuitable, following dispatch of the accommodation booking request, the Section 4 Bail Team caseworker must immediately send a "Section 4 Bail Accommodation Update Letter" to the applicant and their representative by second class post. The letter informs the applicant that as a result of criminal offences committed it has been assessed that to use Initial Accommodation as a bail address would not be appropriate, and as a result, the Section 4 Bail Team is endeavouring to source dispersal accommodation. If an up-to-date NOMS1 form has been issued for the*

[42] Source: Home Office response to FOI request from BID in 2013. The response from the Home Office for disclosure of information in relation to Section 4 (1)(c) applications for the whole year 2013 is overdue at the time of writing.
[43] See Home Office, (July 2014), '*Section 4 bail accommodation'*, Version10.0, Section 18: Section 4 Bail Address Applications by Applicants Already Released on Immigration Bail. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330524/Section_4_Bail_Accommodation_v10.pdf

applicant, a copy of the form should be enclosed with the update letter. If an up-to-date NOMS1 form has not been issued, Section 4 Bail Team caseworkers should insert the explanation provided by the Home Office caseworker in the Section 4 Bail Accommodation Pro-Forma for why the applicant is not suitable for Initial Accommodation" (Home Office, 2014).

This study has found that in a number of applications, where it is otherwise clear from our casework that the risk assessment pro forma has been completed, and the Home Office have told us that they are seeking accommodation from a COMPASS contractor, detained applicants are being sent an update letter without any indication of the type of accommodation being sought.

Mr A received a letter stating "your case was referred to your caseowner for further information. This has now been returned and we are sourcing suitable accommodation [no mention of which type of accommodation]. I apologise for the length of time it is taking to resolve, once an address has been sourced, we shall write an provide an update in due course (sic)"

This practice masks what stage in the application process has been reached, and, if dispersal accommodation is indicated (though not revealed to the applicant), given that procurement of a dispersal bail address may take several weeks or months longer than cases where initial accommodation is considered suitable, it may not be immediately clear to the applicant whether or not it is appropriate and necessary to make representations to the Home Office in relation to their risk assessment.

Accrued additional delays as a result of time wasted between stages of an application

This research has identified and logged the length of time taken by the Home Office to complete each of the stages in an application for Section 4 (1)(c) bail support, including those stages requiring liaison with other agencies. As a result, we have discovered that not only might one or more stages themselves take longer than indicated in Home Office guidance or longer than can be considered reasonable, but additional delay accrues as a result of the Home Office not taking any action between two stages of the application process.

Mr M waited 11 days between the receipt of his application for a Section 4 bail address and the first stage of the process (which is to send the risk assessment pro forma to Liverpool), even though his application was lodged by BID with a specific note asking to treat his case as a matter of urgency (his previous bail address expired when reached him too late when he was detained in a prison).

Mr O waited 4 months and 20 days between the refusal of his first address by probation and the date of the Home Office request for a second bail address from COMPASS contractors.

Mr B waited 42 days between the refusal of his first address by Probation and the Home Office request for a second address from accommodation providers, and 24 days between the second refusal and the request for the third address (a total of 66 days or nearly 10 weeks during which time his application sat on a Home Office desk).

Failure to log representatives on the Home Office Section 4 bail team database

Even in cases where BID lodges Section 4 (1)(c) applications and ticks the box for 'representative' on the application form, we are not always logged by the Home Office as the representative for the purposes of a Section 4 (1)(c) application. As a result we are not always made aware of any correspondence sent to the applicant. Where the Section 4 (1)(c) applicant is detained in the prison estate, this can make the difference between being able to extend and save a grant of Section 4 (1)(c) bail accommodation, or having it expire because it reached the detainee on the wing too late to be used or extended.

When BID called the Home Office for an update on the progress of Mr L's Section 4 (1)(c) application on 10th April 2014, we were told that a grant of a Standard Dispersal Address (valid for 14 days) had been made on the 25th March 2014. However the grant letter had not been sent to BID and had expired without BID being aware of the grant. The Home Office told BID that it was not aware that we were representing the client for the purpose of his Section 4 (1)(c) application. How could the Home Office not know BID was acting as his representative for the purpose of his Section 4 (1)(c) application? They had written to BID in relation to this and an earlier Section 4 (1)(c) bail support application as recently as one month earlier. BID had sent a formal service complaint letter and a letter of authority to the Home Office in relation to the previous Section 4 (1)(c) application, and when BID had called the Home Office on the 24th March 2014, two days before the grant in question, the Home Office had discussed the now-expired application with us on the basis that we had authority to do so. Consequences: Mr L had to wait still longer in detention before he could apply for release on bail while BID lodged a further application for Section 4 (1)(c) bail accommodation.

In the case of Mr M, BID called the Home Office for an update on 14th May 2014 and discovered that an address had been granted on the 12th May 2014. The Home Office acknowledged that they did not send details of the grant to BID but to Detention Action, even though they confirmed we were listed as the client's representative for the purpose of his Section 4 (1)(c) application. We were also acting as his legal representative. BID had sent many letters to the Home Office about his bail support application, including one request to resolve the delay and one formal service complaint, each time with our letter of authority attached, and the Home Office had sent BID correspondence and called us several times about this very Section 4 (1)(c) application. Consequences: We had to request an extension of the grant so that Mr M's bail application could be lodged.

There does not appear to be any consistency in the Home Office approach to letters of authority to act on behalf of a detainee in the matter of an application for Section 4 (1)(c) support. Renewal of an applicant's letter of authority for BID to act on their behalf is sometimes asked for by the Section 4 bail team before further action can be taken on an application. No reason is given for this, nor is any Home Office policy or guidance referred to. Where detainees are held in the prison estate (up to 25% of immigration detainees at times in recent months) it could take 2-3 weeks for a legal representative such as BID to get a new letter of authority from a client by post, introducing further delay into the Section 4 (1)(c) application process and lengthening the bail cycle for that individual.

9. Complaints to the Home Office about unreasonable delay in the provision of Section 4 (1)(c) bail accommodation

It is BID's normal practice to seek informal resolution with the Home Office Section 4 bail team of any delay in the conclusion of any stage of a Section 4 (1)(c) bail accommodation application. If such an approach does not result in the requested action being taken within a reasonable time (wherever possible in line with any guidance or policy published by the Home Office) then we may proceed to lodging a formal complaint about the service provided by the Home Office via the standard Home Office complaint procedure.

If the response by the Home Office to our complaint is not satisfactory we may seek a review of the response.

At any point in this process, while continuing to pursue their application for a Section 4 (1)(c) bail address with the Home Office we may refer clients on to public law firms for consideration of judicial review of their ongoing detention, which may include consideration of delays on the part of the Home Office in provision of Section 4 (1)(c).

During the course of this study, between January 2014 and June 2014, the number of attempts made by BID in writing to ensure bail accommodation applications were concluded were as follows:

Where delay was located in the Section 4 (1)(c) application process	Requests by BID to Home Office Section 4 bail team to resolve the delay	Formal service complaints to the Home Office on behalf of our client
Completion of risk assessment pro forma	17	4
Provision of Section 4 accommodation by COMPASS contractors	10	10
Licence address checks, Home Office errors such as incorrect information held on licence expiry date	2	5
TOTAL	29	19

STUDY FINDINGS

Section 4 bail team responses to written requests from BID to resolve delay in any specific part of the Section 4 (1)(c) application process

in 58% of those Section 4(1)(c) applications in this study where we made a written request to the Section 4 bail team at the Home Office to resolve the delay (in any part of the application process), BID either received a written answer or saw the required action taken in the case but did not receive any related correspondence from the Home Office .

In 27% of cases where we sought resolution of the specific delay, the requested action was not taken by the Home Office nor did they respond to our correspondence). At the end of the study, in 13% of cases where we sought resolution of a delay the application for a bail address was still pending.

The average time taken by the Home Office to take a requested action following a request from BID to resolve a specific delay (if the action was taken: 8.82 days (1.26 weeks)

STUDY FINDINGS

Home Office complaint allocation hub responses to formal service complaints from BID to resolve delay in any specific part of the Section 4 (1)(c) application process

In n=16 (84%) of cases, BID received an answer from the Home Office to our formal letter of complaint.

In 4 of these 16 cases the Home Office response to our complaint was unsatisfactory, and BID wrote to the Home Office to ask for a review of the response. Out of these 4 requests for review, an answer was received in 3 cases in an average time of 27 days.

In 15% of cases, no answer was received at all, even though the Home Office Complaints Management Guidance document states that a response must be provided within 20 working days.

Average time to receive an answer to a formal complaint: 23.93 days = 3.41 weeks

In 81% of cases where an answer was received, the Home Office complaint allocation hub responded within the required 20 working days.

10. Immigration detainees in the prison estate: restricted communication results in expiry of Section 4 (1)(c) grants before use

In recent months more than 1000 immigration detainees have been held in prisons under immigration powers, meaning that prison-held detainees have comprised up to 25% of the total detained population in the UK (current published Home Office statistics on detention only refer to the IRC estate comprising around 3200 beds). For example, on December 31 2013, 1,214 people were being held as immigration detainees in the prison estate.[44] Immigration detainees in prisons are overwhelmingly held under serving-prisoner conditions, and are unable to communicate by telephone or fax with the Home Office, the courts, or legal representatives in a way that is remotely comparable to IRCs. They face a number of practical barriers to making arrangements for an application for release on bail, including key elements such as sureties and bail accommodation.

> For further information on immigration detention in the prison estate refer to BID's report '*Denial of Justice: the hidden use of UK prisons for immigration detention*' (September 2014).

Restricted prison communication means detainees cannot extend 14 day grants of Section 4 dispersal bail accommodation

Immigration detainees held in prisons post-sentence are not allowed mobile phones and generally have limited access to wing telephones during working hours.[45] Detainees held in prisons are therefore unable to call the Home Office Section 4 bail team to ensure an extension of their bail accommodation grant. The prison postal service and communication problems for detainees held in prisons do not allow sufficient time to seek an extension of the grant from the Home Office in writing, let alone write to a legal representative to ask them to do this.

Mr F wrote to BID from the prison where he is currently detained under immigration powers:

> *"By the time I receive my Section 4 bail accommodation I have to rush to apply for bail before it expires. I received my last section 4 bail address on [date] September 2013 and it was valid until [date 5 days later]. I submitted my bail application on the following day of receiving my section 4 address and received a hearing date of [5 days later] of which my address had expired. The judge said I had no valid address for bail."*

BID has a large number of examples of cases where clients detained in prisons granted standard dispersal accommodation, valid for 14 days in the first instance, who did not receive their grant letter on the prison wing in time to use it. They then lose the bail address when it expires. Many detainees in this position have waited several months for the grant of bail accommodation, during which time

[44] Source: Secretary of State for Justice response to parliamentary question April 9th 2014. Hansard, 9 Apr 2014: Column 249W.

[45] BID's report on detention in the prison estate is available at http://www.biduk.org/971/news/new-bid-report-on-the-hidden-use-of-prisons-for-immigration-detention.html

probation services may have done an address check, and the Home Office paid rental on empty accommodation pending probation approval.

Other prison-held detainees try to use the Section 4 address when it eventually reaches them on the wing but are refused bail by the First-tier Tribunal because the address has already expired, or expires on the day of hearing, or the judge considers that electronic monitoring cannot be set up in time if the Section 4 (1)(c) is about to expire that day or the next. While detainees represented by counsel might be able to salvage a bail hearing under these circumstances, if a judge is minded to find a solution, we consider this would be almost impossible for an unrepresented bail applicant.

BID's regular legal advice surveys suggest that up to 77% of immigration detainees in IRCs had no immigration legal advice while held in prison, either as a prisoner or detainee.[46] Unrepresented detainees in the prison estate are likely to be entirely unaware that the Home Office will entertain requests to extend grants of Section 4 bail accommodation, let alone how to do this[47].

Capacity problems at York House (Hatton Cross) hearing centre mean bail applications cannot be listed within the 14 day eligibility of grants of Section 4 (1)(c) dispersal accommodation

A lack of capacity of secure hearing rooms at one London First-tier Tribunal (IAC) hearing centre is creating listing delays for bail applications where the applicant must be produced in person from immigration detention in the prison estate.[48] Around 20% of prison detention beds fall within the catchment area for Hatton Cross hearing centre.[49]

Inability to get a bail hearing date within the 14 days grant period for Section 4(1)(c) dispersal bail accommodation means that extensions of the Section 4 grant cannot generally be sought or secured, and the grant of Home Office bail accommodation is at risk of expiry without use. This problem has been raised by BID with the First-tier Tribunal (IAC) and HM Courts & Tribunals Service (March 2014), and we understand that no resolution to the capacity shortage is in sight at the time of writing.

> *Mr N is detained in a prison. He waited 8 months for a grant of a Section 4 address in the form of Standard Dispersal Accommodation. His grant letter was issued on 12th March 2014 and was valid for 14 days. He (and BID as his legal representative) received the grant letter on 18th March. By that time BID could not obtain a bail hearing date before the grant expired due to bail listing delays at Hatton Cross hearing centre, and so after 8 months waiting for a*

[46] See Bail for Immigration Detainees, (August 2013), '*Summary: survey of levels of legal representation for immigration detainees across the UK detention estate (Surveys 1-8)*'. A survey carried out May-June 2014 showed that of detainees interviewed in IRCs who came from prisons only 13% had received any independent immigration legal advice while in prison. This figure has remained fairly constant since BID's first survey in November 2010 (24%, 23%, 26%, 21%, 32%, and 22%). Summary results available at http://www.biduk.org/162/bid-research-reports/bid-research-reports.html

[47] In any case, work on Section 4 (1)(c)related matters is not within scope of immigration legal aid work.

[48] For further information refer to Bail for Immigration Detainees, (September 2014), '*Denial of Justice: the hidden use of UK prisons for immigration detention*'. Page 41-42. Available at http://www.biduk.org/971/news/new-bid-report-on-the-hidden-use-of-prisons-for-immigration-detention.html See also HM Courts & Tribunals Service, (January 2014), '*The Fundamental Review of the First-tier Tribunal Immigration and Asylum Chamber: A joint review by the judicial and administrative arms of the First-tier Tribunal (IAC) taking an in depth look at the operations of the Tribunal*'.

[49] On the basis of November 2013 figures provided to BID by the Home Office for the number and distribution of immigration detainees in the prison estate, and the HM Courts & Tribunals Service postcode listing allocation guidance currently in force.

Section 4 bail address Mr N had to start again with a fresh application for a Section 4 bail address before he could exercise his right to apply for bail.

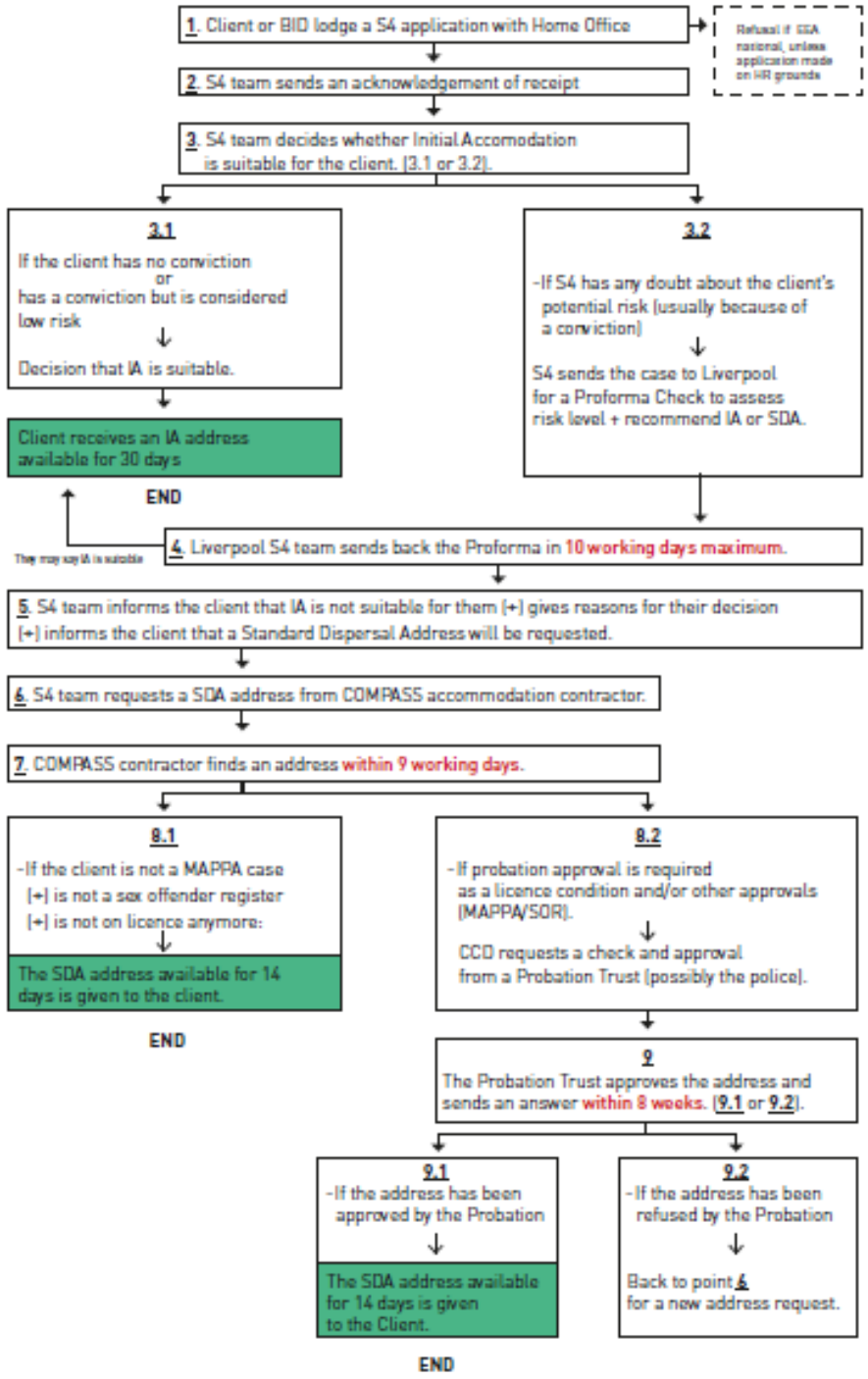
Mr L received his grant of Section 4 accommodation while detained in prison. The 14-day grant of Section 4 support expired before it could be used. He had waited 26 days for his grant of Standard Dispersal Accommodation.

The result is wasted and unused grants of Section 4 (1)(c) bail accommodation, some of which may have been issued by the Home Office only after the conclusion of an application after several months delay. For a grant of Section 4 (1)(c) bail accommodation to go unused after months of delay is wasteful: the application process may have involved outside agencies, several weeks of rent being paid by the Home Office while an empty Section 4 property is checked by NOMS, and court time and probation service time is also being wasted.

More than that, the impact on the detainee's mental state of the loss of a bail address after months of waiting, without the opportunity to appear before the First-tier Tribunal, can often be profound.

ANNEX A

The Section 4 Application Process



Annex B

Edited extract from presentation given by Dr Adeline Trude, Bail for Immigration Detainees, to the First-tier Tribunal (Asylum Support) Annual Training Conference 12th October 2012, '*Section 4 (1) (c) accommodation: Razai and asylum support*'

BID has been invited to speak today about Section 4 (1) (c) bail accommodation and support, with particular reference to how the UK Border Agency applies Section 4 (1) (c), including the operation of any criteria used by the agency for decision making purposes.

Section 4 (1)(c) support is distinct from Section 4 (1)(a) and (b) support in that it is intended only for people in immigration detention who require an address to use for the purpose of making an application for release on bail. Section 4 (1) (c) support comes as a package of accommodation with financial support.

Section 4 (1)(c) support has always been essential to detainees exercising their right to apply for release on bail, and increasingly forms a core part of BID's legal casework and policy work with UKBA. We have tried to tackle delays in provision through systematic compilation of evidence of delays, negotiation with UKBA, and trying to force disclosure of risk assessments made in individual cases in order to make representations.

By 2010 the operation of Section 4 (1) (c) support and the long delays which ensued had become so problematic that BID acted as intervener in the case of Razai & Ors v SSHD [2010] EWHC 3151 (Admin) (02 December 2010)[50]. Since around 2008, when it was still possible to lodge a bail application and then apply for Section 4 in time for the hearing a week later, we have come about as far away as it is possible to get from a meaningful exercise of the right for detainees to challenge their ongoing detention by means of regular bail applications. With delays in grants of support running into months for some detainees this is no longer possible.

On the face of it entitlement is not an issue in applications for Section 4 (1)(c) support. The issue at the heart of the provision by UKBA of Section 4 (1)(c) bail accommodation, both pre- and post-Razai, is a distinction made by UKBA caseowners between applicants who are considered to pose a 'higher risk' to the public if released and those who are not so considered. This distinction is made following a risk assessment process that is only partially revealed in the relevant policy instruction. The assessment may draw on offender management information provided by NOMS, as well as UKBA's own intelligence in relation to behaviour in detention, and the nature of any criminal conviction. Since 2009/2010 these 'higher risk' applicants have been deemed unsuitable for Initial Accommodation where facilities are shared with women and children, and they must instead be provided with self-contained standard Dispersal accommodation if bailed[51].

[50] See BAILLI http://www.bailii.org/ew/cases/EWHC/Admin/2010/3151.html

[51] A type of Dispersal accommodation known as Complex Bail Accommodation "where the Offender Manager has identified specific licence conditions which could not be met if the individual were to be accommodated in Standard Dispersal Accommodation". UKBA policy instruction *Section 4 bail accommodation*, Version 8.0, (February 2010), p: 10.

A response by UKBA to an FOI request[52] by BID on the numbers of Section 4 (1)(c) applications over the last couple of years shows that the majority of grants of bail addresses (57%) are for Initial Accommodation. It is BID's experience that these applications are dealt with in a matter of a couple of weeks enabling the applicants to lodge their bail application with minimal delay. Only 0.5% of grants were for Complex Bail Accommodation in 2010, though this figure rose in 2011 to around 3% for a partial year. In 2010 there were three letters to applicants advising that CBA could not be found other than at disproportionate cost; it is of course only these cases where an outright and written refusal of Section 4 (1)(c) is made that attract a right of appeal to the Asylum Support Tribunal. The greatest problem by far is faced by those applicants for Section 4 (1)(c) who have been deemed by UKBA to fall somewhere between IA and CBA, viewed as 'higher risk' but not the highest risk, and as requiring self-contained Dispersal Accommodation. Prior to the Razai hearing in late 2010, and since, grants of dispersal addresses for applicants so assessed by UKBA have been taking weeks or months.

The case of Razai dealt with two main issues. Firstly the failure at that time on the part of the SSHD to publish the criteria used for determining which detained Section 4 (1)(c) applicants would be classed as 'higher risk' and thus require self-contained dispersal accommodation. Secondly, because of an apparent shortage, the length of time that was being taken by UKBA to provide this dispersal accommodation in order for the bail applicant to be able to exercise their right to make an application for release on bail.

What changed after Razai?

The criteria used by UKBA's Criminal Casework Directorate of UKBA for the purpose of 'risk assessment' in Section 4 (1)(c) applications were provided to the court for the hearing in Razai, and later published in a couple of iterations of the Section 4 (1)(c) bail accommodation policy instruction, the most recent version of which was published in February 2011[53].

In his judgment Nicol J found that the failure before the hearing not to publish all the policy, including risk assessment criteria, was not unlawful in these cases given their particular circumstances because the policy worked for two of the claimants. An alternative legal remedy was available to them in that the Asylum Support Tribunal reversed the decision of the SSHD.

However, Nicol J stated strongly that there is no right of appeal against

i. Delay in a decision on whether to agree to Section 4 (1)(c) bail accommodation, or to refuse to provide accommodation, or
ii. Delay in the provision of Section 4 (1)(c) bail accommodation once a decision to provide it has been made.

Nicol J further found that

[52] Letter to BID from NAM+, UKBA, 14th December 2011 notes that between 1st January 2010 and 31st December 2010 NAM+ received 3367 applications for Section 4 (1)(c) support (including some duplications). Grants of Initial Accommodation comprised 57% of these applications, Standard Dispersal accommodation was granted to 2% of applicants, Complex Bail Accommodation was granted to 0.5% of applicants. Three letters were sent advising that CBA could not be found other than at disproportionate cost. A further letter also dated 14th December 2011 stated that between 1st January 2011 and 14th November 2011 there were 2789 applications for Section 4 (1)(c) support to NAM+. During this period grants of CBA comprised 3% of applications.

[53] UKBA policy instruction *Section 4 bail accommodation*, Version 8.0, (February 2010). September 2014 update: the current version 10.0 of Home Office policy document updated July 2014 is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330524/Section_4_Bail_Accommodation_v10.pdf

> *"a decision that a detainee is not suitable for an immediate offer of Initial Accommodation is of such significance that fairness does require the SSHD to tell the applicant what she has in mind and why. This is because of the stark difference between the time that it takes to offer Initial accommodation as a bail address (only a few days) and the delays that can occur if Initial Accommodation is not offered (on the evidence, delays of weeks or months). Fairness also requires the SSHD to take into account any representations that are made in response"* (§85).

He went on

> *"the reason why the detainee needs to know why he is regarded as a high risk case…is so that he can make submissions to the contrary to the SSHD or decide whether there are grounds to challenge the legality of the decision not to treat him as suitable for IA"* (§87).

On the face of it the judgment offered some encouragement and a way forward for detainees and their representatives, given that the UKBA were obliged to both encourage and engage with representations made to them in relation to their assessments of various risks of release on bail. Assessments of risk made by UKBA have implications for the substantive immigration case in addition to applications for Section 4 (1)(c) bail accommodation and support. The implication of Razai for legal advisors is that more detailed engagement with the issue of risk may be required in order to try to reduce delay in release, but caution is required since such representations will have implications for the substantive immigration case.

The Section 4 (1)(c) policy instruction of February 2011 (Version 8.0)[54] notes that at the point of writing to an applicant to notify them that they have been assessed as suitable for dispersal accommodation, and that the agency is "endeavouring to source dispersal accommodation"[55], the applicant should be provided with a copy of the document designed by UKBA and the National Offender Management Service (NOMS) to act as a vehicle for the collection between the two agencies of relevant offender management and other information for the purpose of risk assessment. This form is called the NOMS1 form[56]. The NOMS1 contains the information relied on by UKBA decision makers, and include a recommendation by NOMS for one of the three types of Section 4 (1) (c) bail accommodation. For applicants assessed as higher risk and waiting for Dispersal accommodation, the NOMS1 form can be considered to provide details of the basis of the case for the higher risk evaluation, including reliance by UKBA on material short of convictions, sufficient to enable the applicant to make representations.

Where we are now?

Nearly two years after Razai was heard, the delays in processing Section 4 (1)(c) applications, granting dispersal addresses, and then providing such accommodation are even lengthier, amounting in many cases to weeks or months. The new COMPASS accommodation contracts have not so far made any noticeable difference to the delays in provision, and we are currently nowhere near the nine day contractual requirement for provision of dispersal accommodation specified by UKBA in

[54] September 2014 update: this requirement to disclose remains in the current policy guidance.
[55] *Ibid*: 16.
[56] September 2014 update: the NOMS1 form is no longer in use as of August 2014, by agreement between NOMS and the Home Office, and instead the OASys report will be the only vehicle for the provision by NOMS to the Home Office of offender management information. Whether or not an up to date OASys report is available in any particular case is of course a separate matter, particularly if the individual concerned is no longer on license.

COMPASS specifications[57] once a decision in relation to risk has been made. UKBA has told BID[58] that it is not prepared to go to the open market to reduce the backlog in provision of dispersal accommodation and allow detainees, who may at this point have been detained for months or years, to exercise their right to apply for release on bail.

What has never been at stake is any question of delay in moving anyone on from Initial Accommodation to Dispersal accommodation after a couple of weeks. The delays in provision of Section 4 (1)(c) dispersal accommodation seem to be borne almost entirely by those held in detention rather than those who have been released from or have never been in detention.
But perhaps a more worrying problem is that the mechanism afforded by the judgment in Razai, namely that fairness dictates that the SSHD engage with S4 (1)(c) applicants over the issue of risk in dispersal cases, is not working. There continue to be large differentials in the time taken to provide Initial and Dispersal accommodation. Yet in our experience as legal representatives UKBA has failed to engage in any way on the issue of risk assessment in specific cases. While a tiny number of applicants have appeal to the AST as a remedy on receipt of a refusal letter from UKBA (three such cases in 2010), the options open to the greater numbers of dispersal cases (we estimate up to 30% of Section 4 (1)(c)applicants) have been entirely shut down.

Lest it be thought that this shyness about the evidential basis of risk assessment is restricted to Section 4 (1)(c) applications, we have observed this pattern of behaviour repeated by UKBA in the context of bail hearings too. A Service Level Agreement between NOMS and UKBA[59] obliges Home Office Presenting Officers to provide NOMS1 forms to the Tribunal and the bail applicant at a bail hearing. The President's Bail Guidance for First-Tier Judges[60] similarly requires UKBA to make available to the Tribunal any offender management information that has been relied on for decision making. Despite this, and BID's extended correspondence with UKBA on the matter, the forms are not yet being produced for tribunal judges and bail applicants, making consideration or challenge difficult.

At paragraph 35 of his leading judgement in the case of Walumba Lumba and Kadian Delroy Mighty ([2011] UKSC 12)[61], Lord Dyson stated:

> *"The individual has a basic public law right to have his or her case considered under whatever policy the executive sees fit to adopt provided that the adopted policy is a lawful exercise of the discretion conferred by the statute [….] There is a correlative right to know what that currently existing policy is, so that the individual can make relevant representations in relation to it."*

He also stated at paragraph 38:

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[57] UKBA, *COMPASS Project Schedule 2 Accommodation & Transport Statement of Requirements*, (no date). Available at http://bit.ly/T0ZRFW
[58] Meeting between BID and NAM+, UKBA, 9th August 2012.
[59] NOMS & UKBA, (2009), *Service Level Agreement to support the effective management and speedy removal of Foreign National Prisoners*, Ministry of Justice & Home Office.
[60] First Tier Tribunal (Immigration & Asylum Chamber), *President's Bail Guidance for First-Tier Judges*, (2011 and 2012 versions). In 2012 version see Annexe 3.6, 'Bail Hearings at AITs: Information from Offender Managers to the CCD'.
[61] Walumba Lumba (Congo) and Kadian Delroy Mighty (Jamaica) [2011] UKSC 12. Available at http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0063_Judgment.pdf

"What must, however, be published is that which a person who is affected by the operation of the policy needs to know in order to make informed and meaningful representations to the decision-maker before a decision is made."

BID believes it is only reasonable that the same logic must be applied to all the evidence, both adverse and favourable, relied on for the purpose of making Section 4 (1)(c) risk assessments, so that "meaningful representations" can be made for release.

Our current concerns about the provision of Section 4 (1)(c) support

- There is no automatic disclosure of risk information relied on for decision making (using the NOMS1 form) to applicants assessed as requiring dispersal accommodation and likely to face significant delays before they can apply for release.
- Even where requested by legal representatives in the context of a S4 (1)(c) application, our experience is that there is no comprehensive disclosure of the information relied on to make decisions about level of risk (in the NOMS1 form or otherwise).
- Routine failure on the part of UKBA to engage with representations made in individual cases on risk assessments.
- Legal representatives may be reduced to making a Subject Access Request (SAR) request for offender management information, which introduces further significant delay into the proceedings. Indeed this is routinely suggested by UKBA caseowners, despite Razai. It has not escaped our notice that it might be difficult for UKBA simultaneously to argue against release on bail because the risk on release of harm to the public or of reoffending is high, while simultaneously arguing something less in terms of risk for the same person's application for Section 4 (1)(c) bail accommodation. Yet our SAR requests frequently reveal a discrepancy in level of risk on release ascribed to individuals by NOMS and UKBA.

In addition to UKBA's failure to engage with the spirit and letter of the judgment in Razai, BID has concerns about the manner in which criminal risk and risk of harm on release is assessed by the agency more generally. These concerns go beyond the failure to disclose the evidential basis of risk assessments, and in our view demonstrate why such disclosure is essential as well as required in the interests of fairness. Our concerns include:

- The reliance in the Section 4 (1)(c) risk assessment process on offender management information provided by NOMS. We have been informed by NOMS that it may not be safe to rely on certain dynamic elements of offender management information or risk assessments after a period of time. Where a Licence has expired while someone is detained, NOMS no longer has an interest and cannot provide updated risk information. Under circumstances in which someone has been detained for a couple of years, it is not clear on what basis UKBA is assessing criminal risk on release.
- The reliance by UKBA on allegations of poor behaviour in detention for risk assessment. BID has found many worrying discrepancies in this area including accuracy of record keeping and inconsistent data entry on the UKBA central database (CID), no guidance currently on in entering incident data from IRCs on CID, failure in wing reports submitted by centres to distinguish between aggressors and victims in incident reports, the failure to consider mitigating factors in cases of severe mental illness or distress, and the collation by UKBA of

only negative not positive behavioural reports. UKBA have only very recently agreed to review these problems[62].

- Legal aid funding in connection with Section 4 (1)(c) applications, including representations in relation to risk assessment, is not clear at present. ILPA have informed us that under the current detention centre contracts even the former 30 minutes work allowed under tolerance is no longer available. NASS work is not chargeable to immigration / asylum matters opened under the current contract, irrespective of whether fixed fee or hourly rate, but must be dealt with as a community care matter[63].

What do we want to change?

BID believes that since Razai the power to grant Section 4 (1)(c) bail accommodation is deployed in a manner that remains unfair in both design and operation. In our experience there is a wholesale failure to exercise the Section 4 (1)(c) power for a significant cohort of detainees in any meaningful way. There is of course no guarantee that any bail applicant will be granted release, though around 40% of detainees are released from detention into the community.[64] For detainees reliant on Section 4 (1)(c) to exercise their right to apply for release on bail, the current reluctance by UKBA i) to engage with applicants on issues of risk, and ii) to ensure an adequate supply of dispersal accommodation for bailees, adds weeks and months to time spent in detention.

We ask UKBA to address the ongoing shortage of supply of dispersal accommodation, to rigorously enforce the contractual 9 day upper limit under COMPASS for the provision of Section 4 (1)(c) dispersal accommodation for bail applicants, and to finally engage in full with the judgment made in Razai by revealing the complete evidential basis on which risk assessments are made and engage with representations.

[62] Meeting between BID and UKBA, 11th June 2012.

[63] BID does not have a legal aid contract, and therefore operates outside the means and merits test required of legal aid providers.

[64] Home Office Immigration Statistics, see http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research

Annex C

Research data, including number of cases in the study for each element of the application process

Average (mean) total time taken by the Home Office to grant a Standard Dispersal bail address					
	Number of cases studied	**Average (mean) total time taken by Home Office**	**Range**		
All types of case – with and without NOMS involvement, including pending cases	61	103.13 days (14.7weeks)	5 to 503 days		
Cases with NOMS involvement	22	180.86 days (25.83 weeks)	82 to 503 days		
Cases without NOMS involvement	39	59.28 days (8.46 weeks)	5 to 175 days		
Average (mean) total time taken by the Home Office to grant an Initial Accommodation bail address					
	Number of cases studied	**Average (mean) total time taken by Home Office**	**Range**		
All types of case (applicants with and without criminal conviction(s))	34[65]	9.05 days (1.29 weeks)	1 to 83 days		
Applicants with criminal conviction(s):	16	8.75 days (1.25 weeks)	1 to 67 days		
Applicants with no criminal conviction(s)	18	9.33 days (1.33 weeks)	1 to 83 days		
Delays related to choosing the right type of accommodation for the applicant					
	Number of cases studied	**Average (mean) total time taken by the Home Office**	**Range**	Number of written requests to Home Office to resolve delay	Number of formal service complaints to Home Office
To acknowledge a Section 4(1)(c) application and issue (but not complete) the risk assessment pro forma	61	9.36 days (1.33 weeks)	0 to 81 days		
To fully complete and return the risk assessment pro forma document to the Section	48	35.33 days (5.04 weeks)	1 to 183 days		

[65] In 4 cases out of the 34 in total granted IA, the Home Office issued a grant of IA bail accommodation even though the applicant was still on licence and needed licence address approval.

4 bail team					
Average (mean) total wait[66] for the initial 'suitability' risk assessment to be completed ():	54	46.29 days (6.61 weeks)	6 to 210 days		
				17	4
Delays related to Home Office management of licence-address checks on bail accommodation					
	Number of cases studied	**Average (mean) total time**	**Range**	**Number of written requests to Home Office[67] to resolve delay**	**Number of formal service complaints to Home Office**
To obtain a decision on an address and convey that decision to the Home Office (approvals & refusals)	28	57.5 days (8.2 weeks	2 to 154 days		
To obtain a positive decision (approval of the address)		64 days (9.14 weeks	20 to 154 days		
To obtain a negative decision (non-approval of the address)		53.7 days (7.6 weeks)	2 to 150 days		
					2
Delays related to the provision of accommodation by COMPASS contractors					
	Number of cases studied	**Average time taken by COMPASS contractors**	**Range**	**Number of written requests to Home Office to resolve delay**	**Number of formal service complaints to Home Office**
To source an address (including pending cases) on behalf of the Home Office	53	22 days (3.14 weeks)	0-97 days	10	10

[66] From the application being lodged through to the date of the Home Office letter informing the applicant whether they are suitable for Initial Accommodation or Standard Dispersal Accommodation.
[67] Separate complaints to probation trusts are not included here.