

# GATWICK DETAINEES WELFARE GROUP

Patrons: Lord Dholakia OBE, Baroness Williams of Crosby

Registered charity No. 1124328

Company Limited by Guarantee No. 4911257

November 2011

## **Stakeholder Submission for the Universal Periodic Review**

### **Article 5 of the ECHR and immigration detention in the UK**

#### ***About Gatwick Detainees Welfare Group***

*GDWG is a registered charity who provide support and advocacy to immigration detainees held at the two Immigration Removal Centres at Gatwick Airport.*

#### ***About Dover Detainee Visitor Group***

*DDVG works to ease the consequences of indefinite immigration detention, destitution of ex-detainees and to challenge attitudes towards immigrants in the UK. Our mission is to provide emotional and practical support to immigration detainees held at the Dover Immigration Removal Centre, ease the effects of destitution on ex-detainees who are released into the community and facilitate their integration (nationwide), and to raise awareness about immigration and indefinite detention in the UK.*

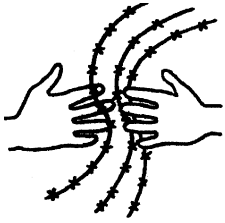
#### **Summary**

1. This submission relates to the difficulties facing immigration detainees in the UK detention estate in regards to obtaining good quality legal advice and representation in order to effectively challenge their detention, and how this impacts on Article 5 of the European Convention on Human Rights, the right to liberty and security. While Article 5 does of course allow for states to deprive the individual of their liberty for the purposes of immigration control, this is only allowed in accordance with the law. British law stipulates that detention should be used as a last resort and for the shortest time possible, and that legal safeguards are in place so that detainees are able to challenge their detention. This is only possible if there is a system of good quality legal advice and representation being accessible, otherwise there is a risk that detention may not be challenged effectively and may breach Article 5. This is particularly relevant when you consider that most detainees are not native English speakers, and will not be familiar with the intricacies of British immigration law or the system that holds them. We believe that there are significant problems in this area, and that the Border Agency are making poor decisions around detaining or prolonging

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the detention of many people, and that they are being detained without access to adequate legal advice, therefore prolonging their detention, even in circumstances where it may be unlawful.

## ***The current situation in the UK***

2. The British government recently disclosed that it had spent more than £12 million pounds on compensation claims for unlawful detention during 2009-10<sup>1</sup>. Amongst those compensated were torture survivors and other vulnerable detainees who were held in contravention of the UK Border Agency's own policy, along with others who were held for prolonged periods of months and years, where removal could not be considered imminent, or in many cases even possible. While it is unclear how many people were actually paid compensation, it does seem apparent that the breaching of Article 5 is not limited to isolated cases in the UK's Immigration Removal Centres (IRCs), but that it is a relatively widespread occurrence. The experience of the Gatwick Detainees Welfare Group, as well as a number of other detention-related NGOs that we work with, is that the problem is getting worse. The UK government currently detains more than 25,000 people each year, with more than 2,500 detained on average at any one time<sup>2</sup>. We have identified a number of detainees over the past few years who we believed to be unlawfully detained, and who we were able to refer to lawyers who specialise in this area of work. However, there were many occasions where we were unable to find a lawyer, not because of a lack of merit in the case, but due to a lack of capacity at the firms in question, and a lack of good quality lawyers overall.
3. The problem of the dwindling numbers of good quality Legal Aid lawyers has been compounded in recent years with the collapse into administration of the two biggest providers of legal advice to asylum seekers and other migrants in the last eighteen months or so, Refugee and Migrant Justice (June 2010) and the Immigration Advisory Service (July 2011), with both blaming changes in Legal Aid and the restructuring of payments brought in by the Justice Department<sup>3</sup>. This has had a huge impact on many detainees, leaving them without representation, and hence reducing their chances of challenging their detention effectively.
4. For those held in detention now, a system of exclusive contracts has led to restrictions on their choice of advice providers, meaning only a limited number of firms with Legal Aid contracts are able to go in to each IRC to give 30 minute advice sessions and take

<sup>1</sup> Baroness Neville-Jones, Minister of State, Home Office, Hansard 29 Nov 2010 : Column WA410

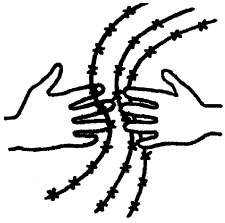
<sup>2</sup> <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-brief-q2-2011/detention>

<sup>3</sup> <http://www.bbc.co.uk/news/uk-14105065>, 11<sup>th</sup> July 2011

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on new clients. During those 30 minutes, representatives from legal firms are under obligation not only to advise the client, but also to take on cases where there are sufficient merits. Firms are also obliged to have enough resources and manpower to take all clients seen during those sessions, provided the clients have enough merit. In practice, this often does not happen. Some firms have told visitor groups, off the record, that out of ten clients seen at a surgery, they can only take two. A 30 minute session is not enough time to fully assess the merits of a case, be it for their substantive appeal, detention matter or bail. Many of our clients have informed us that they have routinely been told during these Detention Duty Advice (DDA) appointments that their case has 'no merit' and so they would not qualify for Legal Aid, and that therefore the provider would not be assisting them at all. This advice completely ignores the fact that their substantive immigration matter and the matter of their detention should be considered separately, and while a detainee may not qualify for Legal Aid on their substantive matter, all detainees should be entitled to advice and possible representation for a bail hearing in order to challenge their detention. In many cases this is not happening, leading to many detainees being forced to apply for bail on their own, which significantly reduces the chance of success<sup>4</sup>.

5. GDWG have also encountered many detainees who did not even know about the existence of the DDA surgeries, despite some of them being in detention for prolonged periods. For example, we spoke to a man from Ivory Coast recently who had been in Brook House IRC at Gatwick for 13 months, but knew nothing about the advice surgeries that took place there. It seems that there is a general lack of information provided to detainees about the scheme in Brook House, and indeed many other removal centres. Bail for Immigration Detainees and the Information Centre about Asylum Seekers and Refugees found that only 42% of detainees they surveyed from all 11 IRCs in the UK had heard of the DDA scheme<sup>5</sup>.

## ***Case Study***

6. Below is a case study, compiled by our colleagues at the Dover Detainee Visitor Group (DDVG), of a client who experienced the previously described problems with the DDA<sup>6</sup>:

*Ahmed – An obvious case for bail turned down*

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<sup>4</sup> Close Campsfield Campaign, *Immigration Bail Hearings: A Travesty of Justice?*, March 2011

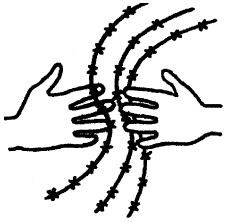
<sup>5</sup> 'Provisional results of a survey of levels of legal representation for immigration detainees across the UK detention estate', June 2011, Bail for Immigration Detainees & Information Centre about Asylum and Refugees

<sup>6</sup> Report on the DDA Legal Surgeries at Dover IRC, Dover Detainee Visitor Group, September 2011

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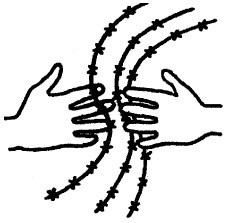
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7. Ahmed had removal directions set for 21/6/11 via a chartered flight to Baghdad, Iraq. This flight was cancelled after an injunction based on Human Rights Article 3. Ahmed was kept in detention anyway while most of the people scheduled to be removed on that flight were released.
8. He booked an appointment through the DDA legal surgeries at Dover IRC. He met someone from a DDA firm on the 28/06/11. He explained to the solicitor that he needed legal representation and that he wanted to be represented for Temporary Admission and/or bail since he was one of the Iraqis on that cancelled flight. Clearly he could not have been removed from the UK within a reasonable time and the case of this chartered flight was widely publicised among all those working with/for detained people. However, the solicitor informed him that the firm could not represent him and that the solicitor present for that meeting was not there to look into the merits of his case, or to represent him, or to apply for bail. He was there simply to give him some advice. He also advised Ahmed to talk to Bail for Immigration Detainees (a charity who help detainees apply for bail) for representation for bail.
9. A caseworker from DDVG met Ahmed on the same day that Ahmed met this solicitor. When Ahmed told him what was said to him by this solicitor, the caseworker from DDVG approached the solicitor in question (who was still giving advice to other detained clients) in case there was a misunderstanding. The solicitor repeated that he was not there to take on cases and that he was there to give some advice, nothing more.
10. Ahmed sent a formal complaint explaining that he was under the impression that these legal surgeries were there for detainees to find legal representation if they had sufficient merit. Ahmed also wrote that he thought that if a detainee had enough merit, then the solicitor firm was under the obligation to take on that case.
11. The following is the solicitor firm's reply and the LSC's reaction to it:
  - The DDA firm stated that from Ahmed's paperwork, the solicitor concluded that his asylum appeal rights had been exhausted and that between that day and Ahmed's date of detention he had no papers showing any contact with the Home Office. His conclusion was that Ahmed's merits were low.
  - The firm also informed Ahmed that they cannot take on more than 12 substantive cases per year in Dover.
  - The solicitor firm said they could not apply for bail as they had limited instructions and were not in a position to take on his substantive application. This is in direct contravention to the rules laid down by the LSC, which state that firms have to consider separately whether there are merits to apply for bail.
  - The solicitor firm said that they **may**, not **must**, pursue cases with merit if they had sufficient resources and if they had been allocated enough New Matters Starts (NMS) at Dover. Again, this is

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contrary to the LSC rules, which allow firms to increase their NMS awards, and also stipulate that firms **must** have the capacity to provide further advice/representation to all clients who qualify on means/merits.

- This firm, like all other DDA firms who do not sign up clients in the first meeting, did not issue the client with a CW4 appeal form as they should have done.

## *Observations*

12. In this case it seems that this firm violated a number of points from the Standard Civil Contract for DDA Firms and it seems that the person who met Ahmed was completely unaware of his role at the legal surgery.
13. By setting a maximum number of NMS awards, law firms might get the impression that there is no obligation to take on cases once they have used their NMS. We believe the LSC should make it clear that law firms are under obligation to take on cases with merit, and should therefore either provide them with more NMS in the first place or make them aware of their obligation to request more NMS if the need arises. We find it shocking that in 75% of the cases during an initial DDA pilot run by the LSC, DDA firms were able to determine in 30 minute meetings with no interpreters present that those cases clearly had no merit. We would like to point out that cases where merit is unclear should be taken on for further investigation.

## ***Conclusion and Recommendations***

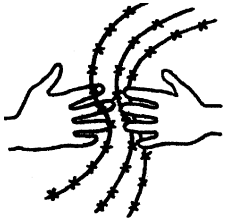
14. The system of immigration detention in the UK is, in our opinion, fundamentally flawed, and this is leading to an increasing number of people being detained in breach of Article 5 of the ECHR. Primarily this situation is caused by the Border Agency making poor and in many cases unlawful decisions about who to detain and for how long, and this is exacerbated by the problems of finding good quality legal advisors to assist detainees in challenging their detention. Further Legal Aid cuts threaten to make this problem even worse, leaving even more detainees unrepresented and unable to navigate their way through the legal minefield they are faced with. We would like to see not only better decision-making by the Border Agency, but also better provision of legal advice and representation to detainees so that they may effectively challenge their ongoing detention.
15. GDWG recommend the following:

**Recommendation 1: There should be an automatic right to free legal representation for bail applications.** Detainees should be able to easily access good quality legal advice and representation from reputable firms in order to apply for bail.

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**Recommendation 2: The DDA scheme should be scrapped.** Detainees should once again be allowed more freedom of choice over where they can get publicly funded legal advice and representation.

**Recommendation 3: Immigration work should be protected against the proposed Legal Aid cuts.** The status of a detainee's substantive immigration matter has a profound effect on their detention, meaning that if they are unable to access free legal representation for appeals against deportation or immigration applications, they are much less likely to succeed in any application for release from detention.

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