APPG on Immigration Detention

Meeting on the detention of people for removal under the UK-France Treaty

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While ILPA welcomed a safe route from France for people seeking asylum in the UK and believed it was the most effective way to "smash the gangs" and "stop the boats", the structure of the UK-France scheme was dehumanising. A person being able to enter the UK on the safe route (which was, in any case, limited and inaccessible to unaccompanied children) was dependent on the seemingly random selection of someone who had taken a dangerous route being detained and sent back to France. Such individuals were then barred from subsequently applying for the safe route. This meant they might repeatedly attempt irregular and dangerous journeys to the UK, for example, to be reunited with loved ones, especially following suspension of the dedicated refugee family reunion route.

The aim of the agreement was deterrence, to deter people from taking dangerous journeys. If truly and fully successful as a deterrent, the UK would take no one from France, as it would have no one to send back. Those who did arrive would be driven underground, including into situations of exploitation, out of fear of being removed to France. This would only strengthen the hands of their enslavers and diminish the UK's ability to "smash the gangs".

This kind of cyclical displacement and fear of traffickers was not theoretical. It had been seen in practice, in the case of the Iranian man who had recently returned again to the UK by small boat after being removed to France. He spoke to the Guardian about how he was abused by a human trafficking network in the forests of France before he crossed to the UK from France the first time. ILPA warned of such cyclical displacement before the Agreement was even presented to Parliament, in a joint letter it wrote with Amnesty International UK to the Minister for Border Security and Asylum in August.

The scheme also raised specific concerns about access to justice, exacerbating well-documented pre-existing issues across immigration and asylum legal aid which resulted in a lack of quality legal aid representation for those in immigration detention (see Dr Jo Wilding's research, for example). Given the complexity of this area of the law, an unrepresented individual simply could not navigate it alone.

The vast majority of people crossing on "small boats" did claim asylum, with many expressing their wish to do so in the screening interview upon arrival. During such an interview, despite being entitled to legal aid advice – in relation to their protection claim, bail and detention – almost none would be able to access such advice. After arrival, they were detained at Manston Short-term

Holding Facility. There was no Detained Duty Advice Scheme available at Manston. Therefore, almost certainly none would have received legal advice about whether their previous experiences amounted to trafficking or modern slavery, or advice to help them understand the merits of their protection or human rights claim, the inadmissibility process, or age assessment process.

After a person arrived in the UK, the Home Office had 14 days to ask the French government whether they could be readmitted to France. If they were chosen for selection for removal to France, a person would receive a Notice of Intent (NOI) from the Home Office after they had been moved from Manston STHF to an Immigration Removal Centre (IRC). The NOI was important – it explained that the person's asylum case was being considered by the Home Office for inadmissibility (ie not being admitted into the UK asylum system), the reasons for this, and to which safe third country or countries the Home Office was considering returning the person. The NOI also gave a 7-day deadline by which the person must submit to the Home Office any reasons as to why their claim should not be treated as inadmissible.

Despite its importance, the NOI was not translated, and the person was taken through it not by a qualified lawyer, but by a member of the Home Office Detention Engagement Team using an interpreter (see the Home Office's guidance on interpretation here). They were also provided with a generic leaflet about the UK-France agreement and about the Detained Duty Advice Scheme (DDAS), translated into top languages (which may or may not include a language they could read). No other documentation was translated into a language that they *might* be able to read.

While the person had 7 days to respond to the NOI, they might not understand the need to respond, how to respond, the consequences of failing to respond, or that they could request an extension of time to respond. Without access to legal advice or a qualified interpreter, an individual in detention could not understand or be expected to grasp the urgent need to request a lawyer to help with the reams of paperwork they had received. As ILPA and a number of other organisations had pointed out in a recent joint letter to the Home Office, Ministry of Justice (MOJ), and Legal Aid Agency (LAA), people "*need legal advice to know they should request legal advice*".

Even if people did try to access advice under the DDAS, they might experience a significant delay in obtaining an appointment. For example, during the August bank holiday, there had been a delay of more than 7 days (ie. the period of time to respond to an NOI) to get an appointment. This had impacted 12 people of which ILPA was aware. IRC Welfare Teams had to instead refer these individuals to an NGO to see if it could find lawyers for the 12 individuals.

Even if a person did access advice under the DDAS, following the 30-minute session, they might be passed from provider to provider, often because no provider had capacity to take on the case given the urgent timeframe involved. This was raised by ILPA and others in their joint letter (mentioned above):

"*Bail for Immigration Detainees (BID) has spoken to two individuals who have been informed by advisers on the DDAS that they could not be provided with legal aid assistance following their appointment. Detention Action is aware of an individual who has not been contacted by their*

DDAS adviser in two weeks and of up to four people who received no follow-up despite the tight deadline for responding to the NOI. Gatwick Detainees Welfare Group is aware of a firm that was required to provide DDAS advice to 10 people, 7 of whom had NOIs, on a single day, meaning it was never possible to take on all 7 of the cases."

For a lawyer able to take on a UK-France case, 7 days (even with the possibility of a small extension) was a very short period of time to respond to an NOI. In this time, a lawyer needed to take instructions about their client's journey to the UK, whether it would have been reasonable for them to claim in a safe country through which they passed, understand if they are an unaccompanied child or a victim of trafficking or modern slavery, and whether they had any family ties in the UK. It was also a very short timeframe for vital expert evidence to be collected in relation to these matters and any others of relevance. Other matters could include, for example, the risk of a person facing chain *refoulement*, should France, for example under the Dublin procedure, send a person on to Poland, where they might be pushed back into Belarus.

Often, however, a person would only find a lawyer who was able to help them once the Home Office had decided that their protection claim was inadmissible, and they were facing imminent removal. At that point a lawyer would need to take instructions, conduct a merits and means assessment to determine if a person qualifies for legal aid services, fill out various legal aid forms, seek and be granted emergency funding, lodge challenges and seek interim relief to prevent removal. All of these steps were happening at break-neck speed, because UK-France agreement requires an end-to-end process from arrival in the UK to transfer to France of 3 months.

In their joint letter referenced above, ILPA and other organisations had presented early evidence, concerns, and practical issues regarding access to legal aid advice, legal aid representation, and thereby the courts and justice, for individuals detained under the UK-France Agreement. They had urged the Government to make one Department responsible for monitoring and ensuring access to justice in immigration detention, because currently there was a vacuum of responsibility. No-one was monitoring the quality of legal advice on the scheme or the capacity of legal firms involved in DDAS to take on these cases after 30 minutes of free advice. Instead, it had fallen on civil society to do so.

The joint letter had provided two detailed options for allocating responsibility in Government: either to the MOJ (the natural option, given the Lord Chancellor had a statutory duty to secure the availability of legal aid) or to the Home Office, together with its IRC contractors.

In its response, the Government stated that the departments "collaborate closely", so there was "no need for a single Government Department to take responsibility for monitoring and ensuring access to justice in detention".

However, as the response showed, there were significant gaps in the Government's monitoring and data, which was only shared on a weekly basis rather than in real-time, despite the short deadlines people faced. Also, the LAA did not undertake sampling or peer reviewing of remote advice surgeries where no further work was undertaken following a person's DDAS appointment.

Perhaps most fundamentally of all, the government's letter admitted that *"The LAA does not have information about why any individual is detained in an IRC."* This meant the LAA could not monitor whether someone detained for removal to France (as opposed to people detained for other reasons) had been provided with civil legal services following the advice appointment.

Humans for Rights Network travelled to Paris in mid-October and spoke with 12 people who were removed, from their briefing it is clear these access to justice issues have real impacts:

- H4RN reported identifying at least 3 cases where the person's connections to the UK, such as relatives, had not been fully explored before they were removed to France. Two of the people they spoke to had sisters in the UK and one an aunt. The individuals had not been able to access legal advice in order to make representations in relation to these family connections. Two of them had in fact been visited by their relatives whilst held in UK immigration detention.
- H4RN also said it had spoken with torture survivors and trafficking victims whose experiences had not been adequately explored in the UK before their removal. This included two men who reported experiencing torture and extreme violence in Poland, and a third man reporting torture in Libya.
- Four men (two of those who also experienced torture are included in this number) reported experiencing modern slavery - two in Libya, one in Ethiopia and one in Yemen. Some had had no contact with their lawyer in the UK, while others were unsure about what their lawyers had done to make representations to the Home Office regarding these experiences. Others were not certain if NRM interviews had taken place or if these experiences had been considered by the Home Office prior to their removal.

Access to the DDAS was not the litmus test for securing access to justice, because legal advice did not equate to legal representation. Two Departments and one agency seeing only part of the picture and having only part of the responsibility was unsatisfactory when it came to a matter so fundamental as access to justice for those in immigration detention. The fairness and thus the effectiveness of the UK-France scheme rested on such access. The vacuum of responsibility must be filled.