

# Report on the DDA Legal Surgeries at Dover IRC



THE DOVER DETAINEE  
Visitor Group

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## **Introduction**

The Dover Detainee Visitor Group (DDVG) has seen a drastic increase in detainees approaching the organisation purely for matters related to legal representation.

Prior to the exclusive contracts at IRCs, DDVG's role with legal representation was mainly to chase up solicitors, help with communication and occasionally refer clients. However, since the exclusive contracts have been in place, DDVG's role has had to change in order to accommodate the fact that detainees have been finding it more difficult to find legal representation in the first place and when they do find legal representation, detainees are experiencing delays and/or unfair treatment. Over the last few months, we've been forced to act as watchdogs over solicitors, specifically in relation to whether or not they are respecting the Standard Civil Contract for DDA Firms.

From the outset of this report we want to make it clear that DDVG believes that the exclusive contracts have been detrimental to detainees' right to legal representation and our recommendation is for this system to be abolished as soon as possible.

## **General Background**

Between March and May 2011, in collaboration with other organisations working with detained clients, DDVG asked a series of questions to detainees in order to see how the DDA surgeries were working. We spoke with 72 detainees (which amounts to around 23% of the total population at Dover IRC). 65% said they had been in touch with a legal aided solicitor at some point. Out of these, a staggering 66% informed DDVG that they felt they had been treated unfairly by solicitors.

Here is a list of what detainees reported to DDVG about solicitors:

- not knowing if the solicitor is representing them for immigration matters or just bail;
- being kept in the dark about what the solicitor plans to do;
- not discussing and/or not applying for bail;
- not being given contact details of the firm meeting them during the DDA surgeries;
- solicitors being slow to transfer former client's files to the detainee's new legal representatives;
- meeting a caseworker/solicitor at a DDA surgery and no further contact after that;
- not being told that the solicitor firm is not representing them anymore;
- not issuing a CW4 when a client's file is closed;
- being turned down purely for capacity issues;
- solicitors telling detainees that they were in touch with the Home Office and then it turned out this was untrue;
- closing client's files a few days before an important court hearing, even though there were no changes in the detainee's circumstances;

When these findings were presented to the Legal Services Commission (LSC), we were told that these would be taken into consideration but that the LSC needed evidence, in the form of complaints, in order to make sure that solicitors were offering good quality representation and respecting the Standard Civil Contract for DDA firms.

For that reason DDVG spoke to various detainees who had experienced problems with DDA firms and encouraged them to make formal complaints where appropriate. DDVG assisted detainees in writing up complaints and forwarded these complaints and the solicitor firms' replies to the LSC.

The following are some of these complaints. For the sake of confidentiality, the detainees' names and the names of the firms involved are fictitious. However, the LSC has been forwarded the original complaints.

### **The problem with complaining**

It is common knowledge that detainees do not like to complain against solicitors. Some detainees express fear that complaints against solicitor might result in no legal representation at all, or a misguided fear of retribution from the Home Office. Others do not have the necessary language skills or feel disempowered and overwhelmed by the whole immigration system.

There are many other detainees who have experienced very similar situations to the examples below, but were reluctant to make an official complaint.

#### ***Case 1. Ahmed – An obvious case for bail turned down***

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.

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 TA 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 BID for representation for bail.

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.

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.

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 LSC confirmed that DDA firms are in fact awarded specific numbers of Matters Starts. The numbers are based on the assumption that 25% of clients seen will be taken on after their surgery slot. This figure was taken on a rate found during the DDAS pilot.
- 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. The LSC stated that DDA 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 at Dover. The LSC's reaction was that firms can apply to increase their NMS awards. The LSC also said that firms are required to attend up to 10 surgery clients on each rota day and they **must** have capacity to provide further advice/representation to each of these clients if they qualify on means/merit.
- The solicitor firm, like all other DDA firms who do not sign up clients in the first meeting, did not issue the client with a CW4. The LSC said that if there isn't merit to provide advice in respect of the substantive application, firms must issue a CW4.

**Observations** – 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. It would be appropriate to check whether all DDA firms are fully aware of their obligations under this contract.

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. The figures derived from the DDAS pilot project need to be looked into again. We fail to understand how any sample of detained clients at one point in time can be representative of the whole detained population at a different time. We find it shocking that in 75% of the cases during the pilot,

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. The statistics would suggest that this was not happening. We believe the LSC should reconsider whether the pilot project is in fact representative and see how that project might have affected detainees' right to legal representation up to today.

### ***Case 2. Freddy – Returned back to the UK***

Freddy was detained in the UK and removed to Sierra Leone. When he got to the airport in Sierra Leone, he was refused entry and his Sierra Leonean passport was confiscated by the Sierra Leonean officials. He was sent back to the UK escorted by the same people who accompanied him on the flight to Sierra Leone. Once he was back in the UK, he was re-detained.

He booked an appointment through the DDA legal surgeries and met someone from Firm A. When he explained that he was removed to Sierra Leone, refused entry, passport confiscated and returned back to the UK and re-detained, the solicitor asked him for a "refusal letter" from Sierra Leone. He explained that he was not given anything from Sierra Leone or from the Home Office. The solicitor looked at the available paperwork and in that 30 minute meeting she concluded that due to his poor immigration history, he had a weak case and told him they would not be taking on his case. He was not asked to sign any paperwork so effectively he had no right to contest their decision through a CW4.

Freddy managed to book another DDA appointment, this time with Firm B. He explained the same thing to the solicitor from Firm B but once again, the solicitor decided in 30 minutes that there was no need to sign up Freddy to investigate the case further. He was told there and then that they would not be taking on his case, and once again Freddy had no right for a CW4. The solicitor also told him that he should talk to BID for bail.

In the end Freddy found legal aided representation through a third, different company and at the moment another solicitor firm is working on a JR for unlawful detention. He is still being detained.

Freddy sent a formal complaint to both Firm A and B. He stated that he feels he was treated unfairly, and that even though he had a poor immigration history, the most recent aspect of his immigration history, namely the Sierra Leonean authorities refusing him entry and his return to the UK, seemed to indicate at the very least there was no immediate prospect of his removal. This meant that they should have taken the decision on whether to represent him or not after they got more information about his situation and not in that 30 minute meeting. He also pointed out that by not signing him up for legal aid, he could not contest their decision to refuse him representation through a CW4.

Firm B's reply to this was that they stand by their decision citing that Freddy had become appeals rights exhausted and that a previous a JR attempt was rejected. They also informed Freddy that they are limited by the LSC to take no more than 12 substantive asylum cases per year in Dover.

The other company involved, Firm A, also replied to Freddy stating that they have a right to refuse a case if they feel the case has no merit and stated that there is no requirement to take cases on.

This case has been forwarded to the LSC at the time of writing this report so we have not had feedback from them yet.

**Observations** – We feel that this is a clear case of hesitation to take on clients whose cases are not straightforward. The definition of taking on cases with 50% chance or more of success seems to translate to not taking cases that are not obviously easy ones. Both firms have a right (and obligation) to acknowledge that Freddy had a poor immigration history, that he had a failed JR and that he became appeals rights exhausted. However, they both ignored the fact that this person was actually removed and denied entry to Sierra Leone and his passport was confiscated. Both seemed to have ignored Freddy's new circumstances following his failed removal attempt and focused instead about what happened prior to this failed removal. The option for bail was completely ignored. We believe that in 30 minutes, neither one of these companies could really have come up with an informed decision about Freddy's merits. We believe they should have signed him up for legal aid, taken some time to go through all necessary paperwork and then make an informed decision which, if negative, would have given him a right to contest their decision through a CW4. The problem here with the issue of a CW4 is that a solicitor seems to have a right not to issue a CW4 if they did not sign the detainee up for Legal Help in the first place. Under the exclusive contracts system, if a detainee does have a case but the solicitor firms do not sign him up in that first meeting, then the detainee has nowhere else to turn to and effectively his right to legal representation is denied and will probably go unnoticed.

### ***Case 3 – Not knowing what the solicitor is there for***

DDVG is currently helping Kamel with finding legal representation. He has been detained for almost 18 months and is having bad luck finding a decent solicitor. We are finding it very hard to convince him that he should get a legal aid solicitor since he has lost faith in all solicitors. Since he is quite distressed and may be suffering from some form of mental health issue, Kamel did not want to make an official complaint about this matter since he does not see the point. For this reason, the following example cannot be forwarded to the LSC.

Kamel took the step to book an appointment for a legal surgery after DDVG kept insisting to him that unless he had enough money to get a private solicitor, this was his most practical option. He was seen by X Solicitors who signed him up and sent him a client care letter. In this letter the solicitor stated that UKBA cannot remove him to Iran and also that the Indian High Commission has been contacted to help with an ETD. Kamel is Algerian. However, Kamel was hesitant to point out this mistake to his solicitor since he was afraid that the solicitor might get offended and drop his case. Since Kamel does not trust everyone, he was not keen on the idea of having someone from DDVG to talk to his solicitor. Instead he asked a personal friend of his who is not detained to call his solicitor and ask this person what s/he plans to do with Kamel. His friend got in touch with the solicitor and told her/him that the solicitor should help Kamel otherwise he will consider alternative legal representation. Two days after this phone

conversation the solicitor called Kamel to inform him s/he had closed his file. Kamel faxed a request for the reasons in writing and a CW4. The solicitor sent him a letter stating that since Kamel was only signed up for legal help, the solicitor had no obligation to send a CW4.

Kamel is now without legal representation and DDVG is having a hard time convincing him that not all solicitors are like this one. We are trying to re-establish Kamel's faith in the legal system and to convince to him to book another appointment in the hope that he will not be unlucky and be seen by the same solicitor again.

**Observations** – Stories such as Kamel's are abundant but these are the ones that are most difficult to document. The reason is that detainees consider having a solicitor who is not really doing anything better than not having one at all. However, visitor groups and other organisations working with/for detained clients know otherwise. In these cases the standard story is for a solicitor firm to take on a client and do absolutely nothing on the case. When the detained client receives news of some important court hearing, or even worse removal directions, the firm closes the file (most times without mention of a CW4) even though there were no changes in circumstances in the detainee's case since the first time he met the solicitor. Then, the detained client has to face the difficult task of finding new legal representation in a matter of days. Most times this proves unsuccessful, not due to merits, but because of the timescale. Complaining against this solicitor becomes secondary to finding a new solicitor and most times, solicitors acting in this way get away with it. We believe the LSC should be vigilant about some particular firms that are renowned for this type of practice. While we appreciate that the LSC needs to see formal complaints in order to be able to intervene, one cannot forget that many detainees are reluctant to complain against solicitors for reasons that have already been mentioned. We believe the LSC should monitor more thoroughly the quality of service that detainees are receiving from DDA firms, particularly in the light of the exclusivity contract.

#### ***Case 4 – Ignoring clients.***

Nadeem is a Bangladeshi national who was detained at Dover IRC. In mid April 2011 he met someone from Firm C during a legal surgery and they signed him up on that first meeting. After that meeting no one from Firm C got in touch with him and he was never sent a client care letter. In May he sent them a fax to update them about his situation and to ask them if they were effectively representing him or not. In that same fax he wrote that should they decide to close his case, then he would like to get a CW4. By July he still had got no reply, so he sent a formal complaint highlighting the fact that no one had ever made contact with him, despite his efforts to contact them. Even though the firm's complaint procedure states that they send an acknowledgement for complaints within 5 working days, Nadeem was still waiting for a reply 18 days after he sent the complaint. Nadeem agreed to take the complaint to the LSC who took it to task to contact this firm and explain this shortcoming. Nadeem was in the meantime removed from the UK with no access to a fair chance of getting legal advice.

On 09/08/11 the LSC informed DDVG that following their investigation "... [Firm C] ... have amended their procedures as a result of this case such that the admin assistant who currently scans the notes for

*each surgery (because they retain all records electronically) will also now identify which cases require follow up. This will hopefully help to avoid such issues in future."*

## **Conclusion and Recommendations**

The aim of this report is not to put the blame on solicitors or the LSC, but simply to express our opinion about whether the exclusivity contracts have been beneficial or detrimental to detainees' right to good legal representation. We hope that these examples have highlighted the situation of legal representation in IRCs under the DDAS. It is also important to bear in mind that the cases mentioned here are not isolated cases.

DDVG believes that this system has been detrimental to detainees and for that reason our conclusion is that it would be better not to renew this system and instead give back the right to detainees to have more solicitor firms to choose from.

We feel that having only a limited number of firms to give legal advice and legal representation gives more opportunity for abusive practices since detainees feel they are powerless to find alternative representation and are stuck with a firm which is not providing satisfactory results.

We feel that prior to the exclusivity contracts, solicitor firms had an incentive to provide good legal representation since competition from other firms meant that they could lose clients if they didn't do the necessary work. As in most cases where there is no competition, firms do not have an incentive to excel in their work since they are protected by their exclusive right to offer legal representation.

From the cases provided in this report, it is clear that some firms, or individuals within these firms, have either not understood their obligations under the Standard Civil Contract for DDA Firms, or else have violated these obligations knowingly.

Some of the conditions in the contract do not seem to have a unanimous interpretation between solicitors and the LSC. One such case is the different approach to when a solicitor firm should issue a CW4.

The aim of DDA surgeries also seems to differ in interpretation. Under the Standard Civil Contract for DDA Firms, it would seem to us that if a solicitor were to see a client in the legal surgeries, bearing in mind there is no interpreter and 30 minutes is very little time to assess the merits of a case, these firms should be routinely signing clients up for Legal Help on the grounds that the merits are unclear and require further investigation. At a subsequent meeting with the presence of an interpreter and after having evaluated all the evidence, the merits of the case can then be properly assessed and if the case failed merit, the client would be entitled to a CW4. Instead, it would appear to us that where the merits are not immediately clear, clients are simply refused at the legal surgery and therefore denied the right to a CW4.

Another unclear point is the fact that firms are given a “suggested” amount of cases to take on per year while at the same time they can apply for an increase in NMS. Even though technically this gives solicitor firms the right to take on more cases than originally agreed, in practice this does not seem to be happening. We feel that law firms should have an obligation to take on clients where there are merits.

If the LSC decides in favour of pursuing the exclusivity contracts once again, we believe that there needs to be more vigilance on two particular issues: violations of the Standard Civil Contract for DDA Firms and solicitor firms taking on cases but not doing anything after that.

We also suggest that if the exclusive contracts are renewed, then there should be no suggested amount of how many cases should be taken on or not. We feel that this practice alone has led to a lot of detainees without legal representation.

For that reason, as an organisation that is in contact with over 600 immigration detainees per year and whose purpose is to ease the consequences of indefinite immigration detention, we feel that in the best interest of immigration detainees and to respect the right to fair treatment under the law, the exclusivity contracts should not be renewed again.