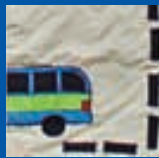


Cutting Justice:



The impacts of the legal aid cuts for people detained in Brook House and Tinsley House IRCs





Artwork by Brook House detainee Ridy

Cutting Justice:

The impacts of the legal aid cuts for people detained in Brook House and Tinsley House IRCs

The work of the Gatwick Detainees Welfare Group (GDWG)

The Gatwick Detainees Welfare Group is an independent charity providing emotional and practical support to people detained under immigration powers in Brook House and Tinsley House IRCs by Gatwick Airport. GDWG has around 75 volunteers who visit people detained in the Gatwick detention centres, and a small team of office staff who undertake advocacy and casework.

Gatwick Detainees Welfare Group

Registered charity number 1124328

The Orchard, 1-2 Gleneagles Court, Brighton Road, Crawley, RH10 6AD

www.gdwg.org.uk

info@gdwg.org.uk

Researcher: Lauren Cape-Davenhill

Research assistants: Dan Godshaw, Fiona Naismith and Amy Goodfellow

Supervisor: Dr Michael Collyer

Designer: Randi Sokoloff

Acknowledgements and Thanks

GDWG would like to give thanks and acknowledgement to the following for their assistance in conducting this research:

Dr Michael Collyer, Sussex Centre for Migration Research, University of Sussex, who supervised the research and provided invaluable support and feedback at every stage of the project.

Dan Godshaw, Fiona Naismith and Amy Goodfellow, who provided assistance with data collection and analysis.

Current and former GDWG staff members Nic Eadie, Sarah Pailthorpe, Anna Pincus and Naomi Blackwell, who provided assistance with data collection and participant selection.

GDWG would like to thank the following:

All of the participants in this research project, particularly those held in immigration detention.

All of the funders who have helped us over the years, including: The A B Charitable Trust, The Allen Lane Foundation, Big Lottery Fund, The Bromley Trust, Crawley Borough Council, The Diana, Princess of Wales Memorial Fund, Esmee Fairbairn Foundation, Hillcote Trust, J Paul Getty Jnr Charitable Trust, The Joseph Rank Trust, Lankelly Chase Foundation, Lloyds TSB Foundation for England and Wales, The Longley Trust, The Rowan Charitable Trust, Sussex Community Foundation, The Tudor Trust, Volunteering England, Wates Foundation.

Our patrons, Lord Dholakia OBE and The Rt Honourable the Baroness Williams of Crosby.

All of the other visitors' groups and other NGOs working in the field of detention with whom we have worked in the past, and continue to do so.

Everyone who has volunteered with or otherwise supported GDWG over the past 20 years.



CONTENTS

1. **Introduction** / 1
2. **Background: Cutting Justice** / 2-3
 - a. The introduction of LASPO: A bad situation made worse / 2
 - b. Widespread concerns regarding the impacts of LASPO / 3
3. **Research Design** / 4-8
 - a. Information from people detained under immigration powers at Brook House and Tinsley House IRCs /4-6
 - i. Telephone survey
 - ii. Semi-structured telephone interviews
 - b. Information from UK-based legal advisors working with clients in immigration detention / 7
 - c. Information from members of other UK-based detainee support organisations / 7
 - d. Consent / 7-8
 - e. Limitations / 8
 - i. Sample size
 - ii. Lack of comparative data
 - iii. Limitations of people in detention describing their own legal representation
4. **Results** / 9-40
 - a. Widespread impacts / 10-11
 - b. The hardest hit: People with private and family lives in the UK and EEA nationals / 12-14
 - i. A significant impact: Private and family life cases
 - ii. A disproportionate impact: EEA nationals
 - c. Private representation: A problematic alternative / 15-20
 - i. Increased use of private solicitors
 - ii. The burden of private fees
 - iii. Limited and uncertain representation
 - iv. Concerns around quality and exploitation
 - d. Self-representation: A last resort / 21-27
 - i. No other option
 - ii. Barriers to self-representing
 - iii. Detention: 'Everything is limited'
 - iv. Limited access to justice
 - e. Pro bono advice organisations overstretched / 28
 - f. Confusion and unclear advice / 29-30
 - g. Exceptional funding: An ineffective safeguard / 31
 - h. 'It's damaging me, from inside': Impacts on emotional and psychological wellbeing / 32-34
 - i. People in detention: stress, powerlessness and cumulative impact
 - ii. Family and friends under strain
 - i. Erosion of trust in the system / 35-36

- j. Beyond Brook House and Tinsley House / 37-40
 - i. Widespread impacts
 - ii. Significant impact for private and family life cases
 - iii. Difficulties finding alternative legal representation
 - iv. Difficulties for clients self-representing
 - v. Ineffectiveness of exceptional funding as a safeguard
 - vi. Impact on emotional and psychological wellbeing
 - vii. Increased levels of distrust in legal aid providers
 - viii. LASPO is unfair

5. Conclusions / 41-42

6. Recommendations / 43

7. Bibliography / 44-45

Index of Charts and Tables

Figure 1. Legal advisor survey. Advisors attending legal surgeries at Brook House or Tinsley House IRCs: Estimate of number of people per legal surgery who are out of scope for legal aid for their immigration cases due to LASPO.

Figure 2: Legal advisor survey. 'Is your firm turning away more detained clients for representation for their immigration cases because they are out of scope as a result of the introduction of LASPO in April 2013?'

Figure 3: Support organisation survey. Impact of LASPO on emotional and psychological wellbeing of clients.

1. INTRODUCTION

Gatwick Detainees Welfare Group

The introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013 brought about wide-ranging restrictions in access to legal aid for immigration cases. In effect, legal aid has been removed for all immigration work outside of asylum, with a small number of exceptions. This has significant implications for people in immigration detention. Access to legal advice around immigration issues is critical for many people in immigration detention to give them a prospect of regularising their immigration status and thus resolving their situation. Many people in immigration detention have lived in the UK for many years and have families here. There are often legal avenues available for them to make claims to stay in the country and regularise their situation. However, applications to the Home Office and courts are complex and should ideally be made by a qualified legal representative. Removing access to legal aid for immigration work effectively means that only those who can afford to pay for legal advice are able to exercise these rights - and there are often problems with private representation, as will be discussed below. Furthermore, people in immigration detention may face particular barriers to finding alternative legal representation or representing themselves effectively. LASPO thus clearly has important implications for access to justice for people in detention, which this study aims to explore.

Due to the recent nature of the changes there is currently little research as to the impacts of LASPO, both generally and specifically for people in immigration detention. Bail for Immigration Detainees (BID) provided written evidence to the Justice Select Committee Inquiry on the impacts of the changes to legal aid which provided an important initial overview of the impacts of LASPO for their clients (BID 2014a), but this was a short report to a parliamentary inquiry based on BID's experience working with clients. As far as we are aware, there is currently no research specifically considering the impacts of LASPO of people in immigration detention, despite clear anecdotal evidence that the impacts have been significant. This study aims to provide initial data on the impacts of LASPO for people in immigration detention, eighteen months after the introduction of the legislation.

The overarching research question is 'What have been the impacts of the recent changes in legal aid, specifically the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), for people detained under immigration powers in Brook House and Tinsley House?'

Within this, the research aims to address:

- To what extent have people detained in Brook House and Tinsley House IRCs been affected by the introduction of LASPO?
- What are the key characteristics of people in Brook House and Tinsley House IRCs affected by LASPO?
- Are people who are now out of scope for legal aid accessing alternative legal advice? What are these alternatives, and are they an adequate replacement for the provision of legal aid?
- How has LASPO impacted on the emotional and psychological wellbeing of people in Brook House and Tinsley House IRCs?

2. BACKGROUND: CUTTING JUSTICE

Gatwick Detainees Welfare Group

a. The introduction of LASPO: A bad situation made worse

Access to good quality legal advice for people in immigration detention was already a concern for support organisations prior to the introduction of LASPO.

For those who are unable to pay a private solicitor, legal advice in immigration detention is provided through the Detention Duty Advice (DDA) scheme. This advice is provided by law firms regulated by the Legal Services Commission (LSC). According to this scheme, each Removal Centre has a lawyer available at least two days a week. They provide advice sessions and take cases on if they are in scope for legal aid and have merits. The advice they give is free of charge (BID 2014b: 1-2). Only three law firms in each Removal Centre are contracted to provide legal advice through the DDA scheme – this means that no other legal aid provider can give immigration advice to people in detention, even if they have a legal aid contract for immigration work.

Support organisations have raised concerns about the quality of legal advice available through the DDA system, including:

- Substantial delays in getting appointments at legal advice surgeries.
- Poor communication by providers leaving detainees unaware whether they have a legal advisor.
- Transfers around the IRC estate disrupting the ability to retain a legal advisor.
- Clients not being clear if a representative is representing them for immigration matters or just bail.
- Clients being turned down at DDA surgeries purely for capacity issues. (DDVG 2011: 2, BID 2014b).

It is thus clear that there were already concerns around access to good quality legal advice for people in immigration detention prior to the introduction of LASPO in April 2013. However, LASPO has changed the landscape dramatically. LASPO brought about wide-ranging restrictions in access to legal aid for immigration cases. In effect, legal aid has been removed for all immigration work outside of asylum, with a small number of exceptions. Previously, work done by an immigration lawyer could, generally, be assumed to be in scope for legal aid, with a few specific exceptions. Under LASPO, unless a matter is specifically included, it is out of scope (Garden Court Chambers 2012: 2-3).¹ LASPO was ostensibly introduced as a cost-saving measure: the Ministry of Justice (MoJ) was required to find budget cuts of around £2billion from an overall budget of £9.8billion, and LASPO was intended substantially to reduce the civil legal aid budget (Justice Committee Select 2015: 5).

Exceptional funding

Section 10 of LASPO provides for “exceptional cases” to be funded where failure to do so would be or risks being a breach of an individual’s Convention rights (within the meaning of the Human Rights Act) or enforceable European Union rights (ASA 2013: 5). This provision was meant to serve as an ‘essential safeguard’² for those cases that would not be eligible for legal aid but required public funding to ensure access to justice.

¹ LASPO also introduced restrictions on legal aid in a wide range of other areas including family law, welfare benefits and clinical negligence (The Bar Council 2013: 12-13)

² Quote from Jonathan Djanogly, the Under-Secretary of State for Justice (Hansard HC 2011: Column 419).

b. Widespread concerns regarding the impacts of LASPO

Concerns have been raised by a wide range of organisations and individuals on the negative impacts of LASPO's restrictions on legal aid for immigration advice in general: for example in submissions made to the Justice Select Committee inquiry 'Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012' (see ILPA 2014, Greater Manchester Immigration Aid Unit 2014).

In GDWG's work with people detained in Brook House and Tinsley House IRCs, there appeared to be a significant increase in the number of clients without access to legal aid following the introduction of LASPO. GDWG caseworkers have been spending more time trying to find pro bono legal advice for people whose immigration cases are out of scope, often without success. GDWG's volunteer visitors have also reported back that people that they are visiting are struggling to access legal advice, or have been asking volunteer visitors to assist them with making immigration submissions to the Home Office or courts as they do not have a legal representative - something that GDWG and its visitors cannot assist with as the organisation is not accredited to give legal advice.

Bail for Immigration Detainees (BID)'s submission to the Justice Select Committee inquiry into the impacts of LASPO (BID 2014a) provides important initial evidence about the impacts of LASPO for their clients in immigration detention. This submission includes results from BID's surveys of levels of legal representation for immigration detainees across the UK detention estate 2010-2013 (BID 2013). Prior to the introduction of LASPO, between 68% and 75% of respondents to BID's survey who had an immigration advisor were in receipt of legal aid (BID 2014b: 5). Since April 2013 the proportion of survey respondents held in IRCs with a legal advisor and who are in receipt of legal aid has dropped. In November 2013 just 52% of detainees interviewed for BID's survey who had a legal advisor were in receipt of legal aid, while in May 2014 the proportion was 54%. Both of these are the lowest rates of publicly funded legal representation since BID began these surveys (BID 2014b: 5-6).

The BID survey results give a strong indicator that the impacts of LASPO have been widespread for people in immigration detention. However, as yet there has been no research specifically designed to assess the impacts of LASPO for people in immigration detention, and only anecdotal information about the key characteristics of people affected by the restrictions on legal aid; whether people are accessing alternative legal advice; and the impacts of LASPO for the emotional and psychological wellbeing of people in detention. This study aims to address these questions.

3. RESEARCH DESIGN

Gatwick Detainees Welfare Group

Conducting research with people in immigration detention raises practical and ethical difficulties. GDWG's priority is the welfare of people in immigration detention, and ethical concerns were of paramount importance in the design of this research. The research design was approved by the University of Sussex Ethics Committee.

The research collected data from three key groups:

- a. People detained under immigration powers in Brook House and Tinsley House IRCs;
- b. UK-based legal advisors working with clients in immigration detention;
- c. Members of other UK-based detainee support organisations.

a. Information from people detained under immigration powers in Brook House and Tinsley House IRCs

Information from GDWG clients detained under immigration powers in Brook House and Tinsley House IRCs provided the core research data. A mixed methods approach was taken. Quantitative methods were used to identify key overall trends in the impacts of LASPO for the GDWG client group, whilst qualitative methods added richness to the quantitative data, providing a more in-depth account of the impacts of LASPO for particular individuals (Johnson and Onwuegbuzie 2004: 19-20). Every effort was taken to ensure that for detainees interviewed, it would be a positive experience to have their voices heard and included in the research.

The methods used to collect information from people detained under immigration powers in Brook House and Tinsley House IRCs were:

i. Telephone survey

A telephone survey of 102 current non-priority³ GDWG clients was conducted to collect quantitative data over the period September-December 2014. The survey was conducted by three trained volunteers and GDWG staff using SurveyMonkey. Researchers attempted to contact all GDWG non-priority clients current at time of survey. The survey was conducted by telephone for logistical reasons and because research access within the detention centres is highly restricted.

Survey questions were based on a literature review, existing knowledge held by GDWG staff, and other surveys conducted on the impacts of LASPO (for example Law Society 2013). The majority of questions were closed, although some questions allowed for comments in order to provide additional or clarifying information, and the final question was open for respondents to give their views on the impacts of LASPO and access to legal advice for people in detention.

³ 'Non-priority' indicates clients for whom GDWG does not have urgent welfare concerns. 'Priority' clients – for example those on hunger strike or considering self-harm or suicide – were not included in the research for ethical reasons.

Researchers attempted contact with all 282⁴ GDWG non-priority clients, however they were not able to make telephone contact with well over half of the current GDWG client list. In GDWG's experience it is often difficult to make telephone contact with people detained in Brook House and Tinsley House IRCs, largely because of poor telephone signal⁵.

Seven people contacted declined to participate in the survey, and six people contacted were unable to participate due to the language barrier⁶. Nine surveys were completed using an interpreter – seven these using another detainee to interpret⁷, and two using an external interpreter.

Out of the 102 people surveyed, 74 were detained in Brook House, 18 were detained in Tinsley House, and 10 were detained in other detention centres⁸. All respondents were male, as all of the people detained in Brook House and the vast majority of people detained in Tinsley House are male⁹.

The 102 survey respondents were of 37 different countries of origin, with one of disputed nationality. The most common countries of origin were Pakistan (18 respondents), Nigeria (15 respondents), India (seven respondents), Democratic Republic of Congo (six respondents), Jamaica (five respondents) and Algeria (four respondents).¹⁰ 13 respondents were European Economic Area (EEA) nationals.

90 of survey respondents had 'good' or 'OK' levels of spoken English, whilst six respondents had 'limited' spoken English and five respondents had none.

⁴ The total number of people in the GDWG client base changes on a day to day basis as people leave detention (whether because they have been released, removed, or transferred to a different detention centre) and contact is made with new clients. It is impossible to know exactly how many of our clients are in the centres at any one time due to the fact that we are not notified of departures and do not have access to any data as to who is in the centres. This client number reflects our records on the day the detainee survey started (8/9/14).

⁵ Problems with telephone signal in Brook House was noted in the 2013 Her Majesty's Inspectorate of Prisons (HMI Prisons) Report on unannounced inspection of Brook House IRC: 'Despite the installation of signal boosters, mobile phone reception was limited in bedrooms' (HMI Prisons 2013: 51).

⁶ Although we did have access to telephone interpreting services for the purpose of this research project, we were not able to make contact with the 6 people who did not participate due to the language barrier when we called them back with an interpreter. This may have been because of problems with telephone signal as outlined above.

⁷ Using other detainees to interpret for this type of research is not best practice, but it was felt that as long as the purpose of the research was clearly explained and researcher was confident that informed consent had been obtained, it was acceptable.

⁸ Although the remit of this research project was people detained in Brook House and Tinsley House IRCs, people are frequently transferred to different detention centres at short notice (see HMIP 2013: 13, 19, 52, BID 2014: 11). The ten people surveyed who were detained in other detention centres had previously been detained in Brook House or Tinsley House and were listed as current GDWG clients, but had recently been transferred to a different centre at the point they were contacted for the survey. It was felt that for the purposes of this research, these people could still be included in the sample as they had been transferred to other IRCs recently and access to legal aid does not differ substantially across the detention estate. Out of the people surveyed in other detention centres, four were in Harmondsworth, two in Colnbrook, two in Dover, one in Haslar and one in The Verne.

⁹ Tinsley House does have a small Family Holding unit where families, including women and children, can be held for 72 hours, or up to a week in 'exceptional' circumstances with ministerial authorisation. It is unusual for GDWG to have clients in this unit as families are held for shorter periods of time.

¹⁰ The other nationalities were Lithuania (3), Spain (3), Afghanistan (2), Bangladesh (2), Cameroon (2), Ghana (2), Jordan (2), Palestine (2), Polish (2), Portugal (2), Somali (2), Sri Lanka (2), Albania (1), Bolivia (1), Botswana (1), Brazil (1), Eritrea (1), Estonia (1), France (1), Gambia (1), Iran (1), Iraq (1), Latvia (1), Morocco (1), Nationality Disputed (1), Nepal (1), Russia – Crimea (1), Sierra Leone (1), Sudan (1), Turkey (1), Uganda (1), Vietnam (1). 1 respondent did not give their nationality.

ii. Semi-structured telephone interviews

Semi-structured telephone interviews were conducted with nine current non-priority GDWG clients to collect qualitative data.

The participant sample was purposive: participants were selected based on the fact that they had been advised by a legal aid provider that their immigration cases were out of scope for legal aid as a result of LASPO. As with the surveys, interviews were conducted by telephone for logistical reasons and because research access within the detention centres is highly restricted. Interview data was supplemented, with informed consent from participants, with GDWG case notes and paperwork held by GDWG relating to participants' immigration situation.

Interview questions were based on a literature review, existing knowledge by GDWG staff, and preliminary data from the detainee telephone survey which provided information about issues and trends amongst participants.

Interview participants were from eight different countries of origin: Two from Portugal and one each from Botswana, Ghana, Jamaica, Lithuania, Latvia, Nigeria and Senegal. Four participants were EEA nationals.

All of the participants had been living in the UK for ten or more years. The average amount of time spent living in the UK was 14 years, with the lowest ten years and the highest 20 years. Over half (five) of the participants had children under 18 years old in the UK, and one had arrived in the UK when he was under the age of 18.

All of the participants had a private/family life element to their case, and six of them also had a challenge to a deportation order. Two participants had ongoing proceedings in the family courts, and one hoped to initiate family proceedings. All family proceedings related to guaranteeing contact with children.

Three interview participants had a private solicitor, four were currently representing themselves for their immigration case, one had a pro bono legal representative (and had previous experience of representing himself), and one had decided not to pursue his immigration case.

Thematic analysis from a critical realist theoretical perspective was adopted. This was a way to report on the experiences, meanings and 'reality' for interview participants whilst acknowledging the ways in which the social context impinges on those meanings (Braun & Clarke 2006: 81).

Interview transcripts were coded manually due to the relatively small size of the data set. Initial codes were identified by researcher and two research volunteers. This helped to improve the reliability of the coded data, as initial codes reflected a range of perspectives rather than those of a single researcher. Researcher then refined the codes and identified key themes. These themes were selected and refined based primarily on their relevance to the research question, but attention was also paid to prevalence across the data set.

b. Information from UK-based legal advisors working with clients in immigration detention.

Information from UK-based legal representatives working with clients in immigration detention was collected to supplement the information provided by detainees.

Online survey

A SurveyMonkey online survey was circulated to contacts in the three legal aid firms contracted to provide immigration advice in Brook House and Tinsley House. Invitations for legal advisors to participate in the survey were also circulated via the Refugee Legal Group¹¹ and social media.

The survey was completed by 20 respondents. Of these, eight attended DDA surgeries at Brook House or Tinsley House IRCs, four attended DDA surgeries at other detention centres, and eight worked with detained clients outside of the DDA system.

c. Information from members of other UK-based detainee support organisations.

Information from staff members of other UK-based detainee support organisations was collected to further supplement the information provided by detainees. Information from other support organisations was used to indicate whether the results of the GDWG research on the impacts of LASPO for people detained in Brook House and Tinsley House IRCs was generalizable to other detention centres.

Online survey

A SurveyMonkey online survey was circulated to contacts in other UK-based detainee support organisations, including all members of the Association of Visitors to Immigration Detainees (AVID) for which contact details are publicly available. Invitations for support organisation staff to participate in the survey were also circulated via the Refugee Legal Group and social media. Organisations included both those providing non-legal advice and support to people in immigration detention, and those providing pro bono legal advice.

The survey was completed by 14 respondents from a range of different UK-based detainee support organisations, including staff from visitors groups and pro bono organisations.

d. Consent

GDWG obtained informed consent from all participants in the research to use their data anonymously. All participants in the detainee survey and interviews were provided with both verbal and written information about the purpose of the research, why this information was being collected, and the way in which information about them would be documented and reported. Verbal consent was obtained from detainee research participants before any data collection proceeded.

Information sheets were circulated with the legal representative and support organisation surveys providing information about the purpose of the research, why the information was being collected, and the way in which

¹¹ A 'Google Group' moderated by Asylum Aid for legal advisors, support organisations and others concerned with legal advice and support for refugees, asylum seekers and migrants.

information about them would be documented and reported. The information sheet stated that completion of the survey implied informed consent for the data to be used in the ways indicated.

To protect anonymity, names have not been included for any of the research participants.

e. Limitations

i. Sample size

This research was a small-scale project, conducted by one researcher, focussing on experiences in two immigration detention centres. For information collected from people in immigration detention, the sample was all taken from the GDWG client base and cannot claim to be representative of the population in Brook House and Tinsley House as a whole. However, effort was taken to collect as many detainee survey responses as possible, and the relatively large number of respondents – 102 out of around 570 bed spaces in Brook House and Tinsley House, or 18% of the population in the two centres – helps increase the strength of the data. The data from legal advisors and support organisations working in other detention centres also provides an indicator of whether the research conclusions may be applicable more broadly.

ii. Lack of comparative data

To assess the impact of LASPO, research would ideally compare trends in legal advice and representation for people in Brook House and Tinsley House prior to the introduction of LASPO, with trends in legal advice and representation following the introduction of LASPO. Although GDWG has a large amount of client data collated prior to the introduction of LASPO, this data dates back to pre-2013. GDWG is not in contact with many clients from this time so would be unable to obtain consent to use this data for research purposes. However, the data from support organisations and legal advisors provides some indication of the extent to which LASPO has changed the landscape in terms of legal advice for people in immigration detention in comparison to the pre-April 2013.

iii. Limitations of people in detention accurately describing their own legal representation

The detainee survey was premised upon people in detention providing information about their own legal representation. However, in GDWG's work with people in detention we encounter high levels of confusion around legal representation: people are often not clear on whether they have a legal representative and what the representative is assisting with. The comments from the detainee survey and detainee interviews provides qualitative data which helps to give a more detailed picture and highlights some of this confusion, which is in itself an indicator of problems around access to legal advice.

4. RESULTS

Gatwick Detainees Welfare Group

To recap, this research aims to address four key questions:

- To what extent have people detained in Brook House and Tinsley House IRCs been affected by the introduction of LASPO?
- What are the key characteristics of people in Brook House and Tinsley House IRCs affected by LASPO?
- Are people who are now out of scope for legal aid accessing alternative legal advice? What are these alternatives, and are they an adequate replacement for the provision of legal aid?
- How has LASPO impacted on the emotional and psychological wellbeing of people in Brook House and Tinsley House IRCs?



Artwork by former detainee Ruben

a. Widespread Impacts

The first research question was: 'To what extent have people detained in Brook House and Tinsley House IRCs been affected by the introduction of LASPO?'

The detainee survey results indicate that the impacts of LASPO have been widespread for people in Brook House and Tinsley House.

Over three quarters of detainees surveyed would not qualify for access to free legal advice for some or all of their immigration case, regardless of means or merits.

Just 37% of respondents with a legal representative for their immigration case were in receipt of legal aid.

Detainees attending legal surgeries at detention centres are frequently being advised that they cannot receive assistance for their immigration case unless they can pay privately.

Based on information provided in the detainee survey about the key issues in respondent's immigration cases, according to the provisions of LASPO 2012 just 22% of respondents had cases fully in scope for legal aid. Over three quarters of respondents had cases that were either partly or fully out of scope for legal aid: 47% had cases that would not be covered by legal aid at all, whilst 31% had 'Mixed' cases: cases combining element(s) that were in scope and out of scope for legal aid according to the provisions of LASPO, for example somebody with both an Asylum claim and challenge to a deportation order¹².

It should be noted that before the limitations on legal aid introduced in LASPO, by no means all of the survey respondents would have been eligible for legal aid for their immigration cases. An assessment for eligibility for legal aid would take into account both means (whether or not an individual has the financial means to pay privately) and merits (how likely the case is to succeed). In addition, not everyone in immigration detention is seeking legal advice for their immigration cases: some people are waiting to return to their countries of origin and do not require immigration advice. But now, over three quarters would automatically be disqualified for access to free immigration advice, regardless of means or merits.

The results showed that just 37% of respondents with a legal representative for their immigration case were in receipt of legal aid. Although GDWG does not have data that can be used for comparison prior to the introduction of LASPO, this result supports the findings of the BID legal advice survey that receipt of legal aid has dropped significantly following the introduction of LASPO. BID's legal advice survey results indicate that prior to the introduction of LASPO, between 68% and 75% of respondents with a legal advisor were in receipt of legal aid. This dropped to 52% in November 2013, following the introduction of LASPO, whilst in May 2014 the proportion was 54% (BID 2014b: 5).

The results from the legal advisor survey also suggest that the scale of the impacts of LASPO has been significant.

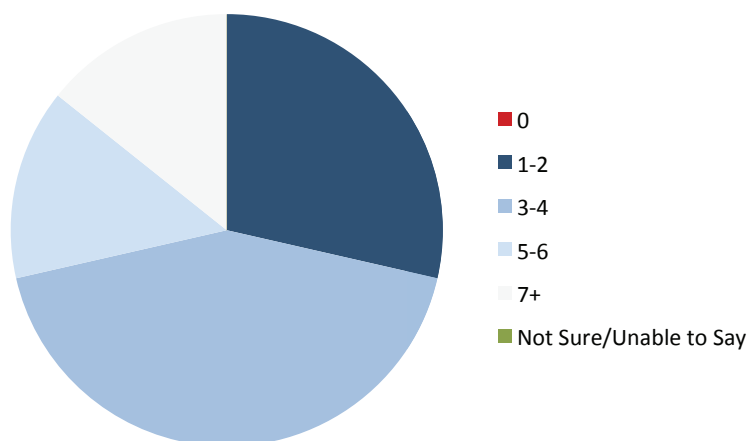
¹² It should be highlighted that these results provide an indication of the proportion of respondents that are in/out of scope for legal aid according to LASPO. In practice the only way to establish if an individual's case is in/out of scope for legal aid is for an assessment to be undertaken by a qualified legal advisor, which was beyond the scope of this study - and even then different legal advisors may come to different conclusions.

Of the eight respondents to the legal advisor survey who attended legal surgeries at Brook House or Tinsley House IRCs, seven said that their firms were turning down more detained clients for representation for their immigration cases because they are out of scope for legal aid as a result of the introduction of LASPO.

These advisors said that an average of 3-4 clients at each legal surgery were out of scope for legal aid for their immigration cases as a result of LASPO, even if they were in scope for other issues such as bail. Ten people are seen per legal surgery, so this suggests that **over a third of people who attend legal surgeries at Brook House and Tinsley House are being advised that they cannot receive assistance for their immigration case unless they can pay privately.**

Figure 1:

Legal advisor survey, advisors attending legal surgeries at Brook House or Tinsley House IRCs: Estimate of number of people per legal surgery who are out of scope for legal aid for their immigration cases due to LASPO.



Please give a rough estimate of the number of people per legal surgery who are out of scope for legal aid for their immigration cases due to LASPO? (i.e. not for other reasons such as means) – even if you are able to take them on just for Temporary Admission/bail

b. The hardest hit: People with private and family lives in the UK and EEA nationals

The second research question was: ‘What are the key characteristics of people in Brook House and Tinsley House IRCs affected by LASPO?’ The results indicate that people with private and family lives in the UK, and EEA nationals, have been particularly affected by the introduction of LASPO.

i. Private and family life cases: a significant impact

LASPO mainly affects people with a private or family life in the UK: including those who have children in the UK, and those who have lived in the UK for many years.

Of the 80 survey respondents with cases partly or fully out of scope for legal aid, nearly three quarters described themselves as having a private or family life (Article 8 of European Convention on Human Rights) component to their immigration case.

Again, as emphasised above, not all of these cases would have attracted legal aid funding prior to the introduction of LASPO as they would still have been subject to means and merits tests. Nonetheless, the results still show that Article 8 is key area of immigration work where LASPO has impacted.

People with a private/family life element to their case were less likely to have a legal aid representative: just 12% had a legal aid representative, as compared to 22% of the total¹³. Of the 22 survey respondents who had been advised at a legal surgery that their cases could not be funded by legal aid, 20 had a private or family life element.

The implications of removing free legal advice for private and family life cases are significant. This research was not longitudinal and did not track outcomes for participants’ immigration cases over time, so cannot make claims about whether people with private and family life cases who are out of scope for legal aid are now more likely to lose their immigration cases than previously. However several interview participants, especially those representing themselves, expressed concern that their cases were less strong as a result of not having free legal advice – and highlighted that the consequences of losing their case would be high.

Separating families

One implication of removing legal aid for private and family life cases is the risk of separating families. 39% of survey respondents with cases partly or fully out of scope for legal aid said they had children in the UK, or a parental-like relationship with somebody else’s children. The majority of detainee interview participants had a child or children under the age of 18.

¹³ Of the seven people with a private/family life who did have legal aid representative for their immigration case, five also had an asylum element to their case, and 4 had legal representatives who started representing them before the introduction of LASPO. Asylum is still covered by legal aid, and legal representatives who have been representing clients since prior to the introduction of LASPO are generally still able to get legal aid funding for the case as long as it is the same matter. Two survey respondents with a private/family life element to their case and legal aid representation had both an asylum element to their immigration case, and a legal aid representative who had been representing them from prior to the introduction of LASPO.

The implications of losing an immigration case are in these circumstances often particularly significant, as the deportation of an adult will result in the separation of a family. This was highlighted by two interview participants:

'if someone has got a kid, how is the kid's life gonna be mentally delayed, how is she gonna cope, coz she's only gonna lose her father in her life...some people have never had families in their life so to have a child, it's something like a privilege, it's a privileged thing to have a child. So to be separated... for some people, that's why some people end up giving up on life, because they have been separated from their child (JI).

'I want to see my children. I don't want to abandon my children, I don't like that' (BR).

People who have been in the UK since childhood

Removing legal aid for people with private and family life cases also has a significant impact for people who have come to the UK as children, and may have grown up here. 21% of detainee survey respondents with cases partly or fully out of scope for legal aid said they had arrived in the UK when they were under 18 years old.

In GDWG's work with people in detention, for young people who have grown up in the UK and often have parents or siblings here the stakes of a losing an immigration case are extremely high: they are faced with being returned to a country where they may have very little connection, and being separated from family in the UK.

'I just thought, wow, I'm gonna end up in a country where I don't know nobody. And like, I know, my family, they told me already – they're born here innit, they're from England – they told me already, if you get deported, I'm not coming back there. They told me that straightforward already. So – it's not like I'm gonna be there with my family, I'm not gonna have no-one there' (CA).

ii. A disproportionate impact: EEA nationals

The results indicate that LASPO has disproportionately affected EEA nationals. EEA nationals are less likely than non-EEA nationals to have a legal representative, and twice as likely to be representing themselves for their immigration case.

None of the 13 EEA nationals in the survey were in scope for legal aid for their immigration case. This is almost by definition – EEA nationals are unlikely to have an asylum claim and are only likely to be in immigration detention as a result of having a deportation order. Challenges to deportation orders are out of scope for legal aid.

All of the EEA national respondents surveyed had a deportation order, whilst ten also had a private/family life element to their case.

Impact on legal representation

- **85% of EEA nationals surveyed did not have legal representation for their immigration case.** In comparison, 64% of non EU nationals had a legal representative for their immigration case.
- 54% of the EEA nationals surveyed were representing themselves for their immigration case – as compared with 27% of non-EEA nationals.

These results suggest that LASPO had reduced access to justice for EEA nationals. Whilst caution must always be taken when making causal links in relation to this type of data, from GDWG's work with people in Brook House and Tinsley House we know that many EEA nationals did have legal aid representation for their immigration cases prior to the introduction of LASPO, indicating that LASPO has restricted access to justice for EEA nationals.



Brook House

c) Private representation: a problematic alternative

The third research question was: 'Are people who are now out of scope for legal aid accessing alternative legal advice? What are these alternatives, and are they an adequate replacement for the provision of legal aid?' This question will be addressed in the next three sections.

i. Increased use of private solicitors

The survey results indicate that the majority of people out of scope for legal aid as a result of LASPO are using private solicitors as an alternative, with worrying implications.

In the survey results, the percentage of people with a legal advisor does not seem to vary whether an individual's immigration case is in scope for legal aid, out of scope or mixed – around 60% of people describe themselves as having a legal advisor for their immigration case.

However, the type of legal advisor varies significantly depending on whether or not an individual's case is in scope for legal aid. More than 85% of those whose cases fell entirely outside of scope for legal aid had a private legal representative, compared with just over 20% of those whose cases did fall in scope, but who had opted to pay privately.

This suggests that many of the people fully or partly out of scope for legal aid are using private solicitors as an alternative. However, this does not imply that private solicitors have satisfactorily 'filled the gap' left by reduced access to legal aid. The implications of an increased use of private solicitors are explored in the following section.

ii. The burden of private fees

Private fees for immigration representation are often substantial, especially for people with limited means. Depending on the application and stage of the case, the applicant may also be liable for application fees and counsel fees in addition to fees for the solicitor. Quotes for particular immigration applications given to interview participants ranged from £800 to £4500. However, it should be highlighted that applicants may make several applications, submissions and/or appeals over the course of pursuing their immigration case so the overall costs may be much higher than this.

We interviewed three people who are using a private representative for their immigration case, having been advised that their case is out of scope for legal aid. All commented that it was difficult to find the money to pay their solicitor:

'I don't work, I work here for £3 a day. I can't pay, for £3 a day I can't pay a solicitor £1000 or something' (BR).

'That is a big problem [paying private fees]. You know if you are in detention obviously you are not allowed any funds, it's just 70p to £1 that they give me' (BE).

The burden of payment for private representation is largely falling on family and friends.

Out of 34 survey respondents with cases fully or partly out of scope for legal aid who were using a private solicitor, 77% had family/friends paying for part or all of their legal fees, with 56% having family/friends covering all of their fees.

The three qualitative interview participants with a private representative were all having their legal fees paid by family or friends.

The interview participants commented on the fact that their family and friends were not rich people, and had their own financial commitments – so paying for private legal fees put a financial strain on them.

'[Paying for a private solicitor] - it's a lot for them. Because – bearing in mind, my sisters, they're like teenagers now, and they're not fully grown up yet, you know what I mean? They get pocket money and stuff like that. And get taken to school and dropped off. So it's a bit... it's a lot for her [my step-mother]. Coz when I've been detained my dad died and all, my dad passed away. So it's been very hard on her' (CA).

'I called many friends, but this friend it's hard, but they not have money, but they try their best to pay a solicitor' (BR).

'...it was a problem because he [my friend] has also got a family to take care of. So after a few words and a few conversations he sort of agreed with me. He is a poor man but you know he is doing his best to get me out of this situation' (BE).

Two interview participants commented on the fact that being in detention made it harder to get financial support from friends as compared to being on the outside:

'When you are detained people think, you know, there is no hope. So even if you are trying to get help from friends and relatives out there, it becomes a problem...All the time when you call them for help it becomes a problem because they think that even if they help you, like in the form of a loan, and you are sent back home, they are going to lose the money' (BE).

'Here it's very difficult, it's very difficult.... If you go outside you can contact some friends, they can help you.... But here it's very difficult, you can't do, you can't do nothing' (BR).

Building up debt

All interview participants with private representatives said they hoped to be able to pay their family and friends back in the future for the money being spent on legal fees. For two this seems out of moral obligation, but one had entered into a more contractual relationship:

'I have asked one of my cousins, you know to finance for this, but I have to pay him back when I'm out. It's not free, it's not something he is doing for free. He is paying for me because he knows I am going to come back out. I have been able to convince him that I will be out. So he has done the thing so I will repay him, I will reimburse him later on' (BE).

Another interview participant, not himself privately represented, observed that *'some people, you know, they get themselves seriously into debt'* (JD) when attempting to pay for private solicitors.

It is a concern that one of the impacts of LASPO may be encouraging people to take on debt to try and pay for legal advice.

Illegal activity as a result of desperation

One interview participant discussed the fact that people in detention were turning to illegal activity – specifically, selling drugs – as a way of funding private solicitor fees.

'At the place where I am [in detention] now, I know a good 4 people, yeah, that their families aren't here or cannot afford it [to pay a solicitor]. And they are forced to sell drugs. And I say to people 'why are you doing that?'... And it's like 'nah, I'm not trying to make money, I'm trying to pay the solicitor...I've seen like decent people who didn't even go prison ending up being like that... And they just started [selling drugs] from the detention centre, because they don't have the money. And if they have to get money to go to court...then they have to try and get the money somehow' (CA).

It is not surprising that people in detention, with limited financial means and no other way of earning money, might turn to illegal activity to fund solicitor fees. This is an indicator of the level of desperation many people in detention feel as they try and fund their immigration cases through whatever means possible.

Whilst it is likely that people in detention have always to an extent relied on family and friends to support them with legal fees, with some also taking on debt or resorting to illegal activity to pay private solicitors, it is likely that LASPO has increased the prevalence of this due to increased numbers of people left with no alternative but to use private solicitors if they want legal representation.

Photo by Isabelle Merminod

iii. Limited and uncertain representation

Uncertain future funding

One of GDWG's concerns around the use of private solicitors by people who have very limited means to pay is that people do not always have enough money to continue paying for the next stage of their case. This in effect risks leaving them without representation.

Case Study: No further funds to challenge Removal Directions

CB, one of the interview participants, had lived in the UK for fifteen years and had three children under the age of eighteen. He did not have a legal representative when he was interviewed for this research, but subsequently instructed a private solicitor. The solicitor made submissions to the Home Office on the grounds of his private and family life, which were refused. CB was subsequently issued with Removal Directions. GDWG spoke with CB eleven days before his flight, and he said he thought the private solicitor was trying to challenge the removal. We spoke with him again four days before the flight. The solicitor had just quoted him £700 to challenge the removal directions - he had not been aware that he needed to pay this amount for them to take action. He did not have any further funds to pay the solicitor, and although he desperately tried to get the money together from family and friends he was unable to. He was removed.

The interview participants with private legal representatives were asked if they were confident that their family/friends had the funds to continue pursuing their case if they were refused at the current stage. One participant said it would not be possible, one expressed the view that he did not know how he would get the money together but would try somehow:

“ I don't know how, but I want someone to represent me – I don't have any choice. I don't have any choice, but I don't want to go to myself, I want someone to represent me (BR). ”

Strength of case limited by funding constraints

Another of GDWG's concerns around the use of private solicitors by people with very limited means is that although they may have the funds to pay for some private representation, they may not be able to afford all of the representation that they need.



Case Study: Limited funding for linked family and immigration case

BR has a wife and three children in the UK, aged ten, eight and four years old. He has been detained under immigration powers for over a year. When he was first detained his wife brought his children to visit him regularly, however over time his detention put a strain on their relationship. The relationship eventually ended. Recently BR's wife started a new relationship and has cut off contact with him, preventing him from having any contact with his children.

BR is aware that he needs a family solicitor to assist him with regaining contact with his children. However, he is receiving financial support from a friend to pay his legal fees and cannot afford to pay both a private and a family solicitor.

“ [My GDWG support worker] did give me one solicitor family, one family solicitor. But it's expensive. He charge me 1200 something, and I don't have money to pay. I want to fight my immigration case, deportation order. But... the problem is money, I don't have money for pay solicitor.

BR has decided to prioritise his limited funds on his immigration case, and not pay a family solicitor to pursue contact with his children. However, BR's immigration case is largely based upon his private and family life in the UK (Article 8 grounds), so his family case and immigration case are intrinsically linked – whether he has contact with his children has an important bearing on whether he has grounds to stay in the UK.

BR's story illustrates that in situations where the capacity to pay private fees is limited, there are often difficult decisions to be made about what to spend money on, and this can reduce the overall strength of the case. In BR's case, the fact that he cannot afford to pay a family solicitor in turn is likely to reduce the strength of his immigration case. Similarly, if someone has a private solicitor but cannot afford to spend money instructing an expert (for example an independent social worker or forensic psychiatrist) to provide evidence in relation to the case, the overall strength of the case is potentially reduced.

iv. Concerns around quality and exploitation

In GDWG's work with people in detention we find the quality of private immigration advisors is highly variable. Whilst there are some very good private representatives, there are also those of worryingly poor quality, some of which charge significant sums whilst doing very little or inadequate work. GDWG had concerns that people desperately trying to get legal representation are often not sure how to establish whether their solicitor is good quality, and may also be vulnerable to exploitation from some unscrupulous private solicitors.

'So how come legal aid, they cut it in one sense, OK, they cut it, but they allow these sharks [private solicitors] – they're like sharks, sorry but they're like sharks, they're preying on the vulnerable. They know – especially if you're Asian or African, I've seen that...They're exploiting the system' (JD).

'Before I pay one solicitor, I gave him £200 and he did not do nothing. When I call him... I lose that £200' (BK).

The combination of the qualitative and quantitative data indicates that although many of the people fully or partly out of scope for legal aid are using private solicitors as an alternative, this does not imply that private solicitors have satisfactorily 'filled the gap' left by reduced access to legal aid. The strain of trying to pay private solicitors fees appear to be largely borne by family and friends, many of whom are themselves poor, whilst others are getting into debt or resorting to illegal activity to fund solicitor fees. Limited funding may result in limited or uncertain representation, with people unsure if they will be able to continue pursuing their case, or making difficult decisions about what to pay for that might reduce the overall strength of their case. There are also concerns about the quality of private representation, and of exploitation by unscrupulous private solicitors.



Artwork by Brook House detainee Ridy

d. Self-representation: A last resort

i. No other option

The results indicate that some people partly or fully out of scope for legal aid are self-representing as an alternative, but this is very much seen as a last resort.

30% of total survey respondents said they were representing themselves for their immigration case. A slightly higher percentage of people with out of scope or mixed cases said they were self-representing than those with cases fully in scope (32% of those with out of scope or mixed cases, 26% of those with cases in scope). This suggests that some people with out of scope immigration cases are self-representing as a result of not being able to access free legal advice, but it seems people partly or fully out of scope for legal advice are largely switching to private representatives, rather than self-representing. This may be in part because of barriers to self-representing, which came up strongly in the qualitative results.

We interviewed five people who had experience representing themselves for their immigration cases, four of whom were self-representing currently. We also interviewed one person who had decided not to fight his case and return home voluntarily due to the barriers he perceived with self-representing. The three interview participants with private solicitors were asked if they had considered representing themselves.

As discussed above, EEA nationals were twice as likely to be self-representing as compared to non-EEA nationals. 54% of the EEA nationals surveyed were representing themselves for their immigration case – as compared with 27% non-EEA nationals.

All of the people with experience representing themselves had done so as a last resort, as a result of being out of scope for legal aid and unable to afford private legal fees.

'I've seen Duncan Lewis, which asked me for £4500 to do all my legal papers and all my appeal, and I said thank you very much but no....if I have the money then obviously I'd pay' (JD).

'If I did have the privilege from Immigration to work, I would have been able to, you know, I would have saved money and obtained a private solicitor... if I had the privilege to work then things would have been much easier for me, but I was never given that privilege, but I was given the privilege to go and bond with my child' (JI).

'I'm not earning a lot of money or anything like that... For the people...that has been locked up, or has been detained for years now... how are they going to have money? Where... they're not going to even see that money, they must have spent all their money by now. How are they gonna pay for a solicitor?' (CI).

One interview participant was unable to cover private solicitor fees because his savings had been appropriated by the Home Office.

'...my solicitor... I couldn't afford to pay him coz the Home Office take away some money that I had saved...' (CM).

He had been working without the correct documentation to support his wife and three children. Such earnings are classified as 'proceeds of crime' and are liable to be appropriated under the Proceeds of Crime Act 2002.

All of the participants wanted legal representation, but had been unable to obtain it and saw self-representation as the only remaining option.

ii. Barriers to self-representing

Lack of legal knowledge and expertise: 'I don't know what to do'

All interview participants with experience representing themselves discussed difficulties associated with a lack of legal knowledge or expertise, often expressed as 'I don't understand', 'I don't know' or 'I don't know what to do'.

'It's kind of hard because you don't really understand, so you have to have someone to put it in the right perspective for you, for you to understand what's... like certain of the rules, you don't really understand' (CM).

'You know, I don't know the English law and, you know, a solicitor is better, he can do everything, he can do everything right not like me' (KA).

'You can't do building job if you are artist... you're representing yourself and you don't know nothing' (EA).

This included not being aware of the kind of evidence needed to support their case.

'I didn't have nothing on me [in court]. This is another thing, you know – I had no paperwork on me. Yes, I had the paperwork what I done in prison, I had references from officers – that's it. I had no tax records, I had nothing on me, and I still sat there...I didn't realise [what paperwork I needed to bring to court]. I had no legal representation so I didn't know nothing...' (JD).

Several mentioned the fact that immigration law is complex, and changes frequently.

'And plus the laws have changed along, so I've heard. There were some changes in 2004, then there was further changes in 2009, due to the other countries that joined the EU, along specially East European countries, so they made a few changes' (LA).

'They change it [the law] every minute. One minute it's this and the next minute it's that. It don't stay one thing for long' (CM).

One participant felt that the Home Office representative tried to take advantage of his lack of legal knowledge and expertise:

'...the Home Office, they know you haven't got no legal representation, so they're just there, they're like...a pack of wolves around a sheep, you know... they don't even try to talk to the judge in the simple context what I can understand, no, they just talk about legal paradoxes where I am not able to understand...' (JD).

Language barrier: 'It's already difficult – even if you're fluent in English'

All of the interview participants had relatively good levels of English. However, several mentioned the language barrier as an issue for other people in detention trying to represent themselves, including a lack of resources available in other languages.

'...those people who couldn't afford to have a private solicitor, they were going to the library and reading books about immigration laws and all that so they could understand a little bit about the law, the immigration law, so they could represent themselves. Which, you know, for certain people can be difficult. It's already difficult – even if you're fluent in English. But there's cases of people that they're not fluent in English, they can't find the books in Portuguese, about the law, etc etc. So there's always little obstacles that come your way and make the situation more difficult' (LA).

'If you're able to actually speak English and understand what's going on it's not so bad, but I'm pretty sure a lot of people will not even go through with it, they don't even fill the appeal papers or go for the appeal' (JD).

Learning difficulties

One interview participant, who had a private representative, specified his learning difficulty as a reason that he felt unable to represent himself effectively:

'I'm dyslexia, so most of the stuff that they [the courts] might say might be hard to understand...' (CA).

iii. Detention: 'Everything is limited'

As well as general barriers to self-representation all interview participants with experience representing themselves felt that being in immigration detention presented particular barriers to preparing their case effectively.

Difficulties collecting evidence from the outside

The majority of interview participants with experience representing themselves had difficulties obtaining evidence to support their case, such as tax records, pay slips from former employers and children's birth certificates. They felt that obtaining such evidence was more difficult from inside detention.

'Collecting the evidence. That's another of my problems. Because being in detention, you can't go anywhere. Like, if I would be able, if I was outside and I could go to the tax office, I could get whatever exactly I need' (JD).

'...because I am in detention I can't get all paperwork that I need from outside' (KA).

Several participants said that collecting evidence required assistance from people on the outside of detention. This suggests that for people without family or friends in the UK, collecting evidence is even more difficult.

'If you want anything or have any problems, you get someone outside to go and get them, or pay someone to go do something for you on the outside. But if you're outside now and preparing a case, you can move freely and do what you need to do for yourself' (CM).

'It can even be more difficult if you haven't got no one outside that can help you with that, because there are people here, migrants, that they are on their own, they might have a couple of pals outside but it is not people qualified... or let's say involved enough with that person so they can go and do that work for them' (LA).

One interview participant specified that some evidence needed to be collected in person, so family or friends could not assist even if they were willing to.

'Loads of places ask for me - she [my partner] can't take the papers like my papers from the [job] agency and stuff like that' (KA).

Restricted internet access

Two interview participants mentioned internet access in detention as another barrier to collecting evidence. Many websites are blocked in detention centres, including sites that may be relevant for gathering evidence such as news websites and social media (APPG on Refugees & APPG on Migration 2015: 43).

'My visitor, one day, she came to visit me and she gave me - actually I've still got it on my phone, in a message because she sent me a text message. Some websites for people in detention.... But it was useless, because... I said to her, before she gave it to me - I bet you a pound to a penny they're gonna be blocked. And it was' (JD).

'...you can't use the proper internet - everything is limited... they're blocking you' (EA).

Limited access to electronic devices

One participant had experienced difficulties compiling evidence and submitting it to the Home Office due to limited access to electronic devices in immigration detention - specifically, through obtaining evidence from his iPhone (see case study below). Other electronic devices that may be helpful to extract and submit evidence, such as cameras and memory sticks, are also prohibited in detention.



Artwork by Brook House detainee Ridy



Tinsley House



Case study: Confusion and desperation around self-representing

Jl is originally from Botswana. He has lived in the UK for ten years, and has a two year old daughter. He has been detained under immigration powers for seven months. He has seen legal aid solicitors from two different firms at Brook House, and been advised that his case is out of scope for legal aid. GDWG caseworkers have referred him to several pro bono organisations but they have not had the capacity to assist with his case. He was prohibited from working when he was living in the community, so has no means of paying for private representation. Jl has been attempting to prepare his Article 8 claim by himself. He has experienced multiple barriers to collecting evidence whilst in detention. For example, he had several hundred photographs of himself with his daughter on his iPhone, along with a number of videos, which he wanted to use to support his case but was not able to access these from detention as camera phones are prohibited. He has been unclear about how to submit evidence and where he should send it. He sometimes contacts GDWG several times a day to ask for assistance or advice around submitting evidence, although we are limited in the support we can give him as we cannot give legal advice. Over time he has become increasingly stressed and anxious about his immigration case. He has trouble sleeping and has started to develop a stutter. He is desperately concerned that he might be removed from the UK and separated from his daughter as a result of not having legal representation for his immigration case.

Advice and support, and its limitations

Of the 25 survey participants with out of scope or mixed cases who were representing themselves for their immigration case, over half (64%) said they had sought information, advice or support: 36% said they had sought help from the Welfare Officer in the detention centre, 24% had sought advice from another detainee, 16% had consulted books, leaflets or other information in the detention centre library, and one had consulted the internet. It seems likely that the low numbers of people seeking support from the internet may be at least partly linked to restrictions on internet usage in detention, as discussed above.

Several interview participants spoke positively about the general support they had received from GDWG, with one participant specifically referring to the support GDWG had given him to obtain evidence from his iPhone to submit to the Home Office.

However, several interview participants referred to some of the limitations in attempting to build up knowledge and obtain support whilst in detention.

Issues mentioned included a lack of awareness and confidence accessing the support available:

'And a lot of people still don't know what's going on as well; they have to go around asking questions, and if you're a person who is shy and afraid to ask for help, you wouldn't know that help is there' (CM);

The limitations of the support that of non-legal support organisations can provide:

'So there's only so much you [GDWG] can do. That's what I'm saying – there's only so much you can do. Because you've not actually, you've not got access to the centres – you come and talk to people, I know, I know – but it's the Home Office's responsibility to actually let... people [...] get the help they need' (JD);

And the lack of advice or support available in detention as compared to on the outside:

'It is difficult to do when you are in the detention centre because you don't have access to all sorts of kind of help. I mean [outside] there's places to go for advice, there's places to go and speak with someone about it, so it's a bit difficult' (JI).

iv. Limited access to justice

For those who are self-representing, the research indicates that there are a range of difficulties including a lack of legal knowledge and expertise, language barriers and learning difficulties. Barriers specific to people in immigration detention include difficulties obtaining evidence from the outside, restricted internet access, and limited access to electronic devices. Many people in detention are proactive in trying to access the limited information, advice and support that is available – but this is fundamentally limited. Immigration cases are often complex and frequently necessitate reading large amounts of paperwork, obtaining and collating evidence and establishing its validity, instructing experts and witnesses, taking statements, cross-examining witnesses in court and having a good understanding of the relevant areas of law. It seems entirely unrealistic to expect people in immigration detention to be able to do this effectively given the barriers outlined above. It seems that meaningful access to justice is significantly compromised for people trying to represent themselves in detention.

For the people fully or partly out of scope for legal aid who have no other option but to represent themselves, it seems LASPO has problematic implications for access to justice.

Perception that LASPO has increased time in detention

This research did not try and assess whether LASPO has had an impact on the length of time people spend in detention. However, several of the interview participants expressed the view that their case had or would potentially be prolonged, and their length of time in detention longer, as a result of not being able to access free legal representation for their immigration matter.

'The problem that occurs is that because you haven't got no one to represent you outside the case is going to take much longer' (LA).

'At least if you were on legal aid, I'm pretty sure it would be quicker to assess, like, my case. Why did they keep me so long, why did they keep me 15 months, trying to...? I think it would be much quicker – my case could be decided, I could be out already' (JD).

'...they [the people without legal representation] just basically wait until when the Home Office is ready to deal with them; they're leaving them for long [in detention]' (CM).

Although the interview participants felt that without legal representation for their immigration matter people were 'left' in detention for prolonged periods, it may be the case that some people are in detention for shorter periods as they are not able to make effective representations around their immigration issues so are removed from the UK more rapidly. Further research would be needed to establish if there is any link between lack of access to free legal advice and the length of time in detention.

Overall, the research suggests that the majority of people whose cases are fully or partly out of scope for legal aid are using private solicitors as an alternative rather than representing themselves, and self-representation is seen very much as a last resort. EEA nationals are significantly more likely to be self-representing than non EEA nationals. For those who are self-representing, it seems that meaningful access to justice is significantly compromised. There are also potential implications for the length of time spent in detention which need further exploration.

e. Pro bono organisations overstretched

80% of organisations providing pro bono immigration advice have noticed a 'significant increase' in demand for their service since the introduction of LASPO.

The research indicates that very few people fully or partly out of scope for legal aid are receiving pro bono representation as an alternative. Just one survey participant was receiving pro bono representation, from Bail for Immigration Detainees, whilst one other had received support preparing his appeal from Bail for Immigration Detainees but had represented himself in court. Both of these individuals were extremely positive about the support they had received.

The support organisation survey results indicate that pro bono organisations have seen demand increase significantly since the introduction of LASPO. Five out of the 14 total respondents for the NGO survey said their organisation provided pro bono immigration advice. 80% of them said they had noticed a 'significant increase' in demand for their organisation's pro bono advice immigration advice service since the introduction of LASPO, whilst one said they had noticed 'some increase'.

It seems that although the work they do is invaluable, pro bono organisations do not have anywhere near the capacity to 'fill the gap' left by the reduced access to legal aid.

Informal pro bono work

It seems likely that LASPO has resulted in an increased amount of informal pro bono work undertaken by legal aid and private advisors.



Case study: Informal pro bono work by legal aid representative

EV, one of the interview participants, was representing himself for his appeal against a deportation order, but had a legal aid solicitor for bail. He was meant to have a Case Management Review Hearing, but this did not go ahead and he was not sure why. His legal aid solicitor agreed to follow this up for him and contacted the court on his behalf, even though this was not work relating to the client's bail matter.

This type of informal pro bono work puts additional pressure on legal aid advisors who are typically already overstretched.

f. Confusion and unclear advice

Of the 80 survey respondents without a legal aid solicitor for their immigration case, 32 had participated in at least one advice session with a legal aid provider whilst in detention. The majority of these (22) were advised that their case was out of scope for legal aid, however five were not sure or were not given a reason why their immigration case had not been taken on, and two had no further contact following the initial consultation. Interview participants also reported varying levels of advice and information provided at legal surgeries.

Some interview participants were given a quote at the legal surgery for how much their case would cost privately, whilst others were not:

'No there was nothing of that sort [information about how much the case would cost privately]. Nothing of that sort happened, no. They said that they were not going to help, they were not going to do anything. All they asked me to do was to sign a document saying they had come to see me and all that' (BE).

One interview participant was given quite clear advice around the possibility of representing himself:

'I said 'So what can I do?' And the person [legal aid advisor] told me well, you have to gather yourself the paperwork that you need, all your circumstances and all the proofs that you would like to present in court. And then you would have to do it yourself, you'd have to go yourself to court or to the hearing, and I would have to represent myself if I wanted to take the case forward' (LA).

However, this kind of advice seemed to be the exception, rather than the rule.

Confusion around what legal aid representatives are assisting with

In GDWG's experience, there is widespread confusion resulting from the fact that although immigration work is excluded from legal aid as a result of LASPO, matters pertaining to the fact of detention (such as Temporary Admission and Bail) are still included. This means that people in detention may have a legal aid solicitor even if their immigration case is out of scope for legal aid, as the solicitor is just assisting with Temporary Admission and Bail. We have encountered several instances of people in detention who are under the impression that their legal aid solicitor can assist with their immigration case when in fact they are only assisting with Temporary Admission and Bail, or are unclear what their representative can and cannot help with.

Some survey respondents expressed uncertainty about what their legal aid solicitor was assisting with:

'He sounded unsure as to whether he had legal help or not because he has not had much contact with his legal aid provider' (Researcher comment on Detainee survey response).

'He said he was confused about what was going on with his case. He mentioned being told by someone today that he would have to provide some money for further legal help, however he stated that the legal representative he had was through legal aid' (Researcher comment on Detainee survey response).



Artwork by Brook House detainee Ridy

One interview participant also reported initial confusion about whether his legal representative could assist with his immigration case or not:

'The first person [legal advisor] I've seen said they could take all my case on legal aid, and then I've seen the actual solicitor, who is now my solicitor for the bail case, who said that actually they cannot represent me for the appeal, because legal aid has been cut once again' (JD).

These results indicate that people who are out of scope for legal aid are not always being given clear advice about what their options are, and there is sometimes confusion about what legal aid solicitors are assisting with.

g. Exceptional funding: an ineffective safeguard

As discussed above, exceptional case funding was supposed to provide a 'safeguard' for cases that fell out of scope for legal aid as a result of LASPO but required public funding to ensure access to justice. However, the legal advisor survey results indicate that this is not serving as an effective safeguard.

None of the eight legal advisor survey respondents who said they attended legal surgeries at Brook House or Tinsley House applied for exceptional funding on a regular basis. This is not surprising: it is not financially viable for legal aid representatives to make exceptional case funding applications on a regular basis. The applications are complex and time-consuming, and representatives are only paid if applications are successful. Two respondents said they never applied for exceptional funding, two said they 'occasionally' applied and three said they 'sometimes' applied¹⁴.

The majority of legal advisors who had applied for exceptional case funding had never been granted it.

Of the seven survey respondents who had applied for exceptional case funding, the majority (4, or 57.1%) had never been granted it, and 3 (42.9%) had only been granted it rarely.

One survey respondent commented on the difficulties of applying for exceptional funding:

'Only one exceptional case funding granted and we had to take the laa [Legal Aid Agency] to court to get it funded. Are currently challenging another' (Legal advisor survey respondent).

There are serious problems in decision-making for exceptional funding applications. In *Gudanaviciene & Ors v Director of Legal Aid Casework & Anor* [2014] EWHC 1840 (Admin), the High Court found that the Legal Aid Agency had made unlawful decisions to refuse exceptional case funding in six test cases (BID 2014a: 4-5). The research provides further evidence that exceptional case funding is not effectively safeguarding access to justice for people in Brook House and Tinsley House with immigration cases out of scope for legal aid.

¹⁴ One respondent skipped the question.

h. 'It's damaging me, from inside': Impacts on Emotional and Psychological Wellbeing

The fourth research question was 'How has LASPO impacted on the emotional and psychological wellbeing of people in Brook House and Tinsley House IRCs?'

The concept of 'wellbeing' is a major focus of social scientific research with a wide range of approaches (La Place et al. 2013). It is used here to report on respondent's subjective interpretation of their own feelings and emotions, in particular the presence or absence of distress.

i. People in detention: stress, powerlessness and cumulative impact

All interview participants said LASPO had a negative impact on their emotional and psychological wellbeing.

To explore the impacts of LASPO on emotional and psychological wellbeing, interview participants were asked whether they thought not being able to access free legal advice had impacted on their feelings or emotions. All interview participants, whether they had legal representation or not, said that there had been a negative impact.

'Stress, stress, stress, stress'

The majority of interview participants described being stressed and/or finding it difficult to cope. This was articulated variously as resulting from the stress attempting to find legal advice:

'I was just stressed [trying to find legal representation], I didn't know what to do, I couldn't sleep... Up til today I'm still not sleeping well' (CA);

Stress raising funds for a private solicitor:

'It's very hard [trying to pay for a private solicitor] – stress, stress, stress, stress' (BR);

Stress associated with trying to represent themselves:

'It's very difficult, it requires a lot of knowledge to understand all things, and a lot of time, you're under pressure you know...it's very hard to deal with that' (EA);

'...it's quite stressful and, it's a bad experience actually' (KA);

And difficulties arising from not having legal representation:

'[Not having legal representation] has had an impact on [my] mentality, it has been traumatising for me...I feel lonely, I feel vulnerable, I feel I don't even have a child out there... What can I say' (JI);

'[Not having legal representation], it's like damaging me, from inside' (EA).

Powerlessness

The majority of interview participants described a sense of powerlessness. They said that decisions they were

making about their legal representation were not out of choice, but because they felt they had no other option.

As discussed above, self-representation was depicted very much as a last resort. The sense of powerlessness for people self-representing was particularly articulated in terms of lack of money limiting the possibilities of getting legal advice:

'...so unless you've got the money to pay a private solicitor, you're stuck...well, like I am. So it's pretty frustrating' (JD).

'...if you got no money you can do nothing, innit? You just in empty place' (EA).

'It's affected me a whole lot because I can't pay for solicitors or represent myself. They [people without legal representation] are less than the bottom of the barrel because they just basically wait until when the Home Office is ready to deal with them' (CM).

The feeling of powerlessness also extended to some of the participants with private representation:

'I want someone to represent me – I don't have any choice [but to pay a private solicitor]. I don't have any choice, but I don't want to go to [represent] myself, I want someone to represent me' (BR).

There was a sense that being in detention increased participants' sense of powerlessness.

'I can't do nothing, I'm in here [detention]. I can't do nothing' (BR).

'...everything is limited in detention, everything is limited' (CM).

Pessimism

Several for the interview participants who were representing themselves expressed pessimism about their own ability, and an overall sense that their chances were reduced as a result of not having legal representation:

'I think I will lose the case because I don't have a solicitor' (KA).

Cumulative impact: 'You got loads of problems...'

When discussing how LASPO had impacted on their wellbeing, and elsewhere during the course of the interviews, several interview participants discussed other issues in detention which had a negative impact on their emotional or psychological wellbeing. This included not knowing when they were going to be released, the length of detention, being separated from their family, and problems with healthcare. This indicates that the wellbeing impacts of LASPO are cumulative: people in immigration detention already have many sources of stress, and detention itself is recognised to have a damaging impact on mental health (Robjant et al. 2009, GDWG 2012). It seems that lack of access to free legal advice, combined with difficulties accessing alternative legal advice – both financial pressure trying to pay a private solicitor, or the pressures of self-representation – are a further stress factor for people in detention, with a negative impact on wellbeing and mental health.

ii Family and friends under strain

Although not an explicit focus of the research, two interview participants discussed the impacts of LASPO on the wellbeing of their family and friends.

Case study: Family members under strain

As discussed above, the research indicates that people with private solicitors are largely reliant on family and friend to pay solicitors fees. CA has lived in the UK since he was seven years old. His father died last year, when CA was in prison. His step-mother is now sole provider for his two teenage sisters. CA spoke with eight different legal aid providers to try and get an immigration solicitor, but when he realised there were no solicitors who could take his case under legal aid he asked his stepmother if she could pay for private solicitor fees. His stepmother agreed, but this has put the family under significant financial strain. CA is concerned about the impact this is having on his stepmother:

“*[Paying for the private solicitor fees], it’s a lot for her [my stepmother]. Coz when I’ve been detained my dad died and all, my dad passed away. So it’s been very hard on her. I was speaking to her earlier, I always try and keep her calm... She’s just stressed right now’ (CA).*

Another interview participant discussed how trying to gather evidence for his case, which he was unable to obtain himself from detention, was putting pressure on his wife who also had two children to care for.

The results indicate that not being able to access free legal advice contributes to stress, difficulty coping and a sense of powerlessness for some people affected by LASPO, and is a further stress factor in an environment that already has a negative impact on mental health. The results also suggest that there may be a knock-on effect for family and friends, although further research would be needed to confirm this.

i. Erosion of trust in the system

The views expressed by detainee interview and survey participants indicate that LASPO is perceived to be unfair, works to the advantage of the Home Office, and is further undermining trust in the immigration system as a whole.

'...if you're representing yourself and you don't know nothing, it's against the human rights, it's against your rights' (EA).

LASPO works in the Home Office's favour

Several interview participants argued that LASPO works in the Home Office's favour: by limiting access to legal advice for people in detention, the Home Office have more power and are more likely to win cases.

'So obviously, the easiest case for them [the Home Office], obviously, is someone who just gets there, who does not know much about the law, about immigration, and sit in that chair on his own - obviously they're going to have a field day because it's pretty easy for them! They don't have to raise much points to show the judge listen, this person he's got no right to be here, he's committed an offence, he's a risk to the public... It's easy for them to just dish it out the law on their own terms, and everything...to their own result' (JD).

'...certain people are just left to do what immigration feels to do with them; just left there' (CM).

Some perceived LASPO to be a deliberate attempt to demoralise and demotivate them, so that they would not continue to pursue their cases:

'...that's what the immigration are trying to do, especially to me I think that's what they're trying to do – make things difficult for me so they can deport me and separate me from my child and my family' (JI).

'...this is just to demoralise you. All this process, all these barriers, it's just to demoralise you. Every single day, everything that happens in here, is just to put you down. Every single thing... They bring people to detention to win one condition, and that condition is to deport them. So they break down everything, they stop everything, until you find yourself close to... thinking oh, I've got to go back' (JD).

'...everything is limited... they're blocking you' (EA).

The idea that LASPO works in Home Office's favour by discouraging people from pursuing their cases was borne out by one interview participant, who said that he had decided not to pursue his case because he was not eligible for free legal advice and felt the barriers were too high to represent himself:

'The main reason [for deciding not to stay and fight my case] was that [lack of legal aid], the main reason was that. There was a little bit of other reasons, but the main reason was that. Because at the time I thought, if there was legal aid, I would have fight it once, and then if I would win, and if the other side didn't decide to appeal, fair play. But if I would win and then they would decide to appeal, then I don't know, I don't know if I would be willing to stay on that battle forever, you know, or for a long time' (LA).

Increased distrust of legal aid solicitors

Several detainee survey comments indicated high levels of distrust of legal aid solicitors. Although in GDWG's work with people in detention, we often hear people expressing distrust or lack of confidence in legal aid solicitors, levels of distrust seem to have increased since the introduction of LASPO. This is unsurprising: people with cases out of scope for legal aid are likely to be told that legal aid solicitors cannot assist them, or that they will need to pay privately despite legal aid solicitors supposedly being 'free'. This fuels the perception that legal aid solicitors are working with the government/Home Office and are not able or do not want to assist people in detention.

'I know that they are working for immigration - how can I trust someone who is working for someone who wants to deport me' (Detainee survey participant).

'90% of people in detention centre saying they [legal aid solicitors] are helping the Home Office, they are not helping [people in detention]' (Detainee survey participant).

It seems that the introduction of LASPO has further undermined trust in the immigration system as a whole, and eroded confidence in legal aid solicitors. People in detention perceive LASPO as unfair and deliberately designed to further disadvantage them in relation to the Home Office. A system of detention and migration control is easiest to operate if those affected by the system can at least acknowledge its justice. Undermining trust in the operation of the system will inevitably make it harder to run.



GDWG quilt project, produced by GDWG volunteers, Pound Hill Junior School in Crawley, detainees in Tinsley House IRC at Gatwick, ex-detainees, and supporters from local Crawley community organisations, on the occasion of Refugee Week 2014. The quilt was sewn to depict Journeys and the Hand of Friendship to those seeking sanctuary in the UK.

j. Beyond Brook House and Tinsley House

The focus of this research was the impacts of LASPO for people detained in Brook House and Tinsley House IRCs. However, we also collected information from legal representatives and support groups working with people in different detention centres. This was to give an indicator of whether the conclusions we drew around the impacts of LASPO might be applicable in other detention centres.

The information provided in the legal representative and support organisation surveys suggest that many of the trends this research observes in Brook House and Tinsley House are applicable elsewhere in the UK's immigration detention estate.

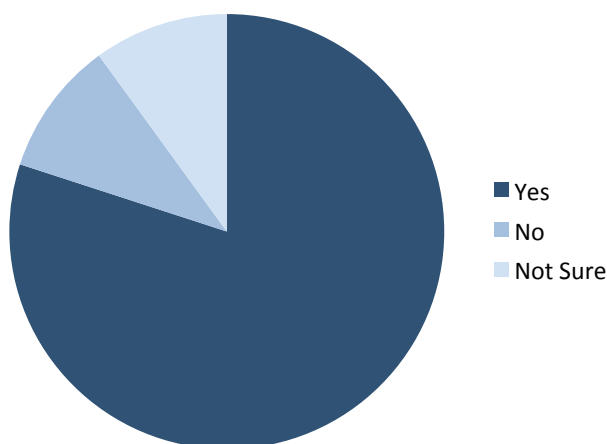
i. Widespread impacts

The information provided in the legal representative and support organisation surveys suggests that the scale of LASPO has been significant for people held under immigration powers across the detention estate:

- 86% respondents to the support organisation survey said that they had seen a 'significant increase' in the number of clients struggling to access legal advice because they are out of scope for legal aid as a result of LASPO.
- 80% of total respondents to the legal representative survey said that their firms were turning down more detained clients for their immigration cases as a result of the introduction of LASPO.
- The four legal advisors who attended legal surgeries in detention centres other than Brook House and Tinsley House said they turned down an average of 3-4 clients per legal surgery – the same as for those attending legal surgeries in Brook House and Tinsley House

Figure 2:

Legal advisor survey. 'Is your firm turning away more detained clients for representation for their immigration cases because they are out of scope as a result of the introduction of LASPO in April 2013?'



Is your firm turning away more detained clients for representation for their immigration cases because they are out of scope as a result of the introduction of LASPO in April 2013?

ii. Significant impact for private and family life cases

Information from the legal representative and support organisation surveys suggest that across the detention estate, LASPO has had a particular impact on people with a private and family life element to their immigration case:

'We regularly assist detainees separated from their families who are unable to pursue family cases because legal aid is not available for Article 8 cases. This is distressing for the detainee and their families' (Support organisation survey respondent).

'[LASPO] has led to large numbers of our clients being unrepresented, particularly those in the Verne who often have strong article 8 cases after long term residency. With so few pro bono avenues available to people we are rarely able to provide such individuals with much help' (Support organisation survey respondent).

'Really vulnerable clients are missing out on legal representations, particular females with children who are facing deportation but only have Article 8 grounds to argue' (Legal advisor survey respondent).

iii. Difficulties finding alternative legal representation

Information from the legal advisor and support organisation surveys suggests that across the detention estate, people detained across the detention estate are struggling to access alternative legal representation:

'Many people who we are unable to assist as they are no longer within scope, are then unable to pay the private fees that we quote. Meaning that these people just go to ground, which rather than addressing the problem is merely sweeping it under the carpet' (Legal advisor survey respondent).

'Our job has completely changed - we used to be able to try to find people lawyers as one of our main tasks, but now the best we can do is refer them to a surgery and even then there is little hope' (Support organisation survey respondent).

iv. Difficulties for clients self-representing

Information from the legal advisor and support organisation surveys confirm the difficulties faced by people representing themselves. These include lack of professional expertise, not understanding the process or documents required, and barriers to accessing support as a result of being detained:

'Detained clients are vulnerable enough and the restrictions that LASPO imposes on these clients further exacerbates their plight. Most of these clients have low level education and they are unable to represent themselves successfully and are unable to put forward cogent and persuasive arguments and therefore their arguable cases might be dismissed purely on the basis that they do not have access to a legal representative' (Legal advisor survey respondent).

'Clients feel helpless as they don't understand the process or the documents that they receive that relate to their appeal' (Support organisation survey respondent).

'I'm told by detainees it is very difficult to progress their cases (even where they can) from an IRC. It would be easier to get any support that they can, from outside and in the community' (Support organisation survey respondent).

'It is impossible for people in detention who now fall out of scope... trying to manouvre (sic.) the legal system without any legal advice is near impossible and is resulting in the break up of families' (Support organisation survey respondent).

v. Ineffectiveness of exceptional funding as a safeguard

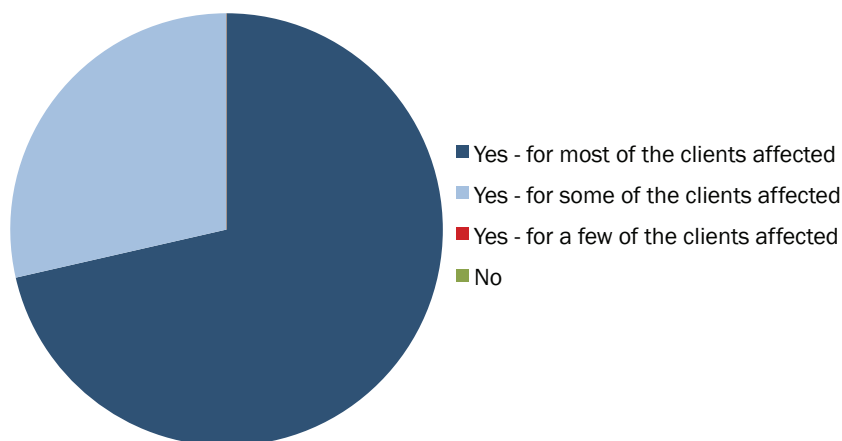
The results of the legal advisor survey indicate that exceptional funding is not effectively safeguarding access to justice for people across the detention estate. 65% of total legal advisor survey respondents had never had exceptional case funding granted for a detained client's immigration case.

vi. Impact on emotional and psychological wellbeing

Information from the support organisation survey indicates that LASPO has had a negative impact on the emotional and psychological wellbeing of people held across the detention estate. 71% respondents said that they felt LASPO has had a negative impact on the emotional/psychological wellbeing of most of the clients affected, and a further 27% said it has had a negative impact for some of the clients affected.

Figure 3:

Support organisation survey.
Impact of LASPO on emotional and psychological wellbeing of clients.



Do you feel that LASPO has had a negative impact on the emotional/psychological wellbeing of some of your clients?

'I have been working with numerous people who are incredibly stressed, depressed and desperate; lots of the people I have worked with are on medication, they feel lost, and angry, and scared at the thought of being split up from their families because they do not have the money to pay for legal advice' (Support organisation survey respondent).

'Clients feel helpless as they don't understand the process or the documents that they receive that relate to their appeal. They are confused, and emotional' (Support organisation survey respondent).

vii. Increased levels of distrust in legal aid providers

One support organisation survey respondent commented on the levels of distrust of legal aid providers, and felt that these levels of distrust were linked to the introduction of LASPO:

'[LASPO has resulted in a]... huge amount of fear and distrust, even when their case is taken on. This fear makes it harder to engage properly with the steps required to take a case forward... LASPO means that more people distrust the rota solicitors, assuming they are working for the Home Office' (Support organisation survey respondent).

viii. LASPO is unfair

Information from the legal advisor and support organisation surveys indicate that like people detained in Brook House and Tinsley House, many legal advisors and support organisation members working with people in immigration detention perceive LASPO to be unfair.

'Detained clients are vulnerable enough and the restrictions that LASPO imposes on these clients further exacerbates their plight... detained clients are at the mercy of the Home Office and there is no one who is able to monitor what the Home Office are doing. This is also dangerous as the HO have omnipotent powers as it is. At least if we could represent these clients then we could challenge the Home Office by way of JRs' (Legal advisor survey respondent).

'In the words of Lord Justice Moses "It is not clear to me how the need to engender public confidence could form part of the justification for discrimination. But they surely form no part of any justification for discrimination amongst those who, apart from that fact that they are "foreign" would be entitled to legal assistance. Certainly it is not possible to justify such discrimination in an area where all are equally subject to the law, resident or not, and equally entitled to its protection, resident or not' (Support organisation survey respondent).

The result from the legal advisor and support organisation surveys indicate that many of the observations made by this research about the impacts of LASPO for people detained in Brook House and Tinsley House IRCs may be applicable elsewhere. However, further research is needed to confirm if this is the case, and to examine if there are any differences in impacts between different detention centres.

5. CONCLUSIONS

Gatwick Detainees Welfare Group



The findings of this research indicate that the scale of the impacts of LASPO have been significant for people in Brook House and Tinsley House IRCs. The results suggest that over three quarters of those surveyed would automatically be disqualified from access to free legal advice for part or all of their immigration case as a result of LASPO, regardless of means or merits; and that over a third of people who attend legal surgeries at Brook House and Tinsley House are being advised that they cannot receive assistance for their immigration case unless they can pay privately.

The results indicate that LASPO has particularly affected people with a private or family life (Article 8 ECHR) component to their immigration case: often people who have lived in the UK for many years, and have families and children here. EEA nationals have also been disproportionately affected, and are significantly more likely than non-EEA nationals to have no legal representative.

It seems that LASPO has not affected the overall levels of people with legal representation, but that most people out of scope for legal aid as a result of LASPO are using private solicitors as an alternative. However, private solicitors have not satisfactorily 'filled the gap' left by reduced access to legal aid. The strain of trying to pay private solicitors fees appear to be largely borne by family and friends, many of whom are themselves poor, whilst others are getting into debt or resorting to illegal activity to fund solicitor fees. Limited funding may result in limited or uncertain representation, and there are concerns about the quality of private representation, and of exploitation by unscrupulous private solicitors.

The results suggest that some people are self-representing as a result of being unable to access free legal advice, although self-representation was very much seen as a last resort. People self-representing in detention faced significant barriers preparing and presenting their case effectively, significantly compromised their access to justice.

Very few people are receiving pro bono legal representation. Pro bono organisations have indicated that they are operating at capacity and are not able to 'fill the gap' let by the withdrawal of state funded legal advice for immigration work.

People who are out of scope for legal aid are not always being given clear advice at legal surgeries, and there is often confusion about what legal aid solicitors are assisting with.

Exceptional case funding is not effectively safeguarding access to justice for people in immigration detention. Many legal advisors are not applying for exceptional funding: and of those who have, the majority have never had exceptional funding granted.

“ I just hope someone actually listens to it. Not just listens, does something about it! (JD).

The impacts of LASPO on the emotional and psychological wellbeing of people in detention have been significant. Respondents described feeling stressed and powerless, and indicated that LASPO was an additional stress factor in an environment that already has a negative impact on mental health. The results give initial indication that LASPO is also putting strain on the wellbeing of people's families and friends.

The introduction of LASPO has further undermined trust in the immigration and legal aid system as a whole. People in detention perceive LASPO as unfair and deliberately designed to further disadvantage them in relation to the Home Office. It has also contributed to increasing distrust in legal aid providers.

Information provided by legal advisors and other support organisations suggest that many of the trends identified in this research are applicable for people in other UK detention centres.

Overall, this research suggests that LASPO has had a significant impact for many people detained in Brook House and Tinsley House, with worrying implications for access to justice. Urgent change is needed to ensure that people in detention, who are already vulnerable, are not excluded from pursuing the legal avenues available for them to regularise their situation.

We hope that the recommendations made in this report are adopted.

6. RECOMMENDATIONS

Gatwick Detainees Welfare Group

For government

- i. Immigration matters should be brought back into scope for legal aid.
- ii. Legal representatives should be paid to make exceptional case funding applications.

For detention centres and the Home Office

- i. Restrictions on internet use should be lifted to allow detainees to fully access all information pertaining to their case.
- ii. People in detention should be granted access to otherwise prohibited electronic devices, e.g. cameras and memory sticks, if this is necessary to provide evidence to support an individual's immigration or family case.

For legal aid providers

- i. Legal advisors should provide clear, written advice at DDA surgeries with the named contact details of the legal advisor and what follow up the client can expect from the surgery.
- ii. Legal advisors should provide clear, written advice at DDA for people who are out of scope for legal aid, advising that case is out of scope for legal aid and outlining the client's options, with a quote where possible for the cost of private work.

7. BIBLIOGRAPHY

Gatwick Detainees Welfare Group

Advice Services Alliance. 2013. LASPO – What You Need To Know. ASA Briefing. January 2013. http://asauk.org.uk/wp-content/uploads/2013/08/LASPO-What-you-need_to-know.pdf. Accessed 11th March 2015.

All Party Parliamentary Group (APPG) on Refugees & All Party Parliamentary Group (APPG) on Migration. 2015. 'The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom,' Joint Enquiry. <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>. Accessed 9th March 2015.

Bail for Immigration Detainees. 2013. 'Summary: Survey of levels of legal representation for immigration detainees across the UK detention estate (Surveys 1-6), September 2013'

Bail for Immigration Detainees. 2013. Notebook for detainees: How to get out of detention' - <http://www.biduk.org/433/how-to-get-out-of-detention/useful-forms-and-the-bid-bail-handbook.html>. Accessed 28th November 2014.

Bail for Immigration Detainees. 2014a. Second submission of written evidence from Bail for Immigration Detainees: Justice Select Committee Inquiry: Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. 1st December 2014. <http://www.biduk.org/sites/default/files/JUSTICE%20CTTE%20-%20VERSION%20FOR%20SUBMISSION%201ST%20DECEMBER%202014.pdf>. Accessed 11th March 2015.

Bail for Immigration Detainees. 2014b. 'Bail for Immigration Detainee's submission to the APPG on Refugees and APPG on Migration's parliamentary inquiry into the use of immigration detention in the UK', September 2014: <http://www.biduk.org/986/consultation-responses-and-submissions/bid-submission-to-parliamentary-inquiry-into-the-use-of-immigration-detention-in-the-uk-access-to-immigration-legal-advice-in-ircs.html> Accessed 28th November 2014.

Dover Detainee Visitors Group (DDVG). 2011. 'Report on the DDA Legal Surgeries at Dover IRC'. September 2011. Fiorni, V.

Garden Court North Chambers. 2012. What an Immigration Lawyer needs to know about LASPO - <http://www.gcnchambers.co.uk/content/download/2438/16602/file/GCN%20Summary%20of%20LASPO%20Act%202012%20re%20immigration%20law-191212.pdf>. Accessed 28th November 2014.

Gatwick Detainees Welfare Group. 2013. Gatwick Detainees Welfare Group: Annual Report 2013. <http://www.gdwg.org.uk/downloads/gdwg-2013.pdf>. Accessed 28th January 2015.

Greater Manchester Immigration Aid Unit. 2014. 'Written evidence from Greater Manchester Immigration Aid Unit (GMIAU) LAS 15': <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/impact-of-changes-to-civil-legal-aid-under-laspo/written/8799.html> . Accessed 14th January 2015.

Hansard. 2011. House of Commons Public Bill Committee debate Session 2010-12: Legal Aid, Sentencing and Punishment of Offenders bill. Committee debate – 10th sitting. Column 419. <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/110908/pm/110908s01.htm>. Accessed 11th March 2015.

Her Majesty's Inspectorate of Prisons (HMI Prisons). 2013. Report on an unannounced inspection of Brook House Immigration Removal Centre by HM Chief Inspector of Prisons. <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/brook-house/brook-house-2013.pdf>. Accessed 28 January 2015.

Immigration Law Practitioner's Association. 2014. 'ILPA submission to the Justice Select Committee for its enquiry: Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012': <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/impact-of-changes-to-civil-legal-aid-under-laspo/written/8928.html>. Accessed 14th January 2015.

Johnson, R. and Onwuegbuzie, A. 2004. 'Mixed Methods Research: A Research Paradigm Whose Time Has Come,' *Educational Researcher* 33 (7): 14-26.

Justice Committee. 2015. 'Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012: Eighth Report of Session 2014-15. <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>. Accessed 10th March 2015.

La Placa, V., McNaught, A., & Knight, A. 2013. Discourse on wellbeing in research and practice. *International Journal of Wellbeing* 3(1): 116-125.

Law Society. 2013. LASPO: Immigration Survey. April 24 2013: <https://www.research.net/r/?sm=fLsZxlxxuqW0tZMA9AVHeaXq0Wh25INuNUyVMTQgnlc%3d>. Accessed 28th January 2015.

Robjant, K., Hassan, R., Katona, C. 2009. 'Mental health implications of detaining asylum seekers: systematic review,' *British Journal of Psychiatry* 194 (4): 306-12.

The Bar Council. 2013. 'Changes to Civil Legal Aid: Practical Guidance for the Bar'. http://www.barcouncil.org.uk/media/201552/changes_to_civil_legal_aid_practical_guidance_for_the_bar.pdf. Accessed 1st April 2015.



Cutting Justice:

The impacts of the legal aid cuts
for people detained in Brook
House and Tinsley House IRCs

May 2015

GDWG | GATWICK DETAINEES
WELFARE GROUP