

# Cutting Justice:



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

Executive Summary





Artwork by Brook House detainee Ridy

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## **Cutting Justice:**

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

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##### **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](http://www.gdwg.org.uk)

[info@gdwg.org.uk](mailto:info@gdwg.org.uk)

Researcher: Lauren Cape-Davenhill

Research assistants: Dan Godshaw, Fiona Naismith and Amy Goodfellow

Supervisor: Dr Michael Collyer

Designer: Randi Sokoloff

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## 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.

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. In the Gatwick Detainees Welfare Group's (GDWG) work with people detained in Brook House and Tinsley House Immigration Removal Centres (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. This study aims to provide further insight into the impacts of LASPO for people detained under immigration powers.

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. RESEARCH DESIGN

Gatwick Detainees Welfare Group

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 telephone survey of 102 current non-priority GDWG clients was conducted to collect quantitative data. More detailed qualitative data was collected from a smaller sample of nine current non-priority GDWG clients, through semi-structured interviews and GDWG case notes.

Online surveys were completed with twenty UK-based legal advisors working with clients in immigration detention, and fourteen members of other UK-based detainee support organisations.

GDWG obtained informed consent from all participants in the research to use their data anonymously.



*Artwork by former detainee Ruben*

## 3. RESULTS

Gatwick Detainees Welfare Group

### a. The impacts of LASPO have been widespread

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.

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.

Before the limitations on legal aid introduced in LASPO, by no means all detainees 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). But now most would automatically be disqualified for access to free immigration advice, regardless of means or merits.

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

**LASPO mainly affects people with an established 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.** Nearly three quarters of detainees with cases partly or fully out of scope for legal aid described themselves as having a private or family life (Article 8 of European Convention on Human Rights) component to their immigration case.

#### 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.

The implications of losing an immigration case in these circumstances are often particularly significant, as the deportation of an adult will result in the separation of a family.

*'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).*

#### 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 detainees 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.

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 noone there' (CA).*

### c. Disproportionate impact on European Economic Area (EEA) nationals

**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. 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.

85% of EEA nationals surveyed did not have any legal representation for their immigration case, and they were nearly twice as likely as non-EEA nationals to be representing themselves.

Prior to the introduction of LASPO, many EEA nationals did have legal aid representation for their immigration cases, indicating that LASPO has restricted access to justice for EEA nationals.

### d. Private representation: a problematic alternative

Many people out of scope for legal aid as a result of LASPO are using private solicitors. With the lack of other alternatives, in the absence of legal aid, paying a private solicitor is often the only option available for legal representation. This has problematic implications.

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.



### The burden of private fees

The strain of trying to pay private solicitors fees is 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.

#### 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).*

### Limited or uncertain representation

Limited funding may result in limited or uncertain representation. Interview participants described being unsure if they would be able to raise the funds to continue pursuing their case, or having to make difficult decisions about what to pay for that might reduce the overall strength of their case.

### Concerns around quality and exploitation

People desperate to get legal representation are often not sure how to establish whether their solicitor is good quality and are vulnerable to exploitation from unscrupulous private solicitors.

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

## e. Self-representation: A last resort

**People in immigration detention face significant barriers to representing themselves effectively for their immigration cases.**

About a third of people partly or fully out of scope for legal aid represent themselves as an alternative, but this is very much seen as a last resort. People in immigration detention face significant barriers to representing themselves effectively for their immigration cases with the result that meaningful access to justice is significantly compromised.

### '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'.

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

Others mentioned the language barrier and learning difficulties as barriers to self-representing effectively.

### Detention: 'Everything is limited'

People representing themselves described a number of barriers specific to immigration detention, which make it particularly difficult to represent themselves effectively:

- Obtaining evidence to support their case, such as tax records, pay slips from former employers and children's birth certificates was difficult from inside detention.
- Restricted internet in detention made it more difficult to prepare cases. 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).*
- Prohibition on access to personal electronic devices in immigration detention was a significant problem for one interviewee: specifically accessing photos and videos from his iPhone.



### **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.

Immigration cases are often complex and 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. For people self-representing in detention, the limitations in knowledge and barriers to preparing and presenting their cases effectively mean that access to justice is significantly compromised.

## f. Pro bono organisations overstretched

Only one survey participant was receiving pro bono legal representation. Pro bono organisations do invaluable work, but are overstretched and do not have anywhere near the capacity to ‘fill the gap’ left by reduced access to legal aid. 80% of organisations providing pro bono immigration advice have noticed a ‘significant increase’ in demand for their service since the introduction of LASPO.

## g. Confusion and unclear advice

People out of scope for legal aid do not always receive clear advice from statutory legal surgeries in detention centres about what their options are. They reported varying levels of advice and information as to whether the representative could take on their immigration case, and what their options were if their case was out of scope.

In addition, there was 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. Consequently, detainees sometimes believe 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.

*‘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).*

## h. Exceptional funding: an ineffective safeguard

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’<sup>1</sup> for those cases that would not be eligible for legal aid but required public funding to ensure access to justice.

Legal advisors rarely applied for exceptional case funding and this was even more rarely granted. **None of the legal advisors responding who attended legal surgeries at detention centres applied for exceptional funding on a regular basis.** This is not surprising: the applications are complex and time-consuming, and representatives are only paid if applications are successful. Of the seven survey respondents who had applied for exceptional case funding, four had never been granted it, and three had only been granted it on rare occasions.

The research provides further evidence that exceptional case funding is not effectively safeguarding access to justice for people with immigration cases out of scope for legal aid.

<sup>1</sup> Quote from Jonathan Djanogly, the Under-Secretary of State for Justice (Hansard HC 2011: Column 419).

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

All detainees interviewed said LASPO had a negative impact on their emotional and psychological wellbeing. They described stress, worry and powerlessness associated with trying to find a legal representative, struggling to pay private solicitors and struggling to represent themselves. They indicated that LASPO was an additional stress factor in an environment that already has a negative impact on mental health:

*'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).*

*'[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).*

They also described LASPO as putting strain on the wellbeing of family and friends, who have the pressure of paying private solicitors fees or trying to collect evidence on behalf of detained relatives in addition to the stress and anxiety of having a loved one detained.

### j. Erosion of trust in the system

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.

*'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).*

Several interview 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).*

Detainees also indicated high levels of distrust and lack of confidence in legal aid solicitors. 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.

## k. Beyond Brook House and Tinsley House

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.

*'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).

*'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).



Tinsley House

## 4. RECOMMENDATIONS

Gatwick Detainees Welfare Group

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

### a. 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.

### b. 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.

### c. 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.



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