‘Fat cat’ lawyers and ‘illegal’ migrants: the impact of intersecting hostilities and toxic narratives on access to justice

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Abstract
This article examines how three spheres of hostility intersect to prevent effective access to justice for those living with insecure immigration status. The neoliberal governance model, the barren justice landscape and the hostile environment are supported by the cynical construction of the ‘fat cat’ lawyer and the toxic ‘folk devil’ narrative of the ‘bogus’ asylum seeker. To the extent that the judiciary have frustrated the more obvious, ideologically driven, attempts to restrict access to justice for migrants, the austerity predicated measures pursuant to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) have completely altered the legal landscape. The analysis is informed by the findings of the ‘Legal advice and support for persons with insecure status’ project (hereafter LAPIS) in Nottingham which explores the challenges faced by service providers and the lived experiences of those with insecurity of status. It is clear that access to justice is a passport to the realisation of other rights, yet participants struggled to access a remedy because legal advice is too often out of reach.

Keywords
Asylum, access to justice, legal aid, destitution, neoliberalism, hostile environment.

Introduction

Access to justice is a fundamental human right and an essential component of the rule of law. The Joint Committee on Human Rights recently observed that for rights to be effective they must be capable of being enforced. Enforcement requires, inter alia, adequate access to legal information, advice and assistance for everyone; a robustly independent judiciary and legal profession and, a “culture which understands the concept of the rule of law, respects human rights and accepts that they will be enforced and which is supported by the Government” (House of Commons & House of Lords 2018, p3). It is axiomatic that restrictions to legal aid in terms of both accessibility and eligibility may endanger the rule of law (The Bach Commission 2017).

Yet the last ten years have witnessed a sustained attack on access to justice in the field of social welfare. The Institute of Fiscal Studies estimates that there has been a 21% cut to public services over this period with a further £12bn cut to welfare budgets still to take place (Smith and Philips 2019). The impact of these cuts is compounded by a £950 million reduction to the legal aid spend (Bowcott 2018). This has had a catastrophic impact on the availability of free legal advice in both the private and voluntary sectors (Byrom 2017; Ministry of Justice 2019). The additional regulation required for immigration advice makes it more challenging for not for profit agencies to plug this gap. For persons living with insecure status the stakes could not be higher. They live in a state of constant anxiety, always facing the possibility of detention and removal. They are unable to work or study and may have reduced English language competency and knowledge of the legal process or their rights. In such circumstances it is unrealistic to expect individuals to assume responsibility for their own legal case.

This paper will argue that those living with insecure status do so at the intersection of three spheres of hostility. Each sphere is maintained through particular toxic narratives that justify discrete policies and practices that constrain and exclude those perceived to be outsiders (be that asylum seekers, welfare claimants, the disabled or Gypsy travellers) from full participation in civil society. Consigned to the margins, outsiders are held up as examples of individuals who have failed to assume personal responsibility. For those living at the intersection of the three spheres, insecurity is a constant, dictating every aspect of their lives. Their opportunity to resolve this insecurity by regularising their status demands accessible and affordable legal advice, something that is increasingly beyond reach.

In this discussion it is important to appreciate that regularised immigration status is a passport to other essential services including non-emergency health care, bank accounts, rented accommodation, driving licences and welfare benefits. Savings to the legal aid budget that depend on restricting access to immigration advice inevitably prolong insecurity and anxiety, generating costs for other agencies further down the line (Low Commission 2014; Organ and Sigafoos 2018).

The first hostile sphere is provided by austerity and neoliberal governance. Although predicated on necessity, austerity can be more accurately viewed as part of wider, neoliberal governance strategy that seeks to promote self-reliance and resilience as alternatives to an

active welfare state (Pikkety 2014; Stiglitz 2013). If conditions among the poor deteriorate, it can be attributed to individual rather than societal deficiencies (Harvey 2007a). The Government's stated position is that individuals should work to resolve their own problems, "rather than resorting to litigation at a significant cost to the taxpayer" (Ministry of Justice 2010, p31). The toxic narrative of 'responsibilisation' is central to this hostility of austerity. The discourse suggests that those unable or unwilling to take responsibility for their personal failings should be excluded from full participation in civil society. Yet it is evident that self-reliance is not easily applicable to those experiencing 'multiple disadvantages' resulting from insecure immigration status (Thomas 2011; York 2013).

The second hostile sphere is the new legal landscape with its particular construction of welfare lawyers (often described as 'fat cats') and their clients. This sphere sees access to justice re-framed as a privilege, one among many public services that are subject to resource constraints and competing public interests. This reframing was criticised by Lord Reed in the employment tribunal fee case of *R (UNISON) v Lord Chancellor* [2017] UKSC 51:

> "The constitutional right of access to the courts is inherent in the rule of law. The importance of the rule of law is not always understood. Indications of a lack of understanding include the assumption that the administration of justice is merely a public service like any other, that courts and tribunals are providers of services to the "users" who appear before them, and that the provision of those services is of value only to the users themselves and to those who are remunerated for their participation in the proceedings" (para.66).

The maintenance of this sphere depends to a large extent on a toxic construction of the legal profession and its clients, most notably in the social welfare sector.

The third sphere, which has impacted on the lives of all migrants since its inception in 2012, is commonly referred to as the 'hostile environment'. Introduced by the then Home Secretary Theresa May, the aim of the policy "was to create here in Britain a really hostile environment for illegal migration" (Telegraph 2012). For many this is synonymous with a series of policy embarrassments, including the Windrush scandal and the Go Home vans, yet other measures introduced pursuant to this policy remain in place and its impact goes well beyond the ill-defined target of 'illegal migration.'

The three spheres of hostility depend on a particular political discourse of assumed competition for finite resources that relies on familiar outsider tropes. The intersection of these spheres is examined with a view to understanding their impact on access to justice. Successive Home Secretaries have attempted to reduce legal remedies for migrants. These measures have included, inter alia, an attempt to remove access to judicial review; a residence test for legal aid; an impossibly high threshold for exceptional case funding, and most recently, restricting access to suspensive appeals. These attempts have largely been thwarted by the senior courts which have drawn on jurisprudence from the European Court of Human Rights, the European Court of Justice and ultimately the common law, to reason that the right to an effective remedy should not be dependent on immigration status (see for example *Gudanaviciene v Director of Legal Aid Casework* [2014] EWCA Civ 1622; *R (On app of the Public Law Project) v Lord Chancellor* [2016] UKSC 39; *R (On app Kiarie and Byndloss) v SSHD* [2017] UKSC 42).

Notwithstanding these judicial constraints, the intersection of these hostile spheres, maintained through toxic narratives, has achieved precisely the same objective, thereby preventing those living with insecure status from accessing an effective remedy to regularise their stay. This has occurred in plain sight without significant critical attention. Harvey (2007b) explains that as a system of thought becomes dominant, the articulations of fundamental concepts are embedded in common sense understandings so that they are taken for granted and beyond question. The ministerial response to the recent UN Rapporteur on Poverty's report illustrates this normative shift (Alston 2018; UNHRC 2019; Booth 2019). The creation and isolation of the 'other' is essential to the maintenance of this orthodoxy. As Venn (2019) suggests, this is a closed ontology that does not admit entry. The 'illegal immigrant' makes the perfect scapegoat: lacking political and social capital they are hidden and excluded from civil society. They are effectively silenced by their absence of status.

The LAPIS study

The following analysis is informed by data gathered in the LAPIS project which sought to better understand the experiences of those living with insecure status and the challenges faced by the not-for-profit sector when they delivered services and support to persons without immigration status in Nottingham (O'Nions et al 2020). Phase 1 of the study consisted of telephone questionnaires with over seventy organisations that were identified as having regular interaction with migrant communities in the city (ranging from community groups to advice

providers). This enabled researchers to identify eight organisations that had a significant role in supporting and advising those living with insecure status. Phase 2 consisted of face-to-face, semi-structured interviews with representatives from these eight organisations lasting between forty and ninety minutes. They were asked to reflect on the barriers their organisation faced when supporting their clients and to consider improvements which could help them to address these challenges. The findings from Phase 2 informed the final phase which investigated the lived experience of fourteen individuals who lived with, or had previously experienced, insecure status. As the study sought to better understand the lives of participants from their own perspective, a phenomenological approach was adopted for the interviews (Bevan 2014). This took the form of semi-structured conversations with fourteen participants, lasting between 30 minutes and two hours. The interviews were transcribed verbatim and thematic analysis was then applied to identify common experiences and challenges (Alhojailan 2012; Evans and Lewis 2018).

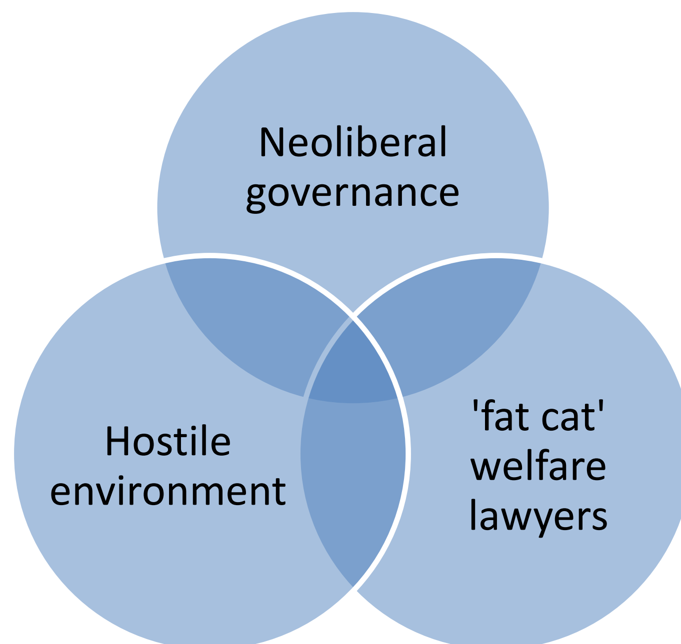
A small number of participants were pursuing legal challenges and were in receipt of basic support and accommodation. Although the members of this group were not insecure in a legal sense, they considered themselves insecure due to the precarious circumstances of their daily lives and their uncertain future. The small amount of state support, which has recently been increased from £37.75 per week for a single adult to £39.60, prevented them from being able to meaningfully participate in society. One of the participants had been waiting 14 months for an initial asylum decision. Five of the participants had been living without any legal status for over a decade. The participants were not known to each other, having been recruited through a variety of support networks across the city, yet their experiences showed underlying similarities that informed and extended existing understanding.

Most of the participants were educated beyond secondary level and had professional qualifications including accountancy, social work and medicine. Their inability to work or study was a source of great distress and had resulted in destitution. Those without any status relied on charities for food and clothes and a monthly cash allowance of £10 provided by a local charity. A small number who were currently pursuing fresh claims after a period of destitution were now housed by another local charity. One had received an eviction notice and others were either street homeless or dependent on friends, family members or good fortune (in the sense that their occupation was tolerated by the relevant authorities). During the twelve months of our project, two participants received leave to remain, one received a final refusal

and another secured evidence that enabled the submission of a fresh claim after three years of homelessness. Their stories revealed an existence that is hidden and hyper-precarious, amounting to what Agamben (1998) famously described as a state of 'zoe' or bare life.

The three intersecting spheres forming the basis of this analysis are represented in the following Venn diagram. Whilst each sphere has its own discrete impact on the lives of persons living with insecure status, it is the cumulative impact provided by their intersection that results in the almost total denial of access to justice.

Intersecting hostilities and toxic narratives



i) Austerity and neoliberal governance

In *Undoing the Demos*, Wendy Brown (2017) argues that neoliberalism becomes a normative sphere of reason that submits every sphere and activity to economisation. Those who have no economic value find themselves disempowered and excluded. The asylum seeker and the welfare dependent detract from the seemingly unqualified good of market growth. The impact of exclusion on the need for recognition and self-esteem is beyond the scope of this paper but it has received considerable attention from thinkers, largely drawing on the work of Hegel (1997). Honneth observes that self-esteem, self-respect and self-confidence are all crucial to the formation of our identity. All require an inter-subjective recognition to flourish but self-respect is particularly relevant in this context as it is maintained through legally

institutionalised relations founded on universal respect. Without recognition our sense of self is diminished and over time this may result in a loss of identity and purpose. Fineman's argument (2011) that we are all inherently vulnerable is never examined as vulnerability is depicted as, prime facie, weakness driven by poor judgement. The political dimension of neoliberalism centres on an autonomous, distinctly separate individual who is capable and ultimately responsible, through rational choice, of determining the direction of their lives. The costs of individual failure are borne by the taxpayer; presenting a competitive, insider/outsider dynamic. The exclusion of the outsider helps to shore up a civil society that appears to struggle with an absence of shared values, reminding us of the consequences of personal failure and poor choices.

The impact of cuts to local authority funding and welfare services has been well-documented. In the last decade, over half of the not-for-profit legal providers have closed, notwithstanding considerable, growing demand for their services (Bowcott 2018; Ministry of Justice 2019). Welfare specialisms have been supplanted by general advice and signposting as volunteers replace professionals and services are discontinued or rationed (Kirwan 2017; Flynn and Hodgson 2017; Law Centres Network 2018). Research by Refugee Action found that 87% of organisations providing frontline services found it more difficult to refer people to solicitors compared to 6 years ago. A fifth of law centres closed and 64% of not-for-profits ceased providing legal aid representation for immigration and asylum cases between 2005 and 2018 (Refugee Action et al 2018). In Nottingham, a significant dispersal city accommodating around 1,000 asylum seekers at any time, there are no longer any not-for-profit agencies providing free asylum or immigration advice (outside the funded EU settlement scheme). The pattern is replicated in other large cities (Organ and Sigafoos 2018; Emanuel 2019).

These cuts have been accompanied by a responsibilisation discourse that seeks to push self-reliance (Sommerland and Sanderson 2013). Kirwan argues that underpinning legal aid cuts, there was an assumption that voluntary agencies could simply step in and fill the gaps (2017, p179). The emptiness of David Cameron's 'big society' vision exemplifies the discourse of responsibilisation which has supplanted the social justice rights conceptualised in TH Marshall's definition of citizenship. Marshall (1950) included the assertion of one's rights and due process as key ingredients of social citizenship. By excluding the most vulnerable from one of the three pillars of citizenship, their active participation in civic life becomes impossible.

The responsibilisation discourse is apparent in the decision to remove immigration cases from the scope of legal aid through LASPO. Yet as practitioners know only too well, immigration law is far from straightforward and easy to navigate (Thomas 2016). The Immigration and Asylum tribunal adopts an adversarial method of adjudication which means that self-representation, even with the support of activist judicial intervention, is unlikely to produce a satisfactory outcome (Thomas 2011). Furthermore, the migrant client is not a model consumer i.e. "someone with reasonable understanding who has problems around the margins of their life" (Sommerland and Sanderson 2013, p318). This client may not speak English, let alone understand how to navigate the immigration rules and extensive Home Office guidance.

The internalisation of the same responsibilisation discourse results in the most vulnerable members of society blaming themselves for their inability to progress to a state of self-sufficiency. This offers a convenient opportunity to a government seeking to distance itself from responsibility, as illustrated by Home Secretary Priti Patel's denial that ten years of austerity policies were to blame for rising poverty (Tidman 2019). UN Rapporteur, Philip Alston, recently challenged the Government's narrative of the inevitability of austerity, suggesting that cuts to welfare were part of a 'commitment to achieving radical social engineering' (Alston 2018). This is further evidenced by the absence of any impact assessment measuring the likely consequences of legal aid cuts (House of Commons Justice Committee 2015, para.87).

ii) The 'fat cat' lawyer and the bogus client

There has been little attention paid to the impact of LASPO beyond the profession. This is in part attributable to the framing of legal aid by the then Justice Secretary, Kenneth Clarke. Clarke extended Lord Irvine's 'fat cat' criticism of private providers who charged comparatively high fees, to those working in the field of publicly funded social welfare. The resulting proposals were condemned by senior judicial figures, including Lord Wilson and Sir Nicholas Wall (Doughty 2010; Phibbs 2010; Gibb 2010), but the message resonated beyond the profession. Byrom suggests that Clarke and others were able to capitalise on low levels of public sympathy for lawyers, undoubtedly aided by the public's limited understanding of legal process and the value of law in securing and defending rights (2017, p227). The cost of legal aid was compared unfavourably to other jurisdictions, notwithstanding their very different legal systems. Again, it is important to emphasise how both the assumed competition and responsibilisation discourses impact on this construction of legal aid as a public benefit.

To make the attack on justice more palatable, ministers re-framed both welfare and justice as privileges, enabling them to deny the broader public interest in providing affordable, effective remedies. When it comes to immigration this framing has been taken a step further as legal remedies are portrayed as directly oppositional to the interests of responsible tax-paying citizens. Successive governments have sought to restrict legal aid to nationals, resorting to inflammatory language that demonises those pursuing a remedy and their representatives. When proposing the residence test for legal aid (subsequently declared unlawful), Chris Grayling MP wrote in the Daily Telegraph: "We must stop the legal aid abusers tarnishing Britain's justice system" and asked "why should you pay the legal bill of people who have never even been to Britain?" (Grayling 2014), blaming 'left wing lawyers' for challenging the legality of the measure. Theresa May MP blamed the judiciary for ignoring the will of Parliament when "putting the law on the side of foreign criminals instead of the public" (May 2013, Col 156). In a subsequent Daily Mail article, she portrayed herself as a warrior in the battle to protect Britain from foreigners and liberal judges (May 2013, para 1). When announcing the hostile environment's flagship 'deport now, appeal later' policy, May made explicit reference to alleged abuse of the appeal system by both greedy lawyers and their underserving clients:

> "...the Bill will cut **abuse** of the appeal process. It will streamline the labyrinthine legal process, which at present allows appeals against 17 different Home Office decisions—17 different opportunities for immigration lawyers to cash in and for immigrants who should not be here to delay their deportation or removal….We will also end the **abuse** of Article 8." (House of Commons 2013, col 158)

More recently, Conservative MP Philip Davies described the Legal Aid Agency's decision to fund Shamima Begum's citizenship deprivation appeal as 'absolutely disgusting', denouncing her as someone who "has been allowed to sponge off taxpayer's money" (Camber 2019, Para 21). Begum is not a foreigner. She was born British, so the deprivation of citizenship depends on her possessing an alternative Bangladeshi nationality. She has never been to Bangladesh and Bangladeshi authorities may well seek to apply the death penalty if she is convicted of terrorism charges. A right to access an affordable legal remedy could not be more significant. Yet, Conservative MP Tom Loughton described Begum as "playing the victim card" (Camber 2019, Para 23).

So far, the courts have curbed the most obvious incursions into the right to an effective remedy. They have consistently ruled against rules, guidance and legislation that violate fundamental rights, the rule of law and the principle of non-discrimination. But language matters, especially in the context of immigration. Inflammatory language supports a narrative that is factually inaccurate and potentially dangerous in that it infects public understanding and heightens sensitivity to the topic (Perez 2016). An obvious example is provided by the Brexit referendum and the following rise in reported hate crimes. It has been suggested that hate crimes increased more significantly after the referendum than following the terrorist attacks in Manchester and London (Divine, 2018). Divine concludes that media coverage of immigration played a 'fundamental role' when connecting 'meaningful democratic events' with 'prejudicial violence'. The UN Committee on the Elimination of Racial Discrimination has also recognised the extent of racial prejudice towards migrants in the British media (2016, para 13). Their most recent report described the referendum campaign as "marked by divisive, anti-immigrant and xenophobic rhetoric" which politicians failed to condemn, resulting in the creation and entrenchment of prejudices "thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities and people who are visibly different" (UN, CERD para. 15).

iii) The hostile environment

Introduced in 2012, the hostile environment may be one of Theresa May's few lasting legacies. Relying on the discourse of assumed competition for limited public services, May justified a series of measures directed at those illegally present as a matter of fairness:

> "Most people will say it can't be fair for people who have no right to be here in the UK to continue to exist as everybody else does with bank accounts, with driving licences and with access to rented accommodation. We are going to be changing that because we don't think that is fair" (Travis 2013).

One of its early manifestations was the spectacularly unsuccessful 'Go Home' vans which were introduced along with leafleting and newspaper campaigns to target those living illegally. The vans were ruled to have breached advertising standards guidance and resulted in the departure of only eleven people. The impact of the vans and the message of hostility were evidenced by

the 1500 texts received by the Home Office, two-thirds of which constituted false accusations (BBC News 2013).

The hostile environment is most commonly associated with the Windrush saga, which resulted in considerable hardship to many British citizens of Caribbean heritage, including the withdrawal of life-saving medical support and the unlawful deportation of an estimated 63 people (Taylor 2018; Williams 2020). But Windrush is just one example from a series of ill-conceived, poorly drafted and executed measures, many of which were subsequently overturned by the courts. There were attempts to rebrand the policy under Sajid Javid's brief tenure as Home Secretary (Poole 2018). Javid wished to dissociate himself from Windrush and repeatedly referred to a 'compliance environment' but the hostile label has stuck and for good reason (Grierson et al. 2018). One of its most insidious consequences is the extension of the internal border which requires teachers, landlords, bankers, employers and hospital staff to assume an immigration policing role. This has the effect of pushing those living with insecure status further away from essential services and safety nets.

Home Office analysis suggests that the hostile environment has failed to produce an increase in either voluntary or forced returns (Home Office 2019). It has also resulted in protracted legal battles with significant costs to the taxpayer. Most recently the pilot right to rent scheme was found to be unlawful as it operated in a discriminatory manner (*R (Joint Council for the Welfare of Immigrants) v SSHD* [2019] EWHC 452 (Admin). One may be forgiven for thinking that this was precisely the intention of a scheme which required private landlords to undertake a range of statutory checks on the immigration status of prospective tenants. At the very least, the failure to undertake an impact assessment (a familiar theme) or continued monitoring of policies gives the impression that the Home Office was simply not interested in principles of equality and fairness when they are applied to migrants (House of Commons Home Affairs Committee 2018). An independent review of the pilot scheme found that 42% of landlords were now less likely to rent to a person without a British passport even though a passport is not determinative of legal residence (Independent Chief Inspector of Borders and Immigration 2018). In defence, the Government argued that, notwithstanding the hostile environment mantra, they were not responsible for the personal choices of landlords. This was given short thrift by Spencer J who reasoned that the legislation "does not merely provide the occasion or opportunity for private landlords to discriminate but causes them to do so" (para 105).

The response of these landlords exemplifies the normalisation of hostility maintained by toxic narratives. As Venn argues, normalisation comes at the expense of “values of tolerance, empathy, compassion, hospitality and responsibility for the vulnerable” (Venn, 2019). When ministers rely on public opinion to justify restricting rights to migrants, there is a real risk of legally entrenched prejudice. This was recognised by Moses LJ when considering the residence test for civil legal aid introduced in 2014: “in the context of a discriminatory provision relating to legal assistance, invoking public confidence amounts to little more than reliance on public prejudice” ([2015] 1 WLR 251 para 184).

The foregoing discussion indicates that these spheres may present considerable challenges for those seeking to regularise their status. However, it is the intersection of these spheres that has the most injurious impact. This can be better understood by examining the availability and affordability of legal advice and representation in the new justice landscape from the perspectives of both service providers and those living with insecure status.

Intersecting impact

Judicial Review

It is suggested that there has been an incremental impact on access to justice from these intersecting spheres. Due to recent legislation restricting avenues of appeal, judicial review remains a vital last resort for migrants seeking to challenge detention or removal. Limitations on legal aid for judicial review applications mean that representatives only receive funding if there is a strong chance of success, to be determined at the permission stage after lawyers have engaged in significant preparatory work. Judicial review, so essential to ensuring that the Home Office operates within its statutory powers, is consequently under considerable threat as Wilding’s recent research demonstrates (2019). Practitioners expressed difficulties in predicting successful permission applications with much depending on the particular judge. This made them more cautious when accepting instructions and required firms to subsidise permission applications with other work. Respondents also identified significant cash flow problems arising from ‘stayed’ applications which had been grouped behind test cases and delays in receiving payments from the Legal Aid Agency. The executive bureaucracy of the legal aid system is a constant theme in Wilding’s interviews with providers (2019; The Low Commission 2014, p25). Not only is judicial review vital to the scrutiny of decision-making, it also provides the only opportunity for effective supervision of executive over-reach through

the rules themselves (parliamentary scrutiny is limited to the negative resolution procedure). This is evidenced by many of the high-profile government defeats outlined above.

Access to legal advice

The difficulties asylum applicants face in finding a solicitor, particularly to take on fresh claims work and judicial reviews appears to have the same impact as that intended by the proposed legal aid residence test. This is clearly evidenced in the LAPIS study where participants spoke frequently of their difficulties in finding any solicitor who would represent them:

> "Before we got to XXXX [firm] we went to XXXXXX [firm]. No space. XXX [another firm]. No space. So many, no space. A lot of places there's no vacancy. I don't know why. Maybe they have too many worse." (Participant IS30 in O'Nions et al 2020)

The marketisation of justice has resulted in reduced expertise across immigration work (Ministry of Justice 2019, para 289). There has been a 33% reduction in providers completing immigration work in the East Midlands; a 50% drop in the Eastern UK region and a 35% drop in London. Refugee Action recently reported that there are 26 local authorities with more than 100 dispersed asylum seekers that currently have no legal aid provision (Refugee Action and NACCOM). Whilst this is certainly a big problem for new arrivals it is an even bigger problem for failed asylum seekers who will not have the financial means to travel to find advice. One of the participants in the LAPIS study explained that she took advantage of free half hour advice clinics at various solicitors, travelling by bus as far as 80 miles, so that she could best understand her legal options by piecing together the abbreviated (and often inconsistent) advice she received.

Affordability and quality of legal advice

The removal of immigration cases from the scope of legal aid in LASPO means that clients have to find the funds for a solicitor or will need to pursue an application for Exceptional Case Funding (ECF), which is only available to solicitors with a legal aid contract. Although 78% of ECF applications are successful, there is still a very low uptake which may in part be attributed to the inadequate fees for legally aided work and the additional time required to support a client with an application (Ministry of Justice, 2018 para 585; Law Centres Network 2018). It has recently been reported there are particular difficulties in accessing legal advice

for long residence applications for children even in cases where funding has been obtained (Lagrue and Dorling, 2018). In most cases, adults who have been continuously resident for twenty years will need to pay privately for their long residence application and will usually need to pay for additional expert reports. This could leave them with a bill of several thousand pounds, a huge barrier for those who are prevented from working or holding a bank account.

The neat categorisation of cases as either immigration or asylum is highly problematic. Successful asylum cases can lead to an application for family reunion which is regarded as an immigration matter. Many refugees are therefore unable to reunite with their family notwithstanding the inclusion of this right in the International Refugee Convention. They will need to comply with the minimum salary of £18,600, adequate accommodation and English language provisions under the Immigration Rules. Asylum cases can take years to be finally determined, not least because of Home Office delays. When the Home Office disputes the applicant's nationality, they may need to make a statelessness application (an immigration matter). One of the LAPIS participants has been in a protracted nationality dispute for several years and has been waiting over a year for the outcome of a statelessness application. Her lawyer has advised that this is not unusual. Pending the outcome of the statelessness application, she may then need to make a fresh asylum claim. Long residence applications are also regarded as immigration matters, meaning that applicants who have been in the system for many years will need to pay for advice and representation.

Those with complicated case histories find it very difficult to find representation due to the additional costs of unpicking poor advice and addressing adverse credibility findings. In the LAPIS study most participants had originally arrived in the UK as visitors or students before subsequently claiming asylum, often when their leave was about to expire. Very few had appreciated there was a legal right to seek asylum and, crucially, that it was advisable to make this claim as soon as possible. There is an implicit assumption in decision-making that delay equates to illegitimacy, evidenced most clearly in section 8(4) Asylum (Treatment of Claimants) Act 2004 which establishes that the deciding authority will take into account as damaging credibility: 'failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country'. The importance of high quality, prompt legal advice is very obvious here. On more than one occasion participants told us that they had been advised (by solicitors or acquaintances) to wait until their existing leave expired before making a claim.

Those not considered to have provided a completely accurate and full account of past experiences can expect to be refused, irrespective of the strength of their claim. This is perhaps understandable in the target driven environment with its well-documented culture of disbelief. Yet there is no evidence to support the contention that those who do not apply immediately are less likely to be genuine. Furthermore, the negative credibility inference does not reflect the reality of the asylum journey where there is no mechanism for lawful entry (See Simon Brown LJ in *R v Uxbridge Magistrates Court & Another Ex Parte Adimi* [1999] EWHC Admin 765).

The impact of the culture of disbelief on the honesty of the applicant's evidence is worth considering. Several LAPIS participants reflected that they would have been in a better position if they had fabricated evidence or simply lied in order to fit the decision-maker's expectations. It may even be argued that the decision-making process, itself a product of the hostile environment, is incapable of producing a fair outcome. Moorehead (2016) recognises how asylum seekers may engage in deceptive behaviour precisely because they fear return and are trying to second guess a system that is both alien and punitive. Souter argues that the system effectively produces lying through its hierarchy of suffering: "The accusation of the 'bogus' asylum seeker thus becomes something of a self-fulfilling prophecy, as the shortcomings of the system are displaced onto its victims" (2016, p. 9).

Costs paid through legal aid are insufficient to cover anything beyond the most basic advice. Wilding found that for immigration barristers the simplest cases cost around 1.5 times the standard legal aid fee and the costs for solicitors were frequently between two and three times the standard fee (Wilding 2019, p25). Unsurprisingly she observed that poor quality providers were much more likely to thrive in this environment as they capped their work at the standard fee and resorted to tactics such as using lower-waged, lower-skilled staff to complete work. The situation has deteriorated further as a consequence of the new Civil Legal aid (Remuneration) Coronavirus Regulations 2020. The regulations enact a new fee structure which increases the initial hourly rate but significantly reduces the costs recoverable in more complex cases. A simultaneous move to a digital case data system which had been in the early stage of consultation has exacerbated the situation. The pilot study found that cases that proceeded to a hearing under the new system required between four and twelve hours additional work at an increased fee of only £60 (ILPA, 2020). Solicitors have reported that they are now

drafting skeleton appeal arguments without having the necessary expertise as they cannot afford to pay barristers (Hynes and Tomlinson, 2020). The Immigration Law Practitioners Association has described the new regulation as 'not fit for purpose' (ILPA, 2020).
The use of lower-skilled advisors has become a natural survival mechanism for firms struggling to make legal aid pay. The new regulations mean that these advisors are now drafting skeleton arguments without the necessary skills or knowledge. It may also be suggested that migrant clients are more likely to be offered these lower skilled advisors as their limited knowledge of the legal process makes them less likely to recognise (or challenge) poor advice. The marketisation of justice drives a reduction in the availability of higher quality advice to the particular detriment of the migrant client. One representative interviewed by Hynes and Tomlinson accepted that the new regulations would incentivise bad representation as the only way to make a profit is to do the least work possible (2020). Inadequate training, poor quality representation and exploitation of clients have been identified as acute and prevailing problems in immigration litigation for a decade (Thomas 2011; Solicitors Regulation Authority 2016).

Restrictions on legal aid not only deprive individuals of their right to access a remedy, they also operate to diminish and obscure executive accountability in a field where errors and delays are far from uncommon. The Home Office recently abandoned its own six-month target for decision-making in straightforward cases; more applicants will now wait years for a final decision as the number of pending cases has increased dramatically over the last five years (Allison and Taylor 2019). Delays in decision-making also impact on support as vulnerable applicants can be waiting seven times longer than the recommended two weeks, with the result that many more end up destitute and forced into homelessness (Refugee Action 2019). When appeals are taken into account around 59% of applicants are granted some form of protection or discretionary leave. Most asylum seekers will appeal against an adverse decision and successful appeal rates have varied over the last five years between 32 and 40% (Home Office, 2019). The ability to find good, affordable legal advice and representation in the tribunal is therefore essential. Without it, refused asylum appellants may be detained and ultimately removed. The cost of an error arising from poor quality representation or self-representation could not be higher.

An integrated advice model

In 2007 an early advice scheme was piloted which attempted to reduce costs by improving the quality of initial decision-making and linking Home Office caseworkers with representatives who would take a more active role in gathering evidence and supporting their client at the earliest stage. Evaluation of the Solihull Early Advice (2008) project showed a significant improvement in initial decision-making in terms of both the time frame and successful outcomes for clients. It demonstrated the potential for considerable whole-life savings in costs (including accommodation, support and advice) up to completion of the first appeal stage. The interactive nature of the Solihull package was shown to enable greater engagement in the process by all parties, better overall client care, and more productive one-to-one relationships (Aspden 2008). Unsurprisingly the evaluation showed that providers spending more time on cases produced more favourable outcomes for their clients, but crucially this required funding beyond the levels set by the graduated fee scheme that applied pre-LASPO (Gibbs 2010).

The conclusions of the Solihull evaluation showed considerable potential for a new sustainable asylum justice model that would be more efficient and provide better outcomes. However, the Home Office response was less than enthusiastic. Although costs were higher during the first stages of the application they would ultimately be saved through reduced numbers of appeals and quicker, more informed, decision-making. However, the subsequent approach taken by LASPO missed the opportunity for a dialogical asylum model due to an overwhelming concern to secure short-term cost savings. The objectives of LASPO suggest a degree of cognitive dissonance at the heart of the Ministry of Justice. One of the four objectives was to prioritise provision for those that need it most, something that the legal aid system was already supposed to be achieving. The other three related exclusively to reducing costs: discouraging unnecessary litigation at public expense; making significant savings to the cost of the scheme; and, delivering better value to the taxpayer. Had access to justice been removed from its silo at the Ministry of Justice it would have been obvious that cost savings would simply be displaced resulting in additional costs for other departments (Organ and Sigafoos 2018).

Living with insecure status

Cuts to legal aid, reframing of access to justice and the hollowing out of the not-for-profit sector, have had a considerable deleterious impact on those experiencing insecure status. The

LAPIS project began by exploring the challenges facing organisations (including community groups and advice agencies) when trying to support their service users.

Nottingham is one of six dispersal areas in the East Midlands accommodating up to 1,000 asylum seekers at any given time. It is estimated that around 500 are living in destitution but the number of refused asylum seekers is unknown (Nottingham Insight 2019). Nottingham is ranked 8th most deprived out of 326 districts in England. Child poverty and unemployment are much higher than the national average and resources are severely stretched in the city. Much of the support for those living with insecure status comes from community projects and voluntary organisations, notably Nottingham and Nottinghamshire Refugee Forum (NNRF), the British Red Cross, the Nottingham Arimathea Trust and Refugee Roots. NNRF's legal project closed due to lack of funding at the end of 2018 and there is now no free legal provision provided by the not-for-profit sector in the city.

The Phase 2 interviews with eight not-for-profit organisations in the city revealed the impact of budget cuts on the level of support they were able to offer their most vulnerable clients. All representatives reported the same three challenges which impacted on their ability to provide adequate support for these clients: access to adequate and consistent funding; a general absence of resources (such as referral options); and difficulties in supporting clients who needed legal advice. Respondents recognised that their clients had a variety of complex needs. These typically included inadequate financial resources, limited English language and very poor understanding of their own rights or entitlements. Their clients' ability to navigate the immigration rules by themselves was clearly compromised. Their responses pointed to the overwhelming demand for legal advice as a passport to other rights but also to the need for related support that could help clients access information about matters including healthcare, cultural events, travel, language support and money management (Rice, 2017). Several respondents spoke of the challenges in assessing the needs of service users who might possess several lever arch folders full of documents about their case. A large part of their role was to plug the justice gap by assisting service users to better understand their legal position and their options. This often necessitated the unpicking of previous legal advice:

> "when people do present to us there is often a lot of unpicking which needs doing and at that point a lot of people have already lost their credibility with the Home Office in

> terms of their application, because of poor legal advice beforehand” (participant D4 in O’Nions et al, 2020).

At the same time the representatives acknowledged that they were legally prohibited from providing even the most basic advice (such as which form to complete). This could be a source of frustration for both representatives and the service users. One respondent explained that service users rarely understood the legal process so they would accompany them to appointments to make notes and explain the lawyer’s advice. This would benefit practitioners, who would be able to use their time more efficiently, but it could leave clients feeling removed from the legal process. More worrying was the suggestion that some practitioners did not understand the rules and needlessly complicated cases, undermining their client’s credibility and contributing to negative outcomes. In one example, the practitioner had embarked on an expensive private life application for the client without first determining the client’s nationality:

> “[It] was extreme... it transpired that she was British by descent, straight away I caught that, yet this guy took two and a half grand off her for a private life application that was obviously refused” (Participant E5 in O’Nions et al. 2020).

More experienced service providers knew which immigration lawyers they could trust to represent clients. However, the limited availability of these trusted providers resulted in inevitable delays and reduced capacity:

> “Quality is an issue but also the time. We’ve got some solicitors that we work with that are very good but, because they are good, they are also very slow. Which is quite a frustration” (participant C7 in O’Nions et al. 2020).

Several representatives hinted at vicarious trauma, observing that the unfairness of the system was difficult to endure. One highly experienced provider described this as a reversal in the burden of proof “if you’re an asylum seeker you are guilty until proven innocent. So, to me, the principles behind immigration are wrong. It is taken from the wrong perspective.” (participant C7) It was generally recognised that the current model is unsustainable as individuals who seek to maintain high standards regularly work beyond their contracted working hours, without additional remuneration. This echoed the finding of Wilding’s research

with private providers (2019). We observed that several individuals were on constant call as they strove to respond to emergency situations that were all too frequent (such as street homelessness, self-harm and illness).

The LAPIS participants living with insecure status experienced multiple disadvantages which contributed to their deteriorating physical and/or mental health. One participant who had been receiving mental health support due to diagnosed depression and post-traumatic stress disorder, explained how this support was withdrawn when she had exhausted legal options. She had twice attempted suicide and had been sectioned under the Mental Health Act. She explained that suicide was the only option as, if successful, it would end her trauma and, if not, she would at least obtain emergency health care for a few days.

Whilst many spoke of their strong desire to integrate through work and/or study it was recognised that the length of the process would make it difficult for them to take up future opportunities. The process had left them deskilled and demotivated. The boredom and anxiety experienced by all those in our study made many feel they could never enjoy a fulfilling, successful life:

> "I need to do something. I cannot do nothing…. I hope for a job or any work but I am not allowed to do that… I feel bored. I feel, erm that I do not exist. Sometimes… I don't know." (Participant IS3E)

> "I am just fed up of being in that situation, my life has been on hold for so many years. I mean it was on hold before I came here, but ever since I came here … I could have had a degree by now." (Participant IS9)

Their interaction with legal services had not been a wholly positive experience. Having told their stories to multiple lawyers, they had received inconsistent and, at times, inappropriate advice, evidencing Wilding's concerns over advice quality. Despite the six contracts for legal aid in Nottingham, several participants who were pursuing fresh asylum claims had not been able to find a solicitor who would listen to their case. In fact, over half the participants who were receiving some advice were represented by the same solicitor, reflecting Wilding's finding of insufficient capacity in the legal aid market. This solicitor was recommended

informally by service providers and other asylum seekers as he would take on more difficult cases and 'put in the extra hours needed' (O'Nions et al 2020).

Often participants commented that they were not listened to by either decision-makers or legal advisors. Participant IS2Z held a postgraduate degree but she became frustrated with the delays in advice from her solicitor so decided to navigate the system herself and prepared a judicial review. The application was ultimately rejected by the Upper Tribunal who, rather ironically, advised her to obtain legal advice.

The nature of legal advice as a passport to other rights was recognised by all participants and service providers. One elderly participant expressed dismay and confusion about an eviction letter she had just received one year after her case was refused and further submissions were rejected. Despite suffering from multiple chronic health conditions (including HIV and hepatitis) she was facing street homelessness. The participants were only too aware of their precarious position and the hostile environment which left them fearful of asserting their limited rights or requesting help:

> "Because honestly, people left their country through no fault of their own, they want to make a new life, not be taking and taking, they want to give back. Because who wouldn't be grateful to somewhere that saved you from harassment, torture and persecution? But the media is all about saying how this is negative, negative, negative. But the only reason that it is negative is because of the system in place, but if that system can be fixed, and I mean really fixed, then things will go a lot smoother, because this hostile environment is really hostile. Being an asylum seeker in the UK is hostile." (Participant IS13)

The vital role of the advice sector in bridging the gap between legal advisor and client was recognised by many participants and several highlighted the closure of the city's only not-for-profit legal project as a cause of great anxiety. Interestingly it was the passion of the staff there and their willingness to listen to the stories of clients without judgement that received the most praise:

> "I had a really good contact… he has been really good and helped me. You can really see he has got all the passion… and now because there is no legal project, if something goes wrong where do I go?". (Participant IS1N)

The Ministry of Justice accepts there is a lack of information about how vulnerable people resolve legal problems without legal aid. There are several options revealed in our study, none of which are particularly desirable: those with family or community ties may borrow funds; they may withdraw from the process altogether; they may visit multiple providers to find the cheapest advice (which is unlikely to be the best advice); or they may seek unregulated advice where there is a high risk of exploitation and where the client may subsequently prejudice their application as their credibility is called into question.

The resurgence of fraudulent advisors which had been addressed through increased regulation under s91 Immigration and Asylum Act 1999, was predicted by those working in the sector who recognised that these clients would no longer be able to get the advice they desperately needed (Sommerland and Sanderson 2013, p320; Meyer and Woodhouse 2013). Several of the LAPIS participants knew where they could obtain such advice and interviewers were shown text messages offering to provide biometric permits for a small fee. Participant IS30 was frustrated by the length of time it was taking to resolve her family's asylum case through legal aid leading her to borrow money through her church for fresh advice. Her suspicions were raised when the new solicitor, who had charged over £2000, did not appear to have knowledge of immigration law. After her complaint the case was referred to the Office of the Immigration Service Commissioner and the advisor was investigated and convicted for unlawfully providing advice. In one final twist of cruel irony, her compensation cheque could not initially be banked as she is legally prohibited from holding a bank account. The family's asylum case remains undetermined. IS30's experience provides a perfect illustration of the interlocking

nature of these spheres and hints at the relationship between legal and emotional exclusion. Austerity predicated cuts meant she could not easily access the free legal advice she was entitled to. As a result, she became vulnerable to exploitation and became the victim of a criminal offence. Her outsider status was then confirmed by the hostile environment which prohibited her from being compensated.

Several participants revealed that their status made them easy targets of exploitation.

> "When you are vulnerable; we have a saying in Egypt, when you are vulnerable they will ride you, they will ride on your shoulders." (Participant IS9)

In one particularly harrowing case the participant, who had lived with insecure status for many years, was befriended by a volunteer who offered to assist in gathering new evidence for her legal case. It soon became apparent that the volunteer expected a sexual relationship in return, causing considerable distress to the participant who had strong religious views concerning homosexuality. Her refusal to embark on a sexual relationship was met with manipulative behaviour including threats. On a separate occasion the same participant was attending a bail reporting centre and noticed a conspicuously well-dressed man loitering outside:

> "he said, 'you are very beautiful, you don't dress like an asylum seeker, you know I can look after you'. I told him, that's the end of the conversation… I reported him, they did a CCTV check but he was out of range." (Participant IS5M)

A sense of disbelief is common to many testimonies. This is linked with the expectation that the UK would be a tolerant, welcoming country which would support them to rebuild their lives (Crawley et al 2018). Contrary to the hostile rhetoric, all participants spoke of a strong desire to study or work and contribute to British society. Participant IS7JM had been waiting for an initial decision for fourteen months and despite receiving basic support he was angry that his life had been stalled because of circumstances beyond his control:

> "To tell you the truth, I'm kind of, I am boiling. I'm kind of… not even pissed off. The fact that I don't have any power over this, it's like I am just a cabbage, I feel useless." (Participant IS7JM)

For those who had been here for many years the anger had been displaced by a feeling of detachment and resignation. It became hard to imagine they would ever be able to pursue their potential and lead a meaningful life. A sense of hopelessness over seemingly endless bureaucracy and delay pervades the interviews. One participant describes how her dreams of studying in the UK and then working overseas as a human rights activist were gradually destroyed:

> "I came to England a very confident person and by then I had lost all self-esteem…The person I was is barely sitting here now. The person was destroyed and crushed and cracked." (Participant IS5M)

The LAPIS study suggests that the current justice landscape is failing to support those who desperately need a legal remedy, removing their agency and condemning them to years of destitution and poor health. Several of the participants had significant, chronic health conditions (ranging from liver failure to advanced heart disease and HIV) which undermined the feasibility of removal, yet the threat is ever-present. There have certainly been cases where people with life-threatening conditions have been removed and the participants were very aware of this. The partnership approach of the Solihull project offers a way to solve this seemingly intractable problem, but the impact of toxic narratives relating to migrants, social welfare and the most vulnerable is now so entrenched that there seems to be no political appetite for an inclusive, properly funded immigration justice system.

Conclusion

Venn (2019) argues that the pervasive atmosphere of hostility is the real triumph of a neoliberal political economy. Nowhere is this more apparent than in attitudes towards the 'illegal' migrant, a term seldom defined that makes no attempt differentiate between protection seekers and those wanting to improve their life prospects. The intersection of a neoliberal governance model, the hostile environment and toxic narratives centred on greedy lawyers and their clients have undermined the opportunity of those without status to seek advice and regularise their

stay. Access to justice is a passport right without which they cannot begin to rebuild their lives. There is now a wealth of research from academics and practitioners recognising that legal advice has become unaffordable and inaccessible for the most vulnerable members of society. Those with insecure status are arguably the most vulnerable as the usual, albeit severely stretched, safety nets do not apply. Their hyper-precarious existence impacts adversely on their identity, preventing them from making connections and becoming stakeholders in communities (Burridge and Gill 2016). They are emotionally and legally consigned, indefinitely, to a state of bare existence.

Total exclusion for those with insecure status is unlikely to be an unintended consequence. The UN Rapporteur's report concluded that destitution was a 'design characteristic' of the asylum system (Alston, 2018, Para. 83) and Thomas (2016) argues that cuts to immigration services illustrate an ideology of hostility that is manifested in policies of deterrence and enforced destitution. However, the wealth of recent evidence concerning the impact of austerity and the marketisation of justice provides one final opportunity to reinstate funding at an appropriate level for both immigration and asylum work.

The long-awaited Ministry of Justice review does not provide cause for optimism. Whilst accepting there has been a decrease in the number of civil legal aid providers, it dismisses evidence suggesting that the 'market' is failing and that clients are struggling to find a solicitor in many parts of the country (Ministry of Justice 2019, para 54; Wilding 2019, p64). Both service providers and service users reported this as a common problem in the LAPIS study, notwithstanding the theoretical availability of six private providers. Two participants who were entitled to legal aid borrowed money to pay privately as they could not find solicitors willing to take their case. This was corroborated by one practitioner who told us privately that their firm rarely took on fresh claims due to unrecovered costs. The few legal aid cases they did accept were the strongest cases and were offset by fees from their corporate private work. When this is combined with the decimation of the not-for-profit advice sector, the right to challenge an adverse decision and secure an effective remedy appears illusory.

For those living without status at the intersection of the three spheres of hostility there is no way to resolve the insecurity that defines every aspect of their lives. The intersection of the three spheres has culminated in a complete denial of access to justice. The LAPIS participants frequently reflected on their aspirations when they arrived in the UK. They were tired,

frustrated and at times, embarrassed by what they now considered to be naivety. This is encapsulated by the experience of Participant IS1N who arrived in 2001 after fleeing a violent marriage. She intended to use her training to work as a nurse but her delay in applying for asylum meant that she was deemed not credible. Next year, if not removed, she can apply for leave to remain on the basis of her twenty-year long residence. She will need to pay for this application and any medical or psychiatric reports that her lawyer recommends. She has no family and no savings or income, having been prevented from working for nineteen years. In the unlikely event that she can find and afford legal representation the outcome should be favourable, but the costs have been higher than she ever anticipated: "I feel like I have wasted everything, my life has not been the way I wanted."

References

Agamben, G. 1998. *Homo sacer : sovereign power and bare life*. California: Stanford University Press.

Alhojailan, M.I., 2012. Thematic analysis: A critical review of its process and evaluation. *West East Journal of Social Sciences*, *1*(1), pp.39-47.

Allison, E. and Taylor, D. 2019. Home Office abandons six-month target for asylum claim decisions. *the Guardian*. Available from: https://www.theguardian.com/uk-news/2019/may/07/home-office-abandons-six-month-target-for-asylum-claim-decisions [Accessed November 19, 2019].

Alston, P. 2018. Report of the Special Rapporteur on extreme poverty and human rights, United Nations, General Assembly 45th session A/HRC/41/39/Add.1

Aspden, J. 2008. *Evaluation of the Solihull Pilot*. United Kingdom Border Agency and the Legal Services Commission. Available from: https://www.refworld.org/pdfid/4c62615e2.pdf.

BBC News 2013. Eleven immigrants left UK after seeing "go home" van adverts. *BBC News*. Available from: https://www.bbc.co.uk/news/uk-politics-24755547 [Accessed November 20, 2019].

Bevan, M.T. 2014. A Method of Phenomenological Interviewing. *Qualitative Health Research*, 24(1), pp.136–144.

Booth, R. 2019. Amber Rudd to lodge complaint over UN's austerity report. *the Guardian*. Available from: https://www.theguardian.com/politics/2019/may/22/amber-rudd-to-lodge-complaint-over-un-austerity-report [Accessed November 19, 2019].

Bowcott, O. 2018. Legal aid: how has it changed in 70 years? *the Guardian*. Available from: https://www.theguardian.com/law/2018/dec/26/legal-aid-how-has-it-changed-in-70-years [Accessed November 17, 2019].

Bowcott, O. 2019. Legal advice centres in England and Wales halved since 2013-14. *The Guardian*. Available from: https://www.theguardian.com/law/2019/jul/15/legal-advice-centres-in-england-and-wales-halved-since-2013-14 [Accessed November 19, 2019].

Bowen, P. 2019. Legal aid for unaccompanied and separated migrant children. *Law Gazette*. Available from: https://www.lawgazette.co.uk/commentary-and-opinion/legal-aid-for-unaccompanied-and-separated-migrant-children/5101470.article [Accessed November 21, 2019].

Brown, W. 2017. *Undoing the demos: neoliberalism`s stealth revolution*. New York: Zone Books.

Burridge, A. and Gill, N. 2016. Conveyor-Belt Justice: Precarity, Access to Justice, and Uneven Geographies of Legal Aid in UK Asylum Appeals. *Antipode*, 49(1), pp.23–42.

Byrom, N. 2013. *The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients*. University of Warwick. Available from: https://warwick.ac.uk/fac/soc/law/research/centres/chrp/spendingcuts/153064_statesector_report-final.pdf [Accessed November 21, 2019].

Byrom, N. 2017. Cuts to Civil Legal Aid and the Identity Crisis in Lawyering: Lessons from the Experience of England and Wales. In A. Flynn and J. Hodgson (eds.) *Access to Justice and Legal Aid Comparative Perspectives on Unmet Legal Need*. London: Bloomsbury Publishing Plc, pp. 221–239.

Costello, C., Ioffe, Y. and Büchsel, T. 2017. *Article 31 of the 1951 Convention Relating to the Status of Refugees*. Geneva: Division Of International Protection United Nations High

Commissioner For Refugees. Available from: https://www.refworld.org/pdfid/59ad55c24.pdf [Accessed November 18, 2019].

Crawley, H; Hagen-Zanter, J 2018. Deciding where to go: policies, people and perceptions shaping destination preferences *International Migration* (57) 1, pp20-35.

Devine, D. 2018. The UK Referendum on Membership of the European Union as a Trigger Event for Hate Crimes. *SSRN Electronic Journal* . Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3118190 [Accessed 19/11/2019].

Doughty, S. 2010. Kenneth Clarke calls a halt to the legal aid gravy train. *Mail Online*. Available from: https://www.dailymail.co.uk/news/article-1330028/Kenneth-Clarke-calls-halt-legal-aid-gravy-train.html [Accessed November 17, 2019].

Dyer, C. and Wintour, P. 2004. Woolf leads judges' attack on ministers. *The Guardian*. Available from: https://www.theguardian.com/politics/2004/mar/04/immigration.constitution [Accessed November 20, 2019].

Emanuel, J. 2019. *Balancing the Advice Needs of Bristol*. Bristol Law Centre and University of Bristol. Available from: https://www.bristollawcentre.org.uk/wp-content/uploads/2019/06/Balancing-the-Advice-Needs-of-Bristol-FINAL.pdf [Accessed November 21, 2019].

Evans, C. and Lewis, J., 2018. *Analysing semi-structured interviews using thematic analysis: exploring voluntary civic participation among adults*. SAGE Publications Limited.

Fineman, M. 2011. *Transcending the boundaries of law : generations of feminism and legal theory*. Abingdon: Routledge.

Flynn, A. and Hodgson, J. 2017. *Access to justice and legal aid : comparative perspectives on unmet legal need.* London Bloomsbury Publishing Plc.

Gibb, F. 2010. Legal aid cuts: lawyers are in shock, or resigned. *The times.co.uk*. Available from: https://www.thetimes.co.uk/article/legal-aid-cuts-lawyers-are-in-shock-or-resigned-m0swm3c3k0d [Accessed November 17, 2019].

Gibbs, J. (ed.). 2010. *Justice at Risk: quality and value for money in asylum legal aid: Interim Report*. London: ICAR, City University. Available from: https://www.refworld.org/pdfid/4c62484d2.pdf [Accessed November 20, 2019].

Grayling, C. 2014. Chris Grayling: We must stop the legal aid abusers tarnishing Britain's justice system. *Telegraph.co.uk*. Available from: https://www.telegraph.co.uk/news/uknews/law-and-order/10777503/Chris-Grayling-We-must-stop-the-legal-aid-abusers-tarnishing-Britains-justice-system.html [Accessed November 18, 2019].

Grierson, J., Farrer, M., Sparrow, A., Elgot, J., Walker, P. and Pippa Crerar 2018. Sajid Javid disowns "hostile environment" phrase in first outing as home secretary – as it happened. *The Guardian*. Available from: https://www.theguardian.com/politics/live/2018/apr/30/theresa-may-new-home-secretary-amber-rudd-quits-politics-live [Accessed November 20, 2019].

Harvey, D. 2007a. *A brief history of neoliberalism*. Oxford: Oxford University Press.

Harvey, D. 2007b. Neoliberalism as Creative Destruction. *The ANNALS of the American Academy of Political and Social Science*, 610(1), pp.21–44.

Hegel, G.W.F. 1977. "Independence and Dependence of Self-Consciousness: Lordship and Bondage" in *Phenomenology of Spirit*, Oxford: Oxford University Press.

Home Office 2019. How many people are detained or returned? *GOV.UK*. Available from: https://www.gov.uk/government/publications/immigration-statistics-year-ending-march-2019/how-many-people-are-detained-or-returned [Accessed November 20, 2019].

Honneth, A. 1996 *The struggle for recognition: The moral grammar of social conflicts.* Cambridge: Cambridge University Press.

House of Commons & House of Lords Joint Committee on Human Rights 2018. *Enforcing human rights Tenth Report of Session 2017–19*. UK Parliament. Available from: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/669/669.pdf [Accessed November 17, 2019].

House of Commons 2013. House of Commons Hansard Debates for 22 Oct 2013 (pt 0001). *UK Parliament*. Available from: https://publications.parliament.uk/pa/cm201314/cmhansrd/cm131022/debtext/131022-0001.htm [Accessed November 18, 2019].

House of Commons Home Affairs Committee 2018. *Immigration Policy: Basis for Building Consensus*. HC 500 of session 2017–19. Available from: https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/500/50002.htm [Accessed November 18, 2019].

House of Commons 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*. House of Commons London: The Stationery Office Limited. Available from: https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf [Accessed November 21, 2019].

Hynes, J and Tomlinson, J 2020. Research interviews reveal crippling impact on new legal aid rules. *Free Movement* 1st July 2020. Available from: https://www.freemovement.org.uk/research-interviews-reveal-crippling-impact-of-new-legal-aid-rules/ [Accessed July 1st, 2020].

Immigration Law Practitioners Association 2020. Statement on the new Immigration and asylum legal aid fixed fee. 18th May 2020. Available from: https://ilpa.org.uk/ilpa-statement-re-new-legal-aid-immigration-and-asylum-fixed-fee/ [Accessed July 1st, 2020]

Independent Chief Inspector of Borders and Immigration 2018. Inspection report published: Right to Rent. *GOV.UK*. Available from: https://www.gov.uk/government/news/inspection-report-published-right-to-rent [Accessed November 17, 2019].

Kirkup, J. 2012. Theresa May interview: "We're going to give illegal migrants a really hostile reception." *Telegraph.co.uk*. Available from: https://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html [Accessed November 21, 2019].

Kirwan, S., 2017. The end of 'tea and sympathy'? The changing role of voluntary advice services in enabling 'access to justice. *Access to justice & legal aid: comparative perspective on unmet legal need. Oxford: Hart Publishing*, pp.179-194.

Lagrue, M. and Dorling, K. 2018. *Rights without remedies: Legal aid and access to justice for children*. Colchester: Coram Children's Legal Centre. Available from: https://www.childrenslegalcentre.com/wp-content/uploads/2018/05/Rights-without-remedies_Final.pdf [Accessed November 18, 2019].

Law Centres Network 2018. *Joint Committee on Human Rights Inquiry: 'Human Rights: Attitudes to Enforcement' Written Evidence Submitted by the Law Centres Network,*. Available from: https://www.lawcentres.org.uk/asset/download/662.

Lewis, C. and Kola, A. 2011. Justice for asylum seekers in the UK? *Open Democracy*. Available from: https://www.opendemocracy.net/en/shine-a-light/justice-for-asylum-seekers-in-uk/ [Accessed November 21, 2019].

Marshall, T.H. 1950. *Citizenship and social class*. London: Pluto.

May, T. 2013. It's MY job to deport foreigners who commit serious crime - and I'll fight any judge who stands in my way, says Home Secretary. *Mail Online*. Available from: https://www.dailymail.co.uk/debate/article-2279828/Its-MY-job-deport-foreigners-commit-crime--Ill-fight-judge-stands-way-says-Home-Secretary.html [Accessed November 20, 2019].

May, T. in HC Debates 22nd Oct 2013 col. 156. Available at https://publications.parliament.uk/pa/cm201314/cmhansrd/cm131022/debtext/131022-0001.htm [Accessed 19/11/2019]

Meyler and Woodhouse 2013. Changing the immigration rules and withdrawing the 'currency' of legal aid: the impact of LASPO 2012 on migrants and their families *Journal of Social Welfare and Family Law* 35 (1) pp 35-78

Ministry of Justice (ed.). 2010. *Proposals for the reform of legal aid in England and Wales. Consultation Paper CP12/10*. London: The Stationary Office on behalf of HM Stationary Office. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf [Accessed November 16, 2019].

Ministry of Justice 2019. Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. London: Ministry of Justice

Moorehead, C. 2016. *Human cargo a journey among refugees*. London: Vintage Books.

Nottingham Insight 2019. JSNA evidence summary (2019) *Nottinghaminsight.org.uk*. Available from: https://www.nottinghaminsight.org.uk/themes/health-and-wellbeing/joint-strategic-needs-assessment/behavioural-factors-and-wider-determinants-of-health/jsna-evidence-summary-2019/ [Accessed November 21, 2019].

O'Nions, H., Vickers, T. & Dahill, D. 2020. *Legal advice and support for persons with insecure immigration status* forthcoming, Nottingham Trent University and Nottingham and Nottinghamshire Refugee Forum

O'Nions, H. 2014. *Asylum: A right denied.* Farnham: Ashgate

Organ, J. and Sigafoos, J. 2018. *The impact of LASPO on routes to justice*. Manchester: Equality and Human Rights Commission. Available from: https://www.equalityhumanrights.com/sites/default/files/the-impact-of-laspo-on-routes-to-justice-september-2018.pdf [Accessed November 17, 2019].

Perez, E. 2016 *Unspoken Politics. Implicit attitudes and political thinking,* Cambridge: Cambridge University Press

Phibbs, H. 2010. Legal aid gravy train has not yet ground to a halt. *Mail Online*. Available from: https://www.dailymail.co.uk/debate/article-1330170/Legal-aid-gravy-train-ground-halt.html [Accessed November 17, 2019].

Piketty, T. 2014. *Capital in the twenty-first century*. Cambridge Massachusetts: Harvard University Press.

Poole, S. 2018. 'Compliant environment': is this really what the Windrush generation needs? *The Guardian*. Available from:

https://www.theguardian.com/books/2018/may/03/compliant-environment-is-this-really-what-the-windrush-generation-needs [Accessed November 19, 2019].

Refugee Action 2019. Government failings are leaving vulnerable people seeking asylum homeless and hungry *Refugee Action*. Available from: https://www.refugee-action.org.uk/government-failings-are-leaving-vulnerable-people-seeking-asylum-homeless-and-hungry/ [Accessed November 19, 2019].

Refugee Action and NACCOM 2018. *Tipping The Scales: Access To Justice In The Asylum System*. London: Refugee Action. Available from: https://www.refugee-action.org.uk/wp-content/uploads/2018/07/Access-to-Justice-July-18-1.pdf [Accessed November 21, 2019].

Rice, S., 2017. Reasoning a Human Right to Legal Aid. In Flynn and Hodgson *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need*

Smith, N.A. and Phillips, D. 2019. *English council funding: what's happened and what's next?* London: Institute for Fiscal Studies. Available from: https://www.ifs.org.uk/publications/14133 [Accessed November 21, 2019].

Solicitors Regulation Authority 2016. *Quality of legal services for asylum seekers*. SRA. Available from: https://www.sra.org.uk/globalassets/documents/sra/research/asylum-report.pdf?version=4a1ab3 [Accessed November 20, 2019].

Sommerland, H. and Sanderson, P. 2013. Social justice on the margins: the future of the not for profit sector as providers of legal advice in England and Wales. *Journal of Social Welfare and Family Law*, 35(3), pp.305–327.

Souter, J. 2016. "Bogus" asylum seekers? The ethics of truth-telling in the asylum system. *Open Democracy*. Available from: https://www.opendemocracy.net/en/5050/bogus-asylum-seekers-ethics-of-truth-telling-in-asylum-system/ [Accessed November 20, 2019].

Stiglitz, J.E. 2013. *The price of inequality*. New York: W.W. Norton.

Taylor, R. 2018. *Impact of 'Hostile Environment' Policy*. Lords Library notes LLN-2018-0064: House of Lords. Available from: https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2018-0064.

The Bach Commission 2017. The Final Report Of The Bach Commission. *Fabian Society*. Available from: https://fabians.org.uk/the-final-report-of-the-bach-commission/ [Accessed November 18, 2019].

The Low Commission 2014. *Tackling the advice deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*. Legal Action Group. Available from: http://www.lag.org.uk/media/147015/low_commission_report_final_version.pdf.

The United Nations Human Rights Council 2019. *Report of the Human Rights Council on its forty-first session*. The United Nations. Available from: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Pages/41RegularSession.aspx [Accessed November 17, 2019].

Thomas, R, Palmer, E (ed.), Cornford, T (ed.), Marique, Y (ed.) & Guinchard, A (ed.) 2016, Immigration and Access to Justice: A Critical Analysis of Recent Restrictions. in *Access to Justice: Beyond the Policies and Politics of Austerity.* Oxford: Hart, pp. 105-134.

Thomas, R. 2011. *Administrative justice and asylum appeals: a study of tribunal adjudication*. Oxford: Hart Publishing.

Thomas, R. 2016. Immigration and Access to Justice: A critical analysis of recent restrictions. *IN*: E. Palmer, T. Cornford, Y. Marique, and A. Guinchard (eds.) *Access to Justice: Beyond the Policies and Politics of Austerity.* Oxford: Hart Publishing, pp. 105–134.

Tidman, Z. 2019. Tory Home Secretary Priti Patel says ‘you can’t blame the government for poverty’ *The Independent*. Available from: https://www.independent.co.uk/news/uk/politics/priti-patel-poverty-government-blame-austerity-general-election-tories-a9211741.html [accessed Dec 1st, 2019]

Travis, A. 2013. Immigration bill: Theresa May defends plans to create “hostile environment.” *The Guardian*. Available from: https://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment [Accessed November 20, 2019].

UN CERD. Committee on the Elimination of All Forms of Racial Discrimination *Concluding Observations On The Twenty-First To Twenty-Third Periodic Reports Of United Kingdom Of Great Britain And Northern Ireland* [26th Aug 2016] ERD /C/GBR/CO/21-23, Para 13).

Venn, C. 2019. How Neoliberalism is Normalising Hostility. *Open Democracy*.

Wilding, J. 2019. *Droughts and Deserts. a report on the immigration legal aid market*. York: Joseph Rowntree Trust. Available from: http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf [Accessed November 19, 2019].

Williams, W. 2020. *Windrush. Lessons Learned.* HC 93, March 2020.

York, S. 2013. The end of legal aid in immigration: A barrier to access to justice for migrants and a decline in the rule of law. *Immigration, Asylum and Nationality Law*, 27(2), pp.106–138.