

‘Desert Island’ Detention: Detainees’ Understandings of ‘Law’ in the UK’s Immigration Detention System

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ABSTRACT

This research draws on interviews conducted with asylum-seekers detained in Immigration Removal Centres in a number of locations across the United Kingdom, and explores how they, as subjects, perceive and experience immigration law. What is revealed is that individuals’ experience of law is largely influenced by a variety of non-legal factors which lawyers may not readily engage with on a regular basis. Law here appears to manifest as rumour and suggestion rather than a definitive set of rules and procedures, and is perceived as being coloured by lies and deception on the part of the various stakeholders involved. Participants display differing modes of legal consciousness, in which their experiences of “law” blur with their everyday experiences inside and outside the detention estate. Many present themselves concurrently as passive victims of an unjust and inaccessible system, and equally as active, knowledgeable legal subjects, in seemingly contradictory ways. Permeating all these narratives is the description of immigration detention as a “desert island”, a space that is isolated and remote, and imbued with uncertainty and often fear, a space which appears to be outside the jurisdiction of “law” as lawyers would readily understand it.

KEYWORDS: immigration detention, immigration removal centre, immigration law, uncertainty, asylum

1. INTRODUCTION

Immigration detention – the deprivation of liberty on immigration-related grounds – is on the rise and the subject of increased attention both in the United Kingdom (UK) and globally.¹ In the UK, the immigration detention system benefits from periodic review by Her Majesty’s Inspectorate of Prisons (HMIP), which assesses the conditions of detention but, crucially, not the decision to detain. Immigration

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1 United Nations High Commissioner for Refugees (UNHCR), *Beyond Detention: A Global Strategy to Support Governments to End the Detention of Asylum-Seekers and Refugees, 2014–2019*, Geneva, UNHCR, 2014, 5, available at: <http://www.unhcr.org/uk/protection/detention/53aa929f6/beyond-detention-global-strategy-support-governments-end-detention-asylum.html> (last visited 12 Dec. 2018).

detention is also the subject of legal academic commentary which reviews the legality of detention itself.² There is also a small but growing body of literature which focuses on the experiences of detainees; how they deal with the uncertainty that immigration detention presents, challenges to their notion of identity and the mental health implications of incarceration.³ Some have also begun looking at the experiences of staff working in the detention centres, and how this work shapes their views and behaviours.⁴ What is partially glimpsed in these narratives but not yet fully explored, is the question of how immigration detainees themselves conceive of the legal system to which they are subject. This is the topic of this article.

As lawyers we tend to have certain ideas about how law “works” in society, and immigration law in particular acts to the benefit or detriment of individuals. However, when we dig a little deeper into the operation of law in practice we see that law can play out in a variety of different ways. This research draws on interviews conducted with asylum-seekers detained in Immigration Removal Centres (IRCs) in a number of locations across the UK, and explores how they, as subjects, perceive and experience immigration law. What is revealed is that individuals’ experience of law is largely influenced by a variety of non-legal factors which, as lawyers, we may not readily engage with on a regular basis. Law here appears to manifest as rumour and suggestion rather than a definitive set of rules and procedures, and is perceived as being coloured by lies and deception on the part of the various stakeholders involved. Participants display differing modes of legal consciousness, in which their experiences of “law” blur with their everyday experiences inside and outside the detention estate. Many present themselves concurrently as passive victims of an unjust and inaccessible system, and equally as active, knowledgeable legal subjects, in seemingly contradictory ways. Permeating all these narratives however is the description of immigration detention as a “desert island”, a space that is isolated and remote, and imbued with uncertainty and often fear. This space, inhabited by immigration detainees, by all accounts appears to be outside the jurisdiction of “law” as we, as lawyers, would readily understand it.

It is hoped that, by bringing to the fore the experiences and challenges immigration detainees face, and the differing modes of legal consciousness they display, this

- 2 C. Costello, “Immigration Detention: The Grounds Beneath Our Feet”, *Current Legal Problems*, 68(1), 2015, 143–177; P. De Bruycker & E. Tsourdi (eds.), “Special Issue: The Challenge of Asylum Detention to Refugee Protection”, *Refugee Survey Quarterly*, 35(1), 2016, 1–127; D. Wilsher, *Immigration Detention. Law, History, Politics*, Cambridge, Cambridge University Press, 2011; K. Hailbronner, “Detention of Asylum Seekers”, *European Journal of Migration and Law*, 7(9), 2007, 159–172.
- 3 M. Bosworth, *Inside Immigration Detention*, Oxford, Oxford University Press, 2014; I. Hasselberg, *Enduring Uncertainty: Deportation, Punishment and Everyday Life*, Oxford, Berghahn Books, 2016; M. Griffiths, “Living with Uncertainty: Indefinite Immigration Detention”, *Journal of Legal Anthropology*, 1(3), 2013, 263–286; S. Turnbull, “‘Stuck in the Middle’: Waiting and Uncertainty in Immigration Detention”, *Time & Society*, 25(1), 2016, 61–79; R. Rotter, “Waiting in the Asylum Determination Process: Just an Empty Interlude?”, *Time & Society*, 25(1), 2016, 80–101.
- 4 A. Hall, “‘These People Could Be Anyone’: Fear, Contempt (and Empathy) in a British Immigration Removal Centre”, *Journal of Ethnic and Migration Studies*, 36(6), 2010, 881–98; A. Hall, *Border Watch: Cultures of Immigration, Detention and Control*, London, Pluto Press, 2012; M. Bosworth, “‘Working in this Place Turns you Racist’: Staff, Race, and Power in Detention”, in M. Bosworth, A. Parmar & Y. Vázquez. (eds.), *Race, Criminal Justice, and Migration Control: Enforcing the Boundaries of Belonging*, Oxford, Oxford University Press, 2018, 214–228.

research will better enable all stakeholders engaged in the UK's immigration system, and particularly the legal representatives who are so key to detainees experiences, to better understand and serve the needs of those subject to immigration detention in the UK.

2. IMMIGRATION LAW AND DETENTION IN THE UK

Immigration law in the UK is in a constant state of flux – at present a new immigration bill is presented almost every year, and repeated amendments are made to legislative provisions scattered across Acts of Parliament from the past four decades. In addition, much law and policy is not included in primary legislation but rather the Home Office's Immigration Rules – which have been termed “so difficult to comprehend that it is hard even to describe their complexity”⁵ – and Home Office policy and guidance documents. This guidance is often unclear, misleading, sometimes unpublished, and has been criticised as disconnected with practical reality on the ground.⁶ Indeed, in an ever expanding series of cases, senior judges have condemned the complexity of UK immigration law. It has been described as “an impenetrable jungle of intertwined statutory provisions and judicial decisions”.⁷ The judiciary have in particular called attention to its constantly changing nature, the difficulty in ascertaining the rules in play at any one time and, in some instances, the Secretary of State's own inability to maintain a consistent view of the meaning of the rules and regulations themselves.⁸ The intensification of migration legislation and regulation in recent years, exemplified by new Immigration Rules being produced most months, and repeated amendments to primary legislation and Home Office policy documents, results in “layer upon layer of inadequately thought out, hastily drafted legislation all too often incompatible with human rights’ and rule of law guarantees”.⁹

Against this backdrop sits the UK's immigration detention system. The power to detain in the UK is covered by the Immigration Act 1971 and set out broadly. So broadly in fact that Costello argues in the immigration context we have “groundless” detention.¹⁰ Individuals are most often detained for the purpose of effecting removal. However, they may also be detained to establish their identity or basis of claim; where there is reason to believe they pose a risk of absconding or there is a risk of

5 C. Yeo, “How Complex Are the UK Immigration Rules and is this a Problem?”, *Free Movement Blog*, 24 Jan. 2018, available at: <https://www.freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/> (last visited 12 Dec. 2018).

6 Costello, “Immigration Detention”, 162.

7 *Sapkota v. Secretary of State for the Home Department* [2011] EWCA Civ 1320 Jackson LJ, cited in Yeo, “How Complex Are the UK Immigration Rules and is this a Problem?”.

8 *Secretary of State for the Home Department v. Khan* [2016] EWCA Civ 137; *Pokhriyal v. Secretary of State for the Home Department* [2013] EWCA Civ 1568; *Mirza v. Secretary of State for the Home Department* [2016] UKSC 63. More generally, see Yeo, “How Complex Are the UK Immigration Rules and is this a Problem?”.

9 A. Harvey, Immigration Law Practitioners’ Association, cited in A. Lindley, “Injustice in Immigration Detention: Perspectives from Legal Professionals”, The Bar Council, Nov. 2017, 7, available at: <https://www.barcouncil.org.uk/media-centre/news-and-press-releases/2017/november/injustice-in-immigration-detention/> (last visited 12 Dec. 2018).

10 Costello, “Immigration Detention”. Costello argues that immigration detention, as currently practiced in the UK, violates the right to liberty and offends the rule of law in that it is routinely coercive and preventive.

harm to themselves or the public, or previously as part of the now-suspended detained fast-track (DFT) system, whereby asylum-seekers could be detained if their claims appeared capable of being decided quickly.¹¹ These grounds are set out broadly and their lack of clarity is compounded by the absence of an express time limit on immigration detention, or automatic judicial oversight of the detention process, as considered immediately below.

The UK is unique in Europe in not placing an express time limit on immigration detention.¹² This is covered by common law "*Hardial Singh* principles".¹³ These principles require that the power to detain is strictly and narrowly understood: the power must be for a statutory purpose and limited to such a period as is "reasonably necessary" for that purpose to be achieved.¹⁴ Thus migrants must only be detained for a reasonable period in order to remove them, and not if it becomes apparent that removal will not take place within a reasonable period. There have in the last few years been a flood of cases in which it has been found that detention has breached the principles and become unlawful.¹⁵ However, the threshold is high, and the courts have found that detention for years can be lawful.¹⁶ Without express guidelines it is difficult to know how long an individual may be detained before such detention becomes unlawful, and thus considerable uncertainty pervades in this area.

The UK system is also unusual in lacking automatic judicial oversight of detention. A decision to detain is only reviewed by the courts on the application of the person detained, most often via an application for bail, many of which are refused where the individual is considered likely to abscond and/or cannot provide an address at which they will reside.¹⁷ HMIP reported that many people do not apply for bail as they simply do not know it is available, or they have problems securing legal advice.¹⁸ Individuals may also apply for judicial review of the decision to detain.¹⁹

11 The DFT system was suspended following a series of legal challenges by the charity Detention Action, which culminated in a ruling of systematic unfairness by the Court of Appeal in 2015. *The Lord Chancellor v. Detention Action* [2015] EWCA Civ 840.

12 Except in the case of pregnant women and families.

13 Drawn from the case which set out important principles concerning the use of powers to detain a person for immigration purposes. *R(Hardial Singh) v. Governor of Durham Prison* [1983] EWHC 1. Endorsed by the Supreme Court in *Walumba Lumba & Kadian Mighty v. Secretary of State for the Home Department* [2011] UKSC 12.

14 S. Shaw, "Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw" (Shaw Report), Jan. 2016, 38, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf (last visited 12 Dec. 2018).

15 For example *R (on the application of Sino) v. Secretary of State for the Home Department* [2016] EWHC 803 (Admin).

16 In *R(Muqtaar)* the total length of the appellant's detention was just over 41 months. It was accepted that detention was lawful for the first 16 months but became unlawful thereafter. *R(Muqtaar) v. Secretary of State for the Home Department* [2012] EWCA Civ 1270. See also *Machnikowski v. Secretary of State for the Home Department* [2015] EWHC 54 (Admin) (22 Jan. 2016), where a man held in immigration detention for three years was found not to have been unlawfully detained.

17 Lindley, "Injustice in Immigration Detention", 25–26.

18 Independent Chief Inspector of Borders and Immigration (ICIBI) and HM Inspectorate of Prisons (HMIP) joint report on immigration detention casework, "The Effectiveness and Impact of Immigration Detention Casework", Dec. 2012, available at: <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf> (last visited 12 Dec. 2018).

19 In the UK there is no statutory appeal against the decision to detain under immigration powers.

However again access to this mechanism is not automatic and much will hinge on the availability of legal representation and ability of the individual involved to navigate the processes involved. The uncertainty surrounding these decisions and the difficulty individuals face producing evidence to support such applications results in a system which is often unclear and appears subject to the whims of decision-makers (see Section 3.2). Indeed, Costello argues that individuals are deprived of their liberty in the UK not only without proper legal grounds justifying their detention, but that “the standards governing the entire practice of detention are either secret or unintelligible”.²⁰ This is an area which any but the most expert would approach with trepidation and perhaps fear, which begs the question: how do those subject to it experience this legal system of which they are part?

2.1. The present study

This research comes out of a project on the experiences of lesbian, gay, bisexual, and transgender (LGBT) asylum-seekers who have been held in immigration detention in the UK.²¹ Many of the findings were not limited in relevance to LGBT persons however, and a number of the themes relate to the experiences of detained asylum-seekers and migrants more broadly. As such, this article draws on these narratives to explore how detained asylum-seekers perceive and experience “law”, whether or not they happen to be LGBT. While some of the experiences described by interviewees in this article relate specifically to asylum-seekers as a sub-set of detained migrants – for example, making or appealing an asylum claim – many of the resulting perceptions of immigration law among interviewees chime with the findings of other researchers who have focused on other categories of detained migrants.²² As such, it is hoped that this research will contribute to this developing body of literature not only in the asylum field, but will add to our understanding of how “law” is experienced by those subject to immigration detention in the UK more broadly.

In-depth interviews were conducted with 22 asylum-seekers between November 2015 and March 2016. Participants were from 11 countries in Asia, Africa and the Caribbean, plus one from Russia. Interviews were conducted in person with participants that had recently been released from immigration detention – almost 70 per cent of participants were held in detention in the previous year and all participants had been held in detention in the previous three years. In this sense, this research provides only a partial view of interviewees’ perspectives of immigration law following their release from detention. It was not possible to explore, for example, how interviewee’s perspectives of immigration law had shifted over time.

The duration of time participants had spent in detention varied between three days to 18 months. Eight participants had been subject to the (now suspended) “detained fast-track” system, whereby asylum-seekers could be detained if their

20 Costello, “Immigration Detention”, 161.

21 Stonewall & the UK Gay and Lesbian Immigration Group (UKLGIG), “No Safe Refuge: Experiences of LGBT Asylum Seekers in Detention”, Oct. 2016, available at: https://www.stonewall.org.uk/sites/default/files/no_safe_refuge.pdf (last visited 12 Dec. 2018).

22 For example, while Bosworth, Griffith and Turnbull’s work focuses on detained migrants more broadly, Ines Hasselberg concentrates specifically on the experiences of foreign national offenders (FNOs). See fn 3 above.

claims appeared capable of being decided quickly. This process was finally suspended in 2015, having been ruled “systemically unfair and unjust”.²³ Being subject to this process clearly impacted on how these particular participants experienced immigration law, and reference is made to this throughout this article. The legal status of participants at the time of interview varied: some had been recognised as refugees, some were failed asylum-seekers, and for many their legal status was unclear. That many participants were unable to explain their immigration status is perhaps in itself an indication of the lack of clarity many experienced when faced with UK immigration law.

Interviews were audio-recorded, transcribed and thematically coded and analysed to draw out key themes and sub-themes, patterns and relationships between narratives. This project was not initially set up as a study of detainees’ experiences of law per se, but as noted above focused on the experiences of LGBT asylum-seekers in detention more broadly. As such, these organising themes were developed from those parts of the interview data where the interviewees described the relevance of law to their experiences. In this sense, they were developed inductively, through focusing on the interviewees’ descriptions of how they experienced or navigated legal processes, and what they saw or did not see as “law”. For the purpose of this article the names and details of participants have been anonymised.

The UK has one of the largest networks of immigration detention facilities in Europe; between 2,000 and 3,500 migrants are detained at any given time.²⁴ Immigration detention centres in the UK are officially known as Immigration Removal Centres (IRCs), or sometimes individuals are held in Short-Term Holding Facilities (STHFs). There are currently eight IRCs in the UK. Participants were held in different detention centres in England and Scotland including Brook House, Colnbrook, Dungavel, Harmondsworth, Pennine House and Yarl’s Wood. It was not uncommon for participants to have been placed in multiple centres over the course of their detention, or to have been detained on more than one occasion.

IRCs themselves are not prisons, though they are often conceived as akin to prisons by both detainees and staff. As Turnbull explains, “IRCs are unique quasi-penal institutions that are simultaneously, and confusingly, both like and unlike prisons”.²⁵ The architecture and security practices of IRCs mimic those of prisons and, though detainees are typically provided greater freedom than prisoners, staff and detainees themselves regularly refer to IRCs as prisons.²⁶ As one participant notes, the physical similarities between prisons and IRCs are very prominent: “It’s a prison. They tell me no it’s not a prison, [but] it is a prison because the walls are high, you have got barbed wires and you cannot go through the gates so it is a prison”.²⁷ For other

23 *The Lord Chancellor v. Detention Action* [2015] EWCA Civ 840, 49.

24 As at the end of December 2017, there were 2,138 people in the detention estate. In addition, 407 immigration detainees were held in HM Prisons. Home Office, “Immigration Statistics, October to December 2017”, 21 Mar. 2018, available at: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/how-many-people-are-detained-or-returned> (last visited 12 Dec. 2018).

25 Turnbull, “Stuck in the Mmiddle”, 61.

26 As also noted by M. Bosworth, “Border Criminologies: Assessing the Changing Architecture of Crime and Punishment”, Global Detention Project, Working Paper No. 10, Feb. 2016.

27 Interview with Selena (Jamaica), 12 Nov. 2015.

participants it was the everyday manifestation of control that made the centres so prison-like: “I just felt it was like a prison, you feel as if you are being controlled, you are being controlled with everything, everything is taken away from you”.²⁸

Individuals may be detained at a number of points in their immigration process: when they first enter the country, when they have either failed to leave the UK on expiry of their visas (“overstayers”) or not complied with the terms of their visas, and undocumented persons found in the UK can be detained pending a decision on whether they are to be removed and to facilitate removal. The largest category of immigration detainees is persons who have sought asylum at some stage during their immigration process.²⁹ Individuals can be detained when they first claim asylum, if they have claimed asylum and been refused, or when they go for their regular reporting/signing event at the Home Office.³⁰ Some claim asylum while held in detention pending deportation. The immigration detainee population also includes foreign national offenders (FNOs), some of whom apply for asylum while in prison or following the end of their prison sentence. Since April 2006, the UK Government has prioritised the removal of FNOs, and as of 1 August 2008 all FNOs who have been sentenced to a period of imprisonment of 12 months or more are subject to automatic deportation from the UK.³¹ As such, following the expiry of their prison sentence FNOs may continue to be held in prisons or transferred to IRCs pending their removal. The participants in this study had been detained at various stages of their immigration processes. Some were detained when they first claimed asylum or on reporting to the Home Office. Others claimed asylum while held in detention for “overstaying”, having been apprehended by the authorities. Two participants were FNOs who claimed asylum while held in detention pending removal from the UK.

2.2. Influential figures: the key players

There are a number of key stakeholders based both inside and outside the detention estate that detainees have contact with, who may influence their experience of detention and immigration law. Immigration and asylum falls under the jurisdiction of the UK Home Office (UK Visas and Immigration), and after claiming asylum individuals will have contact with interviewing staff for their preliminary screening and substantive asylum interview, and assigned an individual caseworker who makes decisions on their asylum claim. Interviewing staff and caseworkers are usually detainees’ only direct point of contact with the Home Office and therefore have a significant bearing on their experiences of authority and law both inside and outside the detention estate.

28 Interview with Irene (Uganda), 20 Nov. 2015.

29 Refugee Council, “Detention in the Asylum System”, Feb. 2018, available at: https://www.refugeecouncil.org.uk/assets/0004/2696/Detention_in_the_Asylum_System_Feb_2018.pdf (last visited 12 Dec. 2018).

30 As explored below, a condition of many subject to immigration processes is regular reporting to the Home Office at weekly or fortnightly intervals. This often carries the risk of detention and as such can be very stressful for the individual involved. Previously asylum seekers could also be detained under the now-suspended detained fast-track (DFT) system. See note 11 above and accompanying text.

31 With the introduction of the UK Borders Act 2007.

Although there is a national detention system in the UK, there is no single provider of the detention estate itself. Except for IRC Morton Hall, which is managed by HM Prison Service, the centres are contracted out by the Home Office to private custodial companies, which include GEO, G4S, Mitie and Serco. All of these, other than Mitie, also run prisons. In the vast majority of IRCs, staff employed by these private companies deal with the detainees on a day-to-day level, and manage the reality of incarceration and preparing people for deportation.³² These Detainee Custody Officers (DCOs) have no formal role in the Home Office's decision-making processes and do not receive specific training in international or domestic asylum law. In preparation for their role they undergo six weeks of instruction with a focus on security and "interpersonal skills" and must pass a course on "control and restraint".³³ Despite their disconnect from Home Office decision-making processes, as everyday points of contact with individuals in detention DCOs have a significant impact on detainees' experiences of immigration law while detained.

Detainees also come in to contact with influential figures outside the authoritative roles of Home Office staff and DCOs. These include legal representatives, other detainees and the third sector. First contact with legal representatives may be made outside or, more commonly, inside the detention estate. IRCs are usually serviced by a select number of legal firms who may take on detainees' cases for a fee or for free if the individual qualifies for legal aid. Equally, individuals may secure or have secured legal representation from firms outside detention, sometimes with the help of family or friends. As legal advisors one would expect legal representatives to have the most significant impact of detainees' understanding of UK immigration law, it is therefore noteworthy that a large proportion of detainees lack (adequate) legal representation and access to legal advice whilst in detention (as explored below in Section 3.1).

The narratives of participants in this study reveal that other detainees are often relied upon as a vital source of legal information in detention, often as a supplement when official sources of legal information are unobtainable. Similarly, a number of semi-authoritative figures accessible in IRCs can also influence detainees' perspectives of immigration law and detention processes. These include medical staff and faith leaders such as priests or imams which serve the IRCs. Charities and NGO's may also assist individuals pre-, during or in the post-detention phase, as may friends, family and the broader community. However, due to space constraints these latter categories are not considered in detail in this article.

The impact and influence of these different actors on participants' conceptions and understandings of UK immigration law will be explored below, as we consider how detainees experience immigration law.

3. HOW DETAINEES EXPERIENCE IMMIGRATION LAW

During the course of this study it became clear that detainees experience the UK's immigration system in a number of ways. The four main themes identified in this article are: rumour and suggestion; control and constraint; deception, and; what I have

32 Griffiths, "Living with Uncertainty", 265.

33 M. Bosworth & M. Vannier, "Comparing Immigration Detention in Britain and France: A Matter of Time?", *European Journal of Migration and Law*, 18(2), 2016, 157–176, 170.

termed “desert island detention”, that is, being cut off from legal information, assistance and the means of collating evidence to support a legal case. Each of these thematic areas are explored below, though it must be noted that these are not strictly separate areas and feed into one another to a large extent. Equally, participants presented themselves as legal subjects in a variety of ways: some presented themselves as knowledgeable agents, others as powerless in the face of unwieldy and unyielding bureaucracy, and yet others as both of these concomitantly, in a seemingly contradictory fashion. In this sense this study reflects and contributes to broader research relating to legal consciousness and people’s experiences and perceptions of law in everyday life.

In their seminar work *The Common Place of Law: Stories from Everyday Life*, Ewick and Silbey examined how law or legality is recognized, resisted, and reconstituted by a wide variety of ordinary people going about their lives, and argued that it is out of the most ordinary acts that law is constituted as “law”.³⁴ They thus helped to debunk “the illusion that law is a source of power and authority disconnected from other power structures in society”,³⁵ and rather focused on ordinary people’s perceptions of law in everyday life. They developed the notion of legal consciousness as cultural practice, and discerned three broad shapes and patterns of legal consciousness from their interviews – “before the law”, “with the law” and “against the law” – and noted that people evince differing modes of consciousness in response to different problems and situations. Under this typology, while some view law with reverence as an objective, transcendent, rational sphere (“before the law”), others see it as a “game” with rules and procedures that can be manipulated (“with the law”). Yet others see law in oppositional terms as a dangerous, oppressive force (“against the law”).³⁶ Ewick and Silbey also described how individuals switch between these modes of consciousness in a seemingly contradictory way, reasoning that it is the availability of these multiple modes of consciousness to account for different aspects of people’s experiences with law that constructs and sustains law’s legitimacy despite its manifest failures and injustices.

Further research has extended the reach of legal consciousness scholarship by exploring the socially situated nature of the concept and how it manifests in diverse places, including institutional settings.³⁷ Some have proposed additions or amendments to Ewick and Silbey’s typology, to account for those who, while engaging

34 P Ewick & S. Silbey, *The Common Place of Law: Stories from Everyday Life*, Chicago, University of Chicago Press, 1998.

35 K. Bumiller, *The Civil Rights Society: The Social Construction of Victims*, Baltimore, Johns Hopkins UP, 1988, 10.

36 Ewick & Silbey, *The Common Place of Law*, 47–49.

37 E. Hoffman, “Legal Consciousness and Dispute Resolution: Different Disputing Behaviour at Two Similar Taxicab Companies”, *Law & Social Inquiry*, 28, 2003, 691–718; E. Hoffman, “Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice”, *Law & Society Review*, 39, 2005, 51–82; A-M. Marshall, “Consciousness in Context: Employees’ Views of Sexual Harassment Grievance Procedures”, in B. Fleury-Steiner & L. B. Nielsen (eds.), *The New Civil Rights Research: A Constitutive Approach*, Aldershot, Ashgate, 2006, 101–115; C.T. Albiston, “Legal Consciousness and Workplace Rights”, in B. Fleury-Steiner & L. B. Nielsen (eds.), *The New Civil Rights Research: A Constitutive Approach*, Aldershot, Ashgate, 2006, 55–75; B. Fleury-Steiner, “Before or Against the Law? Citizens’ Legal Beliefs and Expectations as Death Penalty Jurors”, *Studies in Law, Politics and Society*, 27, 2006, 115–137.

legality, downplay or even negate the role of law ("outside the law"),³⁸ or to describe different forms of resistance to law,³⁹ or have shifted the focus to processes and how people's interactions with others and their assumptions about other people's views of law ("second-order legal consciousness") combine with individual experience to form individual and group consciousness in a dynamic fashion.⁴⁰

While Ewick and Silbey's model, and the concept of legal consciousness itself, has been subject to criticism,⁴¹ it is useful for our purposes to consider the diverse and sometimes contradictory ways in which immigration law manifests in the consciousness of those subject to it, and consider the contours of "law" as conceived in this article and understood and defined by participants in this study. This is by no means an easy feat, given the multifaceted sources and often impenetrability (or indeed unobtainability) of law in the immigration context, as described in Section 2 above, and the confusion and lack of information detainees are predominantly subject to throughout their immigration process, as considered in the following section.

"Law" as understood by lawyers typically refers to an enforceable body of rules which govern those subject to it.⁴² In the immigration context this relates to statute, the Immigration Rules and related Home Office policies and guidance, and court and tribunal decisions.⁴³ One of the fundamental principles of the rule of law is that the law "must be accessible and so far as possible intelligible, clear and predictable".⁴⁴ However, for many participants in this study it was apparent that the contours of "law" and the immigration processes to which they were subject blurred in practice with their everyday experiences inside and outside detention, and were anything other than predictable. Many participants relied on informal or non-legal sources to explain and navigate the immigration system, including rumour and suggestions from other detainees, DCOs and other figures they came into contact with during and post-detention. Equally, many discounted or discredited "formal" sources of law such as their Home Office decision letters and tribunal decisions, preferring to rely on "common sense" non-legal explanations for the decisions which had been made. Others considered the process itself completely unpredictable and irrational, akin to a lottery and subject to the individual whims and preferences of Home Office case-workers or immigration judges. Indeed, many participants experienced the process

38 K. D. Richman, "By Any Other Name: The Social and Legal Stakes of Same-Sex Marriage", *University of San Francisco Law Review*, 45, 2010, 357–387. Though note that Richman herself subsequently qualified this choice of terminology, noting that "disentangling the emotions from the law is not only unnecessary but perhaps futile as well". K.D. Richman, *License to Wed: What Legal Marriage Means to Same-Sex Couples*, New York, New York University Press, 2014, 210.

39 R. Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives*, Abingdon, Routledge, 2011. Harding offers a tripartite typology of forms of resistance to law.

40 K.M. Young, "Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight", *Law & Society Review*, 48(3), 2014, 499–530.

41 Not least by Silbey herself, who questioned the continuing validity of the concept of legal consciousness. S. Silbey, "After Legal Consciousness", *Annual Review of Law and Social Science*, 1, 2005, 323–368. See also K. Levine & V. Mellema, "Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy", *Law and Social Inquiry*, 26(1), 2001, 169.

42 J. Law & E.A. Martin, *A Dictionary of Law*, 7th edn., Oxford, Oxford University Press, 2014.

43 Clayton also highlights prerogative power as an historical source of immigration law. G. Clayton, *Immigration and Asylum Law*, 6th edn., Oxford, Oxford University Press, 2014, 27–30.

44 T. Bingham, *The Rule of Law*, London, Penguin Books, 2010.

itself as an exercise of deception on the part of DCOs, the Home Office and the judicial system. In some instances this perception of deception and mistrust also extended beyond government officials to include legal representatives and other key stakeholders.

In this way the UK's immigration processes, as conceived by participants in this study, appear disconnected from any predictable system of rules or "law", and in some instances was rather seen an attempt to "wear down" and dehumanise those subject to it. This is far removed from a conception of law as a system to which recourse could be made to uphold rights and benefits. And pervading all these narratives is a story of uncertainty and confusion, Whether intentionally inflicted by the authorities (as asserted by some participants) or not, such a conception goes against principles of accessibility and predictability of the law to their core. These multifaceted conceptions of "immigration law" belie an understanding of what "law" is which extends beyond how the term is traditionally understood by legal practitioners, and merges with the everyday lives and experiences of immigration detainees. The diverse and often contradictory ways in which participants presented their understanding of law, and themselves as legal subjects, is explored in further detail in the following sections.

3.1. A "desert island"

Perhaps the most powerful theme to emerge from the narratives of those interviewed relates to the idea of being stranded on a "desert island" while in detention, lacking information and understanding of their situation, and cut off from avenues of assistance. Lack of access to information most clearly manifests in difficulties with Home Office communications and accessing caseworkers and legal representatives. Practical difficulties which exacerbate this while in detention relate to phone and internet access and other forms of communication, which are often vital in retrieving information and evidence that the individual may be physically separated from while in detention. The geographical inaccessibility of IRCs means that support to overcome these obstacles is often difficult to obtain. The cumulative effect of this "desertification" is a profound impact on the ability of detainees to adequately navigate their immigration processes, leading to novel understandings on the part of the individual as to how "law" operates in these situations. This lack of information and support makes individuals susceptible to rumour and suggestion, deception and loss of autonomy and control, as will be explored in the later sections of this article.

3.1.1. *Contact with officials and legal representatives*

A persistent point raised by participants in this study relates to the lack of contact and guidance received from the Home Office and individual caseworkers, a complaint which pervaded not only the period in detention but the entire immigration process. Alex, a 33 year old man originally from Russia who had been detained despite having been subject to torture in his home country, describes his frustration with Home Office communications following his release from detention. One year following his initial asylum screening interview he was still waiting for his substantive interview. As he explained:

The letter which they [the Home Office] sent, that letter I received, it stated a phone number which I could contact and discuss my case. They never pick up,

never, absolutely [...] I, basically, don't understand what's going on. So she keeps silent, the Home Office keeps silent.⁴⁵

This isolation is exacerbated while in detention. Romy, a 24 year old woman from Zimbabwe who had lived in the UK since she was 14, explained "it's so bad but really when you're there it's like you wish you could just break through somewhere and speak to somebody, you know".⁴⁶

Home Office caseworkers are generally based in offices far from the IRCs, and are difficult for detainees to contact.⁴⁷ As Griffiths notes from her own research into the UK detention system, "Telephones go unanswered, caseworkers do not have answer-phones and faxes are not always replied to".⁴⁸ The prominent use of private companies to run IRCs mean that DCOs end up acting as intermediaries, "piggy in the middle" between detainees and caseworkers.⁴⁹ As such, IRCs have been described as ambiguous spaces in which "the state is both heavy-handed and weak, simultaneously highly present and yet always out of reach".⁵⁰ "Law" in the detention context thus manifests as an ever-present and yet largely unobtainable concept. Many participants were clearly engaged in struggles to access and comprehend the law relevant their case, and yet felt outside or cut off from access to this body of rules and decisions.

The frustration participants felt with the lack of communication from official sources extended beyond Home Office officials, and often participants voiced frustration with the lack of communication from their legal representatives. As Irene from Uganda explained, "you can't call them, they are never in the office, they don't call you, they don't tell you what's happening."⁵¹ This was echoed by other participants. Marie is a 44 year old woman originally from Cameroon. She went on hunger strike for three weeks while in detention to protest the conditions she was held under. She had a lawyer but explained it was like not having a lawyer; she completed much of the legal paperwork herself:

I had a lawyer, like I didn't have a lawyer because she never done anything [...] Even when they released me I phoned her, I left 20 messages and she not reply. No, I don't have credit to be calling lawyers all the time. The system of lawyer, there's no point. There's no point to have a legal help.⁵²

Access to legal advice and representation for detainees is a significant problem highlighted not only by participants in this study but also a number of reports on

45 Interview with Alex (Russia), 30 Mar. 2016.

46 Interview with Romy (Zimbabwe), 3 Feb. 2016.

47 Bosworth notes that such distancing, while bureaucratically effective, contributes to the uncertainty of daily life in detention, and is often the source of considerable criticism and unease. Bosworth, *Inside Immigration Detention*, 18.

48 Griffiths, "Living with Uncertainty", 272; Shaw, "Review into the Welfare in Detention of Vulnerable Persons", 184.

49 Shaw, "Review into the Welfare in Detention of Vulnerable Persons", 184.

50 Griffiths, "Living with Uncertainty", 280.

51 Interview with Irene (Uganda), 20 Nov. 2015.

52 Interview with Marie (Cameroon), 7 Jan. 2015.

immigration detention in the UK.⁵³ There is high demand for legal advice in IRCs and many firms are oversubscribed. Some detainees have to wait weeks for an appointment.⁵⁴ Even after securing an appointment, detainees often only have a 30 minute window of time to speak to a legal representative about their case. Furthermore, the availability of legal aid advice for immigration and asylum is highly uneven geographically, and the number of firms servicing different IRCs may be limited. Successive government cuts to legal aid funding, and the removal of the majority of non-asylum immigration matters from the ambit of legal aid, has led to a dramatic reduction in the number of legal aid providers in the immigration and asylum field.⁵⁵ This has led to legal aid “deserts” for this area of law. A recent report by Bail for Immigration Detainees found that less than half of the detainees surveyed had legal representation, and only 55 per cent of those had a legal aid solicitor. Almost a third of detainees (29 per cent) had never had a legal representative while in immigration detention.⁵⁶ Many participants in this study described difficulties in securing legal representation, with some forced to pay large sums of money to private lawyers in the absence of other options.

Even when these obstacles are overcome, participants voiced frustration at being unable to contact their legal representatives. These complaints are reflected in Griffith’s findings:

[...] misinformation and uncertainty also exists for those who do have legal representation. Many detainees spoke of being unable to get hold of their solicitors or obtain information from them, and many felt their solicitor was doing nothing for them. A surprising number did not even know if they had a solicitor or not.⁵⁷

IRCs are purposefully located at a distance from city centres and public transport and are difficult to access.⁵⁸ As such, they are usually serviced by a select number of legal firms, the quality of which has been called into question. A number of participants in this study voiced frustration with the poor quality of legal advice offered by the firms servicing the IRCs, with some of notoriously poor reputations amongst detainees. As explained by Ali from Pakistan: “all of my friends who were in the detention centre, or who were not in the detention centre but got a solicitor, they said they [legal representatives] don’t really help, you have to fight your own case. I mean my

53 For example, Lindley, “Injustice in Immigration Detention”; Shaw, “Review into the Welfare in Detention of Vulnerable Persons”; Refugee Action, “Tipping the Scales: Access to Justice in the Asylum System”, 2018, available at: <https://www.refugee-action.org.uk/wp-content/uploads/2018/07/Access-to-Justice-July-18-1.pdf> (last visited 12 Dec. 2018).

54 Lindley, “Injustice in Immigration Detention”, 39.

55 Refugee Action reports that since 2005, there has been a 56 per cent drop in the number of providers offering legal aid representation for Immigration and Asylum law. Refugee Action, “Tipping the Scales”, 11.

56 Bail for Immigration Detainees (BID), “Six-Monthly Survey Reveals Less than Half of Those Questioned Have a Legal Representative”, 5 Dec. 2017, available at: <http://www.biduk.org/posts/328-six-monthly-survey-reveals-less-than-half-of-those-questioned-have-a-legal-representative> (last visited 12 Dec. 2018).

57 Griffiths, “Living with Uncertainty”, 273.

58 Turnbull, “Stuck in the Middle”, 64; Lindley, “Injustice in Immigration Detention”, 32.

solicitor was sitting there all the time, she said nothing.”⁵⁹ Ali was subject to the “detained fast-track” process described above, and found it particularly stressful securing legal representation in the short period of time available to him, especially given both the limited number of legal representatives serving the IRC⁶⁰ and the time limitations imposed on accessing the service in the detention centre.⁶¹

Another factor which impacts significantly on detainees’ access to legal representation is the prevalence of asylum-seekers being moved between detention centres within the UK. In this study, it was not uncommon for participants to have been moved between IRCs, and this can pose problems in terms of continuation of legal and other support.⁶²

3.1.2. Communication in detention

The geographical distancing of IRCs means detainees have limited physical contact with Home Office officials and legal representatives and are increasingly reliant on other forms of communication such as phone, fax and email to communicate with them. Additionally, cases often hinge on securing documentary evidence, which is not easy to obtain when detainees are separated from their property. These avenues of communication are therefore important means for detainees to collate the information and evidence needed to support their asylum claim. It is in these areas that physical incarceration appeared to impact most severely on participants. One participant described being in detention as being “on an island”, cut off from means of collecting evidence and putting together your case.⁶³

When an individual is detained their mobile phone is confiscated and they are provided with a simple phone to receive and make calls.⁶⁴ The rationale behind confiscating mobile phones seems to be preventing detainees having access to camera phones with which they could document conditions inside the IRCs. For both detainees and visitors to IRCs, mobile phones with cameras and/or internet access are not permitted. Detainees have to top up their new phones using cash. Many reported the charges were extortionate and difficult if not impossible to maintain. As explained by Kasun from Sri Lanka: “normally in detention we use top up [...] pay as you go. When I was detained they gave me the same cell [phone] [...] one minute charged me 32 pence. So first I charge around £300, first month”.⁶⁵ This was echoed by Joan, a 33 year old woman originally from Uganda, who struggled to maintain contact with her partner who was helping collate evidence to support her asylum claim:

59 Interview with Ali (Pakistan), 14 Dec. 2015.

60 By his account, only one trainee solicitor served the IRC. *Ibid.*

61 Ali explained that detainees are permitted only two hours per day to access the barber, social services and legal representatives. *Ibid.*

62 As also noted by Lindley, “Injustice in Immigration Detention”, 44. See also N. Gill, “Governmental Mobility: The Power Effects of the Movement of Detained Asylum Seekers around Britain’s Detention Estate”, *Political Geography*, 28(3), 2009, 186–196.

63 Interview with Joan (Uganda), 12 Nov. 2015.

64 However, one participant reported not being provided with a phone or phone card and was therefore unable to contact anyone for weeks. Interview with Michael (Nigeria), 23 Dec. 2015.

65 Interview with Kasun (Sri Lanka), 7 Mar. 2016.

Well I felt like I was trapped in there, like I can't get this information, it's very important information and even talking was very, very costly for me. Calling her or her calling me, it was just like a very, very costly. It was like, kind of it was like a barrier, like they're stopping me from getting this evidence.⁶⁶

Joan was subject to the detained fast-track system and the delay in securing evidence led to her first asylum application being refused.

Reliance on cash rather than other forms of payment was also raised as a serious issue by some participants. As noted by Alex from Russia:

They took my plastic [debit] card, I had no cash on me. So, see, that's another little thing I wish I had known. Because they don't let you use your plastic card, so basically you can't top up your phone, so you can't call your solicitor, you can't call your parents, you can't call anyone.⁶⁷

Some participants worked in IRCs for £1 per hour to have a form of income, both to facilitate communication and to buy essentials such as toiletries.⁶⁸ Detainees are frequently employed in IRCs as cleaners, litter pickers, kitchen assistants, decorators and block orderlies.⁶⁹ This is an "earned privileges" scheme which ties the "reward" of being allowed to undertake paid work to discipline and compliance with the authorities, feeding into the theme of control (as explored in Section 3.4 below). As Burnett and Chebe explain, "labour works to foster certain behaviours and visions of order within the confines of the [detention] institution".⁷⁰ The reliance of some participants on this form of employment appears to be a direct result of the financial strictures faced while in detention and necessity of maintaining contact with the outside world.

Lack of sufficient access to the internet and other forms of communication such as fax were also raised by participants as serious obstacles to preparing their legal cases. While IRCs have a certain number of computers available with internet access, a large number of sites are blocked and unavailable. As explained by Zahid, a 26 year old Pakistani man: "in that centre like in the Gatwick centre on the internet every single thing is blocked, even you can't access the internet banking".⁷¹ Zahid spoke at length about the difficulties using online facilities and scanning documents while in detention. This was echoed by other participants: "there's no internet, you can't get information from the internet there, it was limited, they block so many sites".⁷² Indeed, in a recent review of the UK's immigration detention system, Stephen Shaw

66 Interview with Joan (Uganda), 12 Nov. 2015.

67 Interview with Alex (Russia), 30 Mar. 2016.

68 Following the introduction of the Immigration, Asylum and Nationality Act 2006, IRCs were exempted from paying the minimum wage.

69 J. Burnett & F. Chebe, "Captive Labour: Asylum Seekers, Migrants and Employment in UK Immigration Removal Centres", *Race & Class*, 51(4), 2010, 95–103, 98.

70 Burnett & Chebe, "Captive Labour", 99.

71 Interview with Zahid (Pakistan), 17 Dec. 2015.

72 Interview with Cynthia (Cameroon), 7 Jan. 2016.

noted that “legitimate sites were blocked inappropriately, and that staff were often as bemused as detainees as to why certain sites were unavailable”. He advised:

I do not believe there is any rational case for continuing the blanket ban on Skype and Facebook and like services, or for preventing access to websites that support detainees in their immigration claims, help prepare them for return, or facilitate contact with their families and friends. Indeed, from that point of view the current restrictions are actually counter-productive.⁷³

Nevertheless, limited internet access remains a significant issue for detainees, often with severe consequences for their ability to collate information for their immigration cases. Some participants were denied legal aid as they failed to secure their bank information in time.⁷⁴ Others had claims rejected for failing to provide supporting evidence within the timeframe required.⁷⁵ Simple communication was raised as a significant issue by all participants in this study, and this extended to use of other services such as fax and scanners, access to which was often controlled by DCOs.

3.1.3. *Isolation and accessing support from other sources*

Cumulatively, being geographically distanced from the community and having limited access to other forms of communication seriously impacted the ability of detainees to navigate their immigration processes. As explained by one participant:

to get moving and speak to your solicitor it takes days, you're trying to get to him but you get the voicemail, if you can't put credit then it's not their problem, so if you don't have any money on you, you won't be able to communicate, maybe the best way is through email and also in the computer room internet is on and off, most sites are blocked so if you wanted to do like research on your country all sites are blocked.⁷⁶

This theme of isolation is reflected in Turnbull's research on immigration detention, where she notes that “detention itself was viewed by detainees as a practice that figuratively ‘handcuffs’ them, preventing them from mounting effective cases against their removal or deportation.”⁷⁷

Difficulties in accessing official forms of support mean that individuals often turn to other forms of assistance, such as charities. As explained by Esther from Nigeria:

to go for my bail they ask for documents they required me to provide, you can't provide them because you don't have access to them [...] so you need these charities to help you [...] you don't have control over anything that happens to you there.⁷⁸

73 Shaw, “Review into the Welfare in Detention of Vulnerable Persons”, 133.

74 Interview with Esther (Nigeria), 12 Nov. 2015.

75 Interview with Joan (Uganda), 12 Nov. 2015.

76 Interview with Romy (Zimbabwe), 3 Feb. 2016.

77 Turnbull, “Stuck in the Middle”, 75.

78 Interview with Esther (Nigeria), 12 Nov. 2015.

Given the lack of access to information for detainees themselves, outside sources such as friends, family and charities become vitally important. However, the fact of detention itself can lead to loss of support on the outside, particularly in the case of being moved between IRCs. As noted by Ali, once detained people are often ostracised and find it difficult to connect with their support networks outside the detention estate:

when you get detained no one wants to talk to you, no one wants to keep in touch. They think that, “oh he’s going to ask for help” and who is there for help, no one. I have met people in there and they are in deep trouble. I mean some of them they are in there for like 4 years, 3 years, and when you think of them and they don’t even talk to their friends outside, no one wants to talk to them [...] I spoke to one of the guys and he said “no one talks to me, I mean outside no one answer my call, they think I am going to ask for something but it is just I want to talk”.⁷⁹

Additionally, many detainees feel the stigma of the “detainee” label keenly, and worry about its impact on how they would be received outside detention, and so many do not tell their family and friends in the UK or abroad that they are being detained.⁸⁰ This limits the support available to them and forces them to endure their anxieties alone. As Kasun explained, the fact of detention can lead to individuals being perceived as criminals by the local community:

people that spread the rumours for the Asian community who knows everyone spoke about, because I am in detention for 6 months maybe I did some illegal things. Otherwise, they told to people, otherwise I got released sooner.⁸¹

The “desert island” of immigration detention therefore has a profound impact on individuals’ ability to navigate their immigration processes, and as will be explored in the following sections this influences individuals experiences and perception of immigration law. Rather than an accessible and clear system of rules, many detainees resort to informal or non-legal sources to explain and navigate the legal system, viewing the legal system as system of rules which must be determined and manipulated, or as an oppositional force which must be combated, reflecting some of the differing typologies of legal consciousness put forward by Ewick and Silbey. As a result of poor or withdrawn legal representation and communication, and lack of other forms of support, many detainees resort to representing themselves:

Kasun: I learned because when you fight alone you don’t have anything to, no one to help you.⁸²

79 Interview with Ali (Pakistan), 14 Dec. 2015.

80 M. Bosworth & A. Fili, “Immigration Detention in Greece and UK”, Criminal Justice, Borders and Citizenship Research Paper No. 2745190, 2016, 6–7.

81 Interview with Kasun (Sri Lanka), 7 Mar. 2016.

82 Interview with Kasun (Sri Lanka), 7 Mar. 2016.

Michael: You know you are just in an enclosed environment where there's nothing you can do, you don't have access to the information. You know, I find it really like, so frustrating when I see people, other inmates, yes, having to write a judicial review by themselves.⁸³

Marie: I done everything on my own until I went out, even for my bail application, filled it all, I sent to the court, I went to the court, everything.⁸⁴

Participants thus present themselves as powerless or frustrated in their attempts to access an unobtainable body of "law" and meet the requirements of the system, and yet also as active agents ready to "fight". Ultimately, however, this lack of information and support makes individuals susceptible to rumour and suggestion, deception and loss of autonomy and control, as will be explored below.

3.2. Rumour and suggestion

The uncertainty many individuals experience in relation to their immigration case and period of incarceration, and the lack or incomprehensibility of information received from official sources, can lead them to rely on informal sources of legal information. In this way law can manifest as rumour or suggestion rather than a definitive set of rules and procedures.

Informal sources from which participants accessed legal information included other detainees, DCOs, chaplains and medical staff present in IRCs, and on one occasion the interpreter present at their screening interview. Surprisingly, some of these avenues were positively encouraged by DCOs. One participant described how he was advised by a DCO to speak to other detainees who could help advise on his case: "Instead of telling me to get the proper solicitor to advise me, he told me to go and talk to a detainee. They have these people, they put their picture in their office."⁸⁵ That DCOs have semi-formal channels via which detainees can seek advice from other detainees indicates that detainees' lack of access to official sources of legal information appears to be widely accepted and entrenched in the detention system. Indeed, relying on other detainees for legal advice was a common theme among the participants interviewed. For example, Diana, a 27 year old woman from Uganda, explains how she learnt from others how to present her own claim for judicial review after her initial asylum application was refused under the detained fast-track process: "I started learning from people around, you can do a judicial review [...] I was doing it myself with the help of people who knew about it".⁸⁶ DCOs themselves, who as noted above are not Home Office officials nor trained in immigration or asylum law, on occasion also advise detainees on how to proceed with their case,⁸⁷ a practice also reflected in the findings of Bosworth and Vannier, who note that in the absence of adequate legal assistance most detainees rely on DCOs to help fill out legal forms.⁸⁸

83 Interview with Michael (Nigeria), 23 Dec. 2015.

84 Interview with Marie (Cameroon), 7 Jan. 2015.

85 Interview with Michael (Nigeria), 23 Dec. 2015.

86 Interview with Diana (Uganda) 3 Feb. 2016.

87 Interview with Emmanuel (Nigeria), 11 Dec. 2015.

88 Bosworth & Vannier, "Comparing Immigration Detention in Britain and France?", 175.

This is despite the fact it is a criminal offence in the UK for an individual to provide immigration advice if they are not regulated to do so.

Participants also reported seeking advice from sources such as the interpreter at their screening interview, chaplains in the centre and medical staff. Yasmine, originally from Algeria, relied on an interpreter at her asylum screening interview. She describes how, at those close of the interview she did not understand she was being subject to the detained fast-track process, the interpreter had to explain she was going to be detained: “the [interpreter] said, ‘Seriously you don’t know?’ I asked what was happening.”⁸⁹ Others turned to spiritual leaders for advice. Kasun from Sri Lanka spoke about how his perception of the legality of his detention was influenced by the views of the imam serving in the IRC: “when [the imam] talked to me I just felt that maybe he is right, maybe I am wrong [for seeking asylum]. [...] I thought maybe he’s right, everyone telling me the same thing. Maybe I am just wrong because that’s why I am here today.”⁹⁰ Reliance on these unofficial sources of information results in a situation where law is experienced more as rumour and suggestion than a definite process or legal framework, and forces participants to rely on hearsay to understand and navigate the UK legal system.

A common theme raised by participants in this study was the seeming irrationality of the decisions made by the Home Office. It was not uncommon for participants to be detained, and later released, with little or no explanation from the Home Office as to the basis of these decisions.⁹¹ Similarly, participants often perceived the outcomes of immigration-related appeals or applications to be arbitrary and/or incomprehensible.⁹² Faced with seemingly illogical or unexplained decisions such as these, participants attempt to rationalise such legal processes on the basis of a variety of non-legal factors. Griffiths explains how, in her research, she observed detainees trying to rationalise such decisions, and that some attributed decisions to “political concerns over statistics, the cycle of the financial year, a need to boost the economy or even the UK’s hosting of the 2012 Olympics”.⁹³ In these situations, Griffiths argues, “over-interpretation of signs is subjective and for some people unrelated factors become hyper-meaningful”.⁹⁴ In other instances, Griffiths describes how detainees perceive the Home Office as incompetent and chaotic, considering their immigration outcomes were based on “pure luck or the whim of individual officers, frequently linking decisions to the state of a caseworker’s love life.”⁹⁵ Participants in this study

89 Interview with Yasmine (Algeria), 16 Dec. 2015.

90 Interview with Kasun (Sri Lanka), 7 Mar. 2016.

91 For example, Marie still finds inexplicable the sudden Home Office decision to release her from detention, and was never informed on what ground she was released. Interview with Marie (Cameroon), 7 Jan. 2015. Also noted in M. Griffiths, “Vile Liars and Truth Distorters: Truth, Trust and the Asylum System”, *Anthropology Today*, 28(5), Oct. 2012, 8–12, 10.

92 Griffiths notes that the sense that the asylum and detention systems are inconsistent is not only held by those subject to immigration control, but is shared by many working in the field. Griffiths, “Vile Liars and Truth Distorters”, 11.

93 Griffiths, “Living with Uncertainty”, 276–277

94 *Ibid.*

95 Griffiths further notes that “Asylum applicants feel that the authorities make arbitrary and unfair decisions that they cannot make sense of and that hinder their ability to know what to say and do. For them, the state is not a powerful monolithic entity, but a collection of administrators who are in permanent contradiction.” Griffiths, “Vile Liars and Truth Distorters”, 11–12.

similarly attributed the outcome of immigration-related processes to non-legal factors such as political events across the UK and Europe, incompetence or simple apathy or neglect on the part of Home Office caseworkers. This has profound consequences for how law is understood by immigration detainees, many of whom conceive the legal process as unpredictable and irrational, disconnected from any predictable system of rules.

Indeed, such perceptions may not be entirely unfounded given the UK asylum system has been described as “a lottery, depending on the personal views of the decision-maker who picked up the file”.⁹⁶ News sources have reported that Home Office caseworkers are often overworked and under enormous pressure to decide cases,⁹⁷ frequently inexperienced or underqualified for significant decisions they are required to make,⁹⁸ and a combination of these factors can lead to absurd or perverse decisions.⁹⁹ In his review of the UK’s detention system, Shaw notes that many caseworker reports month after month appeared to be “cut and pasted”, with little or no attention given to the changing circumstances of the individual or development of their legal case.¹⁰⁰ The seeming irrationality of the UK’s immigration system therefore leads individuals to consider a multitude of non-legal factors to explain their immigration process, and this lack of trust in the reliability of the legal system can lead individuals to experience law as an exercise in deception.

3.3. Deception

Concerningly, a number of participants in this study conceived of the UK’s immigration system as an experience of deception, and reported being lied to by various stakeholders involved. Some reported deception from DCOs, who had ploys to make the detainees ‘behave’ in the way they wanted them to. For example, Michael, a 31 year old man from Nigeria, was informed that his “behaviour record” while in detention would influence the outcome of his immigration case: “there’s a lot of things they [DCOs] tend to use that I later found out that it is bullshit. They said they have this folder, they call it orange or yellow folder that they use and when you go to court they use your character, behaviour”.¹⁰¹ The unobtainability of “law” in detention often leaves detainees to rely on rumour or suggestion in the place of clear legal advice, as explored above, and therefore susceptible to deception. In Michael’s case deception was used as a direct means of control over the individual. Others felt they were lied to by DCOs regarding the availability of legal advice: “there are three law firms advertised in the centre for legal advice, the others are always full, or detainees are told they are full”.¹⁰² Some reported instances where medical staff in

96 K. Lyons & K. Brewer, “A Lottery: Asylum System is Unjust, Say Home Office Whistleblowers”, *The Guardian*, 11 Feb. 2018, available at <https://www.theguardian.com/uk-news/2018/feb/11/lottery-asylum-system-unjust-home-office-whistleblowers> (last visited 12 Dec. 2018).

97 *Ibid.*

98 D. Taylor, “Gap-Year Students Deciding Asylum Claims”, *The Guardian*, 28 Feb. 2016, available at: <https://www.theguardian.com/world/2018/feb/11/asylum-interview-10-examples-of-absurdity-home-office> (last visited 12 Dec. 2018).

99 *Ibid.*

100 Shaw, “Review into the Welfare in Detention of Vulnerable Persons”, 184–185.

101 Interview with Michael (Nigeria), 23 Dec. 2015.

102 Interview with Romy (Zimbabwe), 3 Feb. 2016.

the IRC had befriended them in order to extract information that could be used against them in their asylum claim, and that family and friends had also been subject to misinformation:

[when I was detained] my friend called the Home Office and was told that the Home Office is closed and no one knows about me. [...] So she went to look for me at the hospitals the poor girl. And the police station. She thought I had an accident.¹⁰³

More fundamentally, a number of participants described deception in the reporting of the official narratives of their asylum claim and immigration record by both Home Office officials and legal representatives. Some noted instances where certain information had been wiped from their record by their Home Office caseworker. Emmanuel, a 37 year old man from Nigeria, explained how a meeting with the Nigerian Commission was removed from his file:

there's nowhere they're writing that I comply February this year, so that means my case owner removed the date that I complied in February because he know that Nigerian Commission did not give me any travel document to remove me. He did not include it in the base summary. He took that date out for the judge not to see that.¹⁰⁴

Indeed, a common complaint evident from both detainees and official reviews of the UK detention system relates to the quality of Home Office practice, particularly the reports and decisions of caseworkers. In his review of the UK detention system, Shaw notes that many detainees complained that monthly detention reports and decision letters “are slow and of variable quality, and that decision letters and monthly detention review reports appear to be impersonal, and ‘cut and pasted’ from previous letters and reports”, giving the impression that decisions had been made in advance.¹⁰⁵

Perceptions of deception extended beyond Home Office officials to include other key stakeholders in the immigration system. Many voiced dissatisfaction with their legal representatives and in some cases this extended to deception:

I told my solicitor, there was a prison record, there was a record of him coming to visit me. She lied to me, that it's going to take 6 weeks for her to get my prison record. But I later found that those records come with you when you are moved from prison to detention.¹⁰⁶

Salma, a 36 year old woman from Morocco, described the difficulties she experienced in making her case given her limited English language skills, and how she

103 Interview with Yasmine (Algeria), 16 Dec. 2015.

104 Interview with Emmanuel (Nigeria), 11 Dec. 2015.

105 Shaw, “Review into the Welfare in Detention of Vulnerable Persons”, 184–185.

106 Interview with Michael (Nigeria), 23 Dec. 2015.

felt both her solicitor and the translator deliberately misrepresented her statements:

when I was there and she sent me the statement that I had to give to the Home Office, I didn't give it, I didn't sign it because I felt that it was not my words, it was not what I wanted to say, what I wanted to tell.¹⁰⁷

Emmanuel similarly reported incorrect recording of his asylum narrative by his solicitor: "The year I said to her that I have been living with my uncle in 1998, she put 2003 there. The year they attack me and my partner 2003, she put 1998 there."¹⁰⁸

Many detainees complain that the information they receive from the Home Office is full of mistakes or "lies", and often disagree with the official versions of "truth" produced by their caseworkers and legal representatives.¹⁰⁹ Many participants in this study voiced their frustration at being unable to remedy errors, mistakes and deceptions in their case record, which would later be used to undermine their legal claim. Indeed, Griffiths notes there is an irony in a system such as the UK's, that places so much emphasis on the truthfulness of asylum-seekers narratives, being itself imbued with errors, inconsistencies and untruths.¹¹⁰ Asylum decisions often come down to assessments of the credibility of the individual and their story, and in this context any errors denied or unremedied by the Home Office or legal representatives can become a new version of the "truth", which individuals must conform to if they are not to undermine their own credibility and jeopardize their asylum claim. In the cases of Salma and Emmanuel, quoted above, these issues were exacerbated by the short timescales they had to remedy or refute such errors, both being subject to the detained fast-track process.

Participants' perceptions of deception on the part of the Home Office may be related to the Home Office's "culture of disbelief" which, it is contended by many, is the propensity of Home Office officials to disbelieve the narratives of asylum applicants and wrongly refuse asylum claims.¹¹¹ While Home Office officials focus on asylum applicants as a source of deception, it appears the same is true of immigration detainees as regards the Home Office, evidencing mutual distrust. In this way, concerns of deception and, fundamentally, a lack of trust have permeated the UK's asylum process.

Concerns of deception among participants in this study extended beyond the Home Office and legal representatives to the immigration judicial system. Romy describes the distrust she felt of the system when she attended her judicial review hearing:

this judge had already made up her mind that she wasn't going to grant my case [...] it was such a shock to my confidence when I sat down in front of

107 Interview with Salma (Morocco), 10 Nov. 2015.

108 Interview with Emmanuel (Nigeria), 11 Dec. 2015.

109 As noted by Griffiths, "Living with Uncertainty", 273, 279.

110 Griffiths, "Vile Liars and Truth Distorters", 12.

111 J. Souter, "A Culture of Disbelief or Denial? Critiquing Refugee Status Determination in the United Kingdom", *Oxford Monitor of Forced Migration*, 1(1), 2011, 48–59; J. Anderson, J. Hollaus, A. Lindsay & C. Williamson, "The Culture of Disbelief: An Ethnographic Approach to Understanding an Under-Theorised Concept in the UK Asylum System", Refugee Studies Centre Working Paper Series No 102, 2014.

the judge and it was my time and then I discovered that “okay she’s already, she’s already made up her mind.”¹¹²

Distrust of the judicial system was a pervasive theme among participants, many of whom saw it as part of the same apparatus as Home Office decision-making.¹¹³ Indeed, a recent BBC news report highlights that asylum-seekers face a “lottery” depending on where their appeal is heard, with varying access to legal representation and different “cultures” at hearing centres resulting in vastly different likelihoods of success at different centres across the country.¹¹⁴

The incomprehensibility or seeming arbitrariness of the UK’s immigration system leads many subject to it to perceive it with mistrust and apprehension. Participants felt that many stakeholders lied deliberately in order to undermine their immigration case, or did so simply through negligence. This is far removed from a conception of a predictable and impartial system of rules, and rather resulted in many viewing the law in adversarial terms, as an unfair and unjust system that had to be overcome. In many instances the lack of control participants felt they had over the “truth” of their cases, coupled with a lack of reliable legal information, led them to experience a loss of autonomy and view immigration law as a process of control and constraint, displaying a legal consciousness very much “against the law”,¹¹⁵ as considered below.

3.4. Control and constraint

All participants in this study conceived of UK immigration law as a powerful means of control – a loss of autonomy on the part of those subject to it. This relates not only to physical incarceration while in detention, but extends to other measures the Home Office can impose on those subject to immigration proceedings, including reporting and residence conditions, tagging, and lack of access to the labour market. For many, the perpetual uncertainty of the system itself acts as a virtual “chain and shackles”.

The immigration system’s control over the individual manifests most explicitly while in detention. As explained by Esther, a 30 year old woman from Nigeria: “while you are in detention you are made to feel like you don’t have a say in your life, you are kept in a place where people have control over your life, they are the ones that like make the decisions for you.”¹¹⁶ Participants expressed frustration at having to wait until appointed times to do certain things, such as eat, use the internet or access services, a finding echoed in Turnbull’s research.¹¹⁷ As explained by Irene from

112 Interview with Romy (Zimbabwe), 3 Feb. 2016.

113 For example, Emmanuel stated: “I was trying to explain to judge, because I didn’t have solicitor to fight, to argue that, the judge didn’t listen to me.” Interview with Emmanuel (Nigeria), 11 Dec. 2015.

114 C. Nye & L. Sands, “Asylum Seekers Face Appeals ‘Lottery’”, *BBC News*, 29 Nov. 2017, available at: <http://www.bbc.co.uk/news/uk-42153862> (last visited 12 Dec. 2018).

115 Ewick & Silbey, *The Common Place of Law*. See fn 37 above and accompanying text.

116 Interview with Esther (Nigeria), 12 Nov. 2015.

117 Turnbull, “Stuck in the Middle”, 68–69.

Uganda, the apparent apathy of DCOs, despite her reliance on them, manifested itself as a form of control and frustration:

some of them were so rude, they didn't care, sometimes you went to the office they are having a chat and then you knock on the door and they just continue chatting to themselves and maybe at that time you are really desperate, you want to make a phone call to your solicitor because you have to buy your own credit you don't have money, you are not working, you don't have family to send you money so maybe you just want to request for a phone call to at least call your solicitor because you have received a letter from the Home Office telling you something that you probably don't understand.¹¹⁸

Additionally, control mechanisms for those that do not conform to institutional expectations, such as transfers to other centres and withholding of "privileges" such as paid employment, exacerbated feelings of loss of control and autonomy among participants.¹¹⁹ This "infantilisation" for many added to the humiliation and perceived illegitimacy of their detention.¹²⁰

Perhaps the basest manifestation of control over persons in detention is the process of forcible removal from the country. Such procedures are often conducted at night to minimise resistance from other detainees, adding to their perceived clandestine nature. As explained by Cynthia from Cameroon: "they come late at night when everybody is sleeping and pick up girls, carry them to the station without their full willingness, put them on the plane and send them back. When they have pending cases. Like so many situations happen like that."¹²¹ Detainees can be injected with sedative to facilitate such removal. As explained by Rose, a 49 year old woman from Nigeria: "when they are coming to take you off to the airport nobody wants to hear you crying or shouting they just give you an injection and you will, you have to shut your mouth [...] you become like an animal they just drug you like that, drug you".¹²² Witnessing other detainees being transferred for removal in this way exacerbates feelings of insecurity and the manifestation of immigration law as control: "I see them inject people, take them out of their bed, take them to the airport in their sleep".¹²³ In this basest form the animalistic connotations of the treatment of immigration detainees is clearly apparent, and many participants made reference to being

118 Interview with Irene (Uganda), 20 Nov. 2015.

119 See also Turnbull, "Stuck in the Middle", 70.

120 Detainees in the immigration system typically view their incarceration as less legitimate than those subject to a prison sentence. As Bhui notes, "unlike administrative immigration detainees, prisoners are given legitimate reasons for their punishment during an exhaustive legal process with well developed checks and balances that guard against arbitrary impositions of power. This process makes it easier for prisoners to accept that their incarceration relates to a recognisable system of justice and supports legitimacy and order [...] In contrast, immigration detainees can be held on the authority of relatively junior immigration officials without routine judicial oversight of their detention". H. S. Bhui, "Can Inspection Produce Meaningful Change in Immigration Detention?", Global Detention Project, Working Paper No. 12, May. 2016, 5–6.

121 Interview with Cynthia (Cameroon), 7 Jan. 2016.

122 Interview with Rose (Nigeria), 26 Feb. 2016.

123 Interview with Selena (Jamaica), 12 Nov. 2015.

treated like animals, existing in a rights-less space where they lacked any control over their legal case or even physical safety. In this way the UK's immigration processes, as conceived by participants in this study, is seen as a dangerous force, an attempt to dehumanise those subject to it. "Law" is thus seen in oppositional terms and indeed one from which physical and emotional insecurity can result, rather than as a body to which recourse can be made to uphold and defend individuals' rights and security.

Immigration control mechanisms continue to manifest outside detention: those subject to immigration control continue to wait in the community under a variety of conditions and restrictions, most commonly the obligation to report to the Home Office at regular intervals. The vast majority are unable to work, volunteer or study, and some may have additional bail conditions to comply with. One participant in this study was fitted with an electronic tag and had a 7pm curfew. As she explained:

they say it [detention] is a place where you should be kept to be safe, it's like housing while they deal with your case but at the same time it's not really like that it's more of a place to oppress you or it's more of a place to control you until they decide what it is that they want to do with you, it's more like that. If you're not in there they're controlling your person in another way, like for me it's the tag, for me it's signing, for somebody else it could be you can't work, for somebody else it's you have to live in a hostel.¹²⁴

The behaviour of officials encountered during the asylum and detention process can exacerbate these feelings of loss of control, particularly where officials are unsympathetic and hostile. Irene, who had been arrested in Uganda and abused, tortured and raped by prison guards, explains the intimidation she felt when encountering UK officials: "after she raised her voice I was scared every time she [the screening officer] asked me a question, I didn't know what to say so I couldn't go on with the interview".¹²⁵ The experience of being held in detention has been exceptionally stressful for people who have been mistreated by authorities in their home country, or, as in the case of Kasun, fear being placed in detention again: "after detention, even if I see any officers, police, I just get panicking".¹²⁶ Here again we see law perceived as a force which can usher in feelings of insecurity and panic on the part of those subject to it.

It is perhaps unsurprising that participants see the immigration process as a means of control. What is more interesting is that individuals see control manifest not only through the legal measures imposed, but the uncertainty and lack of information they have on their legal case. As considered above, detainees do not have ready access to caseworkers who can advise on the progress of their case and what they may expect over the coming months or years, and many lack legal representation or encounter difficulties in contacting their legal advisers. Additionally, unlike other European States the UK does not have an express time limit on immigration detention, nor automatic judicial review of a decision to detain, and as such detainees do

124 Interview with Romy (Zimbabwe), 3 Feb. 2016.

125 Interview with Irene (Uganda), 20 Nov. 2015.

126 Interview with Kasun (Sri Lanka), 7 Mar. 2016.

not have the benefit of a prison sentence with a determinate period of detention.¹²⁷ Rather, immigration detainees face being held for an indeterminate period of time, which could range from days to, in some cases, years. For many participants it is the lack of information and uncertainty that has the biggest impact on their autonomy and control. As explained by Cynthia:

They never told you how long you are going to be held, you could be held for up to 6 months, could be held for less than 2 weeks. They never gave you any time limit [...] Whenever they call you your mind jumps up and down because you don't know what they are going to tell you so it was just like that, like a suspense. So it is a torture, the emotional torture because you don't know what's the next step, what they are going to do, what is the decision.¹²⁸

Indeed, Griffiths argues that this perpetual uncertainty is in fact critical to the functioning of the UK's immigration detention system, a "technique of power" that has become a fundamental part of governability, serving to keep people insecure, passive and pessimistic, and to reiterate the indifference and power of the state.¹²⁹ She argues that, lying outside the criminal justice system with its determinative rules, procedures and safeguards, immigration detention and those subject to it operate under chronic uncertainty and instability.¹³⁰ Those subject to it experience "dual temporal uncertainty": people are "simultaneously afraid both that their detention will end at any moment without warning, and that they will remain forgotten in detention forever."¹³¹ Combined with the experience of law as rumour, suggestion and deception, this feeds into the construction of individuals as powerless, passive subjects rather than active agents within a legal system. This is far removed from a conception of law as a predictable system of rules to which recourse could be made to uphold rights and benefits, and is rather viewed by participants as an attempt to "wear down" and dehumanise those subject to it.

Significantly, this pervasive uncertainty does not come to an end when individuals are released from detention, but rather permeates the entire immigration process. Participants described waiting in the community under a variety of control mechanisms outlined above, "stagnant" or "stuck",¹³² and uncertain of what the future will bring. Selena explains how this waiting and uncertainty manifests as extreme control over her as an individual: "the Home Office they take away my normality, my independence, they take away my life. I am in some invisible chain and shackles right now, I am stagnant, I can't move."¹³³ Diana, who had been subject to the detained

127 Griffiths, "Living with Uncertain", 281.

128 Interview with Cynthia (Cameroon), 7 Jan. 2016.

129 Griffiths, "Living with Uncertainty", 280.

130 *Ibid.*, 266.

131 *Ibid.*, 272. Bosworth and Fili explain that "[t]he uncertain nature of immigration detention in the UK permeates all aspects of confinement, affecting daily routines, relationships and people's interpretation of the aims and justifications of these sites". Bosworth & Fili, "Immigration Detention in Greece and UK", 6.

132 See similar comments by Griffiths, "Living with Uncertainty", 274.

133 Interview with Selena (Jamaica), 12 Nov. 2015.

fast-track process, describes the mental anguish of being unable to do anything but wait for the next communication from the Home Office:

right now time is, to sit here and wait every day, every day you wait for a letter from the Home Office, you don't even know what they are going to say to you, I could get a letter today that they refused me and the next day they are knocking on my door to take me back into detention. It kills me.¹³⁴

Unable to work or form news lives for themselves, those subject to immigration proceedings wait in limbo for an uncertain and indeterminate period of time.¹³⁵ In this sense, participants overwhelmingly viewed UK immigration law and the immigration system as a form of control over them, both in the sense of physical legal control mechanisms such as detention and reporting requirements, but overwhelmingly all the narratives that formed part of this research focused on the mental control of the system; the exertion of control through uncertainty, which permeates both the detention estate and the entire immigration process. As Hasselberg notes, “present and future lives become suspended [...] marked with extreme nervousness, anxiety, irritation, guilt, fear, anger and suspicion. [...] and ensuing chronic stress and long-term uncertainty”.¹³⁶

That detainees and others subject to immigration control live in a state of continual uncertainty is understood by many as a technique of power itself – the assertion of control through systematic uncertainty and disorder.¹³⁷ Turnbull explains how many participants in her research considered this uncertainty and indeterminacy was a technique of the Home Office, keeping people confined and ignorant, and eventually wearing them down until they agree to “go home”.¹³⁸ Control and constraint in this sense therefore manifests not only through the legal control measures imposed by the UK's immigration system, but most prominently through the mental distress caused by the uncertainty and unpredictability of the system itself, keeping those subject to it in a virtual “chain and shackles”. Such a conception goes against fundamental principles of accessibility and predictability of the law to their core.

Despite, or perhaps because of this rather bleak picture, it is important not to perceive those subject to detention purely as passive, bewildered victims, but rather recognise that many participants in this research reported that the detention process made them stronger, in that they took the opportunity to take charge of their own legal cases and stand up to the authority which exerts such control over them. One example is Romy, who spoke about representing herself in court: “I went from not knowing anything about my case, not knowing anything except for ‘I’m seeking asylum or I don’t want to go home because of’, to ‘I’m able to walk into court and

134 Interview with Diana (Uganda) 3 Feb. 2016.

135 However see Rotter, who argues that waiting was not an empty interlude between events but an intentional and agential process. Rotter, “Waiting in the Asylum Determination Process”.

136 Hasselberg, *Enduring Uncertainty*, 147, and see also Chapter 4. See also Griffiths, “Living with Uncertainty”, 274.

137 Griffiths, “Living with Uncertainty”, 279.

138 Turnbull, “Stuck in the Middle”, 67. See also Griffiths, ““Vile Liars and Truth Distorters””, 11.

represent myself." Her solicitor advised her that no barrister would take her case, and so she asked for the paperwork and represented herself:

I did my own research, I read my paperwork, I read other peoples paperwork, I talked to people, I talked to other solicitors about my chances, I talked to other people who've been in that particular situation, I took notes, I made folders this big and that big.¹³⁹

At the time of interview she was awaiting the outcome of her appeal.

Romy's narrative and that of others interviewed as part of this research chimes with the findings of Hasselberg, Turnbull and Griffiths, who describe those subject to immigration law "learning the law", particularly as regards representing themselves. Hasselberg describes how many detainees appropriated a rule-oriented narrative for their case, often sounding like legal caseworkers.¹⁴⁰ Similarly Griffiths and Turnbull describe how detainees, initially at least, "buy into" the system and argue their case through the official rationale and language, continually "chasing up the courts, caseworkers, placing phone calls and sending faxes to speed the process along".¹⁴¹ These findings reflect the activities of a number of participants involved in the present research, who were not "beaten" or worn down by the system, but presented themselves as knowledgeable legal subjects, appropriating for themselves a sense of control over their own cases and attempted to reassert their own autonomy and power. In this sense many participants displayed a "with the law" legal consciousness – viewing the legal system as one with rules and procedures that can be manipulated with requisite energy and access to knowledge. That many displayed this mode of legal consciousness concurrently with one "against the law" – seeing the law in oppositional terms – reflects Ewick and Silbey's findings on the ability, and indeed perhaps necessity, of individuals to concurrently display different, and often contradictory, modes of legal consciousness when faced with the UK's immigration detention system.

4. CONCLUSIONS

We see a process here whereby those subject to immigration control conceive of the legal system in vastly different ways to how we, as lawyers, would view it. Law is experienced indeterminately, more as rumour and suggestion than a definite process or legal framework, and coloured by lies and deception on the part of stakeholders involved. Participants see the control of the legal system manifest not only through the legal measures imposed, but the mental distress caused by the (deliberate) uncertainty and indeterminacy of the immigration system itself – a measure of control intended to paralyse and "wear down" those subject to immigration proceedings.

Participants display differing modes of legal consciousness – sometimes concurrently – seeing law as an oppositional force to be battled against or avoided, but also a system of rules which can be manipulated with the requisite access to knowledge

139 Interview with Romy (Zimbabwe), 3 Feb. 2016.

140 Hasselberg, *Enduring Uncertainty*, 148.

141 Griffiths, "Living with Uncertainty", 275; Turnbull, "Stuck in the Middle", 71.

and resources. Many participants thus presented themselves as passive, bewildered victims of an unjust and inaccessible system, and at the same time as active, knowledgeable agents. Permeating all these narratives however is the description of immigration detention as a “desert island”, a space that is isolated and remote, and imbued with uncertainty and often fear. This space, inhabited by immigration detainees, by all accounts appears to be outside the jurisdiction of “law” as we, as lawyers, would readily understand it.

It is hoped that, by bringing to the fore the experiences and challenges immigration detainees face, and the differing modes of legal consciousness they display, this research will better enable all stakeholders engaged in the UK’s immigration system, and particularly the legal representatives who are so key to detainees experiences, to better understand and serve the needs of those subject to immigration detention in the UK.