

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's written evidence to the Joint
Committee on Human Rights' inquiry into
factors which may impede individuals from
using the UK's human rights framework
effectively**

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at
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Introduction

1. This inquiry asks for evidence on factors which impede individuals from using the UK's human rights framework effectively. In particular, the inquiry seeks to focus on judicial independence, access to resources, legal independence, and cultural factors that may erect barriers to the enforcement of rights.
2. This submission will focus on three main areas. Firstly, on political attacks upon the UK's human rights framework including attempts to 'scrap' the Human Rights Act 1998, withdraw from the European Convention on Human Rights (ECHR) and the Government's intention to abandon the European Union (EU) Charter of Fundamental Rights and eliminate the enforceability of the general principles of EU law including the principle of equality. These attacks undermine respect for human rights, stigmatise those who seek to vindicate their rights and create uncertainty about the existence of rights protections.
3. Secondly, this submission will focus on declining levels of access to justice with particular reference to the effects of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and tribunal fee hikes. It will also examine recent research focusing on the immigration detention estate which shows how restrictions on access to lawyers and the courts can contribute to an environment where rights violations proliferate.
4. Finally, successive UK Governments have failed to uphold the rule of law, both by not implement judgements in a timely fashion and by failing to defend the constitutional role of an independent judiciary. These failures reduce the confidence of those who rely on judicial enforcement of human rights to protect them from harm and abuse.

Political Attacks on our Human Rights Framework

The Human Rights Act

5. Over the past eighteen years the impact of the Human Rights Act has been felt across society. It not only makes life better and fairer for individuals who successfully bring cases to court but also for the millions of other people who benefit from the changes to legislation, policy and practice that have emerged from living in a country where human rights are directly enforceable and public bodies have a positive obligation to protect and uphold them.
6. Victims of crime, people with physical disabilities, people experiencing mental health problems, minority groups including BAME communities and LGBT groups have all received help from the Act. Journalists, members of the armed forces and those who have lost loved ones as a result of State failings have used it to hold authorities to account and ensure that mistakes and abuses are not repeated. The Human Rights Act offers information and justice to individuals or their bereaved friends and families and, crucially, can help to identify systemic problems that need to be remedied.

7. Yet in both the 2010 and 2015 general elections the Conservative Party pledged to ‘scrap’ the Human Rights Act and replace it with a British Bill of Rights. These pledges provoked political and civil society opposition. No legislation was brought forward to action these proposals despite them being repeated in the 2015 and 2016 Queen’s Speeches.
8. The 2017 Conservative manifesto stated that they would not ‘repeal or replace the Human Rights Act’ but would ‘consider our human rights legal framework when the process of leaving the EU concludes.’
9. Constant attacks, through manifesto pledges and rhetorical threats aimed at the UK human rights framework, undermine the Act, distorting public understanding and respect for the laws that protect people from State sanctioned abuse and neglect. Government attempts to malign the Act have frequently been misleading or inaccurate, helping to fuel the myths and misinformation which have become a mainstay of reporting by some parts of the press. For example on 15 December 2017, *The Daily Mail* published a front page story ‘Another Human Rights Fiasco!’ On 20 December they issued a correction and admitted that the central elements of their story were false.¹ However, corrections do not get the same coverage as front page headlines and the misinformation is already out there ready to be repeated by politicians. The infamous speech by Theresa May which spoke about “[t]he illegal immigrant who cannot be deported because – and I am not making this up – he had pet a cat” is a case in point; a story that has been debunked but plays into the false narrative that human rights do little to protect the general public.²

The European Convention on Human Rights (ECHR):

10. Almost sixty-five years ago the ECHR entered into force. The Convention was a British answer to the unimaginable horrors of the Holocaust; arising from the ruins of a continent that had ripped itself apart and in which millions from persecuted minorities had been brutally murdered. The Convention has led to judges asserting that journalist’s sources must be protected,³ openly gay soldiers can serve in the military⁴ and employers must protect religious beliefs.⁵ These protections are more important than ever as the UK prepares to leave the EU.

¹ The Daily Mail admitted two key aspects of their ‘Another Human Rights Fiasco’ story were false. The story claimed that Abd Al-Waheed had been ‘caught red-handed with bomb’, and that he had been awarded £33,000 for being kept in custody ‘for too long’. In fact, the £33,000 was the total compensation awarded to Mr Al-Waheed for several breaches of the European Convention on Human Rights: £15,000 for beating, £15,000 for inhuman treatment, and £3,300 for unlawful detention. Further, he was not ‘caught red-handed with a bomb’

² The original judgment was released in 2008 and was misreported by the press in 2009. The Judicial Communications Office explained that the decision wasn’t about a cat, but rather a Home Office error. The Home Office lost the case because they ‘conceded that they had mistakenly failed to apply their own policy for dealing with unmarried partners of people settled in the UK

³ *Goodwin v. The United Kingdom* - 17488/90 [1996] ECHR 16 (27 March 1996)

⁴ *Smith And Grady v United Kingdom* - 33985/96; 33986/96 [1999] ECHR 72 (27 September 1999)

⁵ *Eweida v. The United Kingdom* - 48420/10 36516/10 51671/10 59842/10 - HEJUD [2013] ECHR 37 (15 January 2013)

11. During the EU referendum campaign, Theresa May stated:

“The ECHR can bind the hands of Parliament, adds nothing to our prosperity, makes us less secure by preventing the deportation of dangerous foreign nationals – and does nothing to change the attitudes of Governments like Russia’s when it comes to human rights. So regardless of the EU referendum, my view is this. If we want to reform human rights laws in this country it isn’t the EU we should leave but the ECHR and the jurisdiction of its Court.”⁶

12. Withdrawing from the Convention is off the table for this Parliament, but in the longer term, the threat to the Convention remains. One critique often aimed at the ECHR is that it is conceived of as a ‘living instrument’ which leads to a ‘mission creep’ by the European Court of Human Rights (ECtHR).

13. It is important to note that the Convention was drafted in 1950, at a time when, across much of Europe, homosexuality was illegal, marital rape, corporal punishment and discrimination against illegitimate children was legal and developments such as the internet and IVF treatment could never have been envisaged. If the Convention were applied today exactly as it would have been applied in 1950, the protection of human rights would stagnate to a time when social attitudes and day to day life were very different. Instead, the Convention provides a vital framework capable of protecting rights in new and emerging contexts as both technology and social attitudes develop. If the interpretation of the Convention did not evolve, individuals would effectively have no legal protection against new threats to their human rights.

14. The importance of the ‘living instrument’ approach can be seen in *Rantsev v Cyprus and Russia*.⁷ The ECtHR held that trafficking fell within the prohibition on slavery in Article 4 of the Convention, commenting that “the absence of an express reference to trafficking in the Convention is unsurprising” since it was a relatively new phenomenon. Again, in *S and Marper v United Kingdom*⁸ the ECtHR held that retaining DNA samples of individuals who had been arrested but later acquitted violated the Article 8 right to respect for private life. A strictly literal approach of the Convention would deny protection to victims and future victims of human rights violations.

15. Interpreting law to reflect modern times is not a new phenomenon—indeed, it is one that adheres to our own national legal tradition. As the President of the Supreme Court, Lady Hale articulates:

“...it is in a comparatively rare case that an Act of Parliament has to be construed and applied exactly as it would have been applied when it was first passed. Statutes are said to be ‘always speaking’ and so must be made to apply to situations which

⁶ See Full Speech: <https://www.gov.uk/government/speeches/home-secretarys-speech-on-the-uk-eu-and-our-place-in-the-world>

⁷ *Rantsev v Cyprus and Russia* (App no, 25965/04) Judgment of 7 January 2010

⁸ *S. and Marper v the United Kingdom* (Applications nos. 30562/04 and 30566/04)

would never have been contemplated when they were first passed. Thus in 2001, a ‘member of the family’, first used in 1920, could be held to include a same-sex partner. In 1998, ‘bodily harm’ in a statute of 1861 could be held to include psychiatric harm. And in 2011, ‘violence’ could be held to extend beyond physical violence into other sorts of violent behaviour. In all of these examples, the court is seeking to further the purpose of the legislation in the social world as it now is rather than as it was when the statute was passed, but to do so in a principled and predictable way which will not offend against either the intention of Parliament or the principle of legal certainty.”⁹

The Charter of Fundamental Rights

16. In the EU (Withdrawal) Bill pending before Parliament, the Government has taken the extraordinary step of copying and pasting the entirety of EU law into domestic law, but leaving its key human rights components behind. Clause 5(4) of the current Bill singles out the Charter of Fundamental Rights and excludes it from the otherwise comprehensive category of ‘retained EU law.’ Government Ministers have attacked the Charter’s rights protections as “undesirable.”¹⁰
17. It is widely recognised that the Charter has created new rights – and indeed that over time further developments aligned with its aims and core rights can be expected, as with any ‘living instrument’ (including the ECHR)¹¹. In *Google Spain*¹², for example, Articles 7 and 8 of the Charter were interpreted by the Court of Justice of the European Union (ECJ) as the source of the ‘right to be forgotten’.¹³ Excluding the Charter therefore excludes the potential and dynamism of the Charter as our own Courts may interpret and apply it themselves in the future.¹⁴ Moreover, excluding the Charter risks creating protection gaps in domestic law. These are areas where other sources, such as the ECHR, either do not cover the same

⁹ “*Beanstalk or Living Instrument? How tall can the European Convention on Human Rights Grow?*” Gray’s Inn Reading 2011, The Rt Hon the Baroness Hale DBE.

¹⁰ Junior Brexit Minister Suella Fernandes MP, writing in the Telegraph on 18 November 2017, described the Charter as “*much flabbier, covering everything from biomedicine and eugenics to personal data and collective bargaining. Lawyers will love the extra layers of rights and the fees that they bring, and it’s also a core part of the Brussels project too*”

¹¹ The protocol to the Lisbon Treaty, referred to by the government during Committee Stage in an attempt to roll back the clock, cannot displace the reality of the nature of the Charter as applied by the ECJ. As to its value, see Aidan O’Neil, ‘*Is the UK’s ‘opt-out’ from the EU Charter of Fundamental Rights worth the paper it is written on? Part 1*’ (eutopia law, 15 September 2011)

¹² *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*

¹³ *Google Spain (C- 131/12 Google Spain SL v Agencia Espanola de Proteccion de Datos [2014] QB 1022)*,

¹⁴ The importance of that potential may soon be felt in the critical area of LGBT rights. A recent Opinion of the Advocate General in the case of C-673/16 *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others* was clear that the concept of spouse in Directive 2004/38 (free movement) of the EU was gender neutral and therefore had to include same sex spouses, when viewed in light of Articles 7, 9 and 21 of the Charter (see, inter alia, “*it is artificial nowadays to consider that a homosexual couple cannot have a family life within the meaning of Article 7 of the Charter*” [92]). As such, same sex couples had to be given equal rights when exercising free movement. It remains to be seen whether the ECJ will follow this Opinion, and how it will then be received, but the potential for the Charter to revolutionise the lives of LGBT couples is clear.

substantive rights, or do not do so as clearly or comprehensively. Finally, a wider range of individuals may bring claims under the Charter, since the test for standing in judicial review is wider than that for 'victim' under Section 7 of the Human Rights Act. If the Charter is excluded, ordinary people will lose this valuable remedy for violations of their rights.

18. The Government's attempt to use the opportunity of the Withdrawal Bill to abandon the Charter of Fundamental Rights, even as it claims that the purpose of the Bill is to maintain legal continuity after Brexit, reinforces the notion that human rights protections are less worthy of respect and exempt of general rule of law principles.

Going forward

19. The human rights framework exists to help individuals hold the State to account for abuse, negligence and mistreatment. Past proposals to scrap the Human Rights Act, to withdraw from the Convention and the pending proposal to do the same for the Charter of Fundamental Rights would leave the UK with weaker human rights protections. Constant denigrating of human rights undermines public trust in rights protections and obstructs the championing and celebrating of our rights.¹⁵

The Rule of Law and Accessible Justice

Rule of law

20. Successive UK Governments have failed to defend the rule of law in word as well as deed, both by failing to implement judgements¹⁶ in a timely fashion and by failing to defend an independent judiciary. The Lord Chancellor when appointed vows to uphold the independence of our judicial system and the rule of law. As such, the slow and lukewarm response to media attacks on judges following the Article 50 Brexit decision was worrying and disappointing.¹⁷ An independent judiciary ensures equal treatment for minorities and helps to hold the powerful to the same standards as everyone else. The rule of law and an independent judiciary are two vital components in ensuring rights protections for all. When the Government takes affirmative steps to denigrate judicial institutions, people cannot be confident that those institutions will be capable of protecting them from abuses of power.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

21. Throughout the passage of LASPO Liberty argued that free, independent legal assistance is vital to achieving justice for everyone. Without legal aid, we are not a fair society. We have also previously argued that the vulnerable would be hardest hit by legal aid cuts, that there

¹⁵ See Equally Ours 'How to Talk about Human Rights' research which asserts that 41% of people are undecided whilst 26% of people are opposed to human rights.

¹⁶ The Government have recently signalled that they will be resolving the prisoner voting case by giving very limited numbers of prisoners the vote. This ends a 12 year dispute with the ECtHR.

¹⁷ See more at <https://www.liberty-human-rights.org.uk/news/blog/never-trust-government-fails-defend-rule-law>

would be an increase of self-representation in court, that many would be put off from fighting for their rights altogether and that all of this would lead to violations going unchallenged and authorities having no reason to correct errors because the public would not be able to challenge decisions. Sadly, much of this has been borne out. The whittling away of access to justice undermines mechanisms put into place to hold the State to account for human rights violations and simultaneously erodes trust in the framework as a whole.

Creating barriers to justice

22. LASPO shifted the majority of welfare benefit, employment, family, immigration and debt cases outside the scope of legal aid. Statistics show spending on legal aid fell from £2.6bn in 2005-06 to £1.5bn in 2015-16. The sharpest decline came the year after LASPO came into force.¹⁸
23. The number of people accessing legal aid has dropped dramatically. The figures for those receiving legal aid for advice on welfare benefits issues has fallen from 83,000 in 2012–13 to 440 in 2016–17, a staggering decrease of 99.5%.¹⁹ Similarly in regards to civil and family cases, by 2016–17, providing advice and assistance has fallen by 74% from 575,000 to 145,000 and representing someone in court by 29% from 150,000 to 105,000.²⁰
24. Growing evidence shows an increase in people self-representing in court. Numerous sources including surveys of the Magistrates Association, prosecutors, judges and lawyers, Ministry of Justice (MoJ) data and freedom of information responses all indicate that more individuals are appearing in court without legal representation.²¹

Criticism from all areas

25. In his 2015 annual report to Parliament, the then Lord Chief Justice, Lord Thomas of Cwmgiedd wrote that *'our justice system has become unaffordable to most.'*²² Whilst recent research stated that only 39% of the general public believe the justice system works well for citizens and only 17% believe it's easy for people on low incomes to access justice.²³ The cuts have been criticised by leading human rights organisations,²⁴ the Trades Union Congress²⁵ the National Audit Office, senior judges²⁶ and parliamentary select committees.²⁷

¹⁸ <https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2017>

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf p45, paragraph 173

²⁰ *Ibid*

²¹ See 'Transform Justice' Report: *'Justice denied? The experience of unrepresented defendants in the criminal courts'* April 2016

²² https://www.judiciary.gov.uk/wp-content/uploads/2016/01/lcj_report_2015-final.pdf p5

²³ See p. 3 of *'Responsive Justice: How citizens experience the justice system'* Citizens Advice, 2017.

²⁴ <https://www.amnesty.org/en/documents/eur45/4936/2016/en/>

²⁵ Trade Union Congress *'Justice denied - impacts of the government's reforms to legal aid and court services on access'* October, 2016.

²⁶ See <https://www.theguardian.com/law/2014/dec/01/legal-aid-cuts-miscarriages-justice>

Relief measures falling short

26. In excluding many areas of law from the scope of legal aid, LASPO threw into sharp focus the need for a robust mechanism for providing exceptional funding on an individual basis. Exceptional case funding (ECF), mediation and the telephone gateway were all proposals designed to act as relief measures for those no longer able to access legal aid. The Government promised that individuals who were otherwise unable to claim legal aid but whose cases involved human rights would be able to access public funding through the ECF.
27. In 2015, the Justice Select Committee stated that the exceptional case funding scheme had not worked as Parliament intended. The report wrote: *'the MoJ estimated that 5,000-7,000 applications for exceptional cases funding would be made annually, of which around 3,700 (74%-53%) would be granted.'*²⁸ Between April and June in 2017, 533 ECF applications were received and 57% (287) were granted. The annual figures fall well below the Government's estimate. Additionally, the Lord Chancellor's guidance on the use of ECF was successfully challenged in court as failing to give sufficient weight to access to justice in the decision making process.²⁹

The importance of judicial review

28. Judicial review is a core means by which the courts hold public authorities to account, including for violations of human rights. Any State committed to the rule of law must accommodate a robust system of judicial checks on the government and ensure that this layer of protection against arbitrary or unlawful government action is widely and readily accessible. It is worth noting that it was a judicial review that overturned the employment tribunal fee decision which is detailed further on in this briefing. Judicial review has time and time again shown itself to be a vital component to ensuring respect for human rights. Attempts to limit its use to those who can afford it undermine access to justice in the UK.
29. The Government brought forward regulations under LASPO to remove legal aid funding in cases where permission for judicial review was not ultimately granted by the courts. The regulations were successfully challenged in 2015.³⁰ Further changes mean legal aid has been refused for cases where the chances of success are assessed as borderline. This means that cases that might break new legal ground are less likely to be brought through legal aid. This risks insulating the state from legitimate challenges, including to measures which threaten basic rights and freedoms.

Going forward

²⁷ <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/31102.htm>

²⁸ See p. 14 of <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>

²⁹ *Gudanaviciene & Ors, R (on the application of) v The Director of Legal Aid Casework & Or* [2014] EWCA Civ 1622, 15 December 2014)

³⁰ *Ben Hoare Bell Solicitors & Ors, R (On the Application Of) v The Lord Chancellor* [2015] EWHC 523 (Admin) (03 March 2015)

30. We cannot foster a meaningful human rights culture in the UK without accessible justice. Having access to legal services does more than simply vindicate an individual in a particular case. Successful challenges set precedents, raise awareness and help to place human rights considerations at the heart of public sector decision making.
31. In addition to the importance of sound advice in avoiding unnecessary escalation of problems, it is frequently the prospect of legal intervention which produces compromises. If one party has no means of accessing the courts, what impetus is there for a spouse to make concessions, an inefficient government agency to improve its practices, or large company at fault to accept a reasonable settlement? Access to legal services is an equaliser, enfranchising the voiceless and ensuring that nobody in our country is above the law. These cuts, alongside damaging political attacks on the 'legal aid gravy train', have demoralised the system and tainted it in the eyes of the public.

Price hikes in employment and immigration tribunals

32. Employment Tribunal Fees of up to £1,200 were introduced through the Employment Appeal Tribunal Fees Order 2013. The fees further limited access to justice, especially for people on lower incomes. The introduction of fees coincided with a steep decline in the number of cases received by employment tribunals. The number of cases brought by individuals was 68% lower and the average number of cases brought by two or more people fell by 75%.³¹
33. The Government acknowledged that the number of claims had dropped more dramatically than planned.³² The Government had planned that more cases would be settled through mediation. However, between 3000 and 8000 people per year who were unable to settle their cases through the mediation services did not take their case onto a tribunal. This indicated a gap of thousands of individuals whose employment issues were no longer being resolved.
34. As such, Liberty welcomed the Supreme Court Judgement from July 2017 which ruled that the fees were unlawful and reiterated the importance of access to justice to the protection of human rights. In the words of the Supreme Court, "people must in principle have unimpeded access [to justice or] laws are liable to become a dead letter."³³
35. In the three months following the Supreme Court decision there was a 66% increase in claims.³⁴ An accessible and affordable employment tribunal system not only helps people in individual circumstances but also has wider effects, by letting employers know that if they abuse their power over their employees there is a form of redress.

³¹ See p. 4 of <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07081#fullreport>

³² See p. 30 of <https://www.gov.uk/government/consultations/review-of-the-introduction-of-fees-in-the-employment-tribunals>

³³ *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)*, 26 July 2017

³⁴ See <https://www.peoplemanagement.co.uk/news/articles/tribunal-claims-up-66-per-cent-after-fee-abolition>

36. It is important to note that the employment tribunal fees were successfully challenged through judicial review. This decision highlights the importance of an accessible judicial review system to allow people to hold public authorities to account and challenge policies which facilitate further diminution in rights protection.
37. The Supreme Court acknowledged that the reasons for introducing tribunal fees were and continue to be legitimate. The issue in this case was the level of fees imposed. For fees to be lawful, they must be set at a level that everyone can afford. The Government has repeatedly stated it will look at the reintroduction of fees in the future.

Immigration tribunals

38. In 2016, fees for an application to the first-tier immigration and asylum tribunal increased from £80 to £490 and from £140 to £800 for oral hearings. A public consultation returned 147 responses, 142 of these criticised the price hikes and many said they would impede access to justice for vulnerable people. After two months the increases were reversed and those who had paid the higher fees reimbursed.
39. Immigration tribunal fee hikes were reversed and employment tribunal fees successfully challenged in court. Yet ensuring that access to justice remains a crucial battle in the war to make human rights a reality for ordinary people.
40. The Government has announced a review of the reforms brought in by Part One of LASPO, due before the 2018 summer recess.³⁵ This appraisal is long-awaited and needs to be comprehensive in assessing the impact on access to justice. If people cannot access advice or protect their rights, then effectively those rights do not exist. There is nothing more damaging to the desire of creating a thriving human rights culture than putting those rights out of reach for many within society.

Access to justice within the immigration detention system

41. It is important to understand how certain policies intersect with a growing lack of access to justice and directly undermine the creation of a culture of respect and understanding for human rights. One area of particular concern is the use of indefinite immigration detention. The 27,819 people who were held in indefinite immigration detention last year had less access to justice than most. No judge authorises their detention and during the course of their incarceration they may never be brought before a court.³⁶ Unsurprisingly, the system has been criticised by UNHCR for its indefinite and systematic nature;³⁷ by HM Inspector of

³⁵ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2017-10-30/HLWS203/>

³⁶ Immigration Act schedule 10, paragraph 11, not yet in force, would offer some limited prospect of judicial oversight, but only after four months of incarceration for certain people in detention.

³⁷ UNHCR, *Global Strategy Beyond Detention: Progress Report*, August 2016.

Prisons for creating ‘*heightened levels of anxiety and distress*’;³⁸ by the Independent Chief Inspector of Borders and Immigration for failing vulnerable people,³⁹ by a cross-party Parliamentary Inquiry for ‘*unacceptable and deeply shocking*’ treatment of women;⁴⁰ and by Government appointed reviewer, Stephen Shaw, as a dehumanising process which undermines welfare and contributes to vulnerability.⁴¹

42. Vulnerability to violation of basic rights is particularly acute in immigration detention. The Bar Council have criticised the ability of the immigration detention framework to dispense adequate access to justice.⁴² Their report states that immigration advice should be provided much earlier and that not everyone is receiving the legal aid they are entitled to. The results for those who cannot or do not access legal representation or advice surrounding detention are poor.
43. Immigration detention lacks swift court control, an important safeguard to unlawful detention. Making a bail application is the quickest instrument to obtain release. Yet, this process has been reported as a ‘lottery’ with regular errors made by the Home Office, poor standards of evidence and varying judicial interpretation of key factors.⁴³
44. Judicial reviews have again provided an avenue to challenge some of the excesses of the detention system. Detention demonstrates the importance of affordable access to judicial reviews as they are often the last resort for many people being held in detention.
45. Lord Bingham’s core rule of law principles emphasise that a just legal system is clear and consistent, is applied equally, limits bureaucratic discretion and protects human rights.⁴⁴ In the context of immigration detention we see how the lack of adequate access to justice compounds violations in an area where individuals are particularly vulnerable.

Conclusion

46. Attempts to scrap the Human Rights Act, threats to withdraw from the ECHR and the intention to abandon EU-derived human rights –coupled with increasingly impeded access to justice—hinder attempts to achieve a culture which understands and respects human rights. A rights-focused culture cannot take hold while the human rights framework is subjected to regular and misguided attacks by politicians and the media. Further, by placing access to justice out of reach for vulnerable people we alienate the very people who rely on human rights laws as an equaliser the most.

Sam Grant

³⁸ HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, *The effectiveness and impact of immigration detention casework*; December 2012, p. 5.

³⁹ *Ibid.* p. 6.

⁴⁰ All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, 3 March 2015, p. 65.

⁴¹ Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons*, January 2016.

⁴² ‘*Injustice in Immigration Detention Perspectives from legal professionals*,’ Dr Anna Lindley, November 2017.

⁴³ *Ibid.* p. 3

⁴⁴ Lord Bingham, ‘*The Rule of Law*,’ *The Cambridge Law Journal* 66, no. 1 (2007): 69.