

Deportability and the Family

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Deportability and the Family: Mixed-immigration status families in the UK

Dr Melanie Griffiths

Dr Candice Morgan-Glending



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Executive Summary

Background to the research

The *Deportability and the Family* project examines the intersection of family life and immigration enforcement in the context of a decade of profound immigration policy shifts, including interpretation of Article 8 of the European Convention on Human Rights (ECHR) (the right to respect of one's private and family life). It investigates the effect of a person's insecure immigration status on experiences and decisions around family life, as well as the impact of UK-based family ties on people's negotiation of the immigration system. Researchers followed 30 mixed-immigration status families between 2014-17. The families consisted of foreign national men at risk of removal/deportation and their British partners and children. The research data includes interviews with couples and practitioners from legal, private, state and civil society sectors; observation of deportation appeals and other immigration hearings; and analysis of changing media and political rhetoric around immigration enforcement and family life rights.

The British interviewees were exempt from UK immigration controls. The men were not only subject to such controls, as Third Country Nationals (TCN), but their presence in the UK was especially insecure due to their precarious or unlawful immigration status. This made them liable to immigration enforcement measures like immigration detention, reporting and expulsion, meant most were prohibited from both employment and public funds, and created many other restrictions affecting their everyday lives.

Key findings

The research shows that precarious immigration status leads to a range of (potentially extreme) impacts on people's private lives, relationships and families, as well as physical and mental health, finances, careers and identities. Living under chronic insecurity, people are made poorer, sicker and unhappier. Their abilities to plan for the future or to be the partners and parents they wish to be are severely restricted, particularly by aspects of the immigration system such as forced unemployment, long-term uncertainty and the threat or reality of separation by detention or removal. The findings suggest gendered, racialised and classed biases to the recognition and evaluation of family life.

The data found that the harm caused by an insecure immigration status is not only felt by TCNs who are unlawfully present or have a criminal record, but also by those with time-limited visas. Moreover, the effects are not only felt by foreign nationals, but also the British and European citizens close to them, even though they are not subject to immigration controls. This includes British children, who face detriment to their standard of living, school attainment, mental health and feelings of Britishness and belonging.



Relationships and gender

Mixed impacts: UK-based family ties can help meet emotional, financial, practical and legal support needs, but may also heighten the difficulty of living under immigration status insecurity and be associated with guilt, separation or trauma. Most TCN men interviewed reported that their struggles were easier when they were single. Having children in the UK creates an ‘umbilical cord’ attachment, tying people to the country.

Proving relationships: Families with a precarious migrant face high levels of suspicion and intrusion. They are required to evidence the genuineness, sustainability and strength of their relations, but face numerous barriers to so doing, including many created by the immigration system itself. Decision makers might dispute the veracity of family ties, consider them a deceptive attempt to circumvent immigration controls, or genuine and subsisting but nevertheless sacrificial to the public interest of immigration controls.

Relationship trajectory: Precarious or unlawful immigration status affects relationship trajectories, including the onset, duration and outcome. Some aspects are sped up and others slowed, encouraging early cohabitation (and occasionally marriage), before potentially long periods of limbo. The stresses on relationships can be severe, particularly in relation to separation by detention or removal, and the financial and emotional strains.

Marriage and children: TCN men are acutely aware of suspicion over their motives and emotions, particularly from in-laws and the authorities. But in contrast to stereotypes of opportunistic grooms and fathers, the research showed the men were more likely to try to keep their private lives and immigration cases separate, even when it weakened their legal cases (e.g. not telling one’s solicitor about getting engaged). They sought to delay commitments like marriage and children, or avoided relationships altogether, until their immigration status was resolved. In contrast, British partners were more likely to suggest marriage for primarily-instrumental purposes, even though it actually provides no easy solution. The citizens contemplated marriage earlier in the relationship than they would normally, and even when they otherwise rejected the institution. However, they often felt constrained in their ability to have children during their partners’ instability.

Gender roles: The immigration system (especially separation, unemployment, precariousness, powerlessness), affects people’s gendered identities and family roles. Interviewees reported ‘role reversal’ in relationship dynamics, with the female partners feeling overburdened by responsibility and work, and the TCN men feeling emasculated, infantilised, ashamed and dependent by being unable to ‘provide’ financially for their families, make relationship commitments or control their lives. Contributing to their guilt, decision makers (and sometimes in-laws or partners) often explicitly blame TCN men for their legal situations.



Article 8: The immigration system employs gendered scripts about how to perform family roles, including ‘genuine’ relationships and ‘meaningful’ parenting, whilst simultaneously erecting barriers, such as immigration detention, curfews, dispersal and work prohibitions. Being framed as inadequate, unimportant and expendable challenges people’s ability to be the family figures they want to be – and that the Home Office tells them they should be – as well as undermines Article 8 legal claims to remain. Home Office treatment of such cases indicates an institutional reluctance to strengthen family life.

Citizen partners and children

‘Collateral damage’: The immigration status insecurity of a parent or partner affects the whole family, including British citizens. The level of harm can be high and long-lasting. Separation (within the UK or across borders), chronic uncertainty and their partners’ forced unemployment are particularly damaging, affecting citizens’ autonomy over many areas of their lives. Including work, education, place of residence and child raising decisions. Those already socially or economically marginalised are hit hardest.

Children: Although protected by domestic and international law, children’s best interests are conditional. The rights of children born to mixed-immigration status couples are coloured by their parents’ immigration status and any criminal record. A parent’s precarious immigration status (particularly when resulting in separation, forced unemployment or damaged mental health) causes children emotional, behavioural and educational harm and can diminish their sense of Britishness. Parents worry about the future repercussions of their children’s anger at the British authorities.

Family formation: The family-life decisions and experiences of British women are directly affected by their TCN partners’ immigration status precariousness. This includes decisions around having children, with interviewees delaying starting families, feeling unable to be stay-at-home mums, or relinquishing maternity leave to return to work quickly (with implications for breastfeeding). In many cases, citizen partners feel a conflict between resolving their partners’ immigration status and doing best by their children.

Power and responsibility: Precarious migrants often display early and extreme reliance on partners (and sometimes also their in-laws), including in terms of accommodation, food and finances. Citizen partners take on excessive responsibility, from providing emotional stability and income, to managing the legal and administrative applications. This leads to financial and mental health stress and shapes relationship dynamics. Power hierarchies can encourage citizen partners to adopt ‘saviour’ roles or alternatively behave in potentially abusive ways, such as withholding food, money and documents, or threatening to report partners to the Home Office during arguments or break-ups.



Belonging: Citizens' emotional attachments to the UK are challenged by being unable to live there with the partner of their choice and the associated battles with the Home Office, especially when they are long, antagonistic and expensive. Their sense of security and patriotism is particularly shaken by: immigration enforcement action taken against loved ones, emotional damage to their children, being unable to resolve their partner's problems and being advised by the authorities to choose between separation or relocation (seen as a forced choice between one's partner and country).

Civic disenfranchisement: The British partners feel that they are lesser citizens as a result of falling in love with foreign men. Feeling constrained, judged and punished by the British authorities, their responses include relocating abroad, relinquishing British citizenship, and actively undermining UK border controls. Some even take on characteristics reminiscent of precarious migrants, including carrying identification documents, anxiety around immigration officers, vans and dawn raids, inability to plan for the future, and living with packed suitcases. British children with precarious migrant parents also display subjugated citizenship and describe feeling rejected by, and resentful of, the British state.

Work and money

Financial problems: Both precariously and unlawfully resident TCN experience financial difficulties as a direct result of the immigration system. These relate to the prohibitions against employment and accessing public funds, as well as high, growing and often non-refundable fees, applications and legal costs. TCNs may feel forced to work illegally to cover legal cases or support families, despite the risks of poor pay, prison or deportation.

Impacts: Both TCN and their citizen partners are affected. They lose savings, incomes and benefits, facing potentially extreme financial hardship, debt or destitution. There are material, health and psychological effects, as well as impacts for the internal dynamics of relationships. TCN men commonly suffer shame, dependency and emasculation.

Citizens: The families' ability to navigate the immigration system is affected by the socio-economic position of citizen partners, including in terms of financial support, access to legal advice, challenges and applications, and enabling flexibility and risk taking (such as getting married, buying time with risky visa applications, and temporarily relocating within Europe (the 'Surinder Singh' route)). Even if lawfully present, having a precarious partner invariably leads to citizens experiencing financial loss. Common impacts include having to take on additional work or debt to support the family. This increases relationship stress and affects conception, parenting and maternity leave decisions. Those made 'single parents' by their partner's detention or removal disrupting care arrangements may be forced to give up their jobs and seek welfare support.



Separation from family members

Types of separation: The threat of separation from one's family pervades the UK immigration system. Separations occur between countries (e.g. out-of-country visa applications, visa refusals, forced removal) and within the UK (e.g. bail/asylum housing allocation, immigration detention). These are for indefinite and unpredictable periods of time and can be very long or even permanent.

Immigration detention: Detention decisions are not made with families in mind and there is little policy to help detainees maintain relationships, especially compared to provision in prisons. This may relate to an institutional reluctance to strengthen people's Article 8 claims. Individuals can be detained far from families, transferred between detention centres without notice, or released and re-detained. Visits are hindered by travel costs, distance and child-unfriendly visits halls. Detainees and their families are particularly harmed by lengthy and repeat detention, as well as the uncertainty borne from an absence of a timeframe or time limit. Separation may continue even after people are released, including due to the allocation of distant housing, electronic tagging or reporting conditions, absence of funds for travel and damage to relationships and mental health.

Relocation: The UK government routinely advises British citizens with foreign spouses to either leave the UK or conduct their family life across borders. Officials argue that modern technology, such as Skype, provides an adequate long-term alternative to in-person fathering. This dilemma between separation or relocation is presented as a 'choice'. Decision makers misrepresent the barriers and inadequacies (practical and emotional) of both scenarios, including costs, equipment, time zones and child development needs.

Money: The financial position of both TCN and their citizen partners affects the likelihood of separation. For example, finances influence visa options (e.g. high costs of applications, minimum income threshold for spousal visas), access to legal advice and representation, release from immigration detention (e.g. sureties, bail addresses), council housing rules regarding guests and pressures to work illegally (despite risks of prison, detention and deportation). Tight finances or welfare reliance limits families' options, including getting married or relocating overseas.

Impacts: Separation is deeply distressing for the whole family and particularly damaging to children. It causes significant harm, including to relationships, mental health, legal cases and finances. Decision makers underplay such harm and may even use temporary separations (e.g. by prison or immigration detention) to argue that families have demonstrated they could manage with long-term separation. Damage to children is evident in their behaviour, mental health and school attainment. They may develop emotional, behavioural and educational problems, including anxiety, depression and attachment difficulties. Skype is not an adequate alternative to in-person relationships.



Crime and justice

Access to justice: The immigration system is notoriously complex and fluid, and yet the judicial system is increasing out of reach, with people challenging decisions portrayed as wasting time and playing the system. Numerous barriers to legal advice, representation and redress have been introduced in recent years. These include legal aid cuts, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, ‘deport first, appeal later’ certification and the reduction of appealable decisions. Immigration and deportation appeals are heard in the administrative Tribunal, where lower evidential requirements permit the inclusion of hearsay, anonymous allegations and circumstantial evidence.

Foreign National Offenders (FNOs): This has become a highly political policy category, driving and justifying policy restrictions such as a narrowing interpretation of Article 8 of the ECHR. Categorisation as an FNO profoundly shapes individual experience, including by increasing a person’s deportability and raising the levels of harm legally permitted to their families. The impacts can be long-lasting or indefinite (e.g. return travel bans).

Operation Nexus: This police-Home Office initiative heightens the seriousness of TCN’s contact with the criminal justice system and lessens weight given to Article 8. Although framed as targeting high-harm FNOs, Operation Nexus expands the ‘foreign criminal’ category by drawing-in low-level, nascent and historical offenders, including those with spent and petty convictions. Building deportation cases on ‘non-convictions’ like police encounters, acquittals and withdrawn charges risks undermining police/community relations and the reporting of crime and abuse. Trust in the police is also damaged by embedding Immigration Officers in police stations and cross-departmental data sharing.

Rehabilitation: There is increasingly little scope for foreign nationals to shake off an FNO label, with legislative change and initiatives like Operation Nexus increasing seriousness and repercussions of offending and reducing options for demonstrating reform.

Deportation appeals: In essence, these involve a dispute over an individual’s perceived belonging versus criminality. Appellants emphasise ties to the UK whilst the Home Office seeks to establish ‘poor character’ (e.g. through unemployment, benefits, criminality, addiction) and underplay UK-based private life. Decision makers rarely recognise the role of family obligations or immigration restrictions in encouraging offending. Legal aid cuts result in unrepresented appellants, with costs to court time and judicial fairness.

Biases: The drive to increase deportations extends immigration repercussions to groups that are already over-represented in the criminal justice system, including ethnic minorities and eastern Europeans. Disproportionate inclusion of such groups in immigration enforcement is further heightened by the move towards building deportation cases on police encounters, like stop-and-searches, and allegations of drug use and gang membership.



Intersectional biases

Article 14 of the ECHR requires human rights to be recognised without discrimination. However, the research found several grounds by which the evaluation of family life was biased, including those of gender, ethnicity, language and socio-economic status. The experiences of contemporary mixed-citizenship families reflect historical continuities regarding political and social unease over citizen women marrying foreign men. This includes long-running gendered, racialised and classed undercurrents to debates regarding the purity of the populous, the threat (supposedly) posed by women marrying beyond the nation and suspicion over the emotional sincerity of foreign men. Contemporary immigration policy is less overtly biased along race and gender lines, but nevertheless reflects neocolonial biases over the rights of both insiders and foreign nationals to make private choices in the face of national immigration objectives.

TCN men: Mixed-citizenship partner and parental relationships involving foreign national men are commonly undervalued, mistrusted or disputed or by the authorities. Such men's physical presence is deemed dispensable; replaceable with virtual contact by technologies like Skype. They often find it extremely hard to meet decision makers' expectations of (and prove) 'active' parenting or partnering, especially when separated from their families (whether by immigration policies or relationship break-up). Normative gender assumptions regarding the primacy of mothers as caregivers intersect with other, often racialised, value systems. Gender, ethnicity, socio-economic status, religion, criminal record and immigration status converge to produce a figure whose private life is construed as opportunistic, fictive or sacrificial. Several immigration categories that are heavily skewed towards men (e.g. immigration detainees, FNOs, 'illegal immigrants') offer particularly little scope for recognition or respect of emotional lives.

British women: Interviews with both citizens and practitioners suggested that decision makers often approached women as being vulnerable, led by emotion and at risk of being fooled by foreign men using marriage as an immigration 'loop hole'. Historically British women have had weaker and more insecure citizenship rights than men. Although the legal practice of stripping British women of their nationality upon marrying a foreigner ended in 1948, today some are still feeling forced to leave the UK or give up their nationality to live with their foreign spouse. Their claim to full belonging and Britishness is weakened through their relationship with TCN men, with gender and socio-economic status arising as key variables. These women report feeling patronised, hindered and humiliated, with their rationality, good character, finances and national loyalty questioned by decision makers. Common stereotypes arising in the research include older British women being perceived as naïve and duped, young women as vulnerable and needing saving, and foreign women as greedy or criminal.



Policy Implications and Recommendations

Immigration policy: Recognising and valuing family life

- Many aspects of the immigration system hinder precarious and irregular migrants from performing spousal/parental roles, e.g. immigration detention, indefinite uncertainty and forced unemployment.
- Immigration-related weakening of family life is used in refusing Article 8 claims and facilitating expulsion. The Home Office's emphasis on removals creates an institutional reluctance to support – or sometimes even recognise – family life.
- Decision makers should acknowledge when reduced contact or support results from immigration restrictions and separations rather than weak family ties.
- Decision makers should recognise the immigration system's role in creating difficulties evidencing relationships, e.g. through separation or lack of money.
- Government should revert to pre-2012 interpretations of Article 8 protections.

Immigration policy: Gender

- Immigration-related weakening of family life helps reinforce longstanding gendered and racialised stereotypes of failed foreign and ethnic minority fathers.
- To counter concerns that decision makers routinely undervalue or mistrust the private lives of TCN men, they should demonstrate meaningful recognition of the importance of dads, irrespective of nationality, immigration status or criminality.
- The difficulties of proving relationships with partners and children should be recognised, including the role of the immigration system in this (e.g. immigration-related separation) and gendered aspects (e.g. unmarried fathers needing the mother's consent to be named on birth certificates).

Work and money

- The right to work, e.g. through discretionary leave, should be granted to undeportable FNOs, in recognition of the impact of unemployment on dependants (including British citizens and children), and in line with recommendations from the Chief Inspector of Borders and Immigration.
- The minimum income threshold for spousal visas should be lowered, in recognition of the high proportion of British citizens made ineligible.
- Costs of applications and fees should only increase in line with inflation.
- Citizens' access to public funds should not be reduced by living with or marrying a foreign partner who is prohibited from working or claiming benefits.



Access to justice

- Good quality legal advice and representation are essential for navigating the immigration system and challenging Home Office decisions such as Deportation Orders but are increasingly unobtainable.
- Barriers to legal advice and representation must be tackled immediately, including revisiting the LASPO Act 2012 and making legal aid available for human rights and immigration enforcement challenges.
- Politicians should not suggest that people challenging Home Office decisions are playing the system or undermining justice, especially when such challenges relate to immigration enforcement decisions or Article 8 claims.

Immigration detention

Detention decisions

- Home Office case-owners must demonstrate meaningful assessments of potential damage to families in their decisions to detain and re-detain people.
- Community-based alternatives to detention should be the norm.
- Given the acute harm indefinite detention poses to detainees and their families, there should be a maximum time limit of 28 days detention.
- Social Services should be informed of separations, with their monitoring of children feeding into decision-making on initial and continuing detention.
- Help with re-integration should be offered to those released from detention, including housing people with, or close to, their families.

Family contact

- Individuals should be detained as close as possible to their families.
- The Home Office should establish a Family Fund to reimburse travel costs for visits.
- The Home Office should contractually oblige detention providers to support detainees to maintain relationships, including through family-friendly visit days and ample visiting options outside work/school hours.
- Government should commission pilots of good practice in prisons, including story-recording schemes and Home Leave opportunities for key family events.
- All Immigration Removal Centres must assure adequate mobile phone coverage. Social media and video chat programs such as Skype should be accessible.



Crime and offending

Offending

- Public safety and social cohesion require a clear distinction between immigration and policing. Government should direct the police to prioritise community relations over immigration objectives. The police should not pass on victim and witness details to the Home Office.
- Decision makers should acknowledge when immigration or criminal offending arises from mutually incompatible obligations to one's family and the Immigration Rules (e.g. working illegally or absconding to support one's family).

Deportation appeals

- Deportation hearings (especially Nexus-related ones) require greater procedural protection than usually provided by the administrative Tribunal. At a minimum, the criminal standard of proof should be employed.
- Intelligence-led deportation should be suspended in favour of criminal conviction-led processes that genuinely focus on high-harm offenders.
- Legal aid should be immediately reinstated for deportation challenges.

Operation Nexus

- Vulnerable people should be exempt from intelligence-led deportation, including those who have been in the care system, have learning difficulties or been granted refugee or subsidiary protection status.
- Given the nature of youth offending, risk of systemic bias and gravity of deportation, individuals under 21 years should not be subject to Operation Nexus. Failing this, they should be assigned Social Workers and be subject to a flexible age of majority, with individual assessment of moral and psychological maturity.

1: Introduction

1.1 Mixing, marriage and migration

Immigration is rarely off the political agenda. Although much of the debate – from Brexit to immigration detention – seems peculiarly modern, the underlying issues around mobility, identity and national membership have been around for centuries. At different times, different forms of movement and mobile people are politicised as threatening, in ways that reflect unspoken biases and prejudices. There are recurring themes, including suspicion or distaste over ‘mixed’ relationships (the meaning of which changes), women marrying beyond the nation and people crossing borders for family reasons, especially when the people migrating are men.

Such anxieties were especially strong during the Imperial period, with great socio-political concern over intimacy between the colonised and colonisers. Variations of these concerns went on to shape the development of nationality and migration law in the 20th century. Where once colonial-era household manuals and marriage bans dictated ‘mixed’ contact in the colonies, now immigration policies and legislation manage mobility and marriage to the UK. And where once the concerns were focused on relationships between white female British subjects and racialised men in the colonies, by the mid-20th century the focus had moved onto men from the ‘new Commonwealth’ migrating to the UK.

Ever since then, policy makers and politicians have tended to frame mixed-nationality relationships and marriage migration as pitting the private realm against national interests and creating endless ‘chains’ of (unwanted) migration. These qualms are gendered and racialised, with family migration policies built upon the suspicion that men (especially from sub-Saharan Africa and the Indian subcontinent) immigrating as husbands were actually economic migrants in disguise (Wray 2011). The enduring unease at women marrying outside the nation meant that until 1948, British women marrying a foreigner automatically lost their citizenship, whereas foreign brides automatically gained their British husband’s nationality.

There is still deep concern over (certain people’s) mobility and relationships, which is reflected in the scale of policy change in this field. This report suggests that today it is families ‘mixed’ by immigration status and citizenship that are at the forefront of these longstanding (and still racialised and gendered) debates about Britishness, mobility and the boundaries of belonging.



1.2 Research questions

The project investigated the intersection between family life and the immigration system, in the context of a decade of profound policy shifts relating to migration, criminality, deportation, the family and interpretation of Article 8 of the European Convention on Human Rights (ECHR), the right to respect of one's private and family life.

Through a combination of interviews with mixed-immigration status couples and practitioners working in the field, and observation of legal hearings, the research explores the impact of UK-based family ties on people's negotiation of immigration status insecurity, as well as the effect of immigration precariousness and enforcement on practices of family formation, including in relation to gender relations, marriage, cohabitation and child-raising. It questions the families' navigation of shifting immigration policies, particularly around deportation, Article 8 rights and defining 'genuine' relationships, and charts changing political and media rhetoric on these topics. Importantly, the research considers the impact of immigration status insecurity on whole families, including those members whose British or EEA nationality exempts them from British immigration controls. For more details of the research questions, see Appendix 1.

1.3 Methodology and data

The report draws from data gathered in 2014-17 consisting of: qualitative research with mixed-immigration status families, interviews with practitioners working in the field, observations of immigration legal hearings, and analysis of political and media rhetoric. Recognising the need for a particularly robust ethical framework for working in this area, ethical considerations permeated the design and conduct of the project (see Appendix 2 for discussion of research ethics).

The data was collected in the years immediately prior to the UK's European Union membership referendum in June 2016. Three of the 'citizen partners' interviewed were EEA rather than British nationals. At the time, they had secure presence in the UK as EU citizens exercising their free movement rights rather than foreign nationals subject to British immigration rules.

Mixed-immigration status families: The project followed 30 mixed-immigration status families and couples consisting of British (or EEA nationals), and Third Country National (TCN) men. The former were exempt from British immigration controls as a result of their citizenship. The men, in contrast, were not only subject to the UK's Immigration Rules but had particularly uncertain presence due to their precarious immigration status (e.g. temporary visas, asylum claims, immigration legal challenges, criminal records) or being unlawfully present as a result of illegal entry, expired visas and failed asylum claims. Data



was collected through semi-structured interviews, biographic narratives and participant-observation work. Formal interviews were conducted with 14 TCN men and 15 ‘citizen partner’ women. In most cases only one partner of a couple was interviewed, with both partners interviewed (separately or together) in just three cases. Where possible, research contact was maintained over multiple years, so to chart developments over time, sometimes including after leaving the UK. Details of the interviewees are below.

Only one of the interviewees was in a same-sex relationship. This means that the vast majority of couples consisted of a TCN man and a British (or occasionally EEA national) woman. As discussed above, this combination of partners has a long history of being seen as problematic, in ways that are amplified by class, religion and ethnicity. It is also a combination often seen among the families affected today by immigration enforcement measures. There is a longstanding overrepresentation of (racialised) men in aspects of immigration enforcement like immigration detention and forced removals. In 2017, men made up 85% of the 28,000 people detained and 90% of the 12,000 forcibly removed.¹ See Appendix 3 for further discussion of gender choice in the project methodology.

Practitioner interviews: The report draws on over a decade of work in the migration sector. It is directly informed by interviews conducted with 19 ‘meso-level’ practitioners working in the state, NGO, private and legal sectors. These include three (current or former) inspectors of the immigration, prison and detention systems; a former senior manager of an Immigration Removal Centre (IRC); two marriage registrars, four immigration lawyers and nine representatives of the NGO sector (working in asylum, migration and immigration detention).

Immigration legal hearings: Detailed ethnographic observations were recorded for over 30 immigration hearings. Observations were made at all levels of the judicial system, with the majority at First-tier Tribunal (Immigration and Asylum Chamber) hearing centres in England and Wales. Half the observations were of appeals of Deportation Orders. Other hearings observed included immigration bail hearings and appeals of immigration decisions regarding asylum claims, human rights applications, spousal visas, visit visas, revocation of protection and curtailment of leave. The majority of the hearings involved appellants not known to the researchers. The hearings were open to the public, but the researcher negotiated her presence as appropriate on a case-by-case basis. Considerable care was taken to minimise intrusion and avoid contributing to people’s anxiety. No identifying information was recorded (see Appendix 2 on research ethics).

¹ Home Office statistics: <https://www.gov.uk/government/collections/migration-statistics>



Documentary analysis: Researchers charted media and political rhetoric between 2010 and the UK's 2016 EU Referendum relating to Article 8 rights, immigration enforcement and Foreign National Offenders (FNOs). This included newspaper stories, political speeches and reports. When interviewees were willing to share them, documents relevant to their immigration cases were examined for insight into the legal arguments and categories applied. These included Home Office correspondence such as removal directions, reasons for detention, monthly detention reports, bail summaries and immigration decisions, as well as court judgements such as bail decisions and appeal outcomes. Considerable care was taken reading such documents and no identifying information was recorded.

1.4 Overview of the families

The vast majority of the 30 mixed-immigration status families that the project followed consisted of heterosexual couples involving TCN men and British women. More than two thirds of these couples also had (British) children, ranging from babies to teenagers. In four cases the partners were non-British EEA nationals. There was one same-sex couple. Six families were included on the basis of involving a TCN father and his British child(ren) (the mothers were either no longer in relationships with the fathers or were also TCN).

The British partners were aged from their early 20s to late 40s, predominantly white (one Afro-Caribbean British woman was interviewed) and mostly Christian or atheist. They lived across England and Wales and had a wide range of socio-economic backgrounds. Just over half had low incomes, several were in receipt of benefits and a few experienced considerable financial hardship, including being reliant on food banks and crisis loans. There were also professionals and home owners, with a third of the women having university-level education. Only a few had any prior knowledge of the immigration system or the Home Office (those that did had worked or volunteered in the sector).

The men were in their 20s to 50s and had a wide variety of nationalities and ethnicities. Nearly half originated from sub-Saharan Africa, with greatest numbers from Zimbabwe and Nigeria. About a quarter of the men were Asian (three were Afghani) and the remainder came from a mix of countries in north Africa, Europe (Albania), the ex-Soviet, USA, Caribbean and Middle East. The men were predominantly Muslims, Christians and atheists. They had various immigration statuses² and had been in the UK between one and 30 years, with five having arrived as minors. A few had entered the UK irregularly but most had arrived legally with insecure, time-limited immigration status (e.g. on visit or

² One father has never been to the UK or lived with his family. His visa applications have been refused.



student visas), with some later becoming irregular (e.g. after overstaying a visa or having an application or asylum claim refused). Some managed to resolve their immigration status problems before or during the project but most were in limbo or embroiled in legal battles. The vast majority were not entitled to work in the UK. Over half the men had been in immigration detention (between one night and five years), and nearly a third had a criminal record (mostly for immigration offences like working illegally, but also fraud, driving offences and possession of an offensive weapon).

Of the couples that participated, 19 had met in the UK, nine overseas when the British/EEA partner was working, travelling or holidaying and two couples met on the internet. The relationships had lasted between two and 25 years. Half were married, with several more engaged. Three couples had split before the project and six during the project, usually citing the stress of the immigration system (two couples later reunited). Half of the families were living together in the UK, about a third were involuntarily separated (within the UK or across countries) and some were living together overseas (mostly in Europe). Six men had already been forced to leave the UK (two later returned legally, one illegally), with many more facing the possibility.

1.5 Terminology

The report employs migration categories and definitions used by the Home Office, whilst recognising that official definitions do not neutrally categorise types of people but are socio-political constructs that produce those categories through these acts of labelling.

Precarious and unlawful migrants: The Immigration Directorate Instructions defines TCN as being *unlawfully* present if they do not have the required leave to enter or remain. These people are committing an immigration offence and do not have the right to work. They are sometimes referred to as ‘illegal’, ‘undocumented’ or ‘irregular’ migrants.

The Immigration Directorate Instructions defines someone as having a *precarious* immigration status if they are:

‘In the UK with limited leave to enter or remain, or they have settled status which was obtained fraudulently, or they have committed a criminal offence which they should have been aware would make them liable to removal or deportation.’³

The definition produces an extremely large and heterogenous grouping, including the tens of thousands of TCNs lawfully present but with limited leave to enter or remain, as well as the thousands whose secure immigration status is jeopardised by allegations of

³ Immigration Directorate Instructions Chapter 13, *Criminality: Article 8 ECHR Cases*.



fraud or criminality. The definition means people may be considered precarious long after they feel settled, with one participant accused of fraudulently entering on a false passport several decades after the event and subsequent naturalisation.

British citizens: Citizenship exempts people from the immigration system and guarantees the right to enter the country and be protected from being forced out.⁴ British citizenship has its roots in colonialism, with a legal definition of British nationality created in 1914 in an attempt to unify the Empire. It is argued that British citizenship is founded upon ‘state racism’, with a complicated system of six different types of British nationality,⁵ designed to differentially include, exclude and marginalise different groups (Paul 1997, Tyler 2010).

European Economic Area (EEA) nationals: Citizens from the European Union or Iceland, Norway or Liechtenstein. The research was conducted in the lead up to the UK’s 2016 EU referendum, when EEA nationals still had the right to enter, live and work in the UK and bring TCN family members under free movement rights.

Foreign National Offenders (FNOs): The UK Borders Act 2007 defines ‘foreign criminals’ as foreign nationals convicted of an offence in the UK and sentenced to 12 months or more imprisonment, or for a shorter period but for an offence causing serious harm. The Home Office uses a broader definition that includes persistent offenders.

1.6 Structure

The next chapter summarises recent immigration policy change around families and deportation before outlining the Home Office’s interpretation of family life in immigration contexts, including notions of ‘genuineness’. Chapter 3 gives an overview of the real-world impact of immigration precariousness and enforcement on families, including on experiences and decisions around relationships, children and parenting. The following three chapters focus on key issues that arose from the research data. Chapter 4 explores work and money, including the repercussions of forced unemployment and financial dependency on relationships and masculinity. Chapter 5 looks at crime and justice, including deportation appeals and Operation Nexus. Chapter 6 examines forms and effects of separation of the men from their families, both across borders and within the UK. Chapter 7 details the impact of the men’s immigration status on the British citizens and the final chapter provides a summary and some conclusions.

⁴ There are exceptions, such as extradition and ‘Temporary Exclusion Orders’, introduced by the Counter-Terrorism and Security Act 2015.

⁵ See <https://www.gov.uk/types-of-british-nationality>



2: Families and the Immigration System: Interpreting Article 8

As noted in the previous chapter, immigration and nationality rules play out in uneven ways, affecting groups differently according to nationality, gender, class and ethnicity. Historically, British women's claim to their own nationality, independent of their fathers and husbands, has been legally weak. Until the British Nationality Act 1948, British women lost their citizenship if they married a foreigner. Before the British Nationality Act 1981, British women did not autonomously pass their nationality onto their children. Family migration has long been suspected as a 'loophole' permitting endless chains of migration. Such suspicions are coloured by race and class, with sub-Saharan and South Asian families often the hidden targets of family migration policies, with language, income or ancestry requirements producing differential policy impacts. Men migrating for family reasons have attracted particular unease, with 20th-century policies like the Primary Purpose Rule (requiring the main reason for marriage *not* to be the husband's entry or settlement to the UK), reflecting the suspicion that migrating grooms – particularly from the Indian subcontinent – were actually economic migrants in disguise (Wray 2011).

This chapter briefly summarises key immigration policy development of recent years, particularly relating to deportation and family life rights (see Appendices 4 and 5 for more detail). It then looks at how decision makers define, assess and value family life in an immigration context. The couples are introduced alongside the policy, offering insights into the lived experience and negotiation of the immigration system.

2.1 Deportation and family migration policy

In 2006 there was a media-based 'scandal' over the release of foreign national offenders (FNOs) at the end of their prison sentences. The numbers were tiny⁶ but the outcry led to a decade of policy change that was driven, in large part, by the political commitment to increase deportation of 'foreign criminals'. The UK Borders Act 2007 was passed immediately afterwards and eased the deportation process. Deportation Orders would be automatic for foreign nationals sentenced to 12 months or more imprisonment, or for a 'serious' offence⁷ (which includes many drug offences). Major changes to the Immigration Rules were then introduced by Home Secretary Theresa May in 2012. These included changes relating to deportation, which May justified as necessary to protect ***'the public from foreign criminals who try to hide behind family life as a reason to stay here.'***⁸

⁶ Over six years, 1,013 foreign nationals were released without being considered for deportation (NAO 2014: 12).

⁷ 'Serious criminal' is defined under Section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002.

⁸ HC Deb 09/07/2012 Vol 547 Col 9 Theresa May.

The changes significantly raised the threshold of harm that can be done to a deportee's private or family life before it outweighs the public interest of their expulsion. A tiered system was introduced tied to length of prison sentence. Those with sentences up to four years have to show that it would be '*excessively cruel*' ('*unduly harsh*') for their family to be forced to relocate or face separation. For those with longer sentences, the threshold is almost impossible to meet. The value of a person's private and family life is also coloured by their immigration history and status. Less weight is now placed on relationships formed when someone was unlawfully present and less on private lives established under a precarious immigration status (i.e. people with time-limited permission to enter/remain, and those who are 'settled' but have a conviction for a deportable offence). Today, around 12,000 people are expelled each year, of which about half are FNOs. Before being removed or deported people are held in prison-like Immigration Removal Centres (IRC).⁹

The 2012 policy changes also affected family migration policy and the government's interpretation of Article 8 of the ECHR (the right to respect of one's private and family life), in relation to entry clearance, leave to remain and settlement.¹⁰ The family migration changes made it much harder to enter or remain on the basis of relationships, including by introducing a controversial minimum income threshold for the sponsor (£18,600 a year, rising with children requiring immigration clearance). The sum is too high for half the working British population, particularly those at the start or end of their working lives, women, ethnic minorities and those living in poorer regions of the country or returning from living abroad (Children's Commissioner 2015). The changes also made it much harder to gain settlement (indefinite leave to remain) on the basis of Article 8 after committing criminal¹¹ or immigration offences.¹²

Many of the 2012 changes were brought into legislation by the Immigration Act 2014. Home Secretary Theresa May said this new legislation was required because judges had ignored '*the will of Parliament*' by giving undue regard to the family life rights of FNOs.¹³ The 2014 Act also introduced the officially-titled '*hostile environment*', which restricts the access of irregular migrants to everyday services, from health care to marriage.

⁹ Foreign nationals can be deported after criminal offending or expelled through administrative removal. The latter was introduced in 2000 for those breaking the immigration rules or after immigration or asylum application refusals. Over 27,000 people were detained in 2017, with half released not actually removed.

¹⁰ 2012 also saw the piloting of police/Home Office interagency initiative Operation Nexus (see Chapter 5).

¹¹ E.g. 'suitability' criteria, discounting time in prison from length of residence, 7-15 years wait for FNOs with prison sentences up to four years, those with longer sentences are ineligible for settlement based on family ties. Even applicants with non-custodial sentences and out-of-court disposals must wait two years.

¹² E.g. long residence route was more than doubled from 14 to 30 years if any of that time was unlawful, visa overstaying harms private life claims, settlement on the basis of family life is twice as long and much more difficult for unlawfully present applicants ('the ten year route').

¹³ Conservative Party Conference Speech, 9 October, 2012.

2.2 Rights of families and children in an immigration context

Despite the recent changes, the UK government still has many international and domestic commitments to protecting families and children. Immigration enforcement decisions must take family life into consideration, with the public interest in a person's removal or deportation balanced against Article 8 considerations. The government is also signed up to the International Convention on Civil and Political Rights, the Children and the Families Act 2014, and the United Nations Convention on the Rights of the Child, which states:

***'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'* (Article 3)**

For 18 years after signing the Convention, the UK excluded children subject to immigration controls. But under the Borders, Citizenship and Immigration Act 2009, the government has a statutory duty to protect all children in the UK (section 55). This means immigration decisions, like a parent's deportation, must consider the need to safeguard and promote the welfare of children.

However, neither this nor Article 8 are absolute protections, but are weighed against the 'public interest' of national security and border controls. Home Office guidance states that the best interests of the child should be a ***'primary consideration (but not the only or the paramount consideration)'***.¹⁴ Certain levels of harm to families and children are legally acceptable, and these are now tied to criminal offending and immigration status and history. The Home Office states that although it would normally be in a child's best interest to be cared for by both parents, deportation decisions should give consideration to parental offending.¹⁵ It presents families with a 'choice': separation or relocation abroad. It cautions that even for British children, living in the UK should not be assumed to be ***'inherently better than living in any other country'***, even if relocation means a reduced level of education, health care or wealth.

Although the UK has a history of finding certain people, families and ways of moving problematic, the past decade has seen new policies that are particularly exclusionary, marginalising and criminalising. This is reflected in the narrowed interpretation of Article 8, growing immigration repercussions of criminal or immigration offending, and undervaluing of the family lives of FNOs and immigration offenders. Exacerbated by political pledges to slash net immigration, the policy changes seek to increase removals and reduce arrivals and settlement, despite the costs to individuals and families.

¹⁴ Immigration Directorate Instructions, Chapter 8, Appendix FM.

¹⁵ Home Office guidance: *Criminality: Article 8 ECHR Cases* (p19).



2.3 Defining family

Families take on many forms and people's own sense of who is family may differ considerably from official definitions. The latter also vary of course, illustrated for example by the different thresholds for what constitutes family in immigration and welfare contexts. The challenges of having a relationship recognised for immigration purposes is contrasted with the ease by which a visiting friend may be classified as a partner (with financial repercussions) when Council housing is involved. The Home Office may use different concepts of family within a single immigration decision; using a restrictively narrow definition when acknowledging meaningful ties in the UK, but much wider definition when arguing the deportee has networks in the country of removal. When assessing family life, immigration decision makers favour the 'nuclear' family: couples that are married and living together, with children under 18 years old. There is little recognition of alternative family forms such as step-parenting, although there has been an increasingly progressive stance towards recognising same-sex relationships and cohabiting unmarried couples. The British legal system assumes there are two parents.

'Qualifying' family

The Immigration Rules set out stipulations about the nature of relationships and family members necessary to qualify under Article 8. Since 2012, in an immigration context, 'family' is largely restricted to meaning spouses and minor children, and is tempered by immigration status and criminal record (see Table 1).

Table 1: 'Qualifying partners and children'¹⁶

| Qualifying partner | Qualifying child |
|---|---|
| UK citizen or settled person, married or in a civil partnership, or; | UK citizen under the age of 15, or; |
| UK citizen or settled person, engaged to marry or proposed civil partner, or; | UK citizen aged between 15 and 18 and not living independently, or; |
| UK citizen or settled person, cohabited for over two years. | Non-British minor who has lived in the UK for a continuous period of seven years or more. |

Nationality, immigration status, length of time in the UK, marriage and age determine if partners and children 'qualify' for Article 8 recognition. Children have to be dependent

¹⁶ Appendix FM and section 19 of the Immigration Act 2014.

minors and either British citizens or UK residents of at least seven years. Partners must be British or settled and in a long-term or married relationship. Many relationships are excluded, including those with siblings, extended family, children under 18 who are deemed to be living independently, adult children (even if they are still living in the family home), unofficially ‘adopted’ children and non-biologically related individuals. Non-married couples who have not lived together for two years are also excluded, as are non-British children who have not (or cannot prove they have) lived in the UK for seven years.

There is little recognition of the complexity or fluidity of families, including those with children from previous relationships, nor the impact of the immigration system on the course of relationships. They are likely to be particularly in flux, for example, after separation by immigration detention. There is also little recognition that adults who arrived in the UK at a young age may have most or all of their meaningful relations in the UK, including parents and siblings. Such families may have a patchwork of nationalities. Several of the appellants in the observed deportation appeals were the only one amongst their siblings not to have naturalised as a British citizen despite being eligible, usually as a result of the high cost, literacy barriers or simply not realising how important it was.

Deportation appeal: Defining family

The appellant and his sister came to the UK from Somalia as orphans eight years previously. Their father was kidnapped when they were teenagers and shortly afterwards their mother murdered. Extended family secured their passage to the UK, where they claimed asylum. Although the sister now had temporary protection, the appellant (now in his mid-20s) is facing deportation after several small criminal offences. The witnesses at his appeal were his adult sister, aunt, uncle and cousin. None of these relatives fall under the official definition of ‘family’. But when asked what family he has in Somalia he replied: **‘None. Nobody, literally.’** In her testimony, the sister articulated how important they were to each other even as adults:

‘[If he is deported] I will be destroyed. I will be destroyed. I will be devastated. He’s my only brother. He’s the only person I have left from my family.’

‘No close ties’

Even when relationships fall within Home Office definitions, they might not be acknowledged as existing. Immigration detainees invariably have the ‘no close ties’ box ticked on Home Office paperwork, even when they have spouses and children in the UK. Indeed, a longstanding employee of a leading detention NGO said in interview that he has



never seen this box unticked, for which he blames a mixture of Home Office ‘ineptitude’, a pervasive culture of disbelief and:

‘A complete disregard for really wanting to find out whether someone’s got a family and assuming they haven’t. Almost wanting to assume they haven’t.’

(NGO employee)

This was echoed by many other practitioners, who argued that the Home Office are institutionally reluctant to recognise family ties, in case this strengthens Article 8 claims.

2.4 ‘Genuine and subsisting’ relationships

Even when relations fall under Home Office definitions for ‘qualifying’ family and are recognised as existing, they must also be demonstrated to be ‘genuine’ and ‘subsisting’. All the interviewees had the veracity and worth of their relationships questioned, by friends and family as well as officials such as Home Office personnel, solicitors and marriage registrars. The men frequently came under suspicion of deceptively or opportunistically having relationships or children so as to serve their own (immigration) interests.

‘If you don’t have status, you’re not capable of love.’

(Man with precarious immigration status)

Proving your love

Decision makers require family life to be evidenced, through documents such as written statements from friends, family, colleagues, teachers and doctors, bank statements, personal correspondence such as postcards and Valentine’s Day cards, tenancy agreements, gift receipts, tickets to events and transcripts of social media conversations. Interviewees often accumulated multiple folders of proof of their relationships, whilst also complaining about having to provide very personal material. They argued that such intrusion affected the nature of their relationships and meant they were being treated differently than British-only families.

‘The Home Office is in a very intimate bit of your life, you know, you’re having to take photographs of things and you’re having to prove so much. It’s really right at the heart of your relationship in a very kind of intimate way, that if you were with a British citizen you wouldn’t have to prove in the same way.’

(British woman with unlawfully present partner and one child)

Being able to prove one’s relationships in these ways is especially difficult for families with difficult or chaotic lives, that had not anticipated the need to document their relationships



or who were living separately (including as a result of immigration policy). Those in detention tend to have fewest options to demonstrate meaningful involvement. But even when living together, the requirements could be difficult to meet. One participant explained that she had not kept cards, mementos and tickets from dates because she is not sentimental, but therefore cannot prove their early relationship. Another refused to give copies of their online conversations because they were private and included occasional arguments, which she feared would be used to devalue her marriage. Officials may continue to question the veracity of paternal and partner relationships even after immigration applications have been successful (see Case study 3).

‘You have to submit photographs, evidence of your relationship, your wedding. It’s all very intrusive, I think. You know, evidence of a wedding ring or whatever you want to, witness statements from family and friends... email communication between each other, you know, going back three years or whatever! We don’t understand why we should have to submit that sort of stuff when we’ve got two children together, a marriage certificate.’

(British woman with precarious husband and two children)

Those who knew to document their relationship, and were in a position to do so, often did so compulsively, becoming preoccupied with recording their relationships. There could be an artificiality to this, with photographs taken and postcards sent purely or primarily in order to provide valuable evidence. One British interviewee said that she and her partner stopped exchanging birthday cards once he received leave to remain. Another feels guilt that her first child has a richly photographed childhood because her husband was trying to regularise his status after overstaying a visa at the time, whilst their second was born when they no longer needed to accumulate such proof for an Article 8 claim. Experiences and communications between partners and parents and children are inevitably changed by the knowledge that one day they will be publicly scrutinised.

‘Our memories are not memories any more, they are evidence’

(Man with precarious immigration status)

Active parenting

Proof of meaningful involvement with one’s children is also required, and tends to focus on living arrangements, financial contributions and documentary evidence. It is particularly difficult for fathers with barriers around literacy, language, destitution, precarious/unlawful immigration status or who otherwise have chaotic lives and

accommodation. Those who are detained, prohibited from working or who are separated from the mothers find it especially hard to prove meaningful parental relationships, especially if they are not named on birth certificates, or cannot live together, provide money or have regular contact, even if these are not within the fathers' control (e.g. unmarried fathers need the mother's consent to be named on birth certificates).¹⁷

'They say we've got no evidence that you chose to support your daughter. So every nappy that I bought and every clothes that I bought, I should have kept a receipt? Even a sweet? When I buy a sweet, I'll keep a receipt for Immigration! How does one do that? I'd have a bundle of receipts like that. And still they will say something else.'

(Father in immigration detention)

One interviewed man was evidently besotted with his newborn baby but was facing deportation to Iran as a FNO. The Home Office argued this was proportionate as he had never lived with the child, who was born when he was in immigration detention. Although he was *'dying to spend one minute with him!'*, the Home Office wrote in the refusal to his human rights application, that fatherhood is *'more than a biological relationship'* and that he must demonstrate, *'significant and meaningful positive involvement in a child's life with a significant degree of responsibility for the child's welfare'*, such as accommodation, money and subsistence costs. The decision letter states that his partner has already demonstrated that she and the baby do not need him as they have managed without him during his detention and can continue, if she does not wish to move to Iran.

Policy makers tend not to acknowledge the role of the immigration system in producing separation and forced unemployment, nor the diversity of family forms, including families involving separated parents, step-children and negotiated access rights. An immigration barrister interviewed spoke of an institutional favouring of an idealised 'traditional' family structure and of immigration judges being more empathetic towards family forms that they recognised. Four of the fathers in the study were no longer in relationships with the mothers of their children, with both parties commonly blaming the stresses of the immigration system. In almost all cases relationship breakdown resulted in the children living with the mother, which provided additional hurdles to demonstrating active fathering and often relied upon the goodwill of the ex-partner. Although some ex-partners spent significant time, money and emotion facilitating contact between their children and their fathers, this was unusual. For those with antagonistic relationships, the possibility of pursuing access rights through official channels is severely hampered by immigration detention, immigration precariousness and destitution.

¹⁷ Rules for proving paternity are set out in the British Nationality (Proof of Paternity) Regulations 2006.

'I can't be a normal father or concentrate on future plans, you know.'

(Refused asylum seeker father)

Several of the fathers were not named on their children's birth certificates. This was a result of physical absence (across borders or through immigration detention), or through one of the parent's choice. One man did not feel important enough to be officially recognised, *'I'm a nothing man, don't give him my name, I'm a nothing man, I've got nothing.'* More commonly, the women chose not to name the father, through fear of a reduction to their benefits or concern over their child's security of residence in the UK in the event of maternal death. The men's precarious presence in the UK and lack of funds for lawyers or DNA tests meant they were not in a position to challenge this and were instead dependent upon the whims of their ex-partner. A man whose poverty, destitution and unlawful status in the UK put him in this position framed his powerlessness as a father as stemming from his exclusion from two sets of key documents: immigration papers and his baby's birth certificate, *'She have all the power. Because of that single paper.'*

Example: 'Marriage of convenience'

Emir came to the UK as a young adult a few years ago, travelling from north Africa with his family. Although his parents and siblings now have secure status, Emir has had his asylum claims repeatedly refused and depends upon charity for food and shelter. He met his northern European partner during the years spent fighting his asylum case. When they decided to marry, they checked with his MP that he was allowed and were apparently reassured, *'every human should marry, of course you can marry'*. However, on their wedding day, in front of all their friends and family, 11 immigration enforcement officers entered the registry office and stopped the ceremony. Officers detained the bride and groom in separate rooms and fired questions, asking Emir his partner's dog's name, favourite food and parents' names. They asked him why he was not marrying a Muslim woman and asked her why she was not marrying a man from her own country, and whether she'd been forced or paid to marry. The couple were told that their marriage was one of convenience and she was made to leave the UK. Emir was held in a police cell overnight and then released, with the police officers taunting, *'You need to go and find another woman!'* Some months later, when the fiancée attempted to return to the UK to visit him, she was detained for several hours at the airport before being forcibly returned to her country and given a one-year re-entry ban. She successfully appealed the ban and they recently had their first child.



Marriages of convenience

Some relationships deemed by the Home Office not to be genuine are branded marriages of convenience ('sham marriages'), defined as being contracted for the *sole* purpose of obtaining immigration advantage.¹⁸ The numbers of such unions are extremely uncertain. After all, it is difficult to establish reasons for marriage and immigration advantage may be one of several considerations, meaning that a couple could be in a 'genuine' relationship but nonetheless decide to marry purely for immigration purposes, as the High Court recognised in 2017.¹⁹ Nonetheless, and despite there being no evidence to justify a significant problem,²⁰ policy makers have suggested that marriage is a rapidly expanding form of immigration fraud and one of the 'biggest threats' to UK borders (ICIBI 2014), with weddings thereby becoming a target for immigration enforcement.

As a result, under the Immigration Act 2014, the marriage notification period has been almost doubled (from 15 to 28 days) for anyone getting married, including British citizens. Weddings involving a TCN require evidence of nationality and immigration status. If the TCN does not have settled status or permanent residence, then the notification period can be extended up to 70 days whilst the Home Office performs a full investigation. These changes bring marriage registrars into the immigration system, as state representatives identifying 'unusual' or suspicious relationships needing examination. Interviews conducted with registrars suggests employment of stereotypes regarding gender, ethnicity and age gaps, such as a suspicion towards eastern and southern European women for marrying for money, and concern that British and Irish – especially younger and older women – are being tricked into marriage. Despite the policy changes, couples may still have their weddings disrupted, with immigration officers arriving at churches and registry offices to halt ceremonies and make arrests, sometimes accompanied by media crews.

'As new countries come in [to the EU] we find that they will come in and possibly be part of the sham marriage [business], probably because they're newer. Perhaps they don't know about the sham or perhaps they can use them and pay them less?'

(Marriage registrar)

¹⁸ Immigration and Asylum Act 1999.

¹⁹ *Molina, R (On the Application Of) v The Secretary of State for the Home Department* [2017] EWHC 1730 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2017/1730.html>

²⁰ In 2014 the Home Office estimated there were 4-10 thousand 'sham' marriages a year (ICIBI 2014). The number is low and ill-evidenced, with inspectors finding a 'lack of comprehensive and reliable data' and only 5,438 reports of concerns made by marriage registrars over the preceding four years.

2.5 Valuing and harming relationships

In some cases, the Home Office accepts that family ties exist, qualify and are genuine and subsisting, but nonetheless consider them sacrificial to border control. As discussed, a foreign national's immigration status and criminal record now affects the value placed on family ties and the level of harm that can be done to them before outweighing the public interest in deportation. Under the Immigration Act 2014, little weight is legally afforded to partnerships established when a person was unlawfully present, or private lives formed under a precarious immigration status. Home Office guidance explains that the foreign national should have known that **'there was no guarantee that family life could continue indefinitely in the UK'**.²¹ In making these decisions, the Home Office tends to focus on the foreign national, rather than the collective parental or family unit.

'They're not bothered about the kid, or what the kid or what the mother says. They're not bothered about all that. They accept it, that I have got family ties, but that don't matter though. The thing is I have got a Deportation Order, that's all that matters.'

(Deportable father)

Permissible harm and relocation

British citizens cannot be removed or deported from the UK. However, in arguing that removal or deportation of a foreign national is proportionate, decisionmakers can suggest that British family members have the *choice* of leaving the UK with their deported parent or spouse, rather than living apart. The principle that British citizens' families do not always need to be situated in the UK to be respected was introduced into statute by the Immigration Act 2014. As noted in the Immigration Directorate Instructions, the European Convention on Human Rights **'does not oblige the UK to accept the choice of a couple as to which country they would prefer to reside in'**.²² To challenge the argument that their family life could continue through relocation, a (qualifying) partner must demonstrate 'insurmountable obstacles' to moving, whilst a (qualifying) child must show it is 'unreasonable to expect' them to leave the UK. This includes barriers to lawful entry (like not being able to obtain a visa), a poor security situation and cultural barriers that would lead to social discrimination or present very serious hardship. An inability to speak the language or a reduction in wealth or educational opportunities is not sufficient.

²¹ Immigration Directorate Instructions, Chapter 13: Criminality Guidance in Article 8 ECHR Cases.

²² Immigration Directorate Instructions, Chapter 8, Appendix FM.



These thresholds rise significantly with a criminal record. The Immigration Act 2014 brought into legislation the principle that immigration and criminal offending affects the reasonability test assessing the impact of expulsion on private and family life (see also Chapter 5). For a deportee with a prison sentence of 1-4 years, the threshold of harm of separation or relocation to (qualifying) partners and children is now 'unduly harsh', which the Home Office defines as *excessively cruel*. A sentence over four years requires meeting the almost impossibly high, 'very compelling circumstances' (see Figure 1).

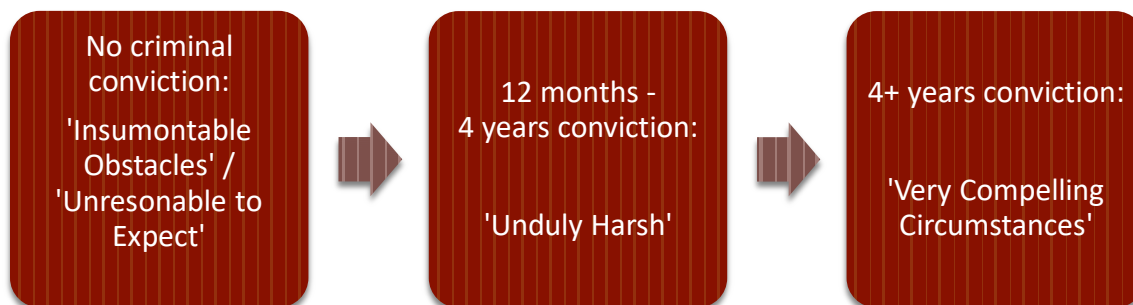


Figure 1: Criminality test for the relocation of a qualifying partner or child

Harm in practice

All the couples were significantly and negatively affected by their experiences, particularly as a result of living with immigration insecurity, limbo and the threat or reality of immigration enforcement and separation, making and fighting immigration and asylum applications, and the – antagonistic and sometimes humiliating – encounters with the Home Office. These affected mental and physical health, finances, relationships, family formation, careers, education, social mobility, hopes, dreams and identities. They damaged partner and parental relationships, shaped decisions regarding marriage, cohabitation and conception, led to mental health diagnoses and medication, and altered people's personalities. Men were often separated from their families at crucial times, missing pregnancies, births and deaths. The couples faced the stark 'choice' between separation or leaving the UK. All were financially affected by the high and growing costs of legal fees, immigration applications and surcharges, worsened by the men's prohibition against both employment and accessing public funds. Even the more affluent and lawfully resident families were harmed, but those hit hardest tended to be the families already financially stretched and those with an irregular, detained or removed family member.

'It's made me a very nervous person. I'm completely different now.'

(British woman with precarious husband and young child)



Parents described emotional, behavioural and educational harm to children, including problems at school, insomnia, anger, anxiety, bed wetting, attachment issues and mental health problems. Some even reported their children self-harming or voicing suicidal ideation. Separation through removal or immigration detention are especially damaging, including lengthy and repeat detention of parents. Their fathers' experiences also affected the children's own sense of security and belonging in the UK (see Chapter 7).

The UK government has domestic and international obligations to respect the best interests of children, but – to the surprise of interviewees – can nevertheless cause children harm in the course of migration management. The threshold of acceptable harm to children can be high, especially when their parent has a criminal record or poor immigration history. One woman's teenage child self-harmed and attempted suicide when her husband was detained for deportation. After three decades in the UK, two of which were as a naturalised British citizen, he was found guilty of having originally arrived on a false passport. His wife had to take on extra work to keep the family afloat, giving her no time to spend with their devastated children or to take the youngest to their

Example: Separation and young children

Sarah, a British woman, married an Asian man she met when working abroad. After starting a family, they decided to move to the UK for their education but were shocked to discover the new spousal visa rules. The husband entered the UK on a six month visit visa, under which he cannot work but is able to do all the childcare, including full time care for their toddler, with whom he is extremely close: ***'He can't go out of the room without him like "Papa, papa!"'*** Sarah found a job in the UK earning over the income threshold needed to sponsor a foreign spouse, but she must earn a sufficient amount for six months before they can apply. The spousal visa must be applied for out of the country and the visit visa will expire soon. Sarah is deeply worried about the impact of her husband's imminent forced departure, particularly on their children.

'For a young child to have to go through that is very unfair, very unsettling for them and they won't be able to understand where their daddy has gone. [The youngest] is very dependent on his dad and will definitely find that extremely difficult. I think that will be quite heart wrenching.'

The children will lose their primary care giver, for an unknown but potentially lengthy period, and ***'both my kids will have to be in childcare for nine hours a day. At a young age like that it's quite an extended day for them, it will be really tough.'*** Sarah's salary will not support two households, immigration solicitors and the high costs of childcare for long. If the visa is denied or delayed, the childcare costs will force her out of work, ending her chances of sponsoring a spousal visa or reuniting her family within the UK.

mental health appointments. The Home Office argue that the missed appointments show the child is coping. The Immigration Judge refused the deportation appeal, arguing that the damage to the family did not meet the 'unduly harsh' threshold.

2.6 Conclusion

Changes to immigration policy and the interpretation of Article 8 have created a category of family life that is qualified for those with a member subject to immigration controls. Sometimes decisionmakers dispute the very existence of family ties, in other cases relationships are acknowledged but argued to be instrumental: an opportunistic or deceptive attempt to circumvent immigration controls for personal gain. High levels of intrusion are evident, with families required to evidence the genuineness of their relationships and strength of their parenting, despite the numerous barriers to so doing (including many created by the immigration system). In other cases, the authorities accept that relationships are genuine and subsisting, and sometimes even that the family will be harmed by separation or relocation, but do not consider the harm disproportionate to the public interest in immigration controls.

The next chapter examines the impact that these judgments have on the people making up these family units. As will be shown, considerable harm can be done as a result of separation or forced relocation overseas, as well as living in the UK with immigration precariousness. The research found that such harm is felt by the whole family, including children and adults not subject to UK immigration controls. This 'collateral damage' is not only suffered by families with an unlawfully present member, but also 'precarious' TCNs with legal but temporary status. Children are protected by domestic and international law, but protections such as their 'best interests' are conditional and coloured by their parents' criminality and immigration status.

The research found a number of biases within the recognition of family life and legitimisation of harm, with partner and parent relationships involving TCN men particularly undervalued in these assessments, especially when they were deemed to be guilty of immigration or criminal offending. The Immigration Act 2014 legislates for the undervaluing of family life established when a TCN is in the UK unlawfully and for particularly high levels of harm to be permissible for all family members, including citizens and children, when the TCN has a criminal record. Both these points risk underlying bias along lines of ethnicity, gender and socio-economic status, given that the evidence is for over-representation of ethnic minority men in both the criminal justice system (Lammy 2017) and spaces of immigration insecurity and enforcement in the UK (Griffiths 2017).



3: Relationships, Families and Gender

As the previous chapter outlined, the immigration system plays a critical role in externally defining and assessing relationships. But it does more than that: it enters the heart of people's intimate lives and shapes their personal relationships and identities. From keeping families trapped in liminal uncertainty, to preventing parents from earning money, and detaining and deporting spouses, relationships are coloured by the insecurity, stresses and financial pressures of a precarious or unlawful immigration status, as well as decision makers' 'culture of disbelief' and invasive questioning, and the dilemmas couples face between indefinite separation or leaving the UK. The need to prove intimacy affects the nature of that intimacy; social media conversations and birthday cards are worded differently when you know that they will eventually become 'evidence' read by civil servants and immigration judges. As this chapter shows, the immigration system affects the inception, course and endings of relationships, the size of families and people's gender identities and family roles. The following chapters then focus on the three biggest areas of harm that arose in the research: money, criminalisation and separation.

3.1 Precarious and unlawful living

Immigration status affected the project participants' experiences. Those families with an unlawfully present member (e.g. refused asylum claimant, visa overstayer, criminalised long-term resident), especially if they had a criminal record, faced greatest insecurity, financial deprivation and risk of separation through prison, immigration detention or expulsion. They also often had least financial security and social capital to fight the legal battles, weather the various storms and garner support from local politicians or journalists.

However, even those families with a lawfully present foreign national faced insecure futures as a result of immigration status precariousness (e.g. from time-limited and conditional visas or temporary admission). This was the case even for the very few permitted to work legally. They still experienced financial loss, uncertainty and faced the threat or reality of indefinite separation (e.g. for out-of-country immigration applications, or from a change in immigration status). Their futures were acutely dependent upon their behaviour, the stability of relationships, the family's income and the whims of policy change. One woman, whose husband was legally present, on the initial stage of a spousal visa, talked about his being in the UK on long-term 'probation':

'It doesn't stop, you're not free. This is the point I'm trying to make. You're not free. As soon as you get here, you're not free. It doesn't leave you, you are still penalised.'

(British woman with husband on time-limited visa)



Example: Lawful but precarious

One family were pushed into poverty after the lawful arrival of the north American fiancé on a visitor's visa. His British partner could not work for health reasons, meaning that she and her children relied upon welfare support for accommodation and living costs. Not only did his time-limited visa prohibit him from earning money to contribute to the household, but his arrival and their marriage led to a drastic reduction of the family's level of social support. Even though he did not have the right to work or access public funds, his presence negatively affected the support his British wife and her children received.

'When we got married, we had our benefits stopped.'

The family of five survived on £40 a week for four months. She was also threatened with an unpayable claim of thousands of pounds in overpaid housing benefit to compensate for his residence in her council flat. He could not live apart from them as Social Services had declared '*grave concerns*' were she to be a solo parent to the children, and he feared '*she could lose the kids if I get taken away.*' The family experienced considerable hardship. They sold possessions, sought crisis loans and even resorted to appealing for baby milk from their friends on social media.

3.2 Impact on relationships

The restrictions, invasions and requirements of the immigration system affect every stage of relationships; from inceptions to endings. Differences in expectations, experiences and internal power hierarchies were evident depending upon whether relationships were formed in the UK or overseas, under a precarious or unlawful immigration status, and if couples met through an immigration-related setting (e.g. asylum charity) or more neutral context. Social stigma and fear of mistrust influenced how and when people communicated their immigration status to new partners and their friends and families. Some stages of relationships sped up and others decelerated. For the most precarious foreign nationals (e.g. (refused) asylum claimants, visa overstayers), the early stages of new relationships were often accelerated by financial and housing problems and could lead to early and often extreme dependence on partners. This included early cohabitation, as well as missing fun dating phases and gift-giving. One interviewee described how every time she and her new boyfriend had gone on a date, it was ruined by them arguing over money as a result of his shame at being unable to pay.



After an intense start, relationships often then lingered for years, unable to progress much whilst the foreign national was trapped in immigration liminality. One British woman described wanting to buy a house, get married and have children with her long-term partner (refused asylum seeker with a deportation order following a criminal conviction), but that they could not whilst he was still fighting his case and they were dependent upon her income and her parents' help. Another wanted to start a family but said they could not whilst living under chronic instability and with an unknowable future.

'I don't want him in a tag on my wedding day. And a honeymoon! I want to be married and then in the next few days go on a honeymoon. I want my honeymoon to be somewhere hot and nice.'

(British woman with unlawfully present partner)

Frustration, despair, dependency and sometimes suspicion affected trust and power. The – often very long – periods of inaction put considerable stress on relationships and could lead to break-up, although it was also the case that some citizens described feeling unable to end relationships because of their partners' financial, legal and emotional vulnerability. Others, in contrast, threatened to contact the Home Office. Break ups could have huge impact on immigration cases as well as mental health and future relationships. Some deportable interviewees vowed to remain indefinitely single, including out of fear that new relationships would be used by the Home Office to devalue their bond to their children. Fathers living apart from their children and those not meeting ideals of the 'traditional' family, struggled to have their parental roles valued by decision makers and were at risk of being deemed expendable or undesirable. They often faced significant difficulties maintaining parental contact, especially if destitute, incarcerated or detained, and were reliant on their ex-partners' goodwill or financial help (see Case Study 2).

'People in situations like us just shouldn't have relationships.'

(Unlawfully present father)

Marriage and engagement

Immigration concerns fed into decisions around marriage and children, but usually not in the ways expected by policy makers. All the men involved in the study were highly conscious of mainstream suspicions that foreign men (particularly those of colour) opportunistically engage in marriage or child-raising as a means of circumventing the immigration rules. Fearing that their motives would be questioned by the authorities, the men in this project invariably tried to avoid getting married or having children until status was resolved. This was especially the case for those with the most precarious situations, who did not consider their lives stable or affluent enough for such commitment.



'I just think sometimes there's, kind of, suspicion that men coming into the UK from overseas are secretly economic migrants and that somehow if they end up marrying then that's somehow seen, potentially, as a route in to the country.'

(British woman living in Europe with TCN husband)

The men were particularly concerned about their motives being mistrusted by their partner or her family. The men's immigration status was often raised during arguments or break-ups, both around suspicions over motives and requirements for gratitude. One man said that after they got his spousal visa, *'the dynamic changed quite a lot. Always it was "I've done this for you, I've done that for you, you're here because of me"... I think she felt I probably owed her something.'* The men feared that suspicions would be heightened if relationships became more committed by marriage or children. This was not an unfounded fear, with some previously-supportive partners or in-laws becoming mistrusting after engagement or marriage. This led to most of the men trying to keep their immigration and private lives separate, even when it damaged immigration and legal cases. Some men ended up resolving that they had to avoid relationships entirely.

'I can struggle with the Home Office, but the idea of someone I am living with constantly holding a bargaining chip over my head because of us getting married... I have always said that the system can punish me but another human being punishing me is something I find very hard to take.'

(Precariously present man)

Example: Marriage and suspicion

Majid has been in the UK over a decade. His asylum claim had been refused. When his (British) girlfriend suggested they start a family he resisted, feeling unable to do so whilst so precarious and prevented from working. However, after several months of pressure he relented and they became pregnant. Majid had always got on well with her parents and would go to the pub with her dad. But after he proposed to her, they became suspicious of his motives and resentful of his unemployment. Her dad asked him if he was marrying his daughter for the *'right reasons'* and said that if he really loved her, he'd break up with her. Majid said *'it kind of devalues the relationship'*, but also understood the mistrust: *'Because I'm a man, things I say have to be checked.'* Concern that the development would be considered opportunistic, he did not tell his solicitor about the engagement, even though it would have strengthened his Article 8 claim. When the firm discovered he'd withheld such an important matter, they dropped his case, shortly before a pivotal High Court hearing.

In contrast, the EEA/British partners tended to be keener to pursue marriage, including partly, or even primarily, in an (increasingly unsuccessful) attempt to resolve their partners' immigration problems by passing on their citizenship privileges. Many considered marriage earlier than they would otherwise in the relationship. Three women reported marrying solely for instrumental purpose as they otherwise did not ever want to enter the institution of marriage. One called it a 'political marriage'. The High Court recently recognised this point that 'genuine' couples can enter 'marriages of convenience'.²³ The research found that contrary to popular and political suspicion, it was far more likely for the British partner to raise and pursue marriage as a means of negotiating the immigration system. However, not only does marriage *not* provide any easy resolution to immigration insecurity, but since the Immigration Act 2014, all unions presenting an immigration advantage are referred for Home Office investigation, raising the risk of detention and removal.

'If you marry a woman because of paper, you're not a man.'

(Unlawfully present man with European partner and child)

3.3 Men, masculinity and fathering

People's ability to parent, form relationships and be the adult men they hoped and expected to be, is severely hindered by living under chronic immigration uncertainty. This includes as a result of employment prohibition, financial stresses (including from expensive immigration applications and legal cases), separation (e.g. by immigration detention or removal), forced (im)mobility and an inability to plan the future. The men's reliance on their partners for supporting and sustaining the family affected power relations, agency and decision making, with impacts on their self-worth and family roles.

'He says, oh, you're with somebody so poor and so useless, if he's feeling really low.'

(British woman with unlawfully present husband)

Having a child affected people's experiences of living in the UK precariously or irregularly and heightened the damage caused by immigration detention, removal, uncertainty and poverty (see also BID 2013). Indeed, many of the men were adamant about resolving their immigration status before having children. Although having children provided much joy, the difficulties of juggling parenthood with immigration concerns could also entail considerable pain, guilt and shame. Trying to raise a child in the context of uncertain immigration status created tension within relationships, in addition to the challenges of

²³ See Gbikpi 2017 for discussion.



negotiating cross-cultural differences over gender and parenting norms. The men were also highly aware of the gendered and racialised suspicion of their emotions and relationships by the authorities and wider society.

'The Home Office don't believe that men have emotions or can love somebody.'

(Father with a Deportation Order)

The immigration system makes it difficult to juggle fatherhood with an insecure immigration status. The men all expressed a desire to support their children and play an active role in their upbringing, but the extent to which they could achieve this was largely dictated by the immigration system. Being a good father and 'good migrant' often appeared mutually incompatible. Under certain circumstances, visiting or living with one's family risks being considered an 'absconder', and providing financial support means working illegally. There are many ways in which the humiliations and loss of control over one's life under the asylum and immigration systems directly affects parenting, including within the home. For example, a single father raising his children in National Asylum Support Service accommodation came home one day to discover the landlord had let himself in and thrown away all the children's pictures on the basis of being a fire hazard.

Emasculation

Most of the men were not permitted to work and were financially dependent on their partners. This and other aspects of the system, such as immigration detention, bail arrangements, asylum housing dispersal or reporting procedures and accommodation rules (e.g. linked to the partners' Council housing) hinder their ability to support and live with their families. This affects their ability to be the partners or parents they wish to be, with impacts on their sense of selves as gendered adults and ultimately their mental health. The inability to provide for one's family produced particularly strong feelings of uselessness as a father, as well as feelings of loneliness, isolation and purposelessness.

'I'm your father, you know, and I can't work. That's all I can say to them.'

(Unlawfully present father)

The dependency and powerless produced by the immigration system led to the men feeling burdened by shame and guilt, with the inequality leading to relationship stress and even break-up. These impacts were typically expressed in gendered terms, such as describing a 'role reversal' or giving emasculating metaphors about not being 'a man', as will be explored in Chapter 4. Those fathers unable to work lawfully sought alternative ways to provide for their families, such as being the primary caregiver whilst their partners worked. However, although some found positives in these situations, including being very



close to their young children, nonetheless the fathers generally asserted a preference to work and conform to a gender-normative family structure.

‘When the children don’t want to speak [to him when he calls] or are really tired from activities or sport, then that will have an effect on him even more, that will probably make him feel less of a man. Because he’s not working, so he’s got all the time in the day to think things, whereas, I’ve got work, they’ve got school.’

(British woman with deported husband)

Blame and responsibility

The British/EEA partners reported feeling overly responsible, including for bringing in money, navigating the legal system, providing practical and emotional stability, and for the British immigration system itself (see Chapter 7). The foreign national men also felt responsible; speaking of guilt for the harm that their partners and families experienced.

‘Sometimes I feel I failed my family, to be honest. It’s quite shameful.’

(Unlawfully present husband and father)

‘He felt like it was all his fault, that everything was his fault.’

(British woman with unlawfully present husband)

These sentiments are built into the Immigration Rules, which now place responsibility for immigration-related harm on the individuals affected, especially those who have committed criminal or immigration offences. Several participants had relationships with their qualifying (usually British) partners and children dismissed as being of little weight because of their precarious or unlawful immigration status. One interviewee described being informed by the Home Office that he and his girlfriend should not have become pregnant whilst he was an asylum seeker, another (a refused asylum-seeking father of three) said he had been effectively told that *‘You should put your life on hold until you get a decision.’* Home Office decision makers not only undervalued or dismissed the role that these men play in their children’s lives, but often explicitly blamed the men for their situations (and also sometimes their British and EEA partners).

‘They never told me when you come to England that you can’t have a girlfriend and you can’t have a baby. They never told me, no one told me.

But even if they had told me, come on, it is life!’

(Unlawfully present father)



3.4 Immigration impacts: Article 8 and deportability

Policy and legislative changes mean that the barriers to parenting and partnering presented by a precarious immigration status, such as forced unemployment, separation and chronic uncertainty, also directly feed into people's immigration cases and assessments of how expendable they are. The men's Article 8 claims, for example, were weakened by the suggestion that they were not playing meaningful family roles as a result of not living with or financially supporting their children, even if these were as a result of the immigration system. An interviewee separated from his child through immigration detention and then distant, no-choice accommodation, explained that Home Office and legal decisions makers will ask him when he last saw her and will use this to argue that he's not *'a proper dad'* and they don't have a real relationship. The men generally understood this to be an intentional aim of the system, saying that it is designed on purpose to *'break me'* by playing *'mind games'* to encourage them to break immigration conditions: *'Starve him of the things he wants!'* A desire to be living near one's child and contribute to their upbringing, for example, might entail 'absconding' from housing and working illegally. But by not doing this, not only are their relationships damaged, but so too are the legal claims to remain in the UK.

Deportability and family ties

In contrast to the suspicion that men opportunistically engage in family life, the participants spoke of the additional difficulties that family ties presented them. From the everyday restrictions of an insecure immigration status to immigration enforcement measures, having family ties in the UK profoundly affects people's experiences of precarious and unlawful immigration status. Relationships in the UK can present people with emotional and practical resources, but also heighten the burden of living with uncertainty. Unemployment, chronic insecurity, detention, removal etc, all take on added weight when there are loved ones affected. Undocumented participants, in particular, felt torn between the love and support that relationships provide, and guilt for placing their families in these situations. Several said that they found life as an irregular migrant easier when they were single and only had to worry about themselves.

'You're less human, you know. They're ashamed of you, they actually don't understand what it is all about but then no matter how you think about it, you still think well actually it's not their fault, it's my fault. I bought this to them.'

(Unlawfully present father)

Having family in the UK also affected people's decisions about their lives and futures. Children, in particular, increased the fathers' desire to remain in the country. This was



described as an involuntary *'umbilical cord'* that tied them to the UK. These relationships altered the purpose of people's immigration struggles, with several unlawfully present men saying that they would have stopped fighting for the right to remain long ago, had it not been for their British children. For them, the overriding aim of their immigration cases was to remain in their children's lives, rather than to remain in the UK per se. For some, the threat of separation from their children is literally a matter of life and death. This was tragically illustrated by the suicide of a man detained in a British IRC in 2017. He killed himself the day his son was born, overcome with *'enormous grief at not being allowed to see the birth of his child.'*²⁴

*'I'm not fighting to stay. I want to stay with my son. What I care [about], is my son...
I know she loves him, but babies need their father, they need their mother.
She has to play her part, I have to play my part.'*

(Unlawfully present father)

Even though irregular fathers often feel prevented from parenting, their narratives of fatherhood demonstrate strong commitment to their children and desire to be active in their lives. One man was accused by the Home Office of using his daughter to remain in the UK, but he explained it differently: he is fighting to remain in the UK precisely and only because of his daughter. He has even refused their £70,000 incentive for him to leave.

*'She is what is me. For me I don't care, they can lock me up however long they want.
They will release me when they feel like. They can't break me away from my daughter.
It's impossible. No matter how big the law is, it's impossible'*

(Unlawfully present father)

3.5 Conclusion

The immigration system affects people's relationships and relational identities. This chapter has argued that the immigration system and restrictions placed on precarious migrants go to the heart of people's private lives, colouring their gender identities and relationships. The harms, costs and dependency caused by the immigration system can be extreme and affect the whole family, including citizens and children (a point generally sidelined by decision makers and sometimes completely ignored in refusals). The men were often stuck in 'Catch 22' situations where it was mutually incompatible for them to

²⁴ The Unity Centre (2017). "First death in detention 2017". <http://unitycentreglasgow.org/first-death-in-detention-2017/>



be both good fathers and ‘good migrants’, particularly in terms of physical presence and financial contribution. They voiced considerable shame and guilt around this and the harm caused to loved ones, which was often expressed in gendered terms. Worsening this sense of personal responsibility for the collective harms, decision makers (sometimes even the partners’ friends and family) explicitly blamed the men for the situations.

Immigration risks and restrictions affect parent/child relationships and those between partners. This includes a bearing on the onset, duration and endings of relationship, such as encouraging early cohabitation and reliance (multi-layered and potentially extreme) on British/EEA partners. The immigration system is the cause of much emotional and financial stress, arguments and break-ups. The research found that contrary to popular stereotypes, the TCN men tended to be reluctant to become fathers and husbands, preferring to keep their immigration and private lives separate (even if this undermined their immigration cases), and seeking to resolve the former before making commitments in the latter. This was to avoid hurting people, feeling mentally and financially unable to look ahead and in recognition of the suspicion and scrutiny that their emotional lives were subject to by in-laws, one’s own solicitors and the authorities. Acutely aware of mistrust over their motives, the men actively sought to avoid marriage or having children whilst their immigration status in the UK was so uncertain, some concluding they cannot be in relationships at all. The citizen women were much more likely to suggest marriage in an (often unsuccessful) attempt to secure their partner’s residence. They did so earlier in the relationship than they would normally or when they otherwise did not wish to enter the institution of marriage for ideological reasons.

The chapter also showed that whilst family ties provide people with much needed happiness and support, emotional relationships to UK residents may also accentuate the pain and trauma of immigration precariousness. The research found this was particularly so in relation to forced unemployment and financial hardship, the inability to plan or progress, and the threat (or experience) of separation, whether within the UK (e.g. immigration detention) or across borders (deportation, visas, etc). Most of the men interviewed said that their struggles had been easier to bear when they were single, and several said that they would have left the UK were it not for their relationships. Fathers felt particularly strongly connected to the UK, speaking of an *‘umbilical cord’* that tied them permanently to the country, whether or not they or the authorities liked it.



Case study 1: 'A nothing man'

The couple initially met through a charity where Mary, a British woman, volunteered. Luke, a client there, had arrived in the UK as a teenager nearly 20 years previously. He had been refused asylum repeatedly and had neither the right to work nor recourse to public funds. He was destitute and liable to removal. Indeed, at the beginning of their relationship he was detained for several weeks, before being released into impoverished limbo. His poverty and vulnerability led to an accelerated start to their relationship, including early cohabitation and missing out on the fun stages of an early relationship.

Both parties described the hardship of conducting a relationship in the context of the financial, practical, legal and emotional problems he faced as an appeals rights exhausted refused asylum seeker. Luke spoke of being penniless, isolated and depressed, struggling with the guilt of not being able to contribute financially. Mary described an inescapable power imbalance, with him resentfully dependent on her for financial, social and emotional stability. She lent him her car and credit card to use, but this contributed to his feeling ashamed for being unable to *'provide'* and not the *'man'* in the relationship.

*'She wears the trousers and I wear the skirt.
My manhood is being ripped away from me.'*

Recognising the impact of forced unemployment on his self-esteem, Mary tried to find other ways for him to contribute, like the housework and handy-man tasks. However, Luke found it patronising and bossy, complaining that she was treating him like a *'slave'*. They argued frequently and sometimes split up, but as he had no money or alternative accommodation, they usually quickly reunited. During a rocky patch she discovered she was pregnant. Although this contributed to their stress, they also experienced a reversal of their relationship dynamic towards a more 'traditional' gender balance whilst Mary was pregnant and immediately after the birth. Whilst she felt vulnerable, he had space to be 'strong', capable and caring. But as the sole breadwinner, she reluctantly had to return to work quickly, furthering his feelings of emasculation and hindering her breastfeeding.

The couple eventually split up. Although both want him to be an active father, this is made very difficult by Luke's destitution, depression and ongoing legal liminality. During the summer months, he can spend time with their child in the park but fathering whilst homeless is especially challenging in cold and wet weather. Mary still gives him money, but this makes him feel like he is *'begging'*. She says he is a *'hands-on dad'*, who performs his fatherhood in non-financial ways: he loves doing bath times and playing when he visits, and he makes great dens. But she also described his destitution as encouraging a certain form of *'hard'* and *'street'* masculinity that is difficult to reconcile with a fatherly role. He has a very low opinion of himself as a father and did not even want to be named on their child's birth certificate, explaining, *'I'm a nothing man.'*



4: Work and Finance

Political and media discourse around migration are bound up with discussion about work and money. It is evident in the many negative stereotypes around lazy, greedy or thieving foreigners, as well as political claims to be protecting the ‘taxpayer’ and ‘hard working families’ from economic migrants. The highly moralised figure of the taxpayer is rarely defined but generally portrayed as a British person in steady work and intrinsically beneficial to society. Migrants are excluded from this idealised category, even though they pay tax in various ways, including every time they buy something, just like any other consumer. The immigration system generally – often explicitly – favours wealthy, skilled and employed foreign nationals, whilst simultaneously restricting options for poorer migrants (Bowling 2013). Entry, settlement and deportation processes privilege wealth and financial stability, with money providing access to preferential visa categories and premium services and increasingly underpinning the concept of ‘integration’, which can be critical to deportation decisions.

‘You only have to say Albania and they just go “No taxpayers’ money.” It’s such a red herring. Taxpayers’ money, what on earth are you talking about? They’ve grilled that so successfully: spending taxpayers’ money, spending taxpayers’ money. They don’t! People from outside the EU don’t see taxpayers’ money.’

(British woman, partner refused entry to UK)

Issues and stress relating to work and money were recurring themes in interviewees’ accounts of how the immigration system negatively affects their lives, as well as their relationships and families. Across the spectrum of immigration situations and outcomes, interviewees became less financially comfortable and stable, often significantly so. This chapter outlines the sources of these difficulties, focusing on the prohibition against migrants’ employment. The chapter goes on to consider the impact of these restrictions on people’s relationships, identities and gender roles, before looking at implications of immigration-related financial pressures on the British and EEA national partners.

4.1 Financial strains: The right to work

There are multiple ways in which a precarious or unlawful immigration status caused financial strain and deprivation. The couples became poorer, indebted or reliant on outside support, even when the foreign national was in the UK legally. Those with an unlawfully present member were hit even harder, especially if they had few existing resources to help. Not only did those citizens reliant on the state for support or housing have less back-up to cushion the difficulties, but their welfare provision was liable to being reduced as a result of a foreign partner’s presence, even when he had no recourse to



public funds. All the couples also faced ever-increasing application fees, surcharges and legal costs, made much worse by the legal aid cuts of LASPO 2012. There might also be – often significant – costs of visits to partners in prison, immigration detention or overseas. In a couple of deportation cases, the partner remaining in the UK was maintaining both households, across the two countries, for months or even years. This was not only the situation for those experiencing forced removal. A similar scenario was faced by a British woman whose lawfully present husband had to leave the UK to apply for a spousal visa.

The primary source of financial strain, however, stemmed from the combination of the men's forced unemployment and concurrent ineligibility for public funds. The men's immigration status almost always precluded them from being able to work or access state support or housing. This was especially so for the irregular migrants and those on visit visas or subject to Deportation Orders. Asylum seekers cannot work,²⁵ but might be able to access asylum support. At under £40 a week, this is a fraction of the welfare payments available to British citizens. If accommodation is provided, it is on a no-choice basis and subject to 'dispersal' outside the south of the country, potentially leading to separation from one's family. In IRCs, however, 'cooperative' detainees are allowed to work, in jobs such as cooking, cleaning and gardening. These are paid well below the minimum wage, at £1-£1.25 an hour and save the detention providers large sums. Working in detention is voluntary but is the only way to earn money to support and stay in contact with families.

'You have to because you have to look after your family.'

(Deportable man)

Some of the men had worked without legal permission: from cash-in-hand work on market stalls and building sites, to people in managerial and highly skilled posts within the private and even state sectors. They did so to support themselves and their families, as well as to pay for immigration applications and legal advice. However, it is a criminal offence to work without permission and these individuals risked or experienced punishment in the form of hefty fines, confiscated wages or prison sentences, with a criminal record having repercussions for people's immigration claims, Article 8 rights and deportability. Moreover, irregular work can be precarious, exploitative, unsafe and/or badly paid, but the risk of punishment from the authorities means that people may feel powerless to assert employment rights, leaving them vulnerable to poor treatment and withheld wages.

²⁵ In theory asylum seekers waiting over a year for an initial decision are permitted to work. However, they can only work in jobs included on the shortage occupation list. The specificity and high skill level mean that in practice most asylum seekers cannot work.



'I'm not lazy, I need to work. I used to work [illegally] in construction, digging concrete. It's not good really. I worked from eight until eight and I got £35 all day.'

(Refused asylum seeker man)

Those who worked without permission felt they had no choice, given that there was no other way to provide for their families or fund their cases. Some claimed the authorities had designed the system in order to force them to work illegally in order to increase their deportability. *'Deprive him, he's going to mess up and then it will justify everything'* one man explained, pointing out that in detention he was able to work and send gifts to his child, but now released, he can only send her money or visit her if he works illegally.

'I've got no job, I've got nothing. I'll go look for a 'funny' job. They're going to pay me £4 or £3 an hour. But if I save that money, I can catch the bus, I go see my daughter and buy her something.'

(Unlawfully present father)

Even when foreign nationals do have the right to work, they often struggle to have this recognised. Employers are fearful of the increasingly severe financial and criminal penalties for employing someone without the right to work, which under the Immigration Act 2016 includes fines up to £20,000 per worker and prison sentences of up to five years. The 'hostile environment' approach to migration management entrenches the difficulties of operating in the job market, with the Immigration Acts 2014 and 2016 requiring banks conduct immigration checks on their customers and landlords check tenants' 'right to rent'. This increases people's vulnerability to financial risk, homelessness and insecure or poor housing. It not only affects irregular migrants, but also lawfully present foreign nationals and citizens, particularly ethnic minorities and naturalised Britons, as well as people's family members (citizen and non-citizen).

4.2 Impacts on private life

One of the most consistent themes that arose for all the couples was the extreme – and gendered – difficulties presented by the men's forced unemployment. This, coupled with the men's insecure immigration status, meant they were in various levels of dependency on their partners and sometimes also her extended family. This placed considerable strains on relationships and people's mental health and led to feelings of chronic guilt, indebtedness, resentment and anxiety. The British/EEA women often felt overwhelmed by the financial responsibility, in addition to responsibilities around navigating the immigration and judicial systems. They worked multiple jobs or excessive hours, gave up holiday and maternity leave, avoided pregnancy and were made poorer by their partner's

immigration status. The men felt ashamed and guilty, speaking of their ‘failure’ as parents, partners and men, and their wasted time, talent and purpose. As this section outlines, being prevented from working and the financial stress, poverty and dependency that goes along with that, goes to the heart of family life, affecting people’s relationships and gendered identities. This was illustrated by an irregular father, whose family was living in poverty and surviving off the food bank. He spoke of the shame and pain of not having been able to buy his children birthday presents for seven years.

‘You know, as a parent you start thinking maybe you failed. Maybe you failed in life. It’s pretty heart breaking... I can’t do what I should really do as a father, a husband, a parent. It’s demoralising.’

(Unlawfully present father)

Impact on relationships

Unemployment and financial stress affected the couples’ health, happiness and social and love lives. A man in his 30s who arrived in the UK as a teenager but is now destitute after having his asylum claims refused, described how his need to focus on his immediate survival detaches him from mainstream society, leaving him feeling unable to interact with the community and feeling resentful towards others. He says he has abandoned all hope of *‘love [and] good relationship with friends’*, concluding that people in his situation are unable to have relationships with other people.

‘It makes you push away from the community, and you can’t even have a simple normal conversation with them, you can’t even listen to their normal conversation, it makes you very upset.’

(Unlawfully present father)

A lack of funds inevitably affects the formation and evolution of relationships. Several participants noted that immigration-related financial pressures had shortened the early stages of their courting and continued to hinder romance, fun and present-giving. An interviewee with a failed asylum claim, who was entirely financially reliant upon his girlfriend, explained that if he wanted to buy her a surprise gift, he would have to lie to her to borrow money from her for her own present.

‘In some ways he’s lost some of his independence because he doesn’t have his own money to go and do stuff. You know, it feels like he is dependent on me in every way, even for the visa, the successfulness of the visa application and stuff. It’s all dependent on our relationship and me, so yeah, it’s a bit difficult.’

(British woman with husband on time-limited visa)



Dependency upon one's partner was identified by the couples as affecting the power dynamic in their relationship, which affected people's mental health as well as caused relationship strain. A couple of the men described their partners bringing up his dependency on her in arguments.

'A man's going to want to be able to provide for his family, isn't he? So, when he can't do that, sometimes that's what starts the arguments because he says, "You just feel like because you do it all, that you're the man in the relationship"...

Nobody wants to be 100% reliable on anybody. I'm a woman and I wouldn't want to have to rely on him for, "Can I have some money for this?" You don't want to do that, everybody wants to have their own independence, have their own source of income. I couldn't imagine if I had to ask him or my Mum all the time for stuff, I'd just feel a bit small, wouldn't I?'

(British woman with deported husband)

Example: Forced unemployment

A year ago, Paul had been arrested working illegally on a false visa. He feared returning home, because of his sexuality, and claimed asylum. Whilst he fights his claim, he is forbidden from working. He now stays at home, doing the chores whilst his husband is the sole earner. He is exhausted, working 70 hours a week, in two jobs, to support them and to cover the high legal bills and applications. Paul finds dependency on his partner extremely hard, having always been financially independent. Although he does all the housework, he feels lazy and ashamed, and responsible and guilty for how hard his partner must work. He had focused his efforts on cooking exciting meals as a way to pay into the relationship and keep himself positive, but his husband berated him for spending too much money on food. They increasingly argue, with his partner resenting him for *'doing nothing'* all day. He struggles with the sense that his partner perceives him as being *'lazy'* and a *'scrounger'* who does not contribute. Paul has become isolated and spiralled into depression, sleeping all day and doing increasingly little. Their friends do not understand. They judge him, suspecting he is taking advantage and mistakenly think that unemployment means he *'has it easy.'*

Impact on gender roles

'My husband looks after the kids. The first year he was a stay-at-home dad with our son and since then he's done all the work in the house and he does dinner... he does all the cooking and the laundry and it felt like we were equal for the first time. But he, I don't think, ever felt really comfortable with that. He never felt like he was equal to me. I was always the one bringing in the money and he wanted to do that as well.'

(British woman with unlawfully present husband)

Sociologists have long recognised the relationship between male identity and work, and interviewees clearly articulated the impacts of not being allowed to work in gendered terms. The interviewees felt men are under particularly acute social pressure to be active in the labour market and financially independent. Unemployment affected how the men defined their role in society and family life. They spoke of being inadequate and useless because they could not *'provide'* for partners and children, framing these failures in relation to normative constructions of masculinity. They felt emasculated, referring to themselves as *'nothing men'*, *'waste men'*, *'useless'* and *'ghosts'*. One deportable man said he felt like a slave, stripped of his agency and independence.

'It really feels like you've lost your legs, man, you've lost your hands and legs. You can't even face your woman.'

(Unlawfully present father)

Several also described it as infantilising, with financial dependency and forced unemployment threatening their identities as adults. *'I'm an extra kid! And one that can't collect anything'*, a lawfully present man on a time-limited visa said with guilt, recognising that he is an additional mouth to feed from his wife's stretched welfare support.

'He felt like an extra child because he just, he was really upset about not being able to provide when he was around and he had these really rigid ideas about gender roles.'

(British woman with unlawfully present husband)

Several participants described these restrictions as causing a *'role reversal'* in their relationships. A father who was the primary carer of his toddler said his wife would come home from work demanding to know why dinner was not on the table and berating him for doing *'nothing all day'*. The female interviewees were conscious of their partners feeling emasculated and described trying to find alternative ways by which they could contribute, often trying to do so subtly to protect his pride. These included physical tasks, childcare and housework. This had positive repercussions, including strong father/child bonds, but also sustained a power hierarchy within the couple, further challenging people's gender norms and causing relationship stress.

4.3 Citizens and socio-economic status

It was not only the foreign nationals that were financially harmed by the immigration system. British citizens are also directly affected, especially those already struggling or marginalised. The immigration-related financial pressures, particularly the prohibition against the men working, tended to either force the British partners into working excessively hard or pushed them out of work and onto welfare reliance. Many take on multiple jobs, work very long hours and are stressed, exhausted and burdened by the financial responsibility. Several interviewees had sacrificed having children or had given up maternity leave or plans to be the primary care giver, and felt that they had lost their dreams, plans and choices around work and parenting.

'I was going somewhere once, big life plans... now I am completely dependent on my benefits. My savings have all gone on immigration stuff. £7,000. That has all gone. No course, no job, no partner and no future. It has just all gone...

It makes me really mad that our life is like someone has just stamped it out before it has even begun. All the things we could have been doing and the experiences we could have been having as a family and none of it is happening.'

(British woman, partner refused entry to UK)

Those families receiving state support, or who were carers, unemployed or had low paid or precarious work, found it hardest to withstand the financial impact of their partner's immigration situation. Several British interviewees had their housing or income affected by their relationship to a foreign national, even when he could not work or access public funds. One young British woman could not offer her home as a bail address to her detained partner as it was council-supported, precluding him staying full time. This meant that when he was released from detention, he had to live far from her and their baby. Another British woman twice cancelled her wedding last minute, after her local council called to warn that a change in marital status would affect her benefits and housing, even though her husband could not even enter the UK. With a young child to think of and even though marriage would strengthen their immigration case, she had resolved *'We're not going to get married, we just can't do it. I can't risk it, you know? We haven't got enough back-up.'* In other cases, the fear that the presence of a foreign spouse would threaten housing or finances led to couples living separately or not listing the father's name on the birth certificate, damaging relationships as well as Article 8 claims.

These families were highly restricted in the means by which they could negotiate the immigration system. Options such as moving overseas together require financial stability and independence. As a British interviewee explained, *'I'm on benefits, I can't afford that sort of thing.'* Those who were better-off had more options available, including being eligible for sponsoring their partner through a spousal visa by meeting the minimum

income threshold. Whether from jobs, savings or third party support, financial stability meant being able to afford good quality legal advice, appeal decisions and take risks, such as temporary relocation to other EU member states, or applying for visas they were very unlikely to get. They would still be made poorer, sicker and unhappier, and their privilege did not ensure success, but at least they had possibilities.

'The whole thing is making us less financially stable and obviously with him leaving there's a higher risk of me becoming dependent on benefits or anything like that and me not being able to continue in employment, so it seems really counterproductive... Everything will come falling down for us.'

(British woman with precariously present husband)

Many of the interviewees highlighted the centrality of money in the immigration system. One called it **extortion**, another concluded, *'It's nothing to do with politics, it's all about money.'* They felt constrained and undesirable as a result of the combination of their own class and socio-economic struggles, coupled with their partners' immigration problems.

'This is the plight of not just myself but thousands of Brits who are, in effect, forced to leave England. This is the answer to immigration. Kick the poor, weak, sick Brits out.'

(British woman with deported husband)

Example: Privilege and the Immigration Rules

Fiona is a middle class British professional, who owns her own home and has a well-paid, stable job. She met her husband whilst volunteering with a charity supporting him. He had been refused asylum several times and was destitute, which led to early cohabitation and discussion of marriage. A year into the relationship they applied for him to remain on Article 8 grounds. Even though her voluntary experience gave her insight into the immigration system and Home Office, she admits that she still expected the process to be easy for them because of her social-economic position, believing: *'Oh the Home Office, they'll be fine with me...'* At pains to stress that she does not think privilege *should* ease the process, nonetheless she expected her social standing as a hardworking professional citizen to hold weight and to be transferable to her husband. This was not the case. Fiona was pregnant when they received notification that their application had been rejected and he should leave the UK.

'When I first started the whole thing I was like, I'm a white, middle class doctor, it will obviously be sorted out in about three weeks! It'll be fine and I can pay for the lawyer that we want, and I can write my letters, and I've shown my doctor's certificate, and I can, you know, and they'll obviously just put it straight through.'

Positioning oneself as a taxpayer

'We welcome those who wish to make a life in the UK with their family, work hard and make a contribution. But family life must not be established here at the taxpayer's expense.'

(Home Office spokesperson)²⁶

Immigration policy restrictions, including those relating to Article 8 claims, are often justified through invoking concern for the 'hard working taxpayer'. Under the Immigration Act 2014, it is deemed not in the public interest or economic wellbeing of the UK to admit people who are not financially independent or who do not speak English. There is no clear definition for financial independence but in relation to the spousal visa, the minimum income required to support a couple is £18,600 (a figure high enough to exclude half the working population (Migration Observatory 2016)). The government have defended the income threshold as necessary to ensure integration (e.g. at the Supreme Court challenge in 2016). Since the 2012 Immigration Rules changes, a financially-informed concept of integration has also been central to challenging deportation decisions. This moves the grounds for asserting a right to remain away from time and relationships, to questions of financial independence and not being a 'burden on the taxpayer', which includes not relying on public funds, charity or even family members.²⁷ The argument is that financial struggles hinder 'integration', with detrimental impact on the state purse.

The interviewees, particularly the British citizens, had internalised this logic and language. They often emphasised the ways in which they met this idea of the hard working, tax-paying employee, as a way to articulate their deservingness, claim their rights and call for their relationships to be respected.

'As a taxpayer and as someone as works for a very reputable company... We are working really hard, because we believe that nothing in life is free... I'm a hardworking woman, I've never claimed a benefit, I've never claimed anything in my life. I've worked since I was 15 and they kind of treat me like a criminal!'

(British woman with precariously present husband)

Interviewees also used the language of employment and paying tax to frame the credentials of their foreign partners and the insult of his poor treatment, even if such

²⁶ 'Children trapped in poverty by UK government's "dysfunctional system"' (the Guardian, 03/06/2015) <https://www.theguardian.com/society/2015/jun/03/no-recourse-to-public-funds-children-poverty-uk-government>

²⁷ Section 117B(3) of the 2002 Act, chapter 13 of the Immigration Directorate Instructions.

work had been conducted unlawfully. Several of the men had paid tax through employment, a finding especially true for those who had grown up in the UK.

*'He has paid tax to this damned country and yet they still do this...
It's totally outrageous that a human life is worthless unless you are well off. If you are
hardworking, pay all your taxes, it doesn't make a difference!'*

(British woman with forcibly removed husband)

Concurrently, those interviewees who were economically struggling, sought to explain or excuse their failure to live up to the idealised 'taxpayer', particularly around receiving state support. People receiving benefits or out of work were frequently scapegoated or suspected of being unfairly treated more leniently by the immigration system.

*'If you're a carer or on sick, you're exempt, but if you've got a job and you're
hardworking and you pay your taxes, you don't get any exemptions whatsoever.
It takes the piss.'*

(British woman with husband on time-limited visa)

4.4 Conclusion

The project found multiple ways in which immigration precariousness causes financial loss and difficulty. This included the prohibition against employment, which is not only faced by those unlawfully present but also many legal migrants, including asylum seekers and TCN on visit visas). The combination of ineligibility for work and public funds causes great frustration, financial hardship and emotional and relationship harm, as well as sustaining the demonised figure of the lazy, 'bad' migrant. The financial difficulties caused by the immigration system affect the whole family, including British citizens and children. Some had to resort to crisis loans, the food bank or appealing for financial or in-kind donations on social media, including baby milk in one case. Citizen women interviewed had to relinquish their maternity leave and curtail breastfeeding so as to return to work, take employment despite needing or wanting to be primary carers to their children, or felt unable to have children. Some were forced out of work by their partner's immigration struggles, including onto welfare reliance. Others had to work excessively hard, taking on multiple jobs or hours, sacrificing weekends and starting families. In some cases the foreign nationals felt forced to accept unlawful work, despite the risks, which included risks to their immigration cases and repercussions relating to refusals, detention, prison and deportation.

The impacts affected relationships, gender roles and identities, including the internal power dynamics of couples. Participants spoke of '*role reversal*' in their relationships as



a result of the immigration system. The prohibition against work invariably raised issues around dependency and shame, with forced idleness, unproductiveness and inability to contribute to one's family causing the foreign nationals emasculating stress. Their working partners reported feeling overwhelmed with exhaustion and responsibility for supporting the family (and often also trying to find ways to enable their partners to contribute in other, non-financial, ways). Even when there were positive repercussions, like close father/child bonds, the gendered expectations of both parties were challenged, compounding relationship stress and feelings of emasculation.

The impacts of the immigration system and the ability to navigate it, are not only affected by the situation of foreign nationals, but also the pre-existing socio-economic position of their citizen partners. Economic privilege, such as savings and secure, well-paid jobs, offered greater possibilities and protections, although did not guarantee success. Those women most marginalised, however, were highly constrained in their ability to help their foreign partners successfully negotiate the immigration system.

'This is as much an attack on the poor as it is on foreigners.'

(British woman, partner refused entry to UK)



5: Crime, Offending and Justice

In the last decade, the foreign national offender (FNO)²⁸ has arisen as a category of extraordinary political concern. Combining the longstanding fear of the ‘stranger’ with fear of the criminal, the ‘foreign criminal’ has overtaken the ‘bogus asylum seeker’ as the most demonised immigration category. This has implications at both the individual and system levels. Calls for reform to the immigration system, such as a time limit on immigration detention, often specifically exclude migrants with criminal records.²⁹ Many policy changes, including in relation to Article 8, have been driven (or justified) by a concern with increasing the number of FNOs deported. New restrictions are often directed first at FNOs, before being widened out, including the ‘deport first, appeal later’ system and a narrowing interpretation of Article 8. FNO classification also has increasingly profound implications for individual immigration cases. Criminal records simultaneously heighten deportability and undermine grounds for remaining in the UK, as well as hindering the possibility of returning to the UK.

Nearly a third of the men in the families followed had been imprisoned in the UK, mostly for immigration-related offences (e.g. working illegally), as well as for fraud, driving offences and possession of an offensive weapon. Those with Deportation Orders faced particularly difficult battles to remain in – or return to – the UK. Although it draws on the interviews, this chapter focuses primarily on the 30 observations of deportation appeals and other relevant immigration hearings at the Immigration and Asylum Chamber (IAC), where the legal arguments over these issues are played out. The chapter begins, however, by summarising the legislative context around FNOs (see also Appendices 4 and 5).

5.1 Foreign National Offenders

The 2006 media outcry over the release of FNOs at the end of prison sentences led to a decade of policy changes focused on increasing the identification and expulsion of FNOs, despite the numbers being tiny.³⁰ This included decreasing the level of criminality required for deportations and increasing the penal and immigration consequences for offences committed by foreign nationals, whilst simultaneously decreasing the grounds and means for challenging immigration decisions. Previously, only serious criminals

²⁸ FNOs are defined in the UK Borders Act 2007 as non-British citizens who have been convicted of an offence in the UK and either sentenced to 12 months or more imprisonment, or for a shorter period but for a serious offence, as defined by Section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002). The Home Office uses a broader definition (e.g. includes persistent offenders), see Chapter 13 of the Immigration Directorate Instructions.

²⁹ For example, the Labour Party’s 2015 manifesto.

³⁰ Over six years, 1,013 TCN were released without being considered for deportation (NAO 2014: 12).

tended to be deported. The UK Borders Act 2007, however, made the expulsion of those with a 12-month+ prison sentence in the public interest, as well as those with multiple short sentences or if deemed serious or persistent criminals. The introduction of Operation Nexus in 2012 further lowered the bar. This institutional arrangement was designed to strengthen police-Home Office interagency cooperation to better identify and remove FNOs. Details vary regionally but include stationing immigration officers in police custody suites and the police checking the nationality and immigration status of everyone arrested.

Operation Nexus does more than neutrally increase the detection of FNOs, it expands the definition. It brings foreign nationals with criminal or immigration problems to the Home Office's attention through their contact with the police, including witnesses and victims. It also revitalises and mainstreams 'intelligence-led deportation', under which people can be deported on the basis of police intelligence and their police file, rather than necessarily on the basis of a criminal conviction. This includes people with spent, historical and overseas convictions, as well as those with low-level or unproven criminality or who are deemed to have a criminal 'character' or 'lifestyle' (Luqmani Thompson & Partners 2014). Nexus-related deportation appeals are heard at the IAC, where the evidential requirements and legal protections are lower than the criminal courts. Coupled with the fact that police files cannot be amended, Nexus cases may be built upon a medley of allegations, unproven assertions, hearsay, associations, anonymous evidence, police errors and circumstantial evidence, none of which would usually be admissible in a criminal court. Legal aid cuts mean that appellants may be unrepresented in these challenges. Although presented as targeting high-harm FNOs (see Home Office 2017), Nexus draws in a much wider range of people.

The number of people categorised as 'foreign criminals' may be growing but the number of FNOs actually deported has remained fairly steady (between five and six thousand a year since 2009, see Appendix 5).³¹ People are held indefinitely in IRCs or live in legal limbo in the community, usually without rights to work or remain, but with stringent tagging and reporting requirements. There are no statistics regarding the family ties of detainees, but those coming to IRCs from prison (e.g. as opposed to work-place raids or when reporting), may be particularly likely to have UK-based families.

'The people who come [to IRCs] from prisons tend to have stronger links with families in this country. They tend to have been here for longer.'

(an independent inspector)

³¹ Home Office Immigration statistics, year ending June 2018 (Returns data table rt_06_q)
<https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018-data-tables>



FNOs face particular barriers obtaining immigration bail, as they tend to be accused of presenting an absconding or reoffending risk. Coupled with barriers to deportation, including embeddedness within the UK, this means that FNOs are often detained for the longest periods, frequently longer than their prison sentences (Phelps 2010).

Categorisation as an FNO continues to affect people even after they are deported. Not only does deportation carry a mandatory ten-year return ban, but any future visa application will be negatively affected by the person's criminal record. This can make it almost impossible for people to return to the UK to live with or even visit family. The potential for permanent exile following deportation typically results in a choice between long-term separation or UK-based family members relocating overseas (see Chapter 6).

5.2 The Immigration and Asylum Chamber

Appeals of deportation, asylum and other immigration decisions are heard at the Immigration and Asylum Chamber (IAC), which is part of the administrative Tribunal, rather than Courts system. The majority of the hearings observed for the project were initial appeals, heard at the First-tier Tribunal of the IAC. This includes over 15 deportation appeals, observed at four hearing centres in England and Wales.³² Around the same number of other immigration hearings were observed, including immigration bail hearings and appeals of refused human rights or visa applications, and curtailment of leave decisions. The appellants at the deportation appeals were all male, the vast majority black, Asian or Middle Eastern young men living in deprived inner-city areas. They often had difficult pasts in countries of origin, in transit and/or in the UK, including living under precarious immigration status. They had come into contact with the criminal justice system from financial stress, the care system, problems at home or school, addiction, mental health problems or learning difficulties. Of the three white appellants, two were eastern European and the third western European with learning difficulties.

The main actors present at deportation appeals are Immigration Judges, Home Office Presenting Officers (HOPOs) and the appellants, along with their legal representative if they have one. There may also be IRC security guards or witnesses such as friends, family, country experts, Social Workers or police officers. The Judge is independent and (except for bail hearings) does not make a decision until after the hearing, sending the judgement by post. The HOPOs observed were frequently antagonistic and dismissive, at times even rude or aggressive, although there were exceptions who clearly tried to be respectful and

³² A precise number is hard to give because hearings were sometimes adjourned part way, or were bail hearings but included deportation arguments, or observations were only made on part of a two-day hearing.



civil. Their tactics usually revolved around discrediting the character and credibility of the appellant, sometimes also their witnesses. One HOPO described himself as a ‘hawk’ and called the immigration system *‘soft’* and out of control. Another made disparaging comments about Jamaican fathers after the hearing and accused foreign men as opportunistically having children to secure a *‘trump card’* against border controls.

As political pressure to increase FNO removals has increased, so too have the obstacles hindering legal challenges of such decisions. People appealing immigration decisions are increasingly portrayed by politicians and journalists as wasting taxpayers’ money and trying to frustrate the system, rather than exercising a legal right or correcting a poor decision. Even lodging an asylum or human rights claim is sometimes presented as serving solely to disrupt deportation. One immigration judge observed asked the appellant if his asylum claim was *‘a last clinging straw to gain a foot hole in this country?’* Another man was described by the HOPO as *‘playing games’* because he had lodged multiple appeals.

There are a multiplying number of barriers to justice in this area. These include cuts to Legal Aid under the LASPO Act 2012 (including withdrawal of legal aid for human rights challenges), a reduction of appealable decisions (replaced by internal Home Office reviews) and changes to the government’s interpretation of Article 8. Operation Nexus makes people especially legally vulnerable, stripping them of almost all means of challenging the allegations made against them and denying them the evidential protections of the criminal justice system, which would, for example, not permit hearsay and allegation (Luqmani Thompson & Partners 2014: 31).

About a fifth of the appellants at the deportation appeals were legally unrepresented at the hearings and had to represent themselves. Just over half of all the deportation appellants were detained in IRCs at the time of their appeals. Being legally unrepresented and being in detention are both factors that greatly exacerbate the challenges of legal success. Good quality legal advice and representation is essential; to ensure applications comply with the rapidly-changing policy and law, and to be able to translate lived experience into an effective legal argument. The quality of legal representation is extremely important, and many (especially those in detention, where they have limited choice of firms) are often critical of their representatives, commonly complaining that they spend too little time on one’s case and are impossible to contact. It is common for appellants to meet their barristers for the first time at the hearing itself, spending just a few minutes discussing the case before entering the hearing room.

5.3 Deportation appeals

The appellants entered the hearing room already tainted by suspicion over their motives, credibility and character. Such suspicions were articulated as related to their immigration status, gender and familial ties within the UK. Their position was further weakened by immigration detention, criminality, lack of (good quality) legal representation, the use of video screens, literacy and language barriers, poor finances and the competence, fairness, preparedness and prejudices of others involved. Those challenging their removal after expulsion (i.e. ‘deport first, appeal later’) are especially dehumanised. Although each deportation appeal is unique, at their core, the arguments revolve around a tension between criminality and Article 8; danger and belonging.

Risk, danger and wickedness

The HOPOs inevitably focused on the appellant’s criminal behaviour and poor character to stress the ‘public interest’ of deportation. This can occur before the appellant is even in the room. In one appeal, the HOPO made comments about needing extra security to manage the risk the appellant presented, painting him as dangerous before the hearing begun. During the hearings, the HOPOs typically focus on issues like criminal activity, drug use, unemployment/illegal working, gang allegations, mental health problems, multiple names, failed asylum claims and any immigration offending. They tend to present the appellant in very negative terms. For example, a man who had refused to board the airplane deporting him because he wanted to be at his appeal the following week, was repeatedly described by the HOPO as frustrating his removal through being disruptive.

In countering this narrative of criminality, danger and poor character, appellant’s legal representatives seek to humanise their clients and balance their characters. They gave excuses, apologies or explanations for criminality and queried the seriousness of offences. They argued that crimes were committed long ago or were petty, crimes of circumstance or even showed good character (like a desire to work). They stressed Article 8 grounds for remaining and ‘good migrant’ narratives focusing on hard work, contribution or exceptionalism. This included special family roles, with arguments that dads to step-children, twins, mixed-race or disabled children demonstrated exceptional fatherhood.

‘We’re aiming to try to neutralise the Home Office’s case by saying they’re not that bad, and, actually, they’re quite good in lots of ways! But also trying to shift the debate onto: it’s not about that. It’s about their family life links. It’s about the fact that they’ve never been to that country since they arrived at the age of three and they’re going to be exiled from their home country, which is the UK.

It’s exile, not deportation.’

(Immigration barrister)



Rehabilitation and remorse

Legal representatives also gave narratives of change and rehabilitation, arguing that their clients were no longer a threat to the public. Family ties were often part of the evidence given for this, with mothers, partners and children said to be the cause and guarantor of redemption and future lawfulness. The appellants were often highly emotional in speaking about the guilt and remorse they felt as a result of their families.

‘Couple days after [my baby] was born, I held him and I’ve never been the same since. I grew up without my dad. And to think I was in jail when I should have been there for him. I just want to be there with him.’ (breaks down)

(Appellant at an immigration bail hearing)

The importance of social ties in offender rehabilitation is well recognised, with a recent government-commissioned report recognising the importance of prisoners’ family ties in easing re-integration after release and preventing future offending:

‘If prisons are truly to be places of reform, we cannot ignore the reality that a supportive relationship with at least one person is indispensable to a prisoner’s ability to get through their sentence well and achieve rehabilitation.’

(Farmer 2017: 7)

However, the political concern and resources given to improve rehabilitation within the criminal justice system is absent for FNOs. For them, the seriousness of their criminality is amplified by their nationality and immigration status, and there are few options to claim rehabilitation. FNOs are held in higher security prisons than their British counterparts and refused re-categorisation to open prisons. They are more likely to be imprisoned on remand while awaiting trial or sentencing and they generally receive longer custodial sentences, meaning that prisoners spend more time incarcerated if they are foreign (Bhui 2007; Turnbull and Hasselberg 2016).

In addition to generating greater punishment, these developments hinder the possibility for FNOs to demonstrate change. They are normally denied day release whilst imprisoned and then transferred to immigration detention at the end of their sentence, meaning they cannot prove they are no danger to the public. Volunteering or taking prison courses were considered proof of rehabilitation but were often not available to FNOs or were taken but were hard to evidence to the judge. One young appellant said he had not been allowed to take courses because his sentence was only nine weeks long. An independent inspector said in interview that rehabilitating deportable people and helping them maintain family contacts was not a priority in prisons and simply non-existent in IRCs, where the assumption was that their removal was imminent. Interviewees commonly complained that immigration detention was worse than prison.



*'The difference between prisoner and detainees, the prisoner's got rights.
When you're in prison, they talk to you properly. You've got rights of course.
But in detention no, no, no, you're a nobody, not even a person.'*

(Unlawfully present man)

In any case, an immigration exemption was added to the Rehabilitation of Offenders Act 1974, meaning that for FNOs, even spent convictions continue to hold weight.

Private and family life

Appellants and their lawyers tended to focus on his UK family ties and private lives rather than criminal record. This included stressing relationships and the length of time in the UK and young age at arrival. The appellants often spoke with British accents, having grown up and been schooled in the UK. They frequently knew little about their country of origin and had no friends or family there. More than half of the deportation appellants had partners in the UK (almost always British), although only a few had children, possibly reflecting the youth of most. Lawyers presented their clients as active and engaged family members, demonstrated through letters, birthday cards, court orders, visits, school records etc. Gathering such evidence can be very difficult for dads who are imprisoned or detained, poor, destitute, unlawfully present or separated by borders, housing rules or dispersal, indeed sometimes even establishing paternity is difficult for such men.

Legally speaking, greatest weight is placed on families of procreation in the UK (established through partnership and parenthood), although relationships with UK-based parents were also raised by appellants and lawyers. These relationships and families were presented as showing a break with the past and brighter, law-abiding future. The harm of deportation to family members (particularly children) was said to be disproportionate to the public interest. Partners (girlfriends, wives, co-parents) and mothers were the most common witnesses and sureties, although extended family were sometimes present.

Countering these arguments, HOPOs tended to suggest that the family ties were opportunistic, weak, broken or sacrificial to border controls, although increasingly they do not need to, as Article 8 policy changes make such arguments superfluous in the face of a criminal record. The HOPOs argue partners and children can relocate to the country of deportation or that they had already shown they can manage (with children, finances, health problems, etc.) without the appellant whilst he was detained or imprisoned. They sometimes came close to criticising witnesses, e.g. seemingly blaming mothers for their sons' offending. In various ways, some HOPOs undermined the character and financial independence of witnesses, particularly those who were not British-born or did not meet the 'hardworking taxpayer' ideal.



5.4 Operation Nexus

As noted previously, Operation Nexus is significant in its impact upon the balance between the public interest in deporting ‘foreign criminals’ and the Article 8 rights of them and their families. Operation Nexus permits deportation cases to be built upon criminality that is minimal, unevidenced or even as yet still uncommitted, potentially drawing in people with superficial or unproven criminality. Guidance on Nexus was only published by the Home Office in 2017, five years after it was piloted. There is little data on the initiative but practitioner interviews suggest that those affected fall into two primary categories: young urban black and minority ethnic men and eastern Europeans (the latter sometimes on the basis of spent, historical convictions).³³ The reliance on police files means that all police encounters take on significance, including stop-and-search interactions, even when nothing is found, and arrests, even when charges are not made or are dropped. The potential for police bias or harassment is high.

Providing some (unrepresentative) insight are our observations of four Nexus-related appeal hearings in 2015. Three appeals of deportation orders and one of curtailment of leave. Appellants were men aged 20–24 years, originally from Afghanistan, Iran, Iraq and Jamaica. They had come to the UK as children, alone or in asylum-seeking families. Between them, they had experienced early abandonment, loss, abuse, addiction, chronic pain, learning difficulties, school expulsion and violence. They each had several convictions, although they were described as persistent, not serious, criminals. At the appeals, the HOPOs sought to portray the young men as foreign, despite them growing up in the UK and having UK-based mums and (British) girlfriends. Two had serious convictions for robbery, assaults and handling stolen goods. Another had 20 convictions for smaller offences, like possession of cannabis and not complying with court orders. The fourth Nexus appellant was a 20-year-old facing deportation to a country he left aged five. He had four small convictions relating to possession of a knife and failing to surrender to the police. His longest prison sentence was just eight weeks and he justified the knife as wanting protection after being the victim of multiple stabbings.

The emphasis on police intelligence means that Nexus-related deportation cases revolve around the police file. The entries in the observed hearings were largely insignificant, unsubstantiated, withdrawn, circumstantial or actually an indication of victimhood. Euphemistically termed ‘non-convictions’, the entries raised included instances of stop-and-search, Anti-Social Behaviour Orders, being at the scene of a crime, being a victim of a crime, one’s associations, hearsay and allegation. Because police files cannot be amended, they include mistaken or withdrawn entries. One man had been arrested but

³³ See the Aire Centre’s work challenging the treatment of EEA nationals under Operation Nexus: <http://www.airecentre.org/news.php/272/operation-nexus-hearing>

not charged for: rape (the victim's account was contradictory and eventually withdrawn), robbery (he was not picked in the identity parade and no breach of his electronic tag occurred at the time), possession of drugs (another man admitted they were his), and possession of 'suspect goods' (the item had not actually been stolen). Other entries included his being victim of a serious assault and arrested for an offence in which the suspect was described as a chubby white Irish man (the appellant was a thin Afghani).

All four of the hearings involved accusations of gang membership and drug offences, despite being accompanied by little or no evidence.³⁴ The drugs-related incidents on the files of the Nexus appellants typically related to cannabis and elicited charges of possession or no further action. Allegations of gang membership tended to be backed up with very little information or evidence from the police or HOPOs. Accusations rarely identified a named gang but instead provided vague or circumstantial evidence, including claiming membership through association or arguing the appellant was living a gang-like 'lifestyle'. The *strongest* proof of gang membership in an observed hearing consisted of: a woman's unsubstantiated allegation pertaining to the appellant's friend, the appellant being seen in a residential area that was targeted for an 'anti-gang operation', and being mentioned in a police intelligence report from the gang unit, even though the report did not claim that the appellant was in a gang. The evidence was even weaker in the other cases. All four denied gang membership, even though they accepted they had offended.

The Operation Nexus cases observed all included mothers as witnesses, a sign of the appellants' youth. Their parenting was often criticised by HOPOs as part of examination. For example, one mother was presented as a poor parent for initially leaving her son with family in their country of origin, as well as for her unlawful immigration status in the UK and corresponding lack of engagement with the authorities and her son's teachers.

5.5 Conclusion

Since the 2006 media outcry, 'foreign criminals' has become one of the most politically significant migrant categories in the UK, driving and justifying policy changes and impacting upon the rights and opportunities of individuals and their families. Combining both foreignness and criminality, FNOs are met with considerable distrust and distaste, defining those who come within the growing limits of the category as undesirable and deportable. As discussed, much of the immigration policy change of the last decade have

³⁴ It has been argued that the concept of the 'gang' is used to signify black youth and legitimise over-policing (Williams 2015). Similar arguments can be made around drugs, with abundant evidence of racial bias in the policing and prosecution of drug offences (Kahn 2006, Lammy 2017).



been framed around making it easier to deport FNOs, including the narrowing interpretation of Article 8 rights. Coupled with the introduction of new barriers to justice, such as legal aid cuts and reduction of appealable decisions, it is increasingly difficult for non-citizens to challenge their treatment, especially once classified as FNOs. However, FNOs are often long-term residents to the UK and an unknown but high proportion are likely to have families in the UK, potentially both their families of birth and procreation. This was borne out by both the interviews and court observations.

Observations of deportation appeals and related legal hearings demonstrated the treatment of appellants within the IAC and the impact of inadequate legal advice and representation. They also illuminated the legal negotiations of the two sides, revolving around a tension between perceived belonging and ‘wickedness’. As HOPOs attempt to establish ‘poor character’ of appellants (and sometimes witnesses) through unemployment, benefit reliance, criminality, associations, mental health problems, substance abuse etc., they generally placed little weight on their lives and families in the UK, on rehabilitation and the future, and on the wider context of offending. As explored in previous chapters, fatherhood was undervalued, as well as the importance and rights of adult siblings and extended family, including parents. Operation Nexus is particularly powerful in terms of lessening the weight given to private and family life and exaggerating the seriousness and repercussions of migrants’ contact with the criminal justice system.

Countering these arguments, appellants and their legal representatives and witnesses emphasised ties to the UK, as well as provided explanation, excuse or remorse for offending. However, there is little scope now for non-citizens to shake off an FNO label. Legally and practically, rehabilitation options have been reduced. Operation Nexus and legislative changes increase the weight and repercussions of offending and travel bans ensure long-term repercussions. Moreover, legal representatives rarely gave the kind of context to offending that came out in the research interviews, such as the impacts of immigration restrictions and harms, like the prohibition against both working and public funds, or immigration detention and instability. Nor was there much recognition of pre-arrival trauma, the realities of poor Home Office and police record keeping, the subjectivity, length and errors of the decision-making process, nor the repercussions of having emotional ties in the UK and obligations to one’s family. The legal representatives (who were immigration not criminal experts), rarely discussed the role of family breakdowns, mental health and cognitive problems, substance abuse, or ethnicity and institutional racism in offending and police contact, despite the substantial evidence of race-related biases at every level of the criminal justice system (see Lammy 2017).

Case study 2: 'I'm not leaving my child here'

Martin is now in his late 20s and has been in the UK since he arrived as an orphaned young teenager. He spent a few years living on the streets, without the right to work or recourse to public funds and **'started getting into trouble'**, receiving minor convictions for driving offences and petty offending. He claimed asylum but this took several years to be decided and without a permanent address, Martin did not receive the refusal letter. During the wait, he fell in love with a British woman and moved in with her and her family. After a year she became unexpectedly pregnant. Her father offered Martin a job in his company, but Martin wasn't allowed to work so had to turn it down. Being financially dependent on his pregnant girlfriend and her parents made him feel increasingly guilty and emasculated.

'I am a man, and the way I was raised, a man has to go to work to provide. That's how I was brought up from young. It started getting to me. Because the mum would go to work, the dad would go to work, [my partner] would go to work, and I was sat at the house by myself watching Jeremy Kyle show. It started getting to me...

If you can't make money, you're a nobody. Who are you?'

Martin was desperate not to be a burden and **'just to be somebody, not just on the receiving end all the time'**, so he did the only thing he could as a refused asylum seeker, he applied for Section 4 support so he could at least provide nappies and milk when the baby came. He had not realised that this 'hard case' support was only £35 a week, provided on a pre-paid card he could only use in selected shops for permitted items. Nor that he would have to live in no-choice accommodation in a distant dispersal area. He was moved to a poor part of a city many miles away. So far that, distressingly, he could not return in time for the birth of his baby.

Being separated from his young family was devastating for Martin. He started getting in trouble. Eventually he got into a fight and was sentenced to six months for common assault. He did his time and on the day of his release, his partner and child were waiting outside to bring him home. However, although he had not been told, he was instead going to be transferred to immigration detention for deportation. His multiple small convictions meant that under the UK Borders Act 2007, his deportation was in the public interest. He would end up detained nearly four years; 15 times longer than his three months in prison.

Luckily the IRC was near his family and so they could visit regularly. His girl was just a toddler when he went in and they sent each other drawings. When she started school, he helped her with her homework in the visits hall. Their relationship gave him hope and strength, but **'it's no way to raise a child'**, leaving him feeling like a **'silhouette'** of a father.

After a year, Martin was transferred (without notice or explanation) to an IRC 150 miles away. Family visits now required considerable time and money, including a hotel stay. The

visits became less frequent and increasingly bittersweet, with agonising goodbyes. The strains were enormous and eventually the couple split up. His ex-girlfriend still brought their child for visits but Martin was dependent upon her good will and generosity. His relationship with his daughter became reliant upon phone calls, letters and drawings. But it was so painful for them both that sometimes Martin thought he should break contact.

Martin applied for bail many times but was always refused. Suddenly, after four years in detention, he was released. He must now live at bail housing at no-choice location, which is at the opposite end of the UK from his daughter. It's almost impossible for him to see her as he has to stay at the assigned housing, report to the local police every few days and has no money for transport as he cannot work. The dream of a future being an active father had kept him going through detention but they remain separated after his release.

*'I'm basically in prison. Outside. The system has caught me in prison.
I'm just a ghost, walking around.'*

Several years on and Martin is still fighting deportation. He says that the courts have accepted *'there is a bond between father and daughter'* but *'they don't accept I'm a genuine father.'* The Home Office argues that he has never lived with or supported her, whilst not acknowledging the reasons why (prohibition against work, asylum housing, prison, immigration detention, immigration bail housing). They accuse him of using his child to try to stay in the UK and suggest that he maintains contact after deportation using telephone or Skype. Immigration judges have accepted that the harm Martin's deportation would cause both father and child would not be disproportionate.

Martin believes he is being purposefully separated from his daughter through his accommodation. Their limited contact has legal, as well as emotional, costs. The lack of face-to-face contact coupled with his inability to make financial contributions undermine his Article 8 claims for remaining in the UK and in her life.

*'They are doing everything they can to stop me from being with my daughter...
This is to use later against me. They will ask "when did you last see your daughter?
Where's your evidence?"'*

It is three years since Martin was first interviewed for this project and nothing has changed. Martin feels tied to the UK by his child, desperate about their separation, and feels insulted by the increasingly large, five-figure sums being offered by the Home Office in return for him agreeing to leave the country and face a travel ban against his return.

'I'm not leaving my child here! How can I? Who does that?'

6: Separation

Three quarters of the families interviewed had been involuntarily separated as a result of the immigration system. The others feared separation or had left the UK in order to remain together. Separation lasts months, years or decades and occurs within the UK or between countries. Although there are domestic and international protections for families (see Chapter 2), these are qualified rights that are balanced against the ‘public interest’ of migration management. Home Office guidance states that although it would normally be in the child’s best interest to be cared for by both parents, consideration must be given to parental offending and social service recommendations. Decision makers are directed not to assume that living in the UK is inherently better than living in any other country, and specifically that a drop in education, health, economic, social and public opportunities would generally not make the child’s relocation ‘unduly harsh’. As discussed, the level of harm that is legally permissible to children – either through separation from a parent or leaving the UK with them – depends upon their foreign parent’s immigration status and any criminal offending. Under the Immigration Act 2014, a foreign national’s precarious or unlawful immigration status lessens the weight given to their private and family life respectively. A criminal record further tips the balance in favour of immigration enforcement decisions.

‘Article 8(1) sets out that everyone has the right to respect for his private and family life. However, every state has the right to control the entry of non-nationals into its territory and Article 8 does not give a person an automatic right to pursue their private or family life in the United Kingdom...

The best interests of the child are not the only or paramount consideration and must be balanced against other relevant factors, including the public interest in deporting foreign criminals’

(Home Office refusal letter)

The interviewees faced or experienced a variety of types of separation as a result of immigration controls and administrative processes. This chapter considers the nature and impact of these. Separations occurring within the UK usually related to prison, immigration detention, allocation of asylum or bail accommodation far from families, or because of stipulations regarding the British partner’s housing (e.g. housing benefit/Council restrictions regarding overnight visitors). Separation across borders arises from foreign nationals being made to leave the UK (either through deportation/removal or rules requiring immigration and visa applications to be made out of the country), or from being refused entry into the UK (e.g. when British partners do not earn enough to meet the income threshold for a spousal visa). The length of time of separation is unknowable, but can be many months or years, or even be permanent.

6.1 Impacts of separation

Decision makers, especially from the Home Office, did not appear to fully appreciate the realities and gravity of either relocation or separation. They were referred to in refusal letters and appeals almost in passing, with the assumption that they would be straightforward, unproblematic and bearable.

'It is not accepted that it would be unduly harsh for [your British partner] to live in Iran if she chose to do so. Although she may not be aware of the language, societal and cultural norms of Iran, it is considered that she may, with your presence and support, develop an awareness of such norms if she chose to join you in Iran...

It is not accepted that it would be unduly harsh for [your British baby] to live in Iran...

When he is fit to travel, he may do so as a British citizen or may obtain Iranian nationality upon his relocation. Due to his young age, it is considered that he would be able to readily adapt to life in Iran.'

(Home Office refusal letter)

Yet the possibility or reality of separation was identified by all the research participants as a source of especial stress and anxiety. It had impacts on the mental health of all family members, including British citizens, as well as their financial and employment situations, relationships and wider families. Interviewees variously described the forced separations as pointless, a mistake, a result of their poverty, or a governmental tactic to devalue and destabilise their family lives, so to punish them, make them give up or to undermine their grounds for Article 8 claims.

Academic, medical and civil society literature clearly shows that children benefit from stable relationships with their parents and are harmed by separation from either of them (e.g. Children's Commissioner Report 2015, BID 2013). Many of the participants' children had been separated from their fathers, sometimes for many years. Some had never been able to live with their fathers and only knew them through Skype or occasional visits overseas. Most, however, had lived with their fathers and then experienced his loss. Sudden separations (such as being detained by immigration officers), as well as repeat, indefinite and long periods of separation, seemed to cause the most damage to both adults and children. The interviewees described their children experiencing a range of developmental, behavioural and emotional impacts from separation, including regression in behaviour, worsening school performance and mental health problems, including self-harm. Parents said their children showed signs of attachment and abandonment problems, anxiety, depression, anger towards the authorities, social isolation, drop in school attainment, bed wetting, loss of appetite and weight, nightmares and insomnia.

'He knows you're his dad, you talk every day on Skype. He knows who you are, and he will know who you are, and this won't be anything to him, because it's all he knows. It's not like he had you and then he lost you. He's never had you there.'

(British woman, partner refused entry to UK)

Children often struggled to make sense of their parent's disappearance. Some were too young to understand, others were not told the full truth, especially around forced removal or detention, where they might instead be told that the father was visiting family or away for work. Over time, the periods of separation could result in diverging lives and strained relationships, between parents and children and also between partners. Although not addressed by decision makers, there were also impacts on the structure of the family unit and the relationship between children and the remaining parent. One British interviewee developed such bad depression after her husband was deported that she was unable to care properly for her children or seek employment. Another British woman explained how her teenage daughters were so devastated by their father's detention that they were developing serious mental health problems and suicidal ideations, but that the loss of the main breadwinner meant she was having to work multiple jobs to keep the family afloat, leaving her daughters struggling without either parent's presence or support.

In considering the impact of separation on children, Home Office and judicial decision makers generally operated on the assumption that the mothers were the primary care givers, even though in multiple cases the citizen parent worked full time whilst fathers provided the childcare. In disputing Article 8 claims, Home Office representatives invariably argued that the men did not play meaningful roles in their children's lives. Some refusal letters inexplicably ignored family ties such as wives and small children, others disputed how genuine they were. But even when acknowledged, far less weight was placed on the fathers by Home Office decision makers than by the interviewees and their children. Immigration status and criminality explicitly coloured these judgements, with nationality, ethnicity, gender, socio-economic position and religion also appearing to affect the importance afforded to foreign fathers. Dads who didn't live with their children (which occurred through housing, landlord and benefit rules, as well as relationship breakdown, imprisonment and detention), struggled to have their fatherhood deemed important. 'Modern technology' was frequently presented as an adequate substitute.

'There is no evidence to demonstrate that you have had any meaningful involvement in [your child's] life, either by way of accommodating his mother or ensuring his accommodation, financial provision or subsistence. We are therefore unable to accept that you share a genuine or subsisting parental relationship with [him].'

(Home Office refusal letter to detained father)



6.2 Separation across borders

All of the couples had faced the possibility of being separated between the UK and other countries, and several had experienced this in practice. This section considers the two main causes of this: removal/deportation and visa application rules.

Removals and deportations

Forced removal from the UK was considered particularly traumatic. For those who arrived in the UK as minors or who have family in the country, deportation may be experienced as exile and banishment from one's home. This form of separation tended to be lengthy or even permanent. Once made to leave the UK, return bans and disadvantaged visa applications make it difficult to return, whether to live or visit. Deportation results in a ten-year return ban, but even those leaving the country through administrative removal now also face travel bans.³⁵ Immigration and criminal offending (and sometimes even just negative immigration decisions, like entry refusals) have long-term effects, continuing to impact immigration applications for many years (see Table 2).

Table 2: Entry Clearance and Leave to Enter Applications³⁶

| | |
|---|---|
| Conviction 4+ years | Mandatory refusal |
| Convictions less than 4 years but more than 12 months | Mandatory refusal unless 10 years have passed since the end of the sentence |
| Convictions of 12 months or under | Mandatory refusal unless 5 years have passed since the end of the sentence |
| Non-custodial sentence / out-of-court disposal occurring within the 12 months prior to the application | Normally refused |
| Persistent offender who shows 'particular disregard for the law' or is causing 'serious harm' | Normally refused |
| Person considered to be of 'undesirable' conduct or character | Normally refused |

³⁵ People departing voluntarily and at their own expense face a one year ban. The length increases if removal is state-funded or forced.

³⁶ Immigration Rules Part 9: Grounds for Refusal

These men were at risk of permanently losing contact with their families if deported. One interviewee – unlawfully present, antagonistic relationship with the baby’s mother and not named on the birth certificate – worries that his almost inevitable future removal will mean that his son will not know his father or how much he loves him. He spoke of his fear of dying before his baby grows up and can find him in Western Africa.

‘That is love, and you will know your father. You will see every time when your father looks at you, you will see the love in the eyes. When you look at your son you will see the love. If you don’t live together you can’t know this. This is family.’

(Deportable father)

Visa applications: income thresholds and out-of-country applications

Many visas, including spousal visas, need to be made outside the UK unless exceptional circumstances apply. Such separations vary considerably in length, depending upon the visa application type, process and outcome. They can be long, painful and expensive experiences, especially if two households have to be maintained or the applicant has a poor immigration history. One British interviewee described her husband’s voluntary and self-funded departure as unexpectedly heavy-handed and distressing and their subsequent separation during the wait for his spousal visa as so long and hopeless, that she had eventually regretted their decision to do things legally.

‘When he went back to [his country], I didn’t think I’d ever see him again. They put handcuffs on him at the airport even though he went willingly. My daughter watched him get led away in handcuffs. He paid for his own ticket, you know, we were doing everything by the books! She was terrified when they put handcuffs on him and she was shouting “Daddy, daddy” as they led him away...

There was no good news for months and months and months. Every time he’d go down to the High Commission he’d be asked for more money. Everything was right but they just kept coming up with all these ridiculous reasons... He kept meeting all these people that were in the same position, that they wouldn’t give visas to, and I thought that’s it, you know, he’s stuck there, we should never have sent him back, we should have just waited ten years with him undocumented.’

(British woman whose husband was unlawfully present)

Some couples had never been able to live in the UK together, even if they were married or had children. Those ineligible for spousal visas because of the minimum income threshold might still apply for visit visas to see each other, especially around key life events, like the births of their children. Such applications were frequently unsuccessful. Rather perversely, this was especially the case when family ties were strong as this was

said to heighten the risk of overstaying in the UK. This was the argument used in refusing visit visas to two couples interviewed, which in both cases led to the British women being alone during childbirth. One partner has never since been able to come to the UK and has only seen his now school-age child twice, overseas. The other was granted his visa a few weeks after his baby was born.

‘Your family ties increase, therefore your risk of wanting to stay increases. So, the more reason you’ve got to be in the country, the less entitled you become to come here. You can literally only come as a spending customer.’

(British woman, partner refused entry to UK)

The outcome of visa applications is affected by the finances and behaviour of the foreign national, as well as the British/EEA national partners. Wealth demonstrably affects visa options, including the minimum income threshold for spousal visas, which is said to have led to 15,000 British children living apart from a parent in just the first three years of its introduction (Children’s Commissioner 2015). Data suggests that ethnic minority and female sponsors and those living in northern UK are particularly unlikely to meet the threshold and be able to bring their spouse to the UK (Migration Observatory 2016). Immigration applications are also becoming increasingly expensive. Fees may be several thousand pounds (e.g. settlement and naturalisation) and non-refundable if refused. In a couple of cases the British partners could not even afford the applications, let alone meet the threshold. One man has been separated from his wife and children ever since he was removed after his student visa expired. Made a single mother by his absence, his wife cannot work enough to meet the income threshold for a spousal visa. A decade on, she is now exempt from the income requirement as she is a recognised carer. However, she struggles to support two households. She does not have the savings to make a spousal visa application and she could not risk losing so much money even if she did have it. The intractable situation causes the couple considerable anguish and relationship stress.

‘I can’t be a wife, a mother, work, cook and clean, plus trying to figure out how I’m going to get this money.’

(British woman with husband removed from UK)

As discussed earlier, even if the sponsor earns enough to secure the initial stage of the spousal visa, they remain under great pressure to maintain a high enough household income to apply for the extensions, resulting in ongoing fears of eventual separation.

6.3 Responses: ‘Modern technology’ and relocation

Responses to separation across borders varied. Some couples fought tirelessly to be reunited in the UK, either eventually finding a way or being made to continue living apart, potentially for lengthy or permanent periods. Other couples left the UK together, usually either temporarily in an attempt to use the ‘Surinder Singh’ route to return to the UK later (see below), or indefinitely/permanently, out of necessity or in anger at the country. This section considers two options frequently put forward by decision makers: families leaving the UK together or using communication technologies to manage separation. The Home Office presents this dilemma between living apart or relocating to the country of deportation as a ‘choice’.³⁷ However, the preference of almost all the participants was to live together in the UK and although a few expressed some level of ownership over these decisions, they were – albeit to varying degrees – impositions produced by the immigration system.

‘Modern technology’

Home Office and judicial decision makers often argue that the men’s relationships can continue after separation across borders through the use of ‘modern technologies’, such as telephone, email and Skype. This argument was seen in people’s correspondence and judgements, as well as in the policy document reviews and court observations and was an argument that both interviewees and legal practitioners felt was much more likely to be used with fathers than mothers. The Home Office’s refusal of one young father’s human rights application, for example, concluded it was not unduly harsh to deport him away from his newborn because: *‘You may establish or develop your relationship with [your baby] from your country of return utilising modern means of communication.’*

Two of the families interviewed had relied on technologies for several years to maintain contact after cross-border separation. They claimed that the authorities underplayed the emotional, practical and financial realities of the arrangement and did not take into account country conditions. They experienced multiple problems. Practical barriers included the costs of purchasing and running equipment, internet access and sometimes even electricity in the men’s countries, as well as challenges around phone reception and time differences. Emotionally and relationally, virtual contact proved to be little substitute for daily, face-to-face and physical interaction, particularly for children, who could find it emotionally confusing and upsetting. As one mother explained of her young child, *‘She didn’t talk to him much because she got really upset when she did.’*

³⁷ Immigration Directorate Instructions, Chapter 13: Criminality Guidance in Article 8 ECHR Cases.

Children's patience, fading memories and the painful inevitability of relationships diverging over time, were commonly identified as problems. One British woman described how her youngest child was a baby when her father was removed. Although the family remained in daily contact by telephone and later Skype, she is now a teenager and has no memory of him beyond a computer screen. The interviewee described the daughter as feeling little real connection to her father, and her husband as not knowing his own child and thus failing in his attempts to parent and discipline from afar.

'I don't think you can really co-parent over the phone. You can try your hardest, but there's only so much talking you can do. They need to see him, they need to feel him, they need to touch him. And they can't do that through video calls and WhatsApp. It just doesn't compare.'

(British woman, husband removed)

Relocation

Some of the couples left the UK and lived overseas together, either in the men's country or origin or another EU country. This was rarely an entirely voluntary choice and many of the British citizens described feeling forced into 'exile'. Some also framed the decision to leave the UK as reflecting their new-found distaste and resentment for the country.

'I just looked at all of this and I said, you know what, I'm done. I am not going to keep fighting the UK government. If they don't want him here, I don't want to be here. If they don't accept the man I love as part of this community then I don't want to be part of this community. So I said stuff them. Stuff England.'

(British woman, husband forcibly removed)

Heightening feelings of rejection by the UK, in multiple cases the couples had been explicitly advised by the Home Office that they consider leaving the UK if they wished to live together. The citizens were invariably shocked and upset to discover that British nationals do not have the automatic right to live in the UK with their partner or parents. This had impacts for their sense of identity and national belonging (see Chapter 7).

'It just seems really unfair that we will likely be told that you can go and continue your family life outside of the UK. That also seems really shocking to me because why does my government feel like that when I'm an asset to them? I've been educated in the UK, you know, I'm a taxpayer. Why? I don't understand it.'

(British woman with precariously present husband)

Other couples relocated together strategically, for what they hoped would be short periods of time. Before Brexit, UK nationals living and working in another EU member state could return to the UK with TCN family under European rights of free movement. Known as the ‘Surinder Singh’ route, this potentially allowed Britons to by-pass the UK’s domestic immigration legislation, including the high spousal visa income threshold. Five couples interviewed considered or tried this route, with mixed results. Many found it difficult to move country, especially if there were school-age children or children from previous relationships. It could mean losing UK jobs, housing and school places, using up savings and separation from friends and family, even children. Money and other resources were needed, and some couples had multiple failed attempts at the Surinder Singh route, usually because of difficulties finding employment. Those Britons most financially insecure were least able to afford the expenses and risks of even trying a move, even though doing so might strengthen their position.

*‘I’m on benefits, I can’t afford that sort of thing. I can’t afford anything.
I’ve got no money at all. So that’s it really.’*

(British woman, partner refused entry to UK)

6.4 Immigration detention

Just under half the couples had been separated from each other within the UK. Immigration detention or prison were the primary causes of in-country separation, although additional factors included relationship breakdown, immigration bail and asylum housing allocation, and regulations regarding the citizens’ housing or benefits. Immigration detention is part of the deportation process. As an immigration barrister explained, once in detention, *‘You’re already half gone’*. For the families affected, the threat of permanent separation hangs heavily, even if their loved one is eventually released (as half of detainees are). The literature documents the harm of detention on those detained, including due to its indefinite nature, the threat of removal and in some cases harassment, violence, hunger strikes, self-harm and suicides. This project found that it also harms their non-detained family members, particularly children.³⁸

*‘Why open a centre as far away as you can get, down in Portland?
For God’s sake, it is a nightmare. A removal centre, right down there?!’*

(an independent inspector)

³⁸ Other research has also found harm to children separated from a parent by immigration detention (BID 2013). In 2018 the issue was highlighted by the removal of migrant children at the US/Mexican border.

Immigration detention isolates people from their friends and family. IRCs may be far from families and have poor mobile telephone reception. Detainees have limited access to the internet and no access to technologies that the Home Office commonly argue can maintain family life after removal, such as social media and Skype. Visits from family can be practically, financially and emotionally challenging, leading to financial and mental health problems. One woman interviewed who received benefits because she could not work, spent £800 visiting her husband during the few months he was detained. Others spent long periods unable to see their families because of the travel costs, distances or inability to take time away from work. Shame, guilt and depression could make it emotionally difficult for the men to see their families.

In some cases, the couples chose to tell their children that their fathers were away working rather than detained, but such lies were hard to maintain when the men were repeatedly detained and too suddenly for goodbyes. Some detainees request being moved to an IRC closer to family but were usually refused. Unlike in prisons, there are no projects in IRCs to help detainees stay in contact with their families (like 'Storybook Dads') nor government schemes to reimburse travel costs. Interviewees, including practitioners working in the field, understood this as an institutional reluctance to support family life because of the impact on Article 8 claims.

'If you're sitting in the Home Office, you don't want someone to become settled. You don't want them to feel as if they can keep in touch with their family by being in detention. You don't want them to be assisted to do that... They don't want people to think they can do interesting, useful things, and have their emotional needs met while they're in detention.'

(an independent inspector)

Many of the detained fathers tried to parent from afar, despite the enormous barriers. This included helping with homework during visits, sending letters and drawings and engaging in work opportunities in the IRCs, in order to buy gifts at the shop. They often tried to maintain relationships, but these are hugely strained by detention, especially as the length of time increases. Men spoke of guilt at the pain caused to loved ones, often blaming themselves for placing their family in the position of having to visit detention centres and manage alone. They often distanced themselves from their families over time to protect them or when they were struggling with mental health problems. Relationships may break down during the course of detention, which can be catastrophic emotionally and legally, with impacts on immigration and human rights applications. Break-ups can also make it extremely difficult to maintain contact with children, with the detained parent dependent upon the generosity and goodwill of their ex-partner.



Release from detention

Interviewees were clear that the damage of immigration detention continues even after being released. This can include continued separation from family members. One man living apart from his family due to the location of the immigration bail accommodation he was obliged to live at, said that he felt he remained incarcerated: *'I've always wished to come out but when you do come out there's nothing'*. In addition to distant housing and stringent rules about remaining there, ex-detainees face additional barriers that affect how far and frequently they can travel, such as a lack of money and tagging and reporting conditions. Those men with partners in council housing generally could not be released from detention to their families because of rules regarding guests.

'When you come out you have nowhere to go, no money and mentally and physically impacted. It makes it difficult to understand the community but also sustain a relationship, leading to breakdown.'

(Unlawfully present father)

These continued separations could be hardest for people to deal with, especially when the prospect of being reuniting with lovers and children helped people through their detention. One man described how his children's initial excitement at his release eventually gave way to the pain and confusion of his continued absence. Now nearly two years later, he finds it hard to explain to them why he still cannot live with them. He fathers the best he can through video calls, but they always ask when he is coming.

'And she was so excited the day I came out. After all that time, she was so excited. I've come out! But where is he?... To her it's not about immigration, it's just he's been incarcerated. Daddy's coming home, he's been released! Ah. And the phone calls. When are you coming? Are you coming here?'

(Unlawfully present father)

The pain of continued separation after release from detention was felt to be particularly cruel and unfair. Some felt it was done by design to worsen their mental health or undermine their families and thus Article 8 claims. Others felt it was a ploy to tempt them into immigration offending. Caught in an impossible dilemma, they had to commit immigration offences in order to parent as they wished: having to abscond to live with or near one's family and work illegally to support them financially.



6.5 Conclusion

As this chapter has illustrated, the threat or actuality of separation from partners or children pervades the immigration system. These periods were for unknown, but potentially very long – or even permanent – lengths of time. Separations occur between countries as a result of forced removal, out-of-country visa applications or ineligibility for visas such as for foreign spouses. Families are also split up within the UK, including through immigration detention and the allocation of bail or asylum accommodation. The financial position of both citizens and foreign nationals affect these outcomes. A lack of money leads to separation (e.g. failed visas, prohibitively expensive applications and legal fees, asylum dispersal, council housing rules, risks to benefits) and hinders options (such as the Surinder Singh route or relocation).

The negative impacts of separation, particularly for children, is well documented and also came out clearly in this research. Despite this, the harms were generally underplayed or even simply not acknowledged by decisionmakers. Instead, these impossible decisions were framed as a straightforward ‘choice’, and the damage committed to citizens and children justified through the ‘public interest’ of removal. Those affected, including the British citizens, were given little information or guidance, for example, around the realities of relocation and country conditions. The interviewees felt that their families were being treated differently because of the men’s nationality or immigration status, and that the role of the men in these families was not valued. The men spoke of having to choose between returning to their families or adhering to the immigration rules, and felt that they were pushed into breaking the rules so that their claims were weakened. Barriers to parenting (such as being unable to provide money or live with children) were used to undermine Article 8 claims, even if such barriers were a result of the immigration system. Separation (e.g. by prison or detention) was used by decision makers to show that families had already managed without the men’s presence.

Immigration detention was the primary source of separation within the UK. Detention decisions are not made with families in mind and individuals may be detained far from families. They may also be transferred between IRCs without notice or explanation, or even released suddenly. They may be detained multiple times. Separation by detention is deeply distressing for both detainees and their families. Repeat and lengthy detentions and the absence of a time limit cause particular harm. There is little policy to support detainees to maintain familial relationships, especially compared to prisoner provision. As discussed, visits may be difficult because of travel costs and distance, as well as visit halls that are not private or child-friendly, with seating rules that can limit play and intimacy. Those released may continue to experience separation from their families.



Case study 3: 'You are not free to love who you want'

Ellen met her husband whilst she was on holiday. They originally planned to live in his country but after she became pregnant they instead decided to move to the UK. Even though she earned enough to meet the spousal visa income threshold, obtaining it was a long and difficult process. She was shocked how much personal information she was told to provide to prove their relationship and refused to give some evidence suggested, like print-outs of their social media conversations. *'I believe that's private. I don't believe that they should be looking into our private lives, they just need to know we are together.'* She has spent considerable time, money and stress navigating the visa process alone, in an attempt to save on solicitor fees.

'I did it all myself. I filled out his application so he knew what to put in online, everything. Yes, I did all the work for him. Saved myself two grand, cos these solicitors don't do anything and when they do it, they do it wrong. So what are you paying for?'

She travelled to his country repeatedly during the pregnancy so that he could feel part of it, but they hoped he would be in the UK for the birth. To their devastation, the visa did not arrive in time. It was an arduous and complicated labour, which she went through alone. Mother and baby had to remain in hospital for several days, during which time she was updating their visa application with details of their baby from her hospital bed.

A couple of weeks after their baby was born, the husband received the spousal visa. However, his arrival and reunion with his new family was nonetheless a 'nightmare'. He was detained at the airport, *'interrogated for hours by different people... they don't even give you water'*. Ellen was left waiting breastfeeding their newborn in Arrivals until 1 a.m., before an intimidating grilling over who he was, the length of their relationship and marriage, and proof of his paternity of the child.

'That offended me. That's really offensive. I've still got loads of hormones pumping through my body, I haven't had my husband for a month. I haven't slept for a month. It's 1am, and he should have landed at 10pm.'

The treatment ruined this important moment of celebration: *'When we reunited, he was so angry he couldn't even touch me. Can you imagine? The first time he's meeting his baby.'* Moreover, they continue to experience problems at the UK border despite his hard-won visa. After a short overseas break when their baby was a couple of months old, the family were again quizzed by UK immigration officers, including asking why she had completed his landing card for him (English is not his first language), the nature of their relationship, why she had not taken his surname, and then – to her outrage – asked for proof of paternity. When she objected, saying she did not need to provide that, they asked for the (British) baby's birth certificate. When she again objected, the officer peered into

the baby's pram, and declared *'Don't look like him much'*, noting the young baby's blue eyes. *'I've never felt so offended, or to be made to feel like a criminal in my life. In my own country!'*

Under the 2012 Rule changes, two initial stages of the spousal visa need to be successfully completed before applying for indefinite leave to remain. Each last 33 months and require evidence that the couple continue to meet the income threshold. Still some years from being eligible for settlement, the couple still feel precarious. Ellen described it as being stuck on 'probation'. She does not trust that he will be allowed to stay and so cannot plan for the future or commit to more children. She feels great pressure to maintain her income and described stress, depression, insomnia, anxiety and personality changes. Explaining that she is now less open, laidback and trusting, she said, *'It's changed me.'*

'I get scared, yes. I lose sleep over it. I do, I lose sleep. It doesn't feel permanent to me yet. It feels like he's just here on a really long trip...

We're basically living the next five years each day as they come, and that's the truth, because we just don't know when it's going to be taken away.'

The stress on the couple to continue to earn enough mean they both work multiple jobs, with negative impacts on their own health as well as their relationships with each other and their child. They rely on her extended family for childcare and sometimes for housing. Ellen works up to six days a week, chases bonuses and promotions and worries about the future and losing her job.

'I am worried, because tomorrow I might not have a job. Tomorrow I might not [earn enough]... I cannot relax until he's got that Further Leave to Remain in his hand, and I've still got another three years. I will not rest, and I will not relax.'

Ellen's husband's experiences in the UK have affected them both, including in terms of her own feelings of stability and Britishness. She now carries their marriage certificate when they travel, and her passport whenever she is out in public with her husband, *'because you can be stopped at any time. We watch border control, Border Force. They can walk in a shop and start checking everyone!... I fear that they'll pull him in if I don't have it with me.'* The process has made her much more political and outspoken about issues regarding race, religion and immigration. She's gone on marches, joined social media pressure groups, given interviews to the local media, engaged with MPs and argued with local councillors. She feels 'insulted' by the UK government.

'They say this is a country of freedom and that, but that's bullshit. Excuse my language. It's the biggest load of crap I've ever heard, because you are not free to love who you want. You're not free to marry who you want, and if you do, if you do make that decision, it comes at a price.'



7: British Citizen Partners

The research indicated that immigration-related Article 8 considerations of foreign nationals often inadequately and incompletely take into account the impact of immigration decisions on family members, including citizen partners and children. Immigration enforcement, visa decisions, removal and suggestions of relocation sometimes simply ignore the existence of family members. When they are acknowledged, their rights, vulnerabilities, preferences and UK-based life, employment and relationships are often greatly underplayed. And yet, the precarious or unlawful immigration status of one family member fundamentally affects the lives of the whole family, including those who are not themselves subject to British immigration controls. With historical echoes (see Appendix 3), the British (and European) women and children participating in this research felt they were treated differently and less favourably than other citizens as a result of their ties to foreign national men. As discussed, they faced intrusion, mistrust and restriction, and were made poorer, sicker, unhappy and marginalised. Their intimate lives and decisions were interrogated, their relationships evaluated, if not discredited or sacrificed, and high levels of harm deemed legally permissible to them and their children. One British woman called the immigration system, *'authoritarian and totalitarian'*, and another complained:

'Your opinions, your voice, mean nothing. You're crying, with blood coming out your eyes, but they just don't seem to care.'

(British woman, husband removed)

This chapter focuses on three issues that the citizen interviewees raised most frequently: the (legal, financial and practical) responsibilities they were burdened with, their corresponding feelings of powerlessness, and the judgement they felt from decision makers as a result of their relationships. The chapter then considers the implications for their feelings of citizenship and own sense of security and belonging in the UK.

7.1 Responsibility and powerlessness

The citizen partners were often overwhelmed with financial, legal and practical responsibilities of trying to secure their partners' immigration status, whilst also often having to support the whole family financially and practically. The burden arose as a result of the costs of immigration challenges and applications, then men's prohibition against work, the complexity of the immigration system and language and literacy issues. It frequently led to the citizens working hard, often as the sole breadwinner. In addition to the stress, time and costs, the citizens spoke about the impacts of this duty on their relationships. A couple of interviewees reflected on being in a 'saviour' position and



potentially *'reinforcing these hierarchies'*. Even when relationships broke down, the women often still felt responsible for providing financial, emotional and practical help. In a couple of cases they did not end relationships when they might otherwise have done so, because of their partners' immigration status and precarious position.

'I feel like I've had to really do a lot of research and stuff on my own just to be able to piece together these applications. I feel like the burden of that has really fallen on me because my husband probably can't quite cope with that in a different language as well. So yeah, a lot of it has fallen to be my burden, so you know, working all day and looking after kids, coming home and the second they're in bed it's like right I'm getting my computer out and working on my immigration stuff again.'

(British woman with precariously present husband)

The citizens also felt responsible for the safety and wellbeing of their partners in the UK. It was treatment by the British authorities, rather than a xenophobic general public, that they worried about. One woman said she feared that if her husband was ever permitted to enter the UK he would be at the *'mercy of Border Agency'* and that she would be unable to protect him.

'I couldn't live with myself. I am scared that I couldn't protect him here. He is safer in another country that is meant to be lawless than he is in Britain where you are supposed to be safe and have human rights.'

(British woman, partner refused entry to UK)

In the face of the responsibility to resolve the immigration problems, the citizens described feelings of powerless and impotence. In most cases, the interviewees wanted to live in the UK with their partner or families but found that in practice they had little agency over such decisions since the 2012 changes. This was so whether they had met in the UK and wished to remain in the country, or when they had established families in their partners' country but wanted to relocate to the UK, a choice usually initiated by ailing parents or children's education. The immigration system also hindered their autonomy over other aspects of their lives, including around work, studying and conceiving and raising children. Immigration insecurity and financial pressures meant interviewees avoided having children, gave up maternity leave to return to work, or worked full time when they would prefer to work part time or in the home. Several described a dilemma between resolving their partners' immigration status and doing best by their children.

'When I then go back to work, I'm going to have to go back quite quickly [after the birth], again because he can't work... I'm going to have to take quite a short maternity leave, which I'm not that delighted about.'

(British woman with unlawfully present husband)

Despite initially expecting their citizenship privileges to be readily transferrable to their partner of choice, the experiences of all – including the most privileged – was of a state that seemed to be indifferent, disrespectful, or even callous towards them and their children. None found it easy to resolve their partner's immigration problems, and some faced a total and irresolvable impasse. Two British women had been raising their children alone in the UK for several years and would continue to do so, as they had been unable to bring their partners into the UK, on either a spousal or visit visa. One was exempt from the income threshold but could not afford the risk of losing thousands of pounds if the visa application was refused. The other cannot work because she is having to raise their young child alone and has lost all her savings on immigration applications. Both expressed frustration that decision makers did not take into account the positive impact that the presence of their partners UK would have on their families, finances and employability. Both these women felt trapped and saw few options open to them. They felt different from other British citizens and penalised for their relationships.

7.2 Judgment, scapegoats and positioning

'If you are a British citizen then falling in love with someone who is not British isn't allowed to happen basically...

A lot of people have said to me, why couldn't I have married a white man?'

(British partner, husband deported)

The British and EEA women described feeling judged by decision makers, family, friends, marriage registrars and solicitors, as being silly, stupid or disloyal as a result of their relationships with a foreign man. They identified undercurrents hindering their ability to live with their partner in the UK relating to class, gender, xenophobia and racism. Rather than being treated as rational, independent agents trusted to make their own decisions about their relationships and lives, they felt infantilised and patronised, and under pressure to continually prove or explain their relationships.

'[The authorities] are treating us like we're children, like we don't know what's best for us.'

It was their gender and socio-economic status that they most commonly pointed to as disadvantaging them in their struggles (religion and ethnicity did not arise strongly with the interviewees in this study but might well have done with other participants).

'Why is my government doing this to me? Because I'm poor?'

(British woman, husband removed)



All the citizens also pointed to the preferential treatment and opportunities available to those with resources, making comments such as *'it comes down to money'* and *'money talks to the Home Office.'* Certainly, people's ability to navigate the immigration system depends upon their financial security and factors such as a steady income, secure housing, savings or inheritance, childcare options, job opportunities and support of a financially comfortable family. A steady income was needed to meet income thresholds and to support an unemployed partner, as well as for immigration applications, challenges and legal advice. Less obviously, money was also essential for the 'luxury' of being able to be flexible and take risks, such as relocating temporarily, applying for inevitably unsuccessful visas just to buy time, or even simply marrying or cohabiting without facing financial or accommodation repercussions. Several interviewees blamed their financial difficulties for their poor treatment or described rights as being now linked to wealth not nationality.

'The only people who would get in my situation are poor people, because if you have got money you can afford to get married and have your partner here without the government noticing you.'

(British woman, partner refused entry to UK)

Just as the foreign national fathers felt they were treated less favourably by the Home Office than their female counterparts in the immigration system, so too the British and EEA partners (all female) felt that their gender coloured their treatment from decision makers. Echoing the sexism of early British immigration and nationality legislation, they described being patronised, thwarted and humiliated in their attempts to live with their (foreign) partner in the UK, and dismissed as emotional and naïve by various authorities.

'I think the government... think English women, or western women, who get with foreign men are a bit desperate. They think you are stupid, that you are desperate, or you are a failure in your own country and that is why you want a foreign partner. Why should a lonely, desperate, failing woman get to have human rights?'

(British woman, partner refused entry to UK)

A small number of marriage registrars were interviewed for the project. In discussion about 'sham' marriages and their new role in raising concerns with the Home Office, they spoke of being motivated to *'save'* women from being *'tricked'* by unscrupulous foreign men.³⁹ They gave moving, even tragic, cases of British *'girls'* being *'used'* and *'preyed upon'* by foreign men for immigration gain. One called the would-be brides *'very vulnerable'*, giving examples of women who were emotionally naïve, orphans or had

³⁹ Under the 'hostile environment', marriage registrars have obligations to report to the Home Office marriages they suspect of being conducted for immigration gain (see Chapter 2).

learning difficulties. However, whilst citizen women were presented as vulnerable to being *'duped'*, European women (particularly from southern and eastern member states) were portrayed with suspicion as being more likely to marry TCN men for financial gain.

The interviewees tried to position themselves and their families favourably, including as being deserving and genuine. As discussed in Chapter 4, they also presented themselves and their partners as 'hard working taxpayers' and/or full and unambiguous, *'British born and bred'* citizens. There was palpable concern to portray their partners, particularly if they were unlawfully present, as being of 'good character', deserving and keen to work, and as far removed from negative stereotypes of 'illegal' migrants. Couples involving an unlawfully present TCN man, or an older woman/younger man combination, tended to stress the genuineness of their relationships, recognising the widespread suspicions over such cross-border couples.

In making sense of the system and articulating their own claim to rights, the citizen nationals also scapegoated others, identifying other groups they blamed for their treatment or resented for apparently getting preferential treatment or abusing the system. It is not unusual for denigrated groups to try to gain some legitimacy by dissociating themselves from other marginalised people. Interviewees in work often criticised those receiving welfare support, including for immigration advantage (e.g. exemption from the spousal visa income requirement). Interviewees also criticised migrants (always of immigration categories other than their partner's), and also – strikingly – European nationals.

'Oh, with my depression and everything, I could go on sick tomorrow, and become exempt, but that's just not who we are. We like to do things properly. Legit, we are legit, and we don't believe in handouts, or anything like that.'

(British woman with precariously present husband)

The interviews were conducted in the run up to the UK's 2016 EU membership referendum and demonstrate widespread misplaced resentment of EEA citizens for being able to by-pass domestic immigration rules, especially the spousal visa minimum income. This was particularly evident amongst the most disadvantaged British women, who had fewest options open to them and were most likely to be facing permanent separation.

*'Why [do] I, a British citizen, have to earn £18,600 a year whilst an EU member can just waltz into England and bring their spouse here basically for free? Where the f*** are my rights?!'*

(British woman with deported husband)

7.3 Relationship to the state

Those women who had previous antagonistic experiences of state interaction were not altogether surprised by the disregard given to their families. The more privileged women and those without prior experience of interacting with the state were often extremely shocked and hurt by their treatment. This was the case even when they had insight from work or volunteering into the immigration system's treatment of foreign nationals. All the citizen partners found that the experiences and levels of harm done to themselves and their families, and by being treated differently than other citizens, their feelings and relationship to the UK, the authorities and the government were altered.

'I guess, in general, I thought the state – as a kind of organisation – was something that was generally there to be helpful and supportive and not something that you have to... that I, personally, would ever have to be fighting with.'

(British woman with unlawfully present partner)

One woman made an analogy with the police, saying that she knew well that the police can present problems for some people, but that as a middle class white British citizen she had always seen police officers *'as really helpful people, and if I go and ask them for something they'll show me'*. Her prior volunteering experiences had given her insight into the unfair and cruel treatment of the immigration system, but she had expected that her citizenship and resources would have given her more favourable treatment.

'I haven't felt like I was fighting the system personally, I mean I can obviously see a lot of things that are wrong and a lot of problems, but I always thought it was, sort of, somebody else and maybe somebody that I would try to help or something I would campaign for, but not something that would affect me.'

(British woman with unlawfully present husband)

Undermining immigration controls

In various ways, the citizens were torn between their foreign partners and the border controls created in their names. Journalists and politicians often present a supposed tension between 'the public interest' and mixed-nationality couples. It reflects long-standing suspicion towards family migration, especially when the citizens marrying outside the nation are (non-affluent) women and the foreign nationals seeking entry are men. Even simply trying to navigate the immigration system or challenge negative decisions can be framed as attempts to frustrate the system. The Surinder Singh route (temporarily relocating within the EEA so as to be able to return to the UK with TCN family under European rights of free movement) is often portrayed as a 'loop hole' by the British government, despite being legal (and a disruptive, difficult and expensive option).

Marrying or having children with a foreign national could also be portrayed as undermining the nation or immigration controls and is bound up in the ‘sham marriage’ discourse. Some couples married with no consideration of immigration matters but in other cases marriage was pursued partially or primarily in an attempt (often unsuccessful) to obtain immigration security for the family. The citizens – *not the foreign nationals* – usually suggested this route and it meant marrying earlier in a relationship than they would otherwise or choosing to enter an institution they did not agree with politically. Interviewees said solicitors sometimes advised marriage and encouraged documenting the celebrations and adopting traditional customs, such as taking the husband’s surname.

*‘For me, the marriage is about papers...
I trust him and I know that he needs it right now.’*

(European woman with unlawfully present partner)

In other cases, the citizens became more actively involved in undermining British immigration controls in their attempts to remain with their partner. Two women had helped their partners enter the UK illegally. One accompanied him travelling on a false document, the other helped her husband return to the UK smuggled in a lorry. Both had spent time sleeping rough in France with their partners. In both cases, they had explored but failed to find alternative options, given their financial positions and the nationality and immigration histories of their partners.

7.4 Citizenship and belonging

The men’s immigration struggles affected their partners’ views about the UK, British government, the nature of citizenship and their own feelings of belonging and security. Several of the women commented on the discrepancy they saw between the UK’s rhetoric around human rights and the reality they experienced, in which they felt that their rights were ignored, conditional or sacrificial.

*‘A country that has human rights on paper, no longer follows those own human rights.
A country that, once upon a time, people came here because of how well it treated everyone, and now we are a country that our own government now wants to get out of the Human Rights Act. I’m like, we were one of the countries that developed that and now you want to get us out?!’*

(British woman with unlawfully present husband)

Many of the British partners felt detached from their citizenship or described being prevented from *‘practicing my citizenship’*. They often felt conflicted between love of the country and resentment towards a government they felt judged and rejected by. Many



were very shocked by their treatment, having previously expected that their citizenship meant they would be supported, not thwarted, by the authorities. They described seeing no legal benefit to being British and as having their emotional attachment to the country shaken. Those with dual nationality even considered rescinding their British citizenship.

'It feels like a rejection, you know. I mean, I even looked into whether I could qualify for an Irish passport because I'd heard of people taking up a different citizenship then coming to the UK bringing their partner through EU law... if there was another way, and I had to give up my citizenship to do it, I probably would at this stage because I can't see any advantage to even holding the citizenship if I can't get any of the benefits of that citizenship.'

(British woman with precariously present husband)

Being advised to leave the UK to maintain one's family, and/or having a partner forcibly removed, had particularly stark implications for citizens' feelings of full and secure belonging to the country. A woman whose husband was deported described feeling betrayed by the UK and felt that British society was closing in on itself and becoming increasingly intolerant. Like many others, she distinguished between the British government and people, reserving most distaste for the Home Office, which she considered cruel and incompetent.

'They have basically sucked every single bit of love for the UK out of me. And my passport now is just my way out of here. It sounds awful I know.'

(British woman with deported husband)

In several cases, the individuals did not just display subjugated citizenship but began to take on characteristics reminiscent of precarious and unlawful migrants themselves. This included panicking at the sight of immigration vans and officers, living with packed suitcases in case of having to leave at little notice, carrying one's passport when in public, and not being able to sleep out of fear of dawn raids. These feelings were shared by some of the children. One British interviewee worried that her (British) son would eventually have his belonging and citizenship questioned as a result of his foreign father. She felt that both of them were treated as lesser citizens because they were being prevented from living with her partner and exercising their rights.

'I can't get married and I can't live with my partner. People say, well yes, but he is not British. That is not the point, I am British and I am not having the life that I need or I expected... We get married, we have families and we have children in the majority. I can't do any of that. I am on the outside, so I am living a different type of experience as a British citizen. It is different now for me.'

(British woman, partner refused entry to UK)



Some parents described their children showing resentment towards the authorities and feeling disenfranchised and rejected. They worried about the future implications.

‘What’s going to happen? My kids aren’t always going to be children, they’re going to grow up, they’re going to be older and how is it going to affect them?

And how are they going to look at society and what will they become if they’ve got these ill feelings towards the government? You have children that are committing crimes and doing stuff, because they have a single parent mother and they don’t believe in the system, they just feel like there’s nobody out there.

What adults will they become if they are having to live this terrible life?’

(British woman, husband removed)

7.5 Conclusion

The research found many – sometimes extreme – ways by which the partners and children of precarious and unlawful migrants are affected by the immigration system, even when they are not subject to immigration controls themselves. Immigration applications and appeals, immigration prohibitions and restrictions, separations and relocations abroad all damaged their mental and physical health, finances, education, careers, relationships and family formation and experiences. The immigration system affects parental relationships, the power dynamics within couples and challenges people’s gendered identities and family roles. The citizens felt overburdened by work and responsibility whilst the men reported feelings of emasculation, infantilisation and forced incapacity. At extremes women took on ‘saviour’ roles or alternatively behaved in potentially abusive ways, such as withholding food and money, or threatening the men with reporting them to the Home Office during arguments or break-ups.

The citizens wished to live with their families and the partner of their choice in the UK but to their shock found this was not only difficult to achieve, but actively hindered or even prevented by their government. Many experienced long, fierce and expensive battles. Some had to give up and now live separately or have relocated. Some were not able to prevent the authorities from first detaining or deporting their loved ones. The women’s sense, rationality, motivation, character, finances and national loyalty came into question by decision makers and marriage registrars when they married beyond the nation. These experiences affected their feelings of security and belonging to the country, and their relationships to the UK and British government. They felt that their relationships meant that they and their children were now considered lesser citizens. In response, some left the UK, others gave up their British citizenship, undermined border controls or started acting and feeling in ways more reminiscent of precarious migrants than full citizens.



8: Conclusions

Changes to British immigration policy, particularly the interpretation of Article 8 of the ECHR, have created a category of family that is qualified, insecure and mistrusted. The project data illustrated the breadth and intensity of ways that people's private lives, relationships and families are shaped and harmed by the immigration system. Living in the UK under a precarious immigration status entails a range of restrictions, risks and deprivations, in addition to the crises of immigration enforcement and separation (whether by immigration detention, removal or dispersal). The research showed that this not only affects unlawfully present migrants or those with criminal records, but also those with lawful but time-limited immigration status, as well as people unable to even enter the UK. It also demonstrated that these issues affect not only foreign nationals, but also their children and partners, *even if* they are British nationals and thus exempt from British immigration controls. Children are protected by domestic and international law, but their 'best interests' are conditional. The rights of those born to mixed-immigration status couples are coloured by their parents' criminality and immigration status. The research clearly found that the immigration status precarity of a parent affects British children's standards of living, school attainment, mental health and feelings of belonging.

The data suggests biases to how families and relationships are assessed, judged as 'genuine' and 'meaningful', as well as how they are valued and balanced against the 'public interest' of immigration controls. These reflect historical unease over British subjects marrying beyond the nation, and suspicion that foreign men use marriage and children as an immigration 'loop hole'; unease that has long had gendered, racialised and classed undertones. Despite Article 14 of the ECHR requiring human rights to be recognised without discrimination, project participants felt that the evaluation of their family life was strongly shaped by the gender, ethnicity, language and socio-economic status of both TCNs and their citizen partners. The men routinely faced suspicion over their motives, with their family ties disputed as being opportunistic, or acknowledged but undervalued. The men's physical presence was often deemed nonessential to family life, with Skype frequently presented as an adequate alternative. The citizen women reported feeling patronised, hindered and humiliated, with their rationality, good character, finances and national loyalty questioned by decision makers. Their claim to full belonging and Britishness is weakened through their relationship with TCN men. Legally, British women stopped losing their nationality upon marrying a foreigner in 1948, but still today they may have to leave their country in order to live with a foreign spouse.

The research found that families with a precariously or unlawfully present member experience material, financial, psychological and health- and identity-related impacts, as well as harm to their family life. They are made poorer, sicker and less happy, living under chronic uncertainty and unable to plan for their futures. Both TCN and their



British/European family members face harm to their careers, finances, education, physical and mental health, personalities, dreams, social mobility and feelings of national belonging. Those already socially or economically marginalised are hit hardest. Children develop emotional and behavioural problems, such as anxiety, depression and attachment difficulties. The prohibitions against both work and accessing public funds, as well as high, growing and often non-refundable fees, applications and legal costs can lead to serious financial difficulty. Foreign nationals may feel forced to work illegally to cover legal cases or support families, and citizen partners may have to take on additional work or debt, or give up work if their partner's detention or removal disrupts care arrangements. There are material, psychological and relationship repercussions, including for relationship dynamics (e.g. couples talk of 'role reversal' of provider and carer roles), and decisions around family formation (e.g. delaying starting families, giving up maternity leave).

The data showed many other ways by which the immigration system goes to the heart of people's intimate lives. The realities of living with precarious immigration status or immigration-related separation, coupled with institutional drives to scrutinise and challenge Article 8 grounds for immigration claims, inevitably shape relationships, family roles, gendered identities and family life. The onset, duration and outcomes of relationships are affected, with some aspects sped up and others slowed (e.g. encouraging early cohabitation, delaying conception). Citizen partners report feeling overburdened by responsibility and need to work, whilst the TCN men feel emasculated, infantilised, ashamed and dependent. They tend to feel responsible for their family's plight, a sentiment encouraged by decision makers and sometimes also their partners and in-laws. The research found that they are acutely aware of suspicion over their motives and thus tend to avoid commitments like marriage or starting families (or even to avoid relationships altogether) whilst their immigration status is insecure. In contrast, the British/EEA partners were much more likely to suggest marriage in an attempt to resolve the men's immigration status, even though it provides no easy resolution. They contemplated marriage earlier in the relationship than they would normally, and even when they otherwise rejected the institution of marriage.

The project also found that the immigration precariousness of a loved one affects British citizens' relationship to their government and their sense of national identity. Adults and children reported feeling lesser citizens as a result of their relationships to a precarious or unlawful migrant. Immigration enforcement, harm to children, separation and being advised to leave the UK were particularly damaging to feelings of national belonging. In response people renounced their citizenship, left the UK, actively undermined UK border controls or started behaving and feeling in ways more reminiscent of precarious migrants than full citizens (e.g. carrying identification, fearing dawn raids, living with packed suitcases). Parents worry about the repercussions of this for their children's futures.

The threat or reality of separation from one's family pervades the immigration system and causes significant harm, including to finances, mental health, legal cases and relationships. It is deeply distressing for the whole family, particularly children. Immigration-related separations tend to be for unknown but potentially long or even permanent periods and can occur between countries (e.g. by forced removal, out-of-country visa applications, visa refusals) or within the UK (e.g. bail/asylum housing allocation, immigration detention). The UK government routinely advises British citizens with foreign spouses to either leave the UK or conduct their family life across borders, using modern technology like Skype, which is misleadingly presented as an adequate long-term alternative to in-person fathering. This dilemma between relocation or separation is presented as a 'choice', with the practical and emotional barriers underplayed. Immigration detention causes significant harm to detainees and their families, even if they are eventually released. Detention decisions are not made with families in mind and there is little policy to help detainees maintain relationships, especially compared to provision in prisons. People may be detained far from their families, transferred between IRCs without notice, or repeatedly released and re-detained. Separation can continue long after people have been released.

In summary, the immigration system shapes and curtails relationships, and UK-based relations affect people's experience and negotiation of the immigration system. Family ties provide financial, practical and emotional support but may also accentuate the pain of living under chronic instability, unemployment and separation. Most of the men said their struggles were easier when they were single and several said they would leave the UK if it were not for their children. Impossible dilemmas are created when adhering to the immigration rules is mutually incompatible with meeting family obligations (e.g. when Appeal Rights Exhausted fathers have to report to the authorities, or when providing money or living with one's children means working illegally or 'absconding'). Many believe that such conflicts between obligations to the Home Office and one's family are deliberately created, in an effort to tempt them into immigration offending and thus increase their deportability. They also note that the immigration system itself erects many barriers to performing family roles, including immigration detention, curfews, dispersal accommodation and work prohibitions. These make it difficult for people to meet and prove the Home Office's definitions of 'genuine' and 'meaningful' relationships. Being unable to be the family figures they want to be, and being framed as inadequate, unimportant and expendable, causes great personal and familial harm as well as undermines people's Article 8 claims. Numerous participants believed that it was precisely the concern not to strengthen people's Article 8 claims that was behind the institutional reluctance to recognise, value or support people's family lives, even when this was to the detriment of British children's wellbeing.



9: Postscript update

The years during and after the main part of this project have been tumultuous, with major social and political changes domestically and internationally. Since the beginning of the project, there have been three General Elections, three Prime Ministers, three new Immigration Acts, the Windrush scandal and the EU membership referendum and 'Brexit' withdrawal. International politics has also been turbulent, with a rise in right wing nationalist governments in multiple countries as well as civil rights movements such as Black Lives Matter. Moreover, 2020 saw the Covid-19 global pandemic, which has been linked to millions of deaths worldwide, policies of closing borders, restricting movements of citizens and the reinvigoration of old associations of strangers and disease.

It is notable that in this maelstrom of major change and upheaval, the lives of many of the interviewees have hardly progressed, with many remaining in limbo and waiting for resolution. Some relationships have suffered too much stress and have broken up. Some people have lost their fights and left the UK, some have won and are rebuilding their lives and families. However, even those granted leave to remain in the UK must generally still repeat applications for expensive visa applications every few years, with all the uncertainty, insecurity and cost that it brings.

This short 'postscript' chapter of the online version of the report offers a succinct overview of some of the most relevant recent current affairs and political developments.

9.1 UK politics and immigration policy

There have been three general elections since the start of the project: during the early stages of data collection (May 2015, won by incumbent David Cameron), shortly after interviewing ended (June 2017, won by incumbent Theresa May who was previously Home Secretary) and after the project ended (December 2019, won by incumbent Boris Johnson). Each Prime Minister has brought different priorities but have overseen increasingly hostile immigration policy goals.

Three Immigration Acts have been passed during the course of the project. The Immigration Act 2014 brought into legislation the hostile environment policy and introduced consideration of the public into Article 8 assessments, as is discussed in the report. The Immigration Act 2016 further developed the hostile environment. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended the free movement of EU citizens to the UK.



9.2 Brexit

The interviews were conducted in 2015-16, in the lead-up to the EU membership referendum in June 2016. The referendum campaigning was divisive, much of it focused on immigration. Reflecting this, some of the British interviewees voiced resentment of the rights of EEA nationals to bring dependants to the UK and avoid the more stringent British family migration rules. Several interviewees however, also hoped or did use the same EU rules to circumvent the British rules (the Surinder Singh route, see Section 6.3). With the completion of the Brexit transition, this route is now closed to British citizens and they have little choice but to meet the UK immigration system requirements for a spousal visa, including the high minimum income threshold, or face separation across borders or relocation out of the UK.

At the time of the research, EEA nationals had family rights similar to British citizens and were included in the project on this basis. Since the end of the Brexit transition period, on December 31st 2020, all new EEA nationals in the UK are now more or less subject to the same immigration rules as third country nationals. Those who started living in the UK before January 1st 2021 had until June 30th 2021 to apply to the Settlement Scheme for settlement status, with family members able to apply to join them through the EEA Family Permit scheme. EEA nationals marrying British citizens will have to apply for spousal visas.

Brexit greatly increases the number of people and relationships that must now go through the UK's immigration system and meet the expensive and invasive requirements of spousal and other visas. Amongst others, this increases the burden on British citizens in relationships with EEA nationals.

9.3 Windrush scandal and Black Lives Matter movement

As the project was coming to an end in 2017, the media started reporting on long-standing British residents who had been lawfully in the UK for decades but who were finding themselves suddenly and seriously affected by UK immigration rules. These residents, many elderly and minority ethnic, lost jobs and homes, were denied pensions, refused life-saving healthcare, some were detained, even deported. Eventually termed 'the Windrush scandal' after the ship that brought Caribbean workers to the UK in 1948, these people were affected by the rapidly spreading use of immigration status checks across the breadth of society under hostile environment policies. They had arrived in the UK decades ago as Commonwealth citizens (Citizens of the United Kingdom and Colonies) but had been given no physical evidence of their right of residence. As new 'hostile' policies that required documentary evidence of immigration status spread, these people were being denied services and having their legality questioned. The hostile environment



continues to cause these and other groups enormous harm and suffering, in ways that illustrate the racialised and classed biases of the immigration system (Griffiths and Yeo 2021, Williams 2020).

The Windrush scandal led to the resignation of Home Secretary Amber Rudd in 2018, some (limited) policy row-back, (limited) help for some people to be retrospectively documented, and an independent 'lessons learned' review by Wendy Williams (2020). Despite this, many undocumented lawful residents remain vulnerable to the hostile environment, now including EEA nationals.

The Windrush scandal fed into the wider Black Lives Matter movement in the UK (a rights movement that originated in the USA). These developments have brought much needed focus on to racial injustice, racism and racial inequality. The UK's immigration system must be part of this debate. 'Indirect discrimination is woven into the fabric of the [immigration] system' (Yeo 2020), including in terms of assumptions about people based on ethnicity, racially-biased visa categories and racial discrimination in the economy disproportionately affecting BAME families in the immigration system (e.g. in relation to the spousal visa minimum income threshold, high fees for applications). The over-representation and excessive punishment of BAME people at every level of the criminal justice system (Lammy 2017) also leads to disproportionate harm to racialised groups by immigration detention, Operation Nexus, deportation and visa bans.

The 'Deportability and the Family' project saw many forms of racial discrimination in the immigration system, including in relation to the overwhelming demographics of deportation appeal appellants and immigration detainees, and the degree of distrust decision-makers gave relationships and the value they attributed to partners and parents.

In the Immigration Tribunal hearings observed, Black and minority ethnic partners and parents were routinely treated with more suspicion and antagonism than their white counterparts, including when they were British citizens. Questioning was less empathetic and more accusatory, with questions often linked to ethnicity and ancestral countries of origin. For example, British-born witnesses were sometimes assumed to have naturalised or require a translator because of their ethnicity. One Black British partner of a man facing deportation was put under considerable pressure to disclose her parents' country of birth, with the judge then emphasising her Caribbean heritage above her Britishness. Moreover, despite her partner being a West African national, the judge and HOPO conflated their backgrounds and argued that the British spouse would easily be able to relocate and adapt to his country because of her ethnicity.

9.4 The Covid-19 pandemic

In March 2020, the UK went into its first 'lockdown', as a Covid-19 spread across the country. A global pandemic was declared and across the world borders were shut. The pandemic has had considerable impact on migration, mobility and nationalism both domestically and internationally, with people subject to lockdowns, isolation and directions to stay local. Countries have been 'red listed', requiring expensive quarantine restrictions, pre-flight forms, infection tests and long processing queues. The immigration system has slowed and immigration detention and deportations reduced, although not stopped completely. Indeed, controversial deportation Charter flights have continued, including with one to Jamaica on 2nd December 2020 and more planned for 2021.

As of June 2021, 130,000 UK residents have died of Covid-19. It has been increasingly evident that BAME communities are disproportionately affected, including being at higher risk of contracting the disease and being more severely affected. Part of the explanation relates to types and density of housing, sectors of work, options to work from home and workplaces where there is reduced possibility of socially distancing. People with insecure immigration status may also be more reluctant to approach health services for treatment or vaccination, especially as a result of hostile environment policies, which deliberately stoked such fears.

During the pandemic, a number of unsafe practices within the immigration system have affected migrants. These include asylum seekers being rehoused from individual flats into mixed hotels with shared facilities, and newly arrived asylum seekers being housed in disused army barracks in Kent. The cramped conditions and communal dining, bathrooms and shared dormitories in the Napier barracks prevented social distancing and hygiene control. Some people even slept outside in winter conditions due to the fear of catching Covid-19 inside. In June 2021, a High Court judge ruled the conditions at Napier were unsafe and the Home Office acted unlawfully in housing them there.

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Abbreviations and Definitions

EEA: the European Economic Area is made up of 31 countries (the 28 members of the European Union plus Iceland, Norway and Liechtenstein).

ECHR: European Convention on Human Rights

EU: European Union

Foreign Criminal: Defined in the UK Borders Act 2007 as a non-British person convicted in the UK of an offence and who is either sentenced to 12 months or longer imprisonment or for a shorter period but for a 'serious' offence (as defined by Section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002). The Home Office uses a broader definition (e.g. includes persistent offenders) (Chapter 13 of the Immigration Directorate Instructions).

FNO: Foreign National Offender

HOPO: Home Office Presenting Officer

IAC: Immigration and Asylum Chamber

IRC: Immigration Removal Centre

LASPO: the Legal Aid, Sentencing and Punishment of Offenders Act 2012

NGO: non-governmental organisation

Precarious immigration status: Someone 'with limited leave to enter or remain, or they have settled status which was obtained fraudulently, or they have committed a criminal offence which they should have been aware would make them liable to removal or deportation.' (Chapter 13 of the Immigration Directorate Instructions)

'Surinder Singh' route: Named after a 1992 test case, the phrase refers to British citizens temporarily relocating within the EU and then returning to the UK with their TCN family members. By living and working in another member state, British citizens' European rights of free movement are triggered, allowing them and their close family to by-pass UK immigration legislation on their return, including the spousal visa minimum income threshold.

TCN: Third Country National

Unlawful immigration status: requiring but not having leave to enter or remain (Chapter 13 of the Immigration Directorate Instructions).



Appendices

Appendix 1: Research Questions

Central research questions:

1. How does having a family affect 'deportable men's' experience of immigration insecurity and enforcement, and their relationship to the state?
2. How does being at risk of deportation affect deportable men's decisions and feelings around their family life?

Complementary empirical research questions:

3. How do deportable men and their partners understand and negotiate official debates and rhetoric on their relationships?
4. What impact do immigration policies have on how family members, who are not themselves subject to migration control, conceptualise the nature of citizenship and their relationship to the British state?

Policy-related research questions:

5. How are family migration policy changes affecting the experiences and choices of deportable men and their partners?
6. How do decision makers conceptualise the family and 'genuine' relationships in immigration contexts?
7. Are there gendered assumptions or biases in immigration policy or practice, for example around the value of foreign fathers/partners? If so, how are these employed in detention and deportation decision-making?

Appendix 2: Ethics

Working with people with precarious or unlawful immigration status is ethically and methodologically challenging. Such people are likely to have compounded vulnerabilities, including on legal, financial and health grounds. Many of the project's participants were socially and financially marginalised, mistrustful, had mental health problems and/or were engaging in practices at the edges of legality, such as working or residing without permission. The research was driven by the principle of causing no harm, with particular care employed for those personally affected by the immigration system, in recognition of the personal and political sensitivity of their situations. The project was conducted in line with the Association of Social Anthropologists of the UK and Commonwealth ethical guidelines, the ESRC Framework for Research Ethics and the University of Bristol's research governance policies.⁴⁰ Prior ethics clearance was obtained from the University of Bristol's Research Ethics Committee. Interviewers underwent enhanced DBS (Disclosure and Barring Service) checks. No children were interviewed.

There is no 'one size fits all', universally agreed methodology for conducting work in this area. Rather, a specially-tailored, rigorous and multi-stage research ethics process was designed for the project in dialogue with leading migration and immigration detention NGOs and drawing from the Oxford Refugee Studies Centre's *Ethical Guidelines* (RSC 2007), designed specifically for work with precarious migrants. Researchers strove to honour participants' trust, negotiate meaningful informed consent, avoid undue intrusion and ensure complete anonymity, recognising the importance of ensuring individuals understand the nature of research participation and their right to withdraw at any point. Consent forms were given and discussed with all interviewees. Forms were anonymous, using a reference number system (see below), and signing them was optional, in recognition of the special vulnerabilities and anxieties of precarious migrants, and the many potential barriers that exist (e.g. around language, literacy, legality, unease of formal bureaucratic measures).

Data: Interview data was treated as confidential, in line with the Data Protection Act 1998. Data files were stored securely on University of Bristol password-protected, encrypted equipment and in line with the University's data protection regulations. Audio files were deleted and data anonymised. Sensitive information and identifying features, such as Home Office reference numbers and addresses, were not recorded. To ensure that the data cannot be connected to individuals, the couples' identifiers and personal information were removed and a unique reference number used in place of names.

⁴⁰ https://www.theasa.org/downloads/ethics/Ethical_guidelines.pdf And: <https://esrc.ukri.org/funding/guidance-for-applicants/research-ethics/our-principles-research-organisations/>



IRCs: Interviews were not conducted with people whilst they were detained. This methodological decision was taken in recognition of the considerable ethical challenges of working with incarcerated people, particularly regarding the level of intrusion, intensity of detained experiences, and degree to which participation of detained populations can be truly voluntary. Rather, interviews were primarily conducted after people were released from detention, with the family members of people detained and with detention NGOs. Conversations with people in detention only took place in a few instances and these were conducted through unstructured face-to-face visits led by the individuals over several sessions, and where a third party could vouch for the researcher's integrity.

Court observations: the legal hearings were all open to the public. However, researchers were conscious of the sensitivity and gravity of the hearings and the risk of contributing to intrusion and anxiety. The appropriateness of observations was established on a case-by-case basis, with observations avoided or terminated where the risk of intrusion, disruption or concern were considered too high. Where appropriate, the researcher identified herself and introduced the project to parties present, which could include appellants, witnesses, clerks, legal representatives, HOPOs or immigration judges.

Appendix 3: Gender Rationale

The methodological choice to focus on families involving foreign national men reflects the gendered nature of British immigration policies and debates (both historical and contemporary). Men make-up the vast majority of people detained and removed from the UK, there is a long history of suspicion directed towards relationships between foreign men and British women, and a tradition of affording British women weaker national loyalty and citizenship rights than their male compatriots. Research suggests a correlation between gender and the outcomes of Article 8 claims that goes beyond the UK. In the Netherlands, for example, citizen women in relationships with foreign men have been found to face the greatest judicial suspicion (de Hart, 2009).

As noted in Chapter 1, for hundreds of years there have been political and social concerns in the UK over certain ‘mixed’ relationships. British Empire artefacts, such as household manuals and marriage bans, demonstrate the racial and gender underpinnings of such unease, with particular concern given to intimacy between British women and colonised men. Suspicion over certain relationships continued into the development of immigration controls. In the 20th century, this included the Primary Purpose Rule, which is said to have been used primarily to hinder migrating husbands from the Indian subcontinent (Wray 2011). Citizen women have long been legally constructed as passive, emotional and dependent in British immigration and nationality legislation, with their decisions, identities and allegiances deriving from their fathers and husbands. As part of a long history of women being seen as acting disloyally or foolishly by marrying outside of the nation, until 1948 British women lost their nationality upon marrying a foreigner. It was not until 1983 that British women could independently pass their citizenship onto their children.

Today, the immigration debate and system remain heavily gendered (as well as classed and racialised). Border management techniques and immigrant ‘categories’ reflect underlying biases. ‘Refused asylum seeker’ and ‘foreign criminal’, for example, tend to be imagined as male, whilst today’s ‘genuine’ refugee is more likely to be portrayed as a feminised passive and vulnerable ideal. Salary disparities mean that the controversially-high spousal visa income threshold particularly disadvantages female (and ethnic minority) sponsors of foreign spouses (Migration Observatory 2016). There is also a gendered dimension to the ‘sham marriage’ discourse, which focuses suspicion on TCN men marrying British/EEA women (see Chapter 7). Immigration enforcement is strikingly gendered, with men making up 85% of the 28,000 people held in British IRCs each year and 90% of the 12,000 forcibly removed. The project sought to examine and unpick these biases, recognising that their contemporary manifestations operate in an historical context.



Appendix 4: Policy Overview

The immigration system is usually in a state of flux. Two new Immigration Acts were published during the course of the project alone, as well as much change to the Immigration Rules and legal landscape. Policy development in this area is driven by the political drive to reduce immigration figures, with policies seeking to both decrease the number of people arriving, and increase the number leaving, voluntarily and by force. This includes the government's narrowed interpretation of Article 8 of the European Convention on Human Rights (ECHR). This right (to respect for one's private and family life) has become increasingly controversial, with the Tabloids presenting human rights generally, and Article 8 particularly, as exploited by various unsavoury groups. Politicians have largely sustained such suspicion, with the then Home Secretary Theresa May misleadingly suggesting in 2011 that the interpretation of Article 8 had become so loose as to allow an 'illegal immigrant' to overturn his deportation on the basis of his pet cat.⁴¹ This Appendix outlines relevant immigration policy developments over the last decade, particularly relating to Article 8 protections, deportation and family migration.

The UK Borders Act 2007: Passed in the aftermath of the 2006 outcry over the release of foreign national offenders (FNO), the UK Borders Act 2007 sought to ease the process of forcibly removing people from the country, particularly FNOs. Under the Act, deportation orders would be automatically issued to foreign nationals convicted in the UK for an offence and either sentenced to 12 months or more imprisonment, or for a 'serious' offence,⁴² which includes many drug offences, along with gun and terrorism crimes. Moreover, all those sentenced to prison, including petty and persistent offenders for whom deportation was previously considered disproportionate, would now be considered for deportation.⁴³

Policy developments of 2012: 2012 was an important year in immigration policy. A series of developments significantly impacted upon family migration, deportation and the FNO category. This includes the police and Home Office interagency initiative Operation Nexus, which was piloted in London in 2012. Since rolled out nationally, the details vary by region but include immigration officers stationed in police custody suites, and police officers checking the nationality and immigration status of those arrested. Nexus also reinvigorates 'intelligence-led deportation', under which a deportation case can be built on police contact and indicators of 'criminal character', rather than proven criminal conviction. See Chapter 5 for more.

⁴¹ <https://www.bbc.co.uk/news/uk-politics-15160326>

⁴² 'Serious criminal' is defined under Section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002.

⁴³ However, until a dedicated Removals Casework team was established in 2013, deportations of petty and persistent offenders seem to have been rarely *actively* pursued (NAO 2014: 28).



Major changes were made to the Immigration Rules in 2012, including to family migration policy and the government's interpretation of Article 8. These had significant impact on entry clearance, leave to remain and deportation challenges. The changes were compounded by legal developments, including a significant reduction in the types of immigration decision that can actually be appealed. By then removing most human rights and immigration cases from the scope of legal aid, the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 presents barriers to accessing judicial advice and representation, despite the challenge of navigating the immigration system alone.

Family migration: 'Appendix FM' to the Immigration Directorate Instructions brought momentous change to the immigration rules regarding family members. It raised the English language and financial requirements, making it much harder for people to enter or remain in the UK on the basis of relationships. The changes also effectively closed the route for adult dependants, such as elderly parents, through new stipulations requiring a paradoxical combination of serious long-term care needs that are not available or affordable in the country of residence, coupled with having enough resources to ensure total independence from UK state care or support.⁴⁴

The minimum income threshold for spousal visas was risen to controversial levels, with sponsors required to earn over £18,600 a year, rising with any children requiring immigration clearance. The sum is too high for half the working British population, particularly those at the start or end of their working lives, women, ethnic minorities and those living in poorer regions of the country or returning from living abroad (Children's Commissioner 2015). The incoming spouse's income would not be considered and there was no scope for third party sponsorship (e.g. help from parents or family). The threshold has been challenged at the Supreme Court and was found to be discriminatory but lawful.⁴⁵

Deportation: Changes to the Immigration Rules narrowed the government's interpretation of Article 8, easing the deportation of FNOs. Under paragraph 398, the deportation of foreign nationals sentenced to over 12 months imprisonment, or who the Secretary of State considers to be 'serious' or 'persistent' offenders, is automatically '*conducive to the public good and in the public interest*'. The threshold of harm to one's private or family life required before outweighing this public interest was significantly raised. TCN with prison sentences under four years must now show that it would be '*unduly harsh*' to expect their partner or child to move to the country of deportation or to remain in the UK alone.

⁴⁴ See reports by the APPG on Migration (2013) and JCWI (2014).

⁴⁵ The MM case was heard at the Supreme Court in 2017 and was partially successful, e.g. by securing inclusion of third party support in the calculations (see Bertram and Prabhat 2017 for discussion).



The Home Office defines unduly harsh as ‘excessively cruel’. Those with sentences over four years have an almost impossibly high bar: *‘very compelling circumstances’*.

The 2012 changes to the Rules introduced two significant principles. Firstly, that the more serious the offence, the greater the public interest in deportation, meaning that the exceptionality of the personal circumstances needed to challenge deportation rises with the length of prison sentence. Secondly, the value of a person’s private and family life is coloured by their immigration status and history. Less weight is now placed on relationships formed when the deportee was unlawfully in the UK, and less on private lives established under a precarious immigration status (which covers all forms of time-limited leave to enter or remain – including visit and student visas and asylum claims – as well as settled foreign nationals committing deportable offences).

Furthermore, an integration element shifts the focus from past and present ties to the UK, to potential future integration in the country of deportation. For private life to outweigh deportation now, a person must have been lawfully resident in the UK for most of their life, be *‘socially and culturally integrated’* and face *‘very significant obstacles to their integration into the country of deportation.’* The meaning of integration has shifted, with the Rules specifying that it would be harder to demonstrate for those with poor English language or who are not financially independent through lawful employment.⁴⁶

Settlement (Indefinite Leave to Remain): Before 2012, a person could ‘settle’ in the UK on the basis of their private life if they had been legally present for ten years, or 14 years if unlawful.⁴⁷ The 2012 changes more than doubled the route for those unlawfully present, to a total of 30 years,⁴⁸ introduced new criminality (‘suitability’) criteria,⁴⁹ strict eligibility rules (e.g. not overstaying visas), and grounds for discounting potentially long periods of stay (e.g. time in prison).⁵⁰

The 2012 changes also affected settlement on the basis of a relationship with a partner or child. The five-year route to settlement is only available to those legally present and includes fees and eligibility stipulations. Those unlawfully present can take the ten-year route, but must meet a high bar (*‘insurmountable obstacles’*) against continuing family life outside the UK. This is defined as very significant difficulties that cannot be overcome (e.g. partner cannot obtain entry clearance) or would entail serious hardship. Applications for settlement based on a parental relationship formed during unlawful presence require

⁴⁶ Immigration Directorate Instructions, Chapter 13: Criminality Guidance in Article 8 ECHR Cases

⁴⁷ Immigration Rules paragraph 276B(i)(a)

⁴⁸ Twenty years for limited leave to remain and a further ten years for settlement (Enforcement Instructions Guidance, Chapter 53: Exceptional Circumstances). Minors must have lived in UK for seven years and not be reasonably expected to leave the UK. Those aged 18-25yrs must have spent half their lives in the UK.

⁴⁹ Home Office Enforcement Instructions Guidance, Chapter 53: Exceptional Circumstances

⁵⁰ See Yong (2012) for discussion.

the applicant to have sole or primary responsibility for the child or officially assigned access rights. The threshold for being granted settlement on exceptional Article 8 grounds outside of the Immigration Rules is extremely high, at *'unjustifiably harsh consequences'*, and again is coloured by financial independence and English language proficiency.

In addition to lawfulness of immigration status, the settlement rules now also vary according to criminal record. FNOs must wait years before they are eligible to even apply for settlement on the basis of family ties: seven years for a sentence under 12 months, rising to 15 years after a 1-4 year prison sentence. Those with sentences over four years will never be eligible. Even those with non-custodial sentences and out-of-court disposals must wait 24 months before applying, and anyone the Secretary of State deems to be a persistent offender or of 'undesirable' conduct or character (even without a prison record), are likely to have their application refused, with no end point to their ineligibility.

The Immigration Acts 2014 and 2016: Many of the 2012 changes to the Immigration Rules were brought into legislation by the Immigration Act 2014, including the principle that little weight should be given to private lives or relationships formed when a person was precariously or unlawfully present. Article 8 and deportation are at the heart of the Act, with Theresa May, then Home Secretary, justifying the preceding Immigration Bill by accusing judges of ignoring *'the will of Parliament'* by giving undue regard to the family life rights of FNOs.⁵¹ The Immigration Act 2014 brought the 'public interest' into all Article 8 decisions, reduced and restricted appeal rights, brought in restrictions to immigration bail and increased electronic tagging of FNOs on bail. The 2014 Act also introduced *'deport first, appeal later'* certification for FNOs, under which people are deported before their appeals are heard unless they can demonstrate a *'real risk of serious, irreversible harm'*. In 2017 the Supreme Court found this practice to be unlawful and it was halted.⁵²

The Immigration Act 2014 introduced the *'hostile environment'* agenda, which aims to heavily restrict the lives of irregular migrants. It extends immigration controls into areas of everyday life such as working, driving, health care, education, banking, marriage, renting and policing. A wide range of organisations, government departments and private individuals are brought into enacting immigration checks and sanctions. The Immigration Act 2016 extended the hostile environment, increasing the severity of sanctions and bringing in new powers, including to impound cars, close bank accounts and freeze assets. The 'deport first, appeal later' scheme was widened from FNOs to all immigration cases apart from asylum claims (before being suspended after the Supreme Court judgement).

⁵¹ Conservative Party Conference Speech, 09/10/2012.

⁵² See Yeo 2017 for discussion.



Appendix 5: Immigration Enforcement Overview

Deportation only recently became a central element of the UK's immigration system. Although foreign nationals have been expelled when deemed 'conducive to the public good' (usually on the basis of criminal offending) ever since the Immigration Act 1971, these were conducted in low numbers, only rising after the 'deportation turn' of the mid-1990s, (Anderson, Gibney, Paoletti 2013). Since 2000, foreign nationals can also be removed through administrative removal, after breaking the immigration rules or having immigration or asylum applications refused. In response to media attention, the government prioritised the removal of refused asylum seekers. This changed in 2006, with the *Tabloid* outcry over the release of a small number of foreign national offenders (FNOs) at the end of their prison sentences.⁵³ A total of about 12,000 people are forcibly removed each year, of which about half are now FNOs.⁵⁴ 90% of all deportees are men.

Various policy and other changes have been made since 2006 in an attempt to boost the deportation of FNOs. The number deported nearly doubled in the immediate period,⁵⁵ but has been relatively steady since 2009, at five to six thousand people a year (Table 3). Deportations are complicated; hindered by people lodging legal appeals and by the various political and bureaucratic obstacles that prevent getting travel documents issued (Griffiths 2012). As a result of such barriers, although the total number of people detained has kept increasing, the number of forced removals declines each year.⁵⁶

Before being removed or deported, people are usually detained under immigration powers. Over 27,000 people were incarcerated in prison-like Immigration Removal Centres in 2017. Unlike the rest of Europe, there is no maximum time limit to immigration detention. More than half of people are detained for less than two months, but 3% of those in detention have been there over a year.⁵⁷ There are evident biases, with men making up 85% of those detained and people of colour dominating the figures (although the number of eastern Europeans detained and deported has been growing significantly). About half of people detained are released rather than actually removed, often released

⁵³ Over six years, 1,013 foreign nationals were released without being considering for deportation (NAO 2014: 12).

⁵⁴ Home Office statistics: <https://www.gov.uk/government/collections/migration-statistics>

⁵⁵ The number nearly doubled in two years, from 2,856 in 2006 to 5,613 in 2008 (NAO, 2014: 16).

⁵⁶ Mirroring previous years, the number of people entering detention in 2015 rose by 7%, whilst the number of forced removals decreased by 5% (rv_04, Home Office Removals and Voluntary Departures statistics, 2016). However, more recently detention numbers have been reducing, in response to Stephen Shaw's report (Shaw 2016). 27,348 people were detained in 2017, 28,903 in 2016 and 32,447 in 2015 (Detention data table dt_01) <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018-data-tables>

⁵⁷ Home Office Immigration statistics, year ending June 2018 (Detention data table dt_11_q) <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018-data-tables>

into a difficult limbo, living with immigration bail conditions, electronic tagging, a prohibition against work and all the restrictions of the ‘hostile environment’ approach.⁵⁸

Table 3: FNO Enforced Returns⁵⁹

| Year | Number of FNOs deported |
|------|-------------------------|
| 2009 | 5,528 |
| 2010 | 5,342 |
| 2011 | 4,649 |
| 2012 | 4,765 |
| 2013 | 4,993 |
| 2014 | 5,286 |
| 2015 | 5,768 |
| 2016 | 6,171 |
| 2017 | 6,113 |

⁵⁸ For more on the hostile environment see Yeo (2018).

⁵⁹ Home Office Immigration statistics, year ending June 2018 (Returns data table rt_06_q)
<https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018-data-tables>

Mixed-nationality families in the UK face narrowing immigration policies and interpretation of Article 8 rights. The report summarises research conducted with families living with one member's immigration status insecurity, detention of removal. The executive summary details policy findings and recommendations. Subsequent chapters outline the impact on relationships, including with children, issues of work, money, criminalisation and separation, and the repercussions for family roles, gender identities and citizenship and belonging.

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Project website:

<https://www.birmingham.ac.uk/schools/gees/research/projects/deportation-and-the-family/index.aspx>

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