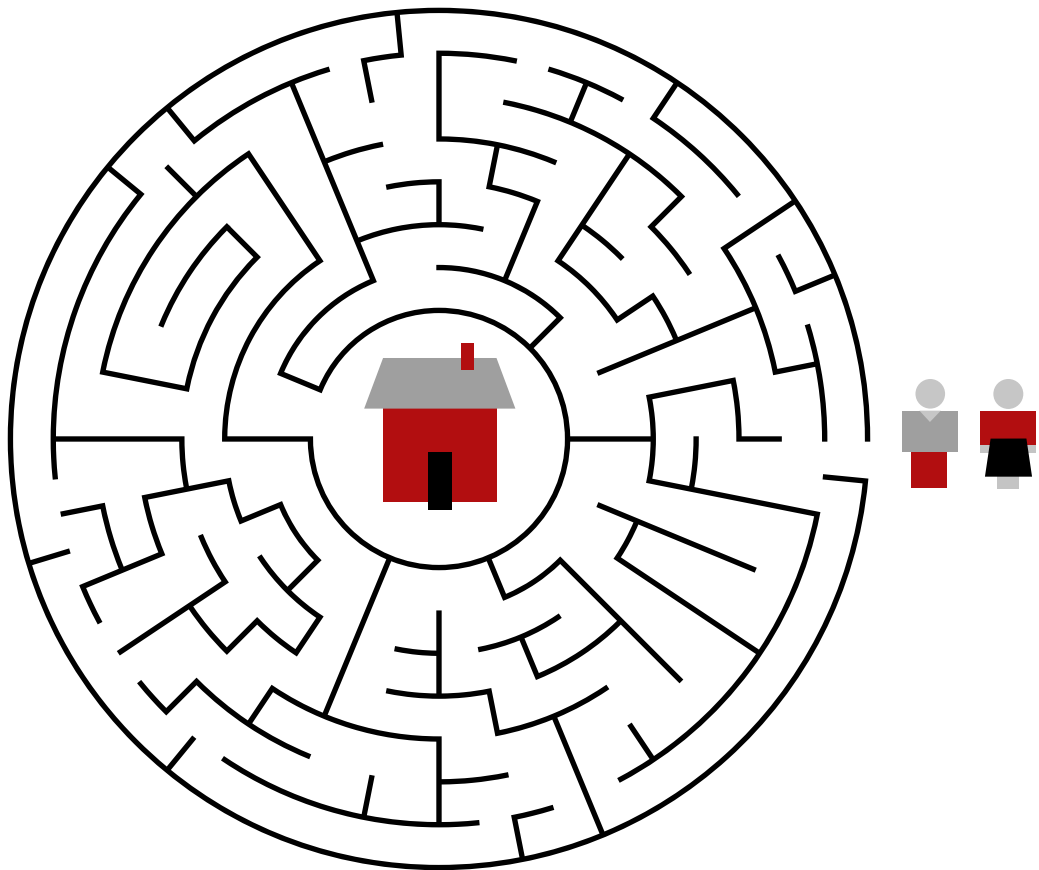


'This is my home':

Securing permanent status for long-term resident children and young people in the UK



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Contents

Executive summary	2
Introduction	5
Which children and young people are we talking about?.....	6
Barriers to permanent status in the UK	7
Complex law and policy	7
Lack of free, quality legal representation.....	8
Application fees	13
Decision-making.....	16
Length of leave granted.....	17
Removal.....	18
Conclusion	19
Recommendations	19
APPENDIX I: Home Office data.....	22
APPENDIX II: Legal Aid Agency data.....	27
APPENDIX III: Case Studies.....	29

Definitions

Children - A child is defined by the 1989 United Nations Convention on the Rights of the Child and the UK's Children Act 1989 as a person below the age of 18 years.

Citizenship - Citizenship is the status of a person recognised under custom or law as being a legal member of a sovereign state.

First-tier Tribunal (Immigration and Asylum Chamber)

- An independent Tribunal dealing with appeals against decisions made by the Home Secretary and his/her officials in immigration, asylum and nationality matters.

Immigration Rules - The Immigration Rules are detailed statements of policy with which the Secretary of State for the Home Department must comply. They do not have the force of an Act of Parliament or Statutory Instrument.

Immigration Health Surcharge - This charge must be paid as part of an immigration application. It is intended to fund healthcare from the National Health Service and at the time of writing cost £200 per year of leave applied for.

Leave to remain - The permission given by the Home Office to someone allowing them to stay in the UK. Indefinite leave

to remain can be granted, or leave can be limited as to time and may contain various prohibitions (on working or claiming 'public funds').

No recourse to public funds - No recourse to public funds (NRPF) is a term used for people who are subject to immigration control and have no entitlement to welfare benefits or to public housing.

Overstay - A person who was lawfully in the UK but whose leave to remain has now expired and who did not apply for an extension of that leave while it was current. Overstayers are in breach of the Immigration Rules and are liable to being removed.

Undocumented migrant - An individual who does not have a regular immigration status, in that they do not have permission (leave) to enter or remain in the UK. Undocumented migrants may also be referred to as 'irregular' or 'illegal' migrants.

Young person - In this report, a young person is defined as anyone aged between 15 and 24 years of age, in keeping with the United Nations definition of 'youth'.

Executive summary

In 2012 it was estimated that there were 120,000 undocumented¹ children in the UK, 65,000 of whom were born here.² Many of these children are lived in the UK their whole lives, not realising that their immigration status is an issue until they try to work or access further education. A person who is undocumented in the UK cannot work, cannot access mainstream benefits, cannot go to college or university, cannot open a bank account or hold a driving licence. Despite these obvious barriers to settled life, there is little hard evidence of legal outcomes for these children. The data that is available is highly fragmented; however, what data there is suggests a large gap between the estimated number of undocumented children in the UK and the numbers who are either able to regularise their status or who leave the country.

There have been 1,560 grants of leave ('permission') to remain on the basis of long residence under the Immigration Rules to children between 2012 (when this leave was introduced) and 2015, and only 1,585 children were granted settlement on a discretionary basis or long residence in the same period. Government statistics record 6,160 children between 2012 and 2015 registering as British under section 1(4) of the British Nationality Act 1981: birth in the UK and continuous residence here for the first ten years of life. Only 8,189 children left the country in this period, either via forced removal or voluntarily. In total this is less than 15% of the number of those children who were estimated to have been undocumented in 2012, but of course that figure will not remain static – the increasingly complex rules and challenges in making applications will push more people into undocumented status every year (if for example, their application is refused and/or their leave comes to an end).

From these figures we can safely estimate that the number of undocumented children regularising their status each year would be in the low thousands at most, with the majority only securing temporary leave to remain and starting on the long road to permanence. This raises questions as to why undocumented children and young people who need to regularise their status and take steps towards permanence are not doing so. This paper explores the means by which children and young people are able to regularise their immigration status, and some of the barriers they face.

In order to achieve permanent status in the UK, an individual would need to identify the relevant part of the Immigration rules and legislation under which to apply, then make a full application, including the relevant legal arguments and supporting evidence, submitting this along with the application fee and immigration healthcare surcharge. Obstacles to doing this include:

- The complexity of law and policy in this area;
- Lack of awareness and understanding;
- The lack of free, quality legal representation; and
- Very high application fees, with very limited fee waivers.

In the UK today, a child might be able to regularise through a number of different routes, outlined in the companion paper, *Securing Permanent Status: existing legal routes for children and young people without leave to remain in the UK*.³ However, the options available have been made more restrictive in recent years. Changes to the Immigration Rules since 2012 and the removal of legal aid for immigration cases, under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, have made it harder and more onerous for children and young people who have lived in the UK for many years to regularise their status.

If their application is accepted, an undocumented child or young person usually would be granted just two and a half years' leave. They are then on a ten-year route to indefinite leave to remain, requiring five applications costing at least £8,269 in fees alone before they will have secure, permanent status. In this time, they effectively will be cut off from university, will not be able to claim any benefits, social housing or homelessness assistance. The need to repeatedly make detailed and expensive applications increases the possibility of their falling back into undocumented status. Despite it being accepted that they are an integrated member of their community who cannot be expected to leave the UK, they are not given the permanence needed to plan for their futures and contribute to the society that is their home.

1 An undocumented migrant is broadly defined as someone without permission (leave) to enter or remain in the UK.

2 N. Sigona and V. Hughes, *No way out, no way in: Irregular migrant children and families in the UK*, University of Oxford, 2012, at https://www.compas.ox.ac.uk/media/PR-2012-Undocumented_Migrant_Children.pdf

3 At http://www.childrenlegalcentre.com/wp-content/uploads/2017/06/Securing-permanent-status_legal-routes.pdf

The UN Convention on the Rights of the Child (UNCRC), which the Supreme Court has held imposes binding international legal obligations on the UK,⁴ clearly states that the rights within the Convention should be respected for all children within the state party's jurisdiction, 'without discrimination of any kind'. The UNCRC states that the best interests of the child must be a primary consideration,⁵ including in the government's exercise of its immigration control functions, in decision-making processes and that state parties must afford children the right to express their views in all matters affecting them – including in judicial and administrative proceedings.⁶

There has been progress in the protection of migrant children's rights in recent year. The UK lifted its reservation to the UN Convention on the Rights of the Child in 2008 and section 55 of the Borders, Citizenship and Immigration Act 2009, placed a statutory duty on the Home Office to safeguard and promote the welfare of children in the exercise of its functions. But the challenges facing children and young people with claims to regularise on the basis of long residence raise questions about whether the UK is meeting its legal obligations to children. The UK government has a sovereign right to manage immigration and control its borders, but the development of a more effective immigration system should include support for long-term resident children and young people to engage with immigration and nationality systems which are fair, efficient, affordable and accountable.

Recommendations for possible and positive policy changes include:

1. A shorter route to permanent status for long-resident children and young people and lower application fees.
2. Improve Home Office decision-making on children and young people's long residence cases in line with established law.
3. Change the policy on granting citizenship to long-term residents of the UK so that children are not arbitrarily excluded on 'good character'
4. The fee waiver policy should be amended so that eligibility is assessed on means and fee waivers are available for children and young people's indefinite leave to remain applications and citizenship applications.
5. Children in care are exempt from paying Home Office fees for immigration applications and appeal fees. These exemptions must be extended to citizenship applications, and should be expanded to apply to care leavers and those supported by the local authority.
6. Remove the profit element of the fee in children's citizenship by entitlement cases
7. An urgent review of children and young people's needs for legal services and at least the reinstatement of legal aid for separated children's immigration cases.
8. Home fee status and access to student finance for young people with certain types of time-limited leave.
9. Better information for social workers
10. Improved local authority practice through training and designated social care leads
11. Publishing more disaggregated data on children and young people's human rights and citizenship applications and outcomes.
12. Collaborative working at a local level to identify opportunities for good practice.

These are more fully explored in the report's Conclusion.

⁴ *ZH (Tanzania) v SSHD* [2011] UKSC 04, para 23

⁵ Article 3 of the UN Convention on the Rights of the Child 1989

⁶ Article 12 of the UN Convention on the Rights of the Child 1989

Case study

Esther, a 24 year old from Nigeria, has lived in the UK since she was 12 years old. She was brought to the UK by her father on a visit visa, valid for six months. She was then left in the care of her step-mother and half-siblings. No-one helped her address her immigration status while she was a child.

In 2015, Esther had a child who has a British father, and so the child was automatically British by birth. Esther was therefore eligible to make an application for leave to remain in the UK under the Immigration Rules, as she had sole parental responsibility for her son. Although she met the requirements of the Immigration Rules, she was not permitted to work and had no one who was supporting her, and so she was not able to afford the Home Office application fees and immigration health surcharge (£1,311 in total). This meant that she would need to request that the Home Office waive those fees.

We met Esther at an outreach appointment and provided her with free advice about the application she would need to make, the evidence required and the process for requesting a fee waiver. This application is one of the more straightforward applications for leave to remain, as Esther met the requirements of the Immigration Rules. Esther has been educated in the UK and had no problem communicating in English. Despite these factors, she was still not in a position to prepare an application by herself.

At the time, there were 89 different visa, immigration and citizenship application forms listed on the government website. The relevant forms for Esther's case were 'Application to extend stay in the UK: form FLR(FP)', and 'Application to extend stay in the UK: appendix 1 FLR(FP) FLR(O)' (to request a fee waiver). These obscure titles do not make it easy to identify which of the 89 forms is the correct one to use. The forms are 61 and 19 pages respectively. Some sections are not relevant to Esther's application, and if others were left blank this would lead to a rejection of her application.

Esther was not able to select the correct forms and, on reviewing the forms once they were given to her, was not able

to identify which parts to complete. For example, there are three sections in which details of dependants/ children should be entered, two of which must be completed by Esther and one which did not. There are also a number of pages which need to be completed if you are applying on the basis of your relationship with a partner, which was not relevant to her application.

Esther had been receiving ad-hoc financial support from a number of different people. Evidence from each of them, confirming that they could not assist her with the Home office application fee, had to be obtained in order to secure a fee waiver. She also had to provide comprehensive evidence demonstrating that she was her son's primary carer and that it would not be reasonable for him to leave the UK. She did not know what documents she could get which would prove this.

We advised her exactly what evidence to obtain, and assisted her to collate 53 items in support of her application. We also prepared a 21 page covering letter with detailed legal representations about how she met the requirements of the Immigration Rules and why she should be granted a fee waiver. This application was successful and she was granted 2½ years' leave.

Esther identifies as British – her formative years have been spent here and she has no connections to Nigeria. However, she will need to hold this leave for ten continuous years before she will be eligible to apply for indefinite leave to remain. This means she will need to make four further applications and will have been in the UK here for over 23 years before she will be 'settled'. Additionally, she is pregnant and the future father is not British or settled in the UK and so the child will potentially have to be included as her dependent on immigration applications until the child is eligible to register as a British citizen. Esther will need to pay the application fee and immigration health surcharge for her and for her youngest child (which would currently be £2,986, but increases annually).

Introduction

In 2012 it was estimated that there were 120,000 undocumented⁷ children in the UK, 65,000 of whom were born here.⁸ According to one study, two thirds of undocumented migrants have been in the UK for over five years.⁹ Although official statistics providing exact numbers are not available, we know that there are thousands of children and young people in the UK with no legal immigration status, and still more who have regularised their status but have only temporary forms of leave.

Many of these children and young people were born in the UK or have lived here for most of their lives. Many grow up in the UK without realising that immigration is even an issue. Their lack of regular status may only become evident when they wish to work or access further or higher education and often the 'visibility' of an individual's immigration status coincides with their transition to adulthood. For families, a crisis situation, for example domestic violence, relationship breakdown, an accident, deterioration of health, or the loss of a job, often precipitates action regarding their immigration status. In the intervening period, children and young people will usually have become fully integrated into society, built up support networks, settled in the education system, know no other life and speak no other language.¹⁰

They have no other 'home' and they belong in the UK. However, while there do exist both immigration and nationality routes for them to regularise their status, at present these are far too difficult to access and realise in practice. They have increasingly been made stricter, with no legal aid available to get legal advice or representation since 2013. If a child or young person makes an application based on how long they have lived in the UK and the life they have built here, they must contend with hugely complex rules and ever-changing law. If their application is accepted, they are granted just two and a half years' leave. They are still ten years away from being granted indefinite leave to remain, requiring five applications costing at least £8,269 in fees and upfront charges alone before they have secure and permanent status.

Obstacles to permanence for these children include:

- Complex law and policy

- Lack of awareness of their rights on the part of children, young people and families
- Lack of free, quality legal representation
- Excessive application fees, with very limited fee waivers
- Inconsistent decision-making by the Home Office.

The changes that the government made to the Immigration Rules in July 2012, including the creation of a default ten-year route to settlement even once an applicant has already established long residence in the UK, have significantly increased the pool of people who will hold temporary leave and be waiting for a very long period before they can achieve permanence (settlement or citizenship). The government recognises that this temporary status limits opportunities and stability, referring to it in the Immigration Act 2014 as 'precarious' and setting out in statute that less weight should be given on appeal to relationships formed while someone has only temporary leave.

For many children and young people, the lack of permanent immigration status can have a significant negative impact on their life and future in the UK. Without this, children and young people may be unable to access secondary healthcare, further and higher education or social security.¹¹ In adolescence many must put their lives on hold, unable to plan for their futures and contribute to the society that is their home.¹² Despite being members of their communities in the UK, they are not given the permanence they need to fully contribute.

This paper outlines the barriers to securing permanent status facing long-term resident children and young people who are currently undocumented or have temporary permission to remain in the UK. It also aims to enumerate, where possible, what happens when these children come into contact with the immigration and nationality systems in the UK. The evidence in this paper is largely derived from publicly available datasets released by the Home Office on a quarterly basis,¹³ but is also based on data accessed through requests for data under the Freedom of Information Act 2000, collated casework data from Coram Children's Legal Centre's (CCLC) legal services, and existing research.

7 An undocumented migrant is broadly defined as someone without permission (leave) to enter or remain in the UK.

8 N. Sigona and V. Hughes, *No way out, no way in: Irregular migrant children and families in the UK*, University of Oxford, 2012

9 London School of Economics and Political Science has estimated that there are between 417,000 and 863,000 undocumented migrants in the UK, two thirds of whom have been present for at least five years. I. Gordon et al., *Economic impact on London and the UK economy of an earned regularisation of irregular migrants in the UK*, London School of Economics, 2009

10 See Coram Children's Legal Centre, *Growing up in a hostile environment: the rights of undocumented migrant children in the UK*, 2013, at www.coramchildrenslegalcentre.com/growing-hostile-environment/

11 For more information, see the Migrant Children's Project's legal fact sheets at www.coramchildrenslegalcentre.com/resources

12 Coram Children's Legal Centre, *Growing Up In A Hostile Environment: The rights of undocumented migrant children in the UK*, 2013

13 Home Office, Immigration statistics quarterly release, at <https://www.gov.uk/government/collections/immigration-statistics-quarterly-release>. At the time of writing, complete statistics for 2016 were not available.

Which children and young people are we talking about?

Undocumented children and young people

Children, young people and families who do not have a regular immigration status may be referred to as 'undocumented', 'irregular' or 'illegal' migrants. An individual who is undocumented is someone without permission (leave) to enter or remain in the UK. There are many routes to becoming 'undocumented', which can be summarised as:

1. Being born in the UK to parents with irregular immigration status (a child born in the UK does not automatically acquire British citizenship).
2. Coming to the UK on a visa (for example, as a visitor or student or as a dependent of a student) and remaining in the UK beyond the date at which that leave expires (individuals in this situation are often referred to as 'overstayers').
3. Entering the UK unlawfully and never acquiring any form of regular immigration status (some in this situation may have never come to the attention of the authorities and others may have made an application to regularise their status but had this refused).
4. Making an asylum claim which is unsuccessful and exhausting all possible appeals (often known as 'appeal rights exhausted').

Children and young people with limited leave to remain

There are different situations for children and young people with limited leave to remain, not limited to but including the following:

1. Children and young people who were granted limited leave to remain for two and a half years on the basis of long residence and private/family life under paragraph 276ADE and/or Appendix FM of the Immigration Rules post 9 July 2012. Under this route, someone can apply for indefinite leave to remain after ten years' limited leave, although the Home Office can exercise its discretion to grant ILR earlier.
2. Unaccompanied children and young people who claimed asylum in the UK as minors and were granted discretionary leave to remain for three years or until the age of 17½ prior to April 2013. Under the old discretionary leave policy and current transitional provisions, someone on this route can apply for indefinite leave to remain after six years' discretionary leave.
3. Unaccompanied children and young people who claimed asylum in the UK as minors and who, post April 2013, are granted limited leave to remain as an unaccompanied asylum-seeking child¹⁴ for 30 months or until the age of 17½. If granted further leave, someone in this situation should be able to apply for indefinite leave to remain after ten years' limited leave.
4. Children and young people who were granted three years' discretionary leave to remain on the basis of Article 8 of the European Convention on Human Rights under the old discretionary leave policy prior to the changes to the Immigration Rules of 9 July 2012. Under the old discretionary leave policy and current transitional provisions, someone on this route can apply for indefinite leave to remain after six years' discretionary leave. It may be arguable, however, that they should be granted indefinite leave to remain at an earlier point.¹⁵

¹⁴ Immigration Rules, paragraph 352ZC to 352ZF at <https://www.gov.uk/guidance/immigration-rules>

¹⁵ *SM & Others v Secretary of State for the Home Department* [2013] EWHC 1144

Barriers to permanent status in the UK

Complex law and policy

In the UK today, a child might be able to regularise through a number of different routes, including under nationality legislation, immigration and asylum legislation (including the Immigration Rules), and human rights law. For more information on the routes to regularisation, please see the companion paper, *Securing Permanent Status: existing legal routes for children and young people without leave to remain in the UK*.¹⁶

However, the options available have been made more restrictive in recent years. Changes to the Immigration Rules since 2012 have made it harder and more onerous for children and young people who have lived in the UK for many years to regularise their status on the basis of long residence, the right to respect for private and family life under Article 8 of the European Convention on Human Rights, and on the grounds that it would be in their best interests to remain in the UK.

Under the current Immigration Rules an individual can apply for leave to remain on the grounds of long residence and private and/or family life. An application fee and yearly immigration health surcharge must be paid unless the child is either eligible for a fee waiver (for example because the applicant can demonstrate they are destitute) or exempt (for example a child in care). One of the requirements for leave to remain is a condition of residence for a set period, dependent upon the age of the applicant:

- An adult applicant must have lived in the UK for at least 20 years or face very significant obstacles to return to their country of origin;
- If under the age of 18 years, the requirement is residence of at least seven years and it must not be reasonable to expect them to leave the UK;
- If over 18 but under 25 years, the individual must have lived in the UK for at least half of their life.

This criterion is based on when someone is considered to have established a private life, but excludes many who have lived in the UK for years. There is a particular problem for young people becoming adults, who upon turning 18 face a leap in the requirements from seven years of residence to nine.

One judge in the Court of Appeal has stated:

*'I fully recognise that the Immigration Rules, which have to deal with a wide variety of circumstances and may have as regards some issues to make very detailed provision, will never be "easy, plain and short" (to use the language of the law reformers of the Commonwealth period); and it is no doubt unrealistic to hope that every provision will be understandable by lay-people, let alone would-be immigrants. But the aim should be that the Rules should be readily understandable by ordinary lawyers and other advisers. That is not the case at present.'*¹⁷

This is not an unusual assessment. The Supreme Court has described UK immigration law as 'an impenetrable jungle of intertwined statutory provisions and judicial decisions'.¹⁸ It has also made clear that the Immigration Rules are not a complete code: the rules do not permit consideration of the best interests of children in all cases and 'family life is not to be defined by the application of a series of rules'. As such, an application not only needs to address the Immigration Rules but must also make clear arguments regarding the applicant's rights under Article 8 and the situation of any children involved. The interplay between the immigration rules and Article 8 'outside the rules' has been subject to a significant amount of litigation.

In order to apply for leave to remain, then, an individual would need to identify the relevant part of the Immigration rules under which they fall, or any exceptional circumstances, then complete a full application, including any additional legal arguments and supporting evidence, submitting this along with the application fee and immigration healthcare surcharge.

¹⁶ At http://www.childrenslegalcentre.com/wp-content/uploads/2017/06/Securing-permanent-status_legal-routes.pdf

¹⁷ *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74

¹⁸ *Patel and others (Appellants) v Secretary of State for the Home Department* [2013] UKSC 72, available at: <https://www.supremecourt.uk/cases/docs/uksc-2012-0177-judgment.pdf>

Lack of free, quality legal representation

Many children, young people and families who are undocumented demonstrate confusion over their legal status in the UK. Many will only engage with the issues of their immigration status when forced to by another crisis point in their lives, such as separation from family, losing their housing, or when they try to access entitlements to which they do not have an automatic right, such as employment or further or higher education.¹⁹ Many may have little awareness of the options available to them. Progressing their case, or taking positive steps, will on the whole depend on the availability of reliable legal advice. Making a successful application with the necessary evidence will be impossible without legal assistance, which is scarce in an environment where no publicly-funded advice and representation for immigration cases is available.²⁰

During the passage of the Legal Aid, Sentencing and Punishment of Offenders Bill, which removed the provision of legal aid for most areas of immigration law, it was argued that immigration cases 'do not raise issues of such fundamental importance as asylum applications, where the issue at stake may be, literally, a matter of life and death' and that those involved in immigration cases 'will usually have made a free and personal choice to come to or remain in the United Kingdom'.²¹ Children have not made such a decision. Furthermore, there is a wealth of research illustrating both the complexities of the legal issues, and cases where the future safety of a child depends on the outcome of their immigration case.²² The complexity of immigration laws, processes and systems, as explored above, is evident from the fact that the Government has made it illegal for those who are not qualified and regulated to provide immigration advice.²³ As one report summarised: 'even professionals who are qualified and registered to give immigration advice find the territory of children's non-asylum immigration claims a tricky territory'.²⁴

This complexity can be exacerbated by language barriers and difficulties with literacy and comprehension. The absence of legal assistance undermines a child or family's ability to put forward the necessary evidence and legal arguments to have their cases fairly determined.

When making an immigration application that relies on family or private life, an individual must demonstrate that they reach the criteria within the Immigration Rules and/or outside of the rules (if relying on Article 8). The jurisprudence on Article 8 and on best interests more broadly requires an in-depth legal knowledge and understanding in order to be effectively applied. To support a claim that it would be in the best interests of a child to remain in the UK, it is necessary gather extensive evidence demonstrating the extent to which a child has developed a personal life and connections within the UK, as well as information on the child's (or family's in cases where the child lives with their family) family circumstances in both the UK and the country of origin. Expert evidence, for example from child psychologists, is often required, as might be evidence from a child's carer, teachers, therapists or medical professionals, mentors and friends. It is vital not only to understand and obtain evidence but also to present this appropriately, and this requires guidance from legal professionals to ensure that all relevant matters informing a best interests assessment are addressed.

Despite some case law acknowledging that, for certain groups of children, a grant of indefinite leave to remain (ILR) rather than temporary leave to remain will be in their best interests,²⁵ Home Office policy and subsequent court decisions make clear that it considers the onus to be on the applicant to provide evidence as to why a grant of ILR would be justified.²⁶ It is therefore difficult to apply for discretionary ILR, or subsequently challenge a refusal to grant, without legal representation. In 2015/16, the grants of discretionary ILR dropped from 160 in the previous year to just 25.

19 See case studies in MiCLU, *Precarious citizenship: unseen, settled and alone – the legal and protection needs of undocumented young people in England and Wales*, 2017 at <http://miclu.org/wp-content/uploads/2017/02/Precarious-Citizenship-Report.pdf>

20 See Coram Children's Legal Centre, *Growing up in a hostile environment: the rights of undocumented migrant children in the UK*, 2013

21 See Freedom of Movement, 'Moj Proposals for legal aid cuts', January 2011, at <https://www.freemovement.org.uk/moj-proposals-for-legal-aid-cuts/>

22 See The Children's Society, *Cut Off From Justice: The impact of excluding separated migrant children from legal aid*, 2015, at <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/cut-off-from-justice-the-impact-of-excluding-separated-migrant-children>; MiCLU, *Precarious citizenship: unseen, settled and alone – the legal and protection needs of undocumented young people in England and Wales*, 2017, at <http://miclu.org/wp-content/uploads/2017/02/Precarious-Citizenship-Report.pdf>

23 The Immigration and Asylum Act 1999 made it unlawful for anyone to provide unregulated immigration advice or immigration services.

24 The Children's Society, *Cut Off From Justice: The impact of excluding separated migrant children from legal aid*, 2015

25 *SM & Others v Secretary of State for the Home Department* [2013] EWHC 1144

26 Home Office policy on Discretionary Leave states that: 'In cases involving children, caseworkers must regard the best interests of the child as a primary consideration (although not necessarily the only consideration) and one that can affect the duration of leave granted. This does not alter the expectation that in most cases a standard period of 30 months' (2.5 years') DL will be appropriate, but it does mean that there may be cases where compelling evidence is available that justifies a longer period of leave (or ILR) to reflect the best interests of the individual child' (emphasis added). Home Office, Asylum Policy Instruction: Discretionary Leave, August 2016, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460712/Discretionary_Leave_2_v7_0.pdf.

As noted above, decisions on Article 8 applications (private and family life and long residence) are being made on an overly restrictive set of criteria contained in the Immigration Rules that do not reflect the established law on Article 8.²⁷ As the Home Office often refuses applications without full consideration of the facts, a detailed assessment of reasonableness, or regard to a child's best interests (see section below on decision making), an appeal to the Tribunal is likely to be necessary.²⁸

The Justice Select Committee has highlighted that the changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 have meant that many people, including those who are most vulnerable, are no longer able to access justice and that 'children are inevitably at a disadvantage in asserting their legal rights', as a result of lack of access to legal representation, including in matters that can have very serious and long-term negative consequences for them. It has expressed particular concern that 'trafficked and separated children are struggling to access immigration advice and assistance.'²⁹ The UN Committee on the Rights of the Child in its 2016 Concluding Observations raised concerns that 'the reforms concerning the reduction of legal aid in all four jurisdictions appear to have a negative impact on the right of children to be heard in judicial and administrative proceedings affecting them'.³⁰

Where an individual is able to access legal representation, there is little guarantee that the advice and representation received will be of a good standard. Detailed analysis of children's cases demonstrates that legal advisers, even if available, are frequently not child-focused and fail to provide information in an accessible way, with poor legal advice 'prolonging the undocumented status of young people'.³¹ The loss of legal aid has meant that many firms have opted to focus more on fee paying clients and expertise in this area has been lost as a result.

Levels of unmet need are extremely high. Coram Children's Legal Centre's Migrant Children's Project runs an outreach legal advice service in the London Boroughs of Hackney and

Haringey, which provides an example. Working in just these specific areas, and solely with vulnerable destitute families, the Project advised 313 clients in 2016-17, at least 65% of whom would have been eligible for legal aid prior to 2013. Where the Project has been able to secure exceptional case funding (see below) for these clients, in 25% of cases it has taken over a month to find a solicitor to take on the case because there is such a shortage of legal providers.

Exceptional case funding

As a safeguard to protect those who lost access to legal aid on 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 does provide for the Legal Aid Agency to grant legal aid funding for so-called 'exceptional cases', where legal aid is deemed necessary to prevent a breach of human rights or an EU law right. The government made clear its view that otherwise out-of-scope immigration cases would not be granted exceptional funding,³² even in cases brought by separated children on their own. The guidance to the exceptional case funding (ECF) scheme set out that legal aid may be granted where the lack of representation would amount to a breach of human rights, but that immigration processes do not engage the human right to a fair trial.³³

After a brief initial flurry at the inception of the reduced legal aid regime, few applications for ECF were made by providers or direct applicants in 2013 and 2014. This was because the grant rate was extremely low, with only 4.5% of applications successful during the first year of the scheme.³⁴ It was therefore not worth providers taking on the financial risk of spending hours on an application, to be paid only in the highly unlikely event of a grant. A provider may have been able to make one or two applications but could not keep doing this where not financially viable.³⁵

In the case of *Gudanaviciene and Ors v Director of Legal Aid Casework*³⁶ the Court of Appeal found that the guidance governing ECF was too restrictive and in some respects was not in accordance with the law. This resulted in amendments to the Lord Chancellor's Guidance on applications for ECF.

27 Coram Children's Legal Centre, *Growing Up In A Hostile Environment: The rights of undocumented migrant children in the UK*, 2013

28 Refusals of dependent applications for extensions of leave as a percentage of overall applications have risen in recent years: from 5% in 2008 to 18% in 2015. See Appendix I

29 Commons Justice Committee, *Civil Legal Aid Cuts*, March 2015, at

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/lapso-report/>

30 UN CRC Committee, *Concluding Observations*, June 2016, at <http://www.crae.org.uk/publications-resources/un-crc-committees-concluding-observations-2016/>

31 See MiCLU, *Precarious Citizenship: unseen, settled and alone – the legal and protection needs of undocumented young people in England and Wales*, 2017, p 91

32 Lord Chancellor's Exceptional Funding Guidance (Non-Inquests), 2014. This guidance has subsequently been revised.

33 Ibid.

34 Legal Aid statistical release, Official Statistics 25 September 2014, at <https://www.gov.uk/government/statistics/legal-aid-statistics-april-2014-to-june-2014>

35 Evidence to this effect was cited in the Justice Select Committee report, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, March 2015, at <https://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311102.htm>

36 *Gudanaviciene and Ors v Director of Legal Aid Casework* [2014] EWCA Civ 1622, at <https://www.judiciary.gov.uk/wp-content/uploads/2014/12/gudanaviciene-ors-v-dir-of-legal-aid.pdf>.

Whilst the grant rate is now higher, the number of applications remains low overall, and the amendments as a result of *Gudanaviciene* have not addressed concerns about the complexity of the process, and the cost to providers.

These difficulties are particularly pronounced when applying for ECF to represent a child. An application for ECF requires detailed information and evidence regarding the case to be put, so practitioners face difficulties in obtaining sufficient instructions and evidence. In addition, it is very difficult to explain the process to a child client and it may be in their interests to pursue funding via any other available avenues, such as from the local authority if they are looked-after. This has resulted in a low number of applications made by or on behalf of children and young people in the first place.

From October 2013 to December 2016, 878 grants of ECF for immigration law matters were made in total.³⁷ Within this, the number of applications made by, or on behalf, of children and young people are even lower. Between October 2013 and December 2016 only 80 applications for ECF for immigration cases were made on behalf of applicants aged under 18 (56, or 70%, of these were granted). For young people aged 18-21, there were 104 applications and 63 grants (60%) in the same period.

Solicitors working on CCLC's own ECF project have been making applications for exceptional case funding for unrepresented families with immigration cases at risk of destitution, making 73 applications in 2016. The project saw wide variations in success rates over the course of 2016. At the start of the year there was a marked drop in grants of Legal Aid for Legal Help – pre-litigation advice. However, a May 2016 Court of Appeal judgment held that there was 'unacceptable risk' that the ECF scheme was not able to provide legal aid in those instances where failure to do so would be either a breach of the Human Rights Act 1998, or other rights enforceable under EU law.³⁸ After this, cases that were judged to have a 'poor' or 'borderline' prospect of success were considered for funding where previously they had not been (see appendix III for supporting data). That said, confidence in the scheme remains low, with application rates still well below initial government estimates for the scheme,

which were 5,000-7,000 applications annually, of which it was estimated that around 3,700 (74%-53%) would be granted.³⁹

The need for legally aided representation for children and young people in the UK immigration system is not going to go away. Between April and December 2016, immigration remained the most requested category of law for ECF applications, making up a total of 54% of applications.⁴⁰ Despite this rise, low overall application and grant rates mean that the ECF system barely scratches the surface of the estimated unmet need.

Assistance from local authorities

There are many unaccompanied children, care leavers and children in migrant families who are unable to access legal aid for their immigration cases and are receiving support from a local authority under section 17 or section 20 of the Children Act 1989. Section 17 gives the local authority a power to provide accommodation and subsistence to children and their families, whereas under section 20, a child is accommodated without their family and is therefore 'looked after' by the local authority. Department for Education statutory guidance sets out that local authorities' obligations to separated children under section 20 extend to considering their need to have their immigration status issues resolved and need for legal services,⁴¹ although it is silent on how these services are to be funded. In the past the government has suggested that social workers could provide the advice themselves, without being appropriately qualified,⁴² but this proposal was subsequently abandoned.

The costs of providing legal advice and representation to children in its care will need to be borne by the local authority. Usually this will be at private rates which are likely to be significantly more expensive than legal aid rates, resulting in a substantial transfer of cost from the Ministry of Justice, under the legal aid scheme, to local authorities. It has been estimated that this cost shift could cost local authorities £10 million annually even if each local authority only dealt with five cases a year.⁴³ This is significantly more than the Ministry of Justice expenditure for *all* children's immigration and asylum

37 Legal aid statistics England and Wales tables, October to December 2016

38 *IS (By the Official Solicitor as Litigation Friend) v Director of Legal Aid Case Work and Another* [2015] EWHC Admin 1965

39 Implementing reforms to civil legal aid, NAO, HC 784, Session 2014-15, November 2014

40 Ministry of Justice, Legal Aid Statistics in England and Wales October to December 2016, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604003/legal-aid-statistics-bulletin-oct-to-dec-2016.pdf

41 Department for Education, *Care of Unaccompanied and trafficked children: statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children*, July 2014 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf

42 See Letter from Damian Green, Minister for Immigration, to Sophie Barrett Brown; Immigration Law Practitioners Association, October 2011 at <http://www.ilpa.org.uk/data/resources/13825/11.10.20-Damian-Green-MP-to-ILPA-relegal-aid.pdf>. This suggestion illustrates the lack of appreciation of the importance of good quality legal advice. Social workers are not trained lawyers, and any social worker purporting to give legal advice and assistance would potentially be committing a criminal offence under section 91 of the Immigration and Asylum Act 1999 if doing so without the necessary exemption or registration, at the right level. Furthermore, non-asylum immigration applications made by children are not simply a matter of 'form filling'. The proposal was subsequently abandoned.

43 No Recourse to Public Funds Network, 'A 'Residence Test' and the Cost Shift to Local Authorities', at <http://www.nrpfnetwork.org.uk/SiteCollectionDocuments/Appendix%201%20Costs%20to%20local%20authorities%20from%20NRPF%20Network.pdf>

cases prior to the changes in legal aid (£5,751, 842 in 2012-13)⁴⁴.

A failure to assist the child in care to obtain legal advice and/or representation where it is needed amounts to a breach of statutory duties. A clear example of this was provided in a recent Local Government Ombudsman decision that the Royal Borough of Greenwich⁴⁵ had failed to assist a child in care to obtain representation and regularise her status. Greenwich was found to have failed in its duties, owing compensation of £5,000 and an apology. It was also told to improve practice and ensure staff were sufficiently trained. A similar finding was made against Dudley Metropolitan Borough Council⁴⁶ when the local authority failed to obtain quality legal advice on citizenship for two children in care.

There is no equivalent guidance for children and families receiving support under section 17. A local authority's duties to meet children's needs could include procuring private legal services for a child, or arguably a family, supported under section 17. However, without guidance, local authority practice on funding support for families is varied.⁴⁷

During the consultation period leading up to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Ministry of Justice revealed that almost 2,500 cases each year involving children as claimants in their own right received legal aid for their immigration cases.⁴⁸ In the absence of other data, this gives the lowest estimate of children in care who can no longer get legal aid for immigration cases. However, many children are likely to be 'hidden'; for example, there are an estimated 9,300 and 12,400 migrant children living in private

fostering arrangements.⁴⁹ So this figure is likely to be just the tip of the iceberg.

In order to make an estimate of the number of undocumented children and young people supported by or in the care of local authority children's services in England, CCLC circulated a Freedom of Information (FOI) request asking for details of the numbers of children from outside the EU cared for or supported by a local authority who are subject to immigration control but have not claimed asylum.⁵⁰ In total, responses were received from 147 local authorities, of whom 81 provided some or all of the information requested.

From the information received we can ascertain that the local authorities in England who had were able to provide information recorded between 965 and 996 children subject to immigration control under the age of 16 receiving support from Children's Services in 2014 and 2015.⁵¹ Local authorities knew of another 193 to 235 children between the ages of 16 and 18 receiving support. Data for the 18-25 age bracket, intended to encompass those supported under leaving care provisions, revealed that between 401 and 442 young people had received support across the two years. The total disclosed was therefore between 1559 and 1673 non-EU children and young people subject to immigration control but not refugees or asylum seekers who were receiving support from 81 local authorities in England in 2014-15. If this sample was taken as an average, it would suggest a figure of around 2,300 children and 800 young people in local authority care in England.⁵² Of the children and young people identified, more children were identified as having no leave to enter or remain than had limited leave.

44 Figure taken from Freedom of Information Request response to CCLC

45 Local Government Ombudsman, Investigation into a complaint against Royal Borough of Greenwich (ref: 13 019 106), 19 January 2016, at <http://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/13-019-106>

46 Local Government Ombudsman, Investigation into a complaint against Dudley Metropolitan Borough Council (ref: 15 015 327), 19 May 2016, at <http://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/15-015-327>

47 COMPAS, *Safeguarding children from destitution: local authority responses to families with 'no recourse to public funds'*, 2015, at https://www.compas.ox.ac.uk/media/PR-2015-No_Recourse_Public_Funds_LAs.pdf

48 Figure obtained through FOI response from Ministry of Justice to JustRights and The Children's Society. See The Children's Society, *Cut Off From Justice: The impact of excluding separated migrant children from legal aid*, 2015, p 14

49 The Department for Education estimated that there were 1,560 children reported as being under private fostering arrangements at 31 March 2016, at <https://www.gov.uk/government/statistics/notifications-of-private-fostering-arrangements-in-england-2015>. Given the informal nature of most private fostering arrangements, this number is probably a significant underestimate. The Children's Society estimated a much higher figure – see The Children's Society, *Cut Off From Justice: The impact of excluding separated migrant children from legal aid*, 2015, p 14

50 The criteria were that the relevant children and young people were (1) up to the age of 25; (2) from countries outside the EU, and (3) will/have not have claimed asylum but (4) are in the care of, or supported by, the local authority. Local authorities were asked to include children and young people whose parents have been detained through immigration or criminal procedures and/or children and young people who have been taken into care because of child protection concerns and/or where private/public family law proceedings are underway, and were asked not to include children recorded as 'unaccompanied asylum seeking children'.

51 Under the provisions of the Data Protection Act 1998 'personal data' is exempt from disclosure. As a result, some local authorities chose to provide aggregated numbers (e.g. 'fewer than 5') to protect the privacy of the individuals concerned.

52 Figures based on average per authority multiplied by number of authorities with children's services departments in England (152). For research into the numbers and geographical spread of unaccompanied asylum-seeking children in England, see Rachel Humphries and Nando Sigona, 'Becoming Adult: Mapping unaccompanied asylum seeking children in England', July 2016, available at: <https://becomingadultproject.files.wordpress.com/2016/07/research-brief-series-01-2016.pdf>.

However, such an estimate must be taken with caution - huge discrepancies between neighbouring local authorities suggest that some of the responses were underestimates. Of the figure for children under the age of 16, 399 (22-24% of the total disclosed) were cared for or supported by a single local authority in London. By means of contrast, three adjacent London boroughs recorded totals of seven, fewer than five, and zero children respectively in the same category. The figures above should be treated as indicative only of the number of children for whom authorities have accessible records, and not as an estimate of any accuracy.

63 local authorities refused to answer because of the costs that would have been incurred in collating the requested data. Within these refusals, many local authorities made it clear that their information management systems did not record data on children or young people in a way that was conducive to finding out about immigration status.

This failure to systematically record data relating to the immigration statuses of children and young people leaves local authorities unable to understand the scale of the problem and in turn how best to address the immigration needs of children in their care, including training for staff and budgeting for the legal costs of acting in the best interests of children subject to immigration control. Without a clear picture of the number of undocumented children in their care, there is a high risk of local authorities failing to provide the correct support and or ensure that immigration issues are resolved at the earliest opportunity.

Other research⁵³ has highlighted a significant lack of consistency across and within local areas as to how separated children from migrant backgrounds are supported (or not) in accessing legal services in the absence of legal aid. Few local authorities have been willing to pay for legal advice for children in their care, despite the fact that a duty to provide

such advice, and a commensurate power to fund it, can be read into their statutory functions under the Children Acts 1989 and 2004. Even before the changes to legal aid, many local authorities were not taking the necessary steps to ensure that children in their care were accessing legal advice and representation at the earliest opportunity, with the result that many were turning 18 without having their immigration status addressed. While local authorities can work with local law centres and other not-for-profit providers to try and arrange free legal advice for their clients, this will often only be initial advice rather than the provider actually taking the case on for representation and may not be enough to meet the individual's needs.

For destitute individuals or families there is a close link between their immigration claim and their eligibility for support. The lack of legal aid will leave many potentially unable to submit an immigration application or appeal a decision, and consequently they will find it harder to access support from a local authority which may only be provided if the individual can show that there is a barrier to their leaving the country.

CCLC case work has highlighted occasions where local authorities put considerable pressure on those they support to regularise their immigration status or face losing support. CCLC has advised families who have been required by a local authority to sign agreements that they will regularise within a fixed period, despite not being offered any assistance to do so, and the family and local authority having no control over the timescales in applying to the Home Office. COMPAS research on safeguarding children from destitution has highlighted similar issues.⁵⁴ This creates a cycle of destitution and dependency, where undocumented migrants are unable to access the step-up that would allow them to move forward with improving their lives, and ultimately supporting themselves.

53 The Children's Society, *Cut Off From Justice: The impact of excluding separated migrant children from legal aid*, 2015

54 COMPAS, *Safeguarding children from destitution: local authority responses to families with 'no recourse to public funds'*, 2015

Application fees

A further barrier to those with little or no income is the fee required for many immigration applications. With fees at their present levels, making applications to the Home Office is impossible for many children and young people even where they have a right in law to status or citizenship. Dismantling this barrier is essential if children and young people are to access their legal rights.

The 2017 application fees for limited leave to remain are £993 per person and for indefinite leave to remain are £2,297 per person.⁵⁵ These levels far outstrip the unit cost to the Home Office of processing applications (£343 for each application). On top of this applicants for limited leave must pay the immigration health surcharge of £200 per person per year of leave granted.

Fees rise at the beginning of each financial year, and often by large margins. Settlement (indefinite leave) fees have more than doubled in recent years, from £1,093 in 2014 to £2,297 in 2017,⁵⁶ and it is typical for family migration fees to rise more steeply than fees for business or student applications.⁵⁷ Large numbers of undocumented people will struggle to secure funds for the application process to regularise. To give a point of comparison, government data shows that 16.5 million (43%) working age adults have no savings⁵⁸ and one international study found that half of the UK population would struggle to come up with £1,500 in 30 days.⁵⁹ Families and young people who are undocumented cannot work, meaning that they are solely reliant on support from friends, charities, churches or similar.

Table 1: Fees for immigration and nationality applications from 2012

	Limited Leave	ILR	Citizenship as a child	Notes
2012 ⁶⁰	Applicant £561 Dependent £261	Applicant £991 Dependent £496	£551	No immigration fee for a child assisted by the local authority – citizenship fee still payable. No fee was payable by someone who had made an Article 3/ Refugee Claim which failed but they were granted leave under another category in the rules.
2013 ⁶¹	Applicant £578 Dependent £477	Applicant £1,051 Dependent £758	£673	No immigration fee for a child assisted by the local authority – citizenship fee still payable. Only those failed asylum seekers who were granted leave outside the rules remained exempt from immigration fees. If someone was granted leave inside the rules under the new codified Article 8, a fee was payable to renew the leave.
2014 ⁶²	£601	£1,093	£669	No immigration fee for a child assisted by the local authority – citizenship fee still payable. Decision taken to align fees for main applicants and dependents.
2015 ⁶³	£649 (+ £500 immigration health charge)	£1,500	£749	No immigration fee for a child assisted by the local authority – citizenship fee still payable.
2016 ⁶⁴	£811 (+ £500 immigration health charge)	£1,875	£936	No immigration fee for a child assisted by the local authority – citizenship fee still payable.
2017 ⁶⁵	£993 (+ £500 immigration health charge)	£2,297	£973	No immigration fee for a child who is looked after by the local authority (previously children in families supported by the local authority were exempt from paying fees. They now need to be looked after children).

55 Home Office immigration and nationality fees from 6 April 2017, at <https://www.gov.uk/government/publications/visa-regulations-revised-table>

56 Home Office Immigration and Nationality Fees From October 2014, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352626/2014-15_Fees_Table_excl_unit_costs_October_v1.pdf

57 Home Office update on new immigration and nationality fees, 26 February 2016 <https://www.gov.uk/government/news/update-new-immigration-and-nationality-fees>

58 Family resources survey 2014/15, published in Households below average income Table 5.9db, Department for Work and Pensions, June 2016.

59 Searle B A, Köppe S, Assets, savings and wealth, and poverty: A review of evidence. Final report to the Joseph Rowntree Foundation. Bristol Personal Finance Research Centre, 2014, at <http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1405-assets-savings-wealth-poverty.pdf>

60 The Immigration and Nationality (Fees) Regulations 2012, at <http://www.legislation.gov.uk/uksi/2012/971/contents/made>

61 The Immigration and Nationality (Fees) Regulations 2013, at <http://www.legislation.gov.uk/uksi/2013/749/schedule/1/made>

62 The Immigration and Nationality (Fees) Regulations 2014, at <http://www.legislation.gov.uk/uksi/2014/922/contents/made>

63 The Immigration and Nationality (Fees) Regulations 2015, at <http://www.legislation.gov.uk/uksi/2015/768/contents/made>

64 The Immigration and Nationality (Fees) Regulations 2016, at <http://www.legislation.gov.uk/uksi/2016/226/contents/made>

65 The Immigration and Nationality (Fees) Regulations 2017, at <http://www.legislation.gov.uk/uksi/2017/515/contents/made>

CCLC has seen many individuals who have struggled to save for their fees only to find that they have been increased and are once more unaffordable. People in this situation are left with little choice but to continue in their irregular status – or, for those who were seeking to renew their leave, to find themselves 'administrated into illegality'.⁶⁶ In other cases, families opt to make applications only on behalf of the parents because they can not afford the fees for every member of the family unit and the parents are the most vulnerable in terms of potential removal from the UK. This leaves children undocumented and even further away from obtaining settled status. The Secretary of State has the discretion to waive the fee (see below)⁶⁷ but the threshold for fee waivers is very high and they are limited to certain circumstance. No waiver is available for applications for ILR or citizenship.

Fee waivers

Fee waivers are only available in limited circumstances and for certain types of application. The Home Office will only waive an immigration application fee where failure to do so would render the applicant incapable of exercising their rights under the European Convention on Human Rights (ECHR). Following *Carter v SSHD*⁶⁸ the Home Office published new guidance in April 2015 on when to waive fees on applications made for either leave to remain under the ten year partner, parent or private life route ('Article 8' applications) or applications for leave to remain on the basis of an ECHR article other than Article 8.⁶⁹ This guidance requires the applicant to demonstrate that they are either currently destitute, or would be rendered destitute by paying the fee. If in the latter category, an applicant must also show that they cannot borrow the money from friends and family, would be unable to save the fee within 12 months without compromising their ability to meet their essential living needs, and that there is no basis for concluding their circumstances would change in the next 12 months.⁷⁰

In practice it is extremely difficult to secure a fee waiver, even with quality legal representation, because the threshold for 'destitution' is so high. For example, a family being in receipt of support under Section 17 of the Children Act 1989 – in itself a test for destitution⁷¹ – is insufficient evidence of destitution to support waiving fees.⁷² Between April 2015 and September 2015, 4,822 fee waiver applications were received by the Home Office, of which only 747 (15%) were accepted.⁷³

For children and young people making applications in their own right the success rate for fee waiver applications is extremely low. The April 2015 policy guidance states that 'if the applicant is a child and his or her parent or parents have or are seeking leave to remain, the whole family unit must qualify under this policy for any member of it to qualify for a fee waiver.'⁷⁴ In 2015, 1,950 fee waiver applications were made by children under 18, of which only 60 were granted. 475 applications were made by young people aged 18-24, only 10 of which were granted.⁷⁵ These figures represent success rates of 3% and 2% respectively.

The low rates of success may in part be simply down to ineligibility on the part of the applicants. However, CCLC advice and casework suggests that for many providing the evidence necessary to show that they are eligible, and a lack of clarity within the fee waiver policy are significant problems. Many clients do not have the capacity to collate the required evidence, evaluate their finances and articulate that they can not pay the fee.

If an applicant does not qualify for a fee waiver, they will be given just 10 days to provide the fee or their application for leave to remain will be rejected as invalid for non-payment of the required fee and it will not be considered.⁷⁶ Such a rejection would mean that the Home Office would not consider an in-time, valid application to have been made, and the applicant would as a result have broken their continuous residence, potentially becoming undocumented again.

66 The Guardian, 'The lawyer who takes the cases no one wants', 2016, at <https://www.theguardian.com/news/2016/apr/14/the-lawyer-who-takes-the-cases-no-one-wants>

67 Sub-section 51(3)(c) of the Immigration, Asylum and Nationality Act 2006

68 *Carter v SSHD* [2014] EWHC 2603, at <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2603.html>.

69 For a comprehensive discussion of immigration applications and routes, see: Coram Children's Legal Centre, *Securing permanent status: existing legal routes to for children and young people without leave to remain in the UK*, May 2016 at http://www.childrenslegalcentre.com/wp-content/uploads/2017/06/Securing-permanent-status_legal-routes.pdf

70 Home Office, Immigration Directorate Instructions, 'Fee waiver for FLR (FP) and FLR (O) forms, April 2015, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420914/Fee_Waiver_Policy_-_April_2015.pdf

71 Project 17, Guide: 'Is your child 'in need?', at <http://www.project17.org.uk/resources/guide-to-accessing-support/are-you-eligible-for-support/child-in-need/>.

72 NRPF Network, 'Local authority concerns about new fee waiver policy', April 2016, at <http://www.nrpfnetwork.org.uk/News/Pages/Fee-Waiver-Policy-April-2015.aspx>.

73 FOI response from UK Visas and Immigration, 28 September 2015, at <https://www.whatdotheyknow.com/request/291548/response/725914/attach/3/FOI%20xxxx%20Response.pdf>. Data is only available from April 2015 as before that date it was recorded manually. Updated data was requested through a Freedom of Information request but was not made available by the Home Office.

74 Immigration Directorate Instructions: Fee waiver for FLR(FP) & FLR(O) forms, April 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420914/Fee_Waiver_Policy_-_April_2015.pdf.

75 FOI response from UK Visas and Immigration to Coram Children's Legal Centre, 17 February 2016.

76 Home Office, Applications for leave to remain; validation, variation and withdrawal, April 2017, page 10, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606967/Applications-for-leave-to-remain-v1.0.pdf.

Citizenship applications

Despite the clear difference and separation between Nationality and Immigration law⁷⁷, nationality applications have, since 2007, been subject to the same escalation of fees as immigration applications. As of 6 April 2017, the fee for citizenship applications is £973, of which £386 is said to constitute the cost of administration and £587 is profit to the Home Office.⁷⁸ There is a large discrepancy between the unit cost and the fee charged, and the relevant impact assessment relating to this charge does not consider the impact on children, and their best interests, nor the Government's statutory duty to promote their welfare.

In many of these cases what is being charged for is a pre-existing entitlement under the British Nationality Act 1981, where the Home Office has not been asked to grant but is merely required to register the child's citizenship. Making a profit, let alone one of £690, from a child's entitlement to be registered as British is arguably problematic. As stated in research by the Project for the Registration of British Citizens and Amnesty UK, 'in the case of such a child, there is no discretion on the part of the Secretary of State to refuse an application because all she is being required to do is register the entitlement parliament has decreed the child to have. The child is not seeking any benefit from the Secretary of State, but rather recognition of the child's pre-existing right at the time of his or her registration application.'⁷⁹

The power to set fees that are higher than the cost of processing applications is contained within statute, and the government has strongly resisted any changes that would 'restrict our ability in setting a fee to take account of any factor other than cost. That would cost the Home Office at least £29 million per annum over the next spending review period, mainly from lost income on current plans. Such a reduction in fee funding would have a serious detrimental effect on the department's ability to operate an effective border and immigration system'.⁸⁰

The Home Office takes into account not just the cost of processing an application, but also the benefits and entitlements available to an individual if their application is successful and the cost of exercising any other function in connection with immigration or nationality. The Home Office does not provide exceptions, it argues, because it does not consider that citizenship is a necessary pre-requisite to enable a person to exercise his or her rights in the UK in line with the European Convention on Human Rights, as explained by Lord Bates in March 2016:

*'Citizenship can never be an absolute right, nor is it necessary in order for a person to reside in the UK and access our public services. A person who is settled in the UK is not required to become a citizen by a certain date: they can remain here until they can meet the criteria for doing so, including payment of the required fee.'*⁸¹

Yet, the government's own guidance that states 'becoming a British citizen is a significant life event. Apart from allowing a child to apply for a British citizen passport, British citizenship gives them the opportunity to participate more fully in the life of their local community as they grow up.'⁸² Furthermore, some applications must be made before the child turns 18 in order for a child to exercise their entitlement, so waiting until the required fee has been raised may not be possible.

77 The British Nationality Act 1981 sets out the various bases on which a person shall be or may become a British citizen and the Secretary of State's role is to provide the administration to support the determination made by parliament of when citizenship is to be recognised. This is different to the Immigration Act 1971, under which the Secretary of State is given power to both determine and apply the criteria and circumstances under which non-British citizens are to be permitted entry or stay in the UK. See Project for the Registration of British Citizens, *Briefing on Fees for the Registration of Children as British Citizens*, September 2016 (revised January and April 2017), at https://prcbc.files.wordpress.com/2015/10/fees_briefing_revised_8_april_2017.pdf.

78 See Impact Assessment for the Immigration & Nationality (Fees) Order 2016, at http://www.legislation.gov.uk/ukia/2016/33/pdfs/ukia_20160033_en.pdf; and Table with detail of fees and unit costs – 2017, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606616/Unit_cost_table_2017.pdf

79 PRCBC and Amnesty UK, *Briefing on Fees for the Registration of Children as British Citizens*, September 2016, available at: https://prcbc.files.wordpress.com/2015/10/fees_briefing_2016.pdf.

80 HL Deb 21 March 2016, vol 769, part 129, col 2217, available at: <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160321-0004.htm#16032216000138>.

81 Ibid, cols 2213-2220.

82 Guidance on the MN1 form on which children register as British

Decision-making

A significant obstacle to regularisation is the consistency of Home Office decision-making. Research and a number of reported cases have highlighted Home Office failure to comply with its duties to consider a child's best interests when making immigration decisions.⁸³ Decisions are often communicated using poor quality refusal letters that do not engage with the evidence provided or the legal arguments presented.⁸⁴

To give an example – out of a sample of ten Home Office decision letters sent to CCLC outreach clients, four of them failed to engage with the best interests of the child or children facing possible removal from the UK. Two devoted just a couple of sentences to the impact on children and simply stated that 'it is generally accepted that the best interests of a child whose parents are facing removal from the UK are serviced by the child remaining with their family unit and remaining with them', concluding that therefore it was reasonable for the children and their parent/s to be removed. This is despite the fact that in one of the cases the applicant's child was in fact British. In the other case the children were six and five and had been born in the UK. The third decision letter, regarding a nine year old born in the UK, goes further and includes a sentence on the education provision in the child's country of origin, but it does not explore the adequacy of this provision. Nor does it look at the views of the child, their safety, access to healthcare or any additional vulnerabilities. The fourth decision letter outlined that it would be reasonable to remove the child the UK because his mother and father could also be removed with him, despite his father having leave to remain and two British national children living in this country.

Where a child or young person makes an application for leave to remain and makes representations to be granted discretionary ILR, the Home Office often fails to properly engage with the points made on ILR at all. CCLC has made several applications where representations and evidence on the appropriateness of a grant of ILR have been included, and subsequent Home Office correspondence has failed to demonstrate any proper consideration of the arguments about ILR. In particular, in cases involving

children, the Home Office frequently fails to carry out an assessment of whether a grant of ILR is in the child's best interests, which they are required by law to do. In some such cases, it has only been through the initiation (or at least threat) of judicial review proceedings that we have been able to obtain ILR for our young clients.

An indication of the quality of decision making is also given in the number of decisions overturned at appeal. Of the Home Office decisions in human rights cases appealed at the First-tier Tribunal (Asylum and Immigration Chamber), which include those brought by children and young people, 45% decisions were overturned in 2015-16, and 41% in the first three quarters of 2016-17.⁸⁵ However, to appeal a Home Office decision adequately will require legal representation, often out of reach of many children and young people.

Decision-making on discretionary citizenship applications for children has also been found to be inadequate. Research conducted by the Project for the Registration of British Citizens (PRCBC) on children's barriers to citizenship found that: 'The case notes from the disclosure files which we obtained, showed that the reasons for refusing to register a child at the Secretary of State's discretion were often contradictory and ill-thought out, generally indicating poor decision-making in children's applications.'⁸⁶ Further, the examination of collated refusal letters by the authors revealed 'a pattern of very short and nonresponsive letters, many of which were worded identically. Statements such as 'the child is not settled' and 'sufficient grounds to exercise discretion could not be found' were frequently used.' The use of stock phrases and identical refusals strongly suggests poor decision-making practices.⁸⁷

It is also getting more and more expensive to seek redress for poor decisions made by the Home Office. At the time of the publication of the PRCBC report cited above, in November 2014, a review of a refusal of a citizenship application incurred an £80 fee. In 2017 this fee rose sharply to £321 – an increase of 300%.⁸⁸

83 See, for example, MiCLU, *Precarious Citizenship: Unseen, Settled and Alone - The Legal and Protection Needs of 'Undocumented' children and young people in England and Wales*, 2017; Greater Manchester Immigration Unit, *Children's Best Interests: A primary consideration?*, 2013; Law Centres Network, *Put Yourself in Our Shoes: Considering Children's Best Interests in the Asylum System*, 2015; *OO (Nigeria)*, *R (on the application of) v Secretary of State for the Home Department* [2017] EWCA Civ 338 (10 May 2017); IA313142014 [2015] UKAITUR IA313142014 (23 October 2015); *JO and Others (section 55 duty) Nigeria* [2014] UKUT 00517 (IAC); *Tinizaray, R (on the application of) v Secretary of State for the Home Department* [2011] EWHC 1850 (Admin) (25 October 2011)

84 MiCLU, *Precarious Citizenship: Unseen, Settled and Alone - The Legal and Protection Needs of 'Undocumented' children and young people in England and Wales*, 2017, p.79

85 Table FIA.3 First Tier Tribunal (Immigration and Asylum Chamber) - Number of appeals determined at hearing or on paper, by outcome category and case type, 2007/08 to Q3 2016/17, in Ministry of Justice, *Tribunals and gender recognition certificate statistics quarterly: October to December 2016*, at <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-october-to-december-2016>

86 See Project for the Registration of Children as British Citizens (PRCBC), *Systemic obstacles to children's registration as British citizens: Legal research report*, November 2014, at <https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf>

87 PRCBC, *Systemic Obstacles to Children's Registration as British Citizens*, November 2014

88 Immigration, asylum and nationality fee levels 2017-18, available at: <https://www.gov.uk/government/publications/visa-regulations-revised-table>

One factor that has become increasingly significant in citizenship applications is the use of an established test for 'good character'. This applies to all registration applications made by someone aged 10 years or over by virtue of section 41(A) of the British Nationality Act 1981, except for some cases involving applicants who are stateless. The Home Secretary must be satisfied the applicant is of 'good character' if citizenship is to be granted. Following criticism by the Independent Chief Inspector of Borders and Immigration⁸⁹ in 2014, the guidance on the good character test for adults was tightened in 2015 but there is no separate good character guidance for children and young people. Decision-makers are told to look at the guidance for adults.⁹⁰ The case of *R (SA) v SSHD*⁹¹ held that even prior to the criticisms of the Chief Inspector, children's applications were routinely refused solely on the basis of criminality. It has been argued that applying good character guidance with no distinction between adults and children 'constitutes a serious failure to recognise, still less give effect to, what it means to fully and individually consider the applicant's character' and that generic refusals to citizenship applications are commonplace.⁹²

Length of leave granted

Even where leave is granted, either by the Home Office or at appeal, it is now for very short periods of time, often with no recourse to public funds, and with very long routes to settlement. For example, a young person who has lived at least half their life in the UK will still only be granted an initial period of leave for 30 months and will not be entitled to indefinite leave to remain until they have accumulated ten continuous years of such leave, requiring a total of five applications to be made costing up to £8,269 at the current rates.⁹³ This not only creates an extremely long route to settlement, but also needlessly increases the burden on Home Office administration. The very youngest that an undocumented child could anticipate receiving settlement under long residence would be at 17 years old.

The courts have held in relation to an old policy that there are problems with the Home Office granting short periods of leave without considering a child's need for stability and their best interests,⁹⁴ and that 'where there is strong evidence to suggest that the child's life would be adversely affected by the grant of limited leave', ILR should be granted.⁹⁵ In spite of this, however, the new system of short periods of leave and drawn-out routes to settlement persists. The discretion to grant ILR is contained in the old and the new policies, but children, young people and families may be unaware of this and in practice it is not operating in such a way as to ensure long-resident children and young people can secure permanence.

A young person on a ten-year route to permanent status (ILR), with five applications and fees of up to £8,269 is effectively cut off from university. They can work, but unless the Home Office consider it appropriate, they will not be able to claim any benefits, social housing or homelessness assistance. Despite it being accepted that they are integrated members of their communities who cannot be expected to leave the UK, they are not given the permanence needed to plan for their futures and contribute to the society that is their home.

89 Independent Chief Inspector of Borders and Immigration, *An Inspection of Nationality Casework*, April-May 2014 at <http://icinspector.independent.gov.uk/wp-content/uploads/2014/12/Nationality-Report-web.pdf>

90 Chapter 9 of the Nationality Instructions
91 [2015] EWHC 1611 (Admin)

92 Legal Voice, *British citizenship for young migrants – and 'bad character' provisions*, 24 June 2016, at <http://www.legalvoice.org.uk/british-citizenship-for-young-migrants-and-bad-character-provisions/>

93 This figure has been calculated using 2016 fee levels. However, fees tend to rise at the beginning of every financial year. Detailed information on current fee levels can be found on the gov.uk website, available at: <https://www.gov.uk/government/publications/visa-regulations-revised-table>.

94 *SM & Others v Secretary of State for the Home Department* [2013] EWHC 1144

95 *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills* [2014] EWCA Civ 1216, para 78. It was felt that the Applicant's life would indeed be so adversely affected because of her inability to embark on a course of study at the right time in her life and was of the view that had she been able at the time, the appellant could have 'applied for ILR on the grounds that she would not otherwise have been eligible for student funding at an appropriate age and had she made clear her situation and the strong likelihood, if not certainty, that she would anyway be entitled to ILR in 2018, she ought, all other things being equal, to have been entitled to have been granted it at once.'

Removal

When looking at the number of undocumented children and young people in the UK it is important to note that every year some will be removed from the UK, or will depart on a voluntary basis. However, the published figures for removals do not disaggregate data by the immigration status previously held by the individual being removed. What data there is available on removal and departure show low numbers of enforced removals: there were 223 children removed in 2012, and 93 removed in 2015. This is borne out in data from Cedars pre-departure accommodation, where in the final year of operation (2016) 16 families were held, and only two were removed. Of the 74 children held across the detention estate in 2016, only 17 were removed.⁹⁶

Numbers of children (within families) returning voluntarily is higher, and rising: from 1,603 in 2012 to 2,314 in 2015. While the number of young people (18-24) being returned forcibly over the same period shows the same decreasing trend, the number of young people who undertook voluntary return has not risen correspondingly. The number of 18 to 24

year olds undertaking voluntary return in 2015 was lower than it was in 2012. In all, in the period 2012-2015, 595 children were removed from the UK, and 7,564 left on a voluntary basis.⁹⁷ This figure is far higher for young people, with 11,879 removed, and 20,265 leaving voluntarily.

Some of the children removed, particularly those with families, may have had an entitlement to citizenship that was not realised while they were in the UK. Children who met section 1(3) of the British Nationality Act, as well as those whose may have lost contact with parents who subsequently became British (section 1(4) British Nationality Act) will have had an entitlement to register which they lost as a result of their removal or voluntary departure.

Even if it were legally possible, forced removal as a means of addressing the number of children and young people with uncertain status in the UK would be prohibitively expensive. At a cost of £13-15,000 per individual, removing just 10% of the estimated number of children would cost over £15 million.⁹⁸

96 Home Office, National Statistics: detention, February 2017, available at: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/detention>

97 Returns tables - rv_04 to rv_04_q: Returns by country of nationality, age and sex

98 Home Office, UK average cost involved in detaining each illegal immigrant, November 2013, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253981/28426_UK_average_costs_involved_in_detaining_each_illegal_immigrant.pdf

Conclusion

Children and young people who have grown up in the UK are, in general, socially integrated members of our communities. However, many of these children are living in the UK without regular immigration status or with only short-term permission to be here. They are trapped in a vulnerable and precarious state by the laws and policies that determine their access to permanent status.

The challenges facing children and young people with claims to regularise on the basis of long residence raise questions about whether the UK is meeting its domestic and international legal obligations to children. The UK government has a sovereign right to manage immigration and control its borders, but the development of a more effective immigration system should include support for long-term resident children and young people to engage with immigration and nationality systems which are fair, efficient, affordable and accountable.

Assistance in accessing routes to regularisation should be available to all children and young people through, for example, confidential support at college, within local authorities and through specialist legal advice. As a result, communities will benefit from the full economic and social contribution of newly-enfranchised and motivated young citizens already in their midst.

Britain aspires to fulfil its obligations in international law and promote transparency and equality in access to justice. Improving compliance in the immigration system must go alongside a sensible approach to long-term residents of our communities, especially children and young people.

In order to achieve this for children and young people, the following suggestions for improvements in law and policy could usefully be explored:

Recommendations

Home Office policy and decision making

1. A shorter route to permanent status for long-resident children and young people and lower application fees.

For those who make an application based on their long residence and for whom it is recognised that they should be able to remain in the UK, there must cease to be such a prolonged period during which they are granted only temporary leave, with a high risk of falling out of the system again. Children and young people who are granted leave need a shorter route to permanence and citizenship. Waiting ten years and paying £8,269 before they get ILR (and then another £973 for citizenship) is pushing children and young people into the shadows and hindering their full integration and participation in society.

2. Better Home Office decision-making on children and young people's long residence cases in line with established law.

UK courts have recognised that immigration control may be in the public interest, but so is upholding the welfare of children.⁹⁹ The Home Office should ensure that its policy and guidance accurately reflects developments in case law

and that all caseowners working on cases involving children receive training on how to make best interests assessments, and where possible this should make provision for interaction with young people who have been impacted by immigration control. It would be expected that improved decision making would result in increased numbers of children granted discretionary ILR, including, for example, children in care.

3. Change the policy on granting citizenship to long-term residents of the UK so that children are not arbitrarily excluded on 'good character'

The policy on good character for children applying for registration as British citizens should be reconsidered. More weight should be placed on evidence provided about the child's character, rather than a record of any convictions, cautions or warning the child may have received. The Home Office should radically revise its current position on 'good character' to at least ensure that any child otherwise entitled to citizenship whose best interests lie in continued residence in the UK is not precluded from citizenship by that test, or to revise the guidance so that specific consideration is given to children's welfare before exclusion under the test.

⁹⁹ Paragraph 33, *H(H) v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25.

Fees

- 4. The fee waiver policy should be amended so that eligibility is assessed on means and fee waivers are available for children and young people's indefinite leave to remain applications and citizenship applications.**

The current fee waiver policy is too complex to allow for meaningful use by those who cannot afford immigration application fees. A far simpler system, using a means assessment, would ensure that fewer children and young people are 'trapped' in their irregular status. For those who have no possible way to pay, there is at present no fee waiver available for either ILR or citizenship applications. The high level at which the fees are currently set, and the speed with which they have risen in recent years, gives the impression of settlement and citizenship as illusory rights, out of reach for many who qualify. There should be a policy under which those who cannot pay can apply for a fee waiver, as with other Home Office applications.

- 5. Children in care are exempt from paying Home Office fees for immigration applications and appeal fees. These exemptions must be extended to citizenship applications, and should be expanded to apply to care leavers and those supported by the local authority.**

Introducing a fee exemption for citizenship applications made by children in care would not only prevent wasteful resource transfer between local and national government, but would also give social workers the tools they need to plan for permanence for children in care where costs might previously have clouded the issue. Many local authorities already cover fees for care leavers who are no longer exempt upon turning 18, and expanding the current exemption in place for immigration applications and tribunal fees to cover care leavers would take away the postcode lottery and provide fairness and consistency.

- 6. Remove the profit element of the fee in children's citizenship by entitlement cases**

The Home Office should remove the profit element in cases of registration by entitlement under the British Nationality Act 1981. In these cases the child is entitled to British citizenship and the Secretary of State is being asked to recognise the rights determined by parliament. Children should be able to apply without penalty or discrimination.¹⁰⁰

Legal advice and representation

- 7. An urgent review of children and young people's needs for legal services and at least the reinstatement of legal aid for separated children's immigration cases.**

Local authorities are paying privately for separated children and young people in their care to access legal advice, resulting in a cost shift from central to local government. Even at the time that cuts to legal aid were being made, the government itself accepted that separated children with immigration cases cannot represent themselves. It is now time to heed the clear calls of the Justice Committee and others and reinstate legal aid for these children. Beyond this, time is ripe for a review of all children and young people's access to justice, with fresh thinking about how to meet the legal needs of children and young people.

Access to higher education

- 8. Home fee status and access to student finance for young people with certain types of time-limited leave.**

In 2011, the government took away home fee status and access to student finance from people with certain forms of leave. The Supreme Court case of *R (Tigere) v Secretary of State for Business, Innovation and Skills* [2015] UKSC 57 was an important victory which restored access to home fees and student finance to some young people.¹⁰¹ However, young people who do not meet the half-life requirement, which requires an 18-year-old to have come to the UK at nine, remain outside the amended regulations. These young people, who may have received all of their secondary education in the UK, are cut off and unable to pursue their ambitions. Unless the university exercises discretion, they are charged international fees. This needs to change so that young people who have grown up and been educated in the UK are no longer blocked from higher education.

¹⁰⁰ As advocated by Amnesty International UK and the PRCBC

¹⁰¹ For more details on access to Higher Education, see the CCLC fact sheet at <http://www.coramchildrenslegalcentre.com>

Support for children in care

9. Better information for social workers

The 2014 statutory guidance on the care of unaccompanied asylum-seeking children and trafficked children should be expanded to include all children of uncertain immigration status in local authority care. It must make explicit the link between a child's best interests and the resolution of their immigration status, even where there is no asylum claim. In anticipation of the UK's departure from the European Union, the guidance should also highlight to local authorities the need to secure status for EU national children in care.

10. Improved local authority practice through training and designated social care leads

Every local authority should ensure its staff working with children are trained and equipped with a basic understanding of the immigration system and processes in order to help them better support the children in their care. Every local authority should designate a named social care lead on migrant children and young people, including asylum seekers and those who are undocumented.

Improved policy and practice

11. Publishing more disaggregated data on children and young people's human rights and citizenship applications and outcomes

Access to disaggregated data on numbers of applications made by or for children under, for example, human rights routes would increase transparency of government and allow both government and support organisations to better understand the scale of need faced by this group of children in the UK. This data is already captured, and is published in an aggregated form. However, it is insufficient to gauge the number of children in the UK on limited forms of leave, which is vital information for groups working to support children in this situation.

12. Collaborative working at a local level to identify opportunities for good practice

The new role of Deputy Mayor for Citizenship and Integration in London provides a valuable opportunity for children's citizenship rights to be championed and promoted throughout the city, and a template for other devolved authorities.

The Deputy Mayor could also have valuable input into existing local authority and civil society networks related to the care and support of children in London subject to immigration control. London local authorities could also be both celebrated for their work helping children that they support or accommodate to be registered as citizens and held accountable for any failure to do so.

Every opportunity should be taken to listen to and respect the voices of young people subject to immigration control when considering amendments to the current system. Children's and young people's voices can and should inform policy developments in the years to come.

APPENDIX I: Home Office data

The changes that the government made to the Immigration Rules in July 2012, including the creation of a default ten-year route to settlement even once an applicant has already established long residence in the UK, have significantly increased the size of the pool of people who will hold temporary leave and be waiting for a very long period before they can achieve permanence (settlement or citizenship). It is difficult to compile accurate statistics relating to children and young people with forms of limited leave to remain and with indefinite leave to remain (ILR) or citizenship due to limitations in official data. Many children and young people in families go through the immigration system as students, workers or family members and move from entry to settlement. These are reflected in Home Office statistics. However, those who move from undocumented status to settlement based on the long-term residence in the UK are not covered. Complete data for 2016 is also not yet available. From the available data we can surmise that in the years 2012 to 2015:

- 1,592 children and 3,882 young people were granted (non-asylum) Discretionary Leave
- 783 children and 1308 young people were granted Discretionary Leave following an asylum claim
- 709 children and 1,172 young people were granted leave primarily on the basis of their right to private life
- 6,160 children were registered as British under section 1(4) of the British Nationality Act 1,981
- 8,189 children and 32,144 young people underwent enforced removal from the UK or undertook voluntary departure

A more detailed summary of the available data is as follows:

Table 2: Discretionary leave (old and transitional cases, as well as some new cases where the Home Office still grants discretionary leave)

Grants of discretionary leave are recorded in two categories in the published Home Office statistics, non-asylum-related grants and asylum-related grants. According to statistics received in response to a CCLC Freedom of Information request, total non-asylum grants of discretionary leave were as follows:

	Total non-asylum grants of discretionary leave ¹⁰²	Of which under 18 at date of decision	Of which 18 to 24 at date of decision	Of which 25 and over at date of decision	Age not recorded
2012	9,480	687	966	7,815	12
2013	12,423	304	1017	11,097	5
2014	12,786	340	1152	11,291	3
2015	9,482	261	747	8,470	4

Estimated number of children granted non-asylum discretionary leave, 2012-15: 1,592
Estimated number of young people (18-24) granted non-asylum discretionary leave 2012-15: 3,882

¹⁰² Table ex_02_o: Grants of an extension of stay by category and country of nationality, excluding dependants: Other

Table 3. Grants of discretionary leave or limited leave following an asylum claim

The Home Office records that the following numbers of children who arrived unaccompanied and claimed asylum were granted either discretionary leave or UASC leave until the age of 17 ½:¹⁰³

	Grants of discretionary leave post-asylum claim to children under 18 ¹⁰⁴	Grants of limited leave as a UASC post-asylum claim to children under 18 ¹⁰⁵
2012	342	0
2013	380	119
2014	23	380
2015	38	809

Table 4. Grants of further discretionary leave or limited leave to remain to young people who were granted temporary leave following an asylum claim

The following numbers of young people who arrived unaccompanied and claimed asylum were granted either discretionary leave or UASC leave were granted a further period of leave turning 17½:¹⁰⁶

2013	277
2014	441
2015	495
Total	1,213

Estimated maximum number of children and young people who sought asylum and were subsequently granted a temporary period of leave of remain¹⁰⁷: 3,304

103 Table as_09: Initial decisions on asylum applications from Unaccompanied Asylum Seeking Children, excluding dependants, by sex and age at initial decision table

104 Table ex_02_o: Grants of an extension of stay by category and country of nationality, excluding dependants: Other

105 Table ex_02_o: Grants of an extension of stay by category and country of nationality, excluding dependants: Other

106 Figures taken from Freedom of Information request response to CCLC

107 Total figure likely to be lower because of crossover between individuals counted in tables 2 and 3

Table 5. Limited leave to remain granted under paragraph 276BE(1) on the basis of meeting the private life requirements of paragraph 276ADE of the Immigration Rules

According to statistics published by the Home Office on 25 August 2016 and information CCLC obtained from the Home Office in January 2017, total grants of limited leave on private life grounds from 2012 onwards (when this type of leave was introduced) were as follows:

	Total private life grants ¹⁰⁸	Of which under 18 at date of decision	Of which 18 to 24 at date of decision	Of which 25 and over at date of decision	Age not recorded
2012	233	20	66	147	0
2013	1,959	278	581	1,099	1
2014	2,119	411	525	1,183	0
2015	3,008	851	613	1,544	0

Estimate number of children granted LLR on private life grounds, 2012-15: 1,560
Estimate number of young people (18-24) granted LLR on private life grounds, 2012-15: 1,785

Table 6. Limited leave to remain granted under Appendix FM and EX.1 on the basis of family life (ten-year route) – excluding dependants

According to statistics published by the Home Office on 25 August 2016, total grants of limited leave on family life grounds (ten-year route) excluding dependants were as follows:¹⁰⁹

	Grants of limited leave on family life grounds (excluding dependants)
2012	2,201
2013	14,551
2014	14,687
2015	17,058

¹⁰⁸ Table ex_02_o: Grants of an extension of stay by category and country of nationality, excluding dependants: Other

¹⁰⁹ Table ex_02_f: Grants of an extension of stay by category and country of nationality, excluding dependants: Family

Table 7. Applications for indefinite leave to remain for children under 18 granted on a discretionary basis

According to figures provided in response to a Freedom of Information Act request the following grants of ILR on a discretionary basis were made:

Financial Year	Granted
2012/2013	145
2013/2014	145
2014/2015	160
2015/2016	25

Table 8. Applications for indefinite leave to remain received, granted and refused for children under 18 on the basis of published Home Office policy in IDI Chapter 8, Annex M

According to figures provided in response to a Freedom of Information Act request the following grants of ILR on a discretionary basis were made:

Financial Year	Applications	Granted	Refused
2012/2013	210	185	5
2013/2014	305	270	15
2014/2015	345	315	15
2015/2016	365	340	10

Estimate number of children granted settlement on a discretionary basis and on basis of IDI Chapter 8, 2012-15: 1,685

Table 9. Citizenship grants under section 1(4) of the British Nationality Act 1981

According to Freedom of Information Act requests made by CCLC, total grants of citizenship under section 1(4) of the British Nationality Act 1981 (where someone was born in the UK and lives in the UK for the first ten years of their life) were as follows:

	Applications received	Grants	% of non-grants
2012	795	755	5%
2013	1,165	1,095	5%
2014	1,900	1,680	12%
2015	2,790	2,630	6%

Estimate number of children and young people granted citizenship, 2012-15: 5,425

Table 10. Removals

According to government data, the numbers of children and young people who were removed from the UK or who departed voluntarily from 2011-2015 were as follows:¹¹⁰

	Enforced removals (under 18)	Enforced removals (18-24)	Voluntary return (under 18)	Voluntary return (18-24)
2012	223	3,486	1,603	5,897
2013	187	3,183	1,876	5,596
2014	92	2,783	1,771	4,456
2015	93	2,427	2,314	4,316

Estimate number of children removed, 2012-15: 595

Estimate number of young people (18-24) removed, 2012-15: 11,879

Estimate number of children returning on a voluntary basis, 2012-2015: 7,564

Estimate number of young people (18-24) returning on a voluntary basis, 2011-2015: 20,265

Unavailable data

The Home Office has confirmed that it cannot provide statistics on the following:

- Leave outside the rules granted under paragraph 276BE(2) on the basis of Article 8 ECHR
- Indefinite leave to remain granted to children under 18 on the basis of 6 years discretionary leave outside the rules

¹¹⁰ Returns tables - rv_04 to rv_04_q: Returns by country of nationality, age and sex

APPENDIX II: Legal Aid Agency data

According to a Freedom of Information Act request made by CCLC in February 2016, the total number of applications for and grants of exceptional case funding (ECF) for immigration cases is below. The ECF scheme commenced in April 2013. However, data on age of the applicant was only recorded from October 2013. The data is disaggregated by age of principle applicant; the Legal Aid Agency refused a request to include a breakdown of cases where an application is made by a parent but where there is a child or children linked to the application.

Table 11. Applications received for immigration ECF, by age of applicant, October 2013 to December 2016

	0-10	11-17	18-21
Oct 13 - Mar 14	0	0	8
Apr 14 - Mar 15	7	7	21
Apr 15 - Mar 16	4	11	30
Apr 16 - Dec 16	9	42	45

Table 12: Applications granted for immigration ECF, by age of applicant, October 2013 to December 2016

	0-10	11-17	18-21
Oct 13 - Mar 14	0	0	0
Apr 14 - Mar 15	0	4	5
Apr 15 - Mar 16	4	8	23
Apr 16 - Dec 16	7	33	35

Table 13: Applications for ECF for immigration cases¹¹¹

Financial Year	Applications Received	Granted
2013-14	234	4
2014-15	334	57
2015-16	493	326
April – Dec 2016	724	491

111 Legal aid statistics England and Wales tables, Oct to Dec 2016

Table 14: Applications for ECF disaggregated by outcome¹¹²

Financial Year	Applications Received	Granted	Refused	Rejected ¹¹³
2013-14	1,516	70	1,048	387
2014-15	1,172	226	680	255
2015-16	1,344	661	359	294

Table 15: Applications for ECF disaggregated by type of applicant¹¹³

Financial Year	Applications	Made by provider	Made by individual
2013-14	1,516	1,438	78
2014-15	1,172	1,117	55
2015-16	1,344	1,182	162

112 Legal aid statistics England and Wales tables, Oct to Dec 2016

113 Ministry of Justice guidance on applying for exceptional case funding states that incorrect or incomplete evidence remains a common reason for applications being rejected.

114 Legal aid statistics England and Wales tables, Jul to Sep 2016

APPENDIX III: Case Studies

The need for timely quality legal advice

(a)

Omar is a 17 year old who arrived in the UK as a young boy and has been in local authority care, following his mother's death, since the age of 8. His brother, who is six years older, also went into care. Both were placed in foster care under section 20 of the Children Act 1989, rather than a full care order, and very little was done to address the Omar's immigration status until he was 15, when an immigration application was finally made. Despite living in the UK for over ten years, with no family to return to, Omar was only granted limited leave to remain for 2½ years. He will need to reapply for leave a further three times, until he is eligible to apply for indefinite leave to remain at the age of 26. He will be ineligible for student finance so if he wants to go to university he might only be able to if the local authority pays his costs.

Omar wants to become British. He doesn't feel 'safe' in the UK due to his temporary status. If he had received good immigration legal advice earlier in life he could have settled status by now. But the local authority, acting as his corporate parent, failed to secure high quality legal advice for him at the earliest opportunity.

(b)

Ali arrived in the UK with his parents from Pakistan when he was two years old. At the age of nine he was taken into care following serious child protection issues. Care proceedings followed and a care order was granted to the local authority. In the meantime, Ali was placed in foster care and started attending a new school. Ali had no leave to remain as his parent's leave had run out a few months prior to his being taken into care. He could not go on a holiday with his foster carers as he did not have his passport. The local authority paid for immigration legal advice for Ali and he was assisted to make an application for leave to remain, with strong arguments made about why Ali should be granted indefinite leave to remain. Ali was lucky: social services saw that his long-term future was in the UK, and that it would cause further uncertainty and confusion in Ali's life to delay.

The Home Office granted Ali indefinite leave to remain. His foster carers had a strong bond with Ali and he called them mum and dad. He said he was part of the family and felt that he was British like his family, not Pakistani. We assisted Ali to make a discretionary application for British citizenship with the support of the local authority. Ali was granted British citizenship and obtained a British passport.

'Falling out' of regular status

Agnes is 20 and has been in the UK since she was nine. She had lawful leave for over eight years, had gone through the education system and was making plans to attend university. Her family were unable to afford full legal advice and representation at the time she turned 18 and needed to renew her visa with the family. Without advice, the family made the wrong application for her and her application was rejected as invalid. Finally her parents saved enough to pay for legal representation and her appeal was allowed on the basis of her private life. However, she was only granted limited leave to remain for 2 ½ years.

As there was a break in her status of about four months, it will now take Agnes a long time to reach settlement from the new grant of leave, even though she previously had eight years leave to remain and has lived here for over half her life. Although she has an offer of a place to study biochemistry, she has, for now, been blocked from going to university: due to the break in her leave she was unable to obtain student finance.

Fee waivers

Hannah was brought to the UK 15 years ago and forced to do unpaid domestic work for a family she did not know. She ran away, but then entered into a relationship with a man who quickly became abusive and controlling. He refused to assist Hannah to regularise her status, and would threaten her with being reported to the Home Office if she did not obey him. Over the years they had three children, but the domestic violence increased, including both serious physical and sexual violence against Hannah, and significant control over her actions. She was not permitted to register with a GP or access hospital services, and her youngest daughter was born at home without any support. Hannah was actively discouraged from regularising her status, or from staying in touch with friends or family.

Finally, after 13 years, Hannah disclosed some of the abuse to her step-sister who called the police. The police took statements and put them in touch with a domestic abuse support organisation, but when they were made aware that Hannah did not have a visa they told her they could not assist her any further. With legal support, Hannah was eventually supported by the local authority and put in touch with CCLC for assistance to make an application for leave on the basis that one of her children had lived in the UK for over seven years, and the other two children were British by birth. Due to Hannah's destitution, a fee waiver application was also made. The application explained Hannah's history in detail, and included supporting evidence from the police, the local authority (detailing the financial support provided)

and the domestic violence support organisation, as well as a signed statement from the step-sister explaining in detail why she was unable to support her sister any further. It was also explained the Hannah did not have any bank accounts because he ex-partner did not permit her to have one.

The fee waiver application was rejected. The rejection letter stated that Hannah had '*failed to provide evidence to demonstrate that [she was] destitute*' and did not provide '*sufficient information relating to your client's monthly expenditure and current sources of income to enable a full assessment of their finances*'. The letter also included two generic 'copy and pasted' paragraphs referring to bank statements that had been submitted, despite the fact that no bank statements were submitted.

On Hannah's behalf, we wrote a detailed letter to the Home Office asking them to reconsider their decision. The response was a form IS.96, stating that Hannah was liable to be detained because "*you are a person without leave who has been served with a notice of liability to removal*". We then issued the Home Office with a formal pre-action letter, repeating our previous representations. It took three further letters to two different Home Office teams, countless hours of work by a solicitor working pro bono, and four months to secure the fee waiver necessary for Hannah to make her application. If successful, she is still only likely to be granted leave for a temporary period, and be on a ten year route to settlement, meaning she will have to go through all of this again.

The impact of being undocumented as a child

Clare came to the UK from Nigeria when she was four and has lived here ever since. Because she came to the UK so young, Clare grew up not knowing that she was undocumented. She assumed she was British and in the same position as her friends at school. Clare's mother began the process of trying to regularise the family's status around the same time that Clare began secondary school, but received poor advice from unregulated solicitors. As a result, the family were still undocumented by the time Clare sat her GCSEs. She nevertheless got excellent grades and began to think of university, where she wanted to study psychology or the law. Her choices of subject were heavily indebted to her childhood experiences of poor legal advice and the subsequent deterioration of her mental health.

As she studied for her A levels and made her application to UCAS, Clare realised that her status would stop her from

going to university, and her mental health suffered badly. She nevertheless sat her A levels and got good grades, but these grades were not enough to overcome the fact that she could not get a student loan because of her immigration status, and could not work to support herself.

Unable to work, and so unable to pay for a private solicitor to take on her case, Clare was finally assisted by a pro bono solicitor when she was 20 and had been in the UK for 16 years, but she was only granted leave to remain for two and a half years just before her 21st birthday. She will finally be able to go to university when she is 24 and has had three years' continuous lawful residence. She is on a ten-year route to settlement, and will not be able to apply for indefinite leave to remain until she is 30 years old.

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