



The impact of the 'hostile environment' on children and young people today

Debate on people who entered the UK as minors between 1948 and 1971

30th April 2018

Introduction

The Children's Society and Coram Children's Legal Centre briefing contributes to this debate by highlighting the impact that the 'hostile environment' is having on generations of children and young people. The Home Secretary highlighted that the 'Windrush' scandal *'is about individuals, people who have built their lives in the UK'*. While her subsequent commitments to resolving all 'Windrush' cases within two weeks, setting up a special unit and waiving all fees for documentation are welcome, it is clear that much more must be done if we are to address the needs of *all* the long-settled individuals currently suffering as a result of a hostile immigration system.

As leading national children's charities, in the last six years our research and policy work with government and parliamentⁱ has attempted to highlight the devastating impact of the 'hostile environment' on children and young peopleⁱⁱ. This package of measures designed to make life so difficult for individuals without papers that they will leave the UK, has also devastated thousands of children and young people who have grown up here in the UK, many from Commonwealth countries themselves having come here into established communities. These measures have left the 'Windrush' generation cut off from employment, housing and healthcare while also leaving a new generation of young people unable to work, unable to open a bank account or drive a car and effectively barred from college, university and secondary healthcare.

Key messages

- There are an estimated 144,000 undocumented migrant children living in England and Wales, the majority in urban areas like London and the West Midlandsⁱⁱⁱ.
- Undocumented young people like the 'Windrush' generation, came to the UK as children or were born here, through no fault of their own. Now they find themselves entangled in a complex immigration system living a precarious existence because of the restrictions and barriers set up to prevent them from accessing vital public services such as NHS secondary healthcare and private services like rented accommodation.
- An increasingly complicated process for immigration applications, the toughening of the immigration rules making it harder and more onerous to regularise status, steep increases to fees for applications and no legal aid for immigration cases has meant that thousands of children remain undocumented. The government has in effect done the opposite of tackling irregular migration by perpetuating young people's precarious status.
- Settlement application fees have increased by 127% to £2,389 since 2014. With the NHS surcharge rising to £1,000 later this year, if a young person wants to regularise and settle here, they will need to make five applications, wait ten years and pay over £10,000 before they can obtain settled status.
- Some have been threatened with forced removal to places that are foreign to them or where they have no connections to and where they would be destitute; this is the only home they know. Some

ⁱ Oral evidence to the Immigration Bill committee on Tuesday 20 October 2015 by Ilona Pinter, The Children's Society and Kamena Dorling, Coram Children's Legal Centre: <https://publications.parliament.uk/pa/cm201516/cmpublic/immigration/151020/pm/151020s01.htm>

ⁱⁱ Coram Children's Legal Centre (2013) ['Growing Up in Hostile Environment: The rights of undocumented migrant children in the UK's hostile environment'](#)

ⁱⁱⁱ The Children's Society (2016) ['Making Life Impossible: How the needs of destitute migrant children are going unmet'](#)

have experienced destitution^{iv}, domestic violence, social exclusion and exploitation as a result of their precarious status and inability to rectify their situation.

- In many cases, undocumented young people *do* have a legitimate right to be in the UK and may even be British citizens. But the exorbitant application fees and lack of legal aid to help them understand their rights and present their case to the Home Office in a fair and comprehensive way mean that they remain trapped in legal limbo, unable to move on with their lives, go to university, work with permission and prevent their integration into society.

Complexity of immigration status

The government's rhetoric has been that individuals are either here 'legally' or 'illegally', however, in reality the process of determining someone's immigration status is complex and requires specialist legal advice, particularly where children are concerned. Over half of all undocumented children were born in this country while others who came here with their parents or to stay in private fostering arrangements arrived lawfully on visas but have overstayed. Children's rights under immigration and nationality law are different to adults and therefore very often their status may be different. For example, children have a right to register as British citizens which adults do not, and children will have different rights under the immigration rules than their parents. These family circumstances influence why a family would have a right to and would want to remain in the UK, and where this would be in their children's best interests.

Claire – a lone mother from Jamaica with two young children^v

Claire was referred to The Children's Society because she was homeless and destitute, and was pregnant at the time. She is a Jamaican national who was sent to the UK as a child when she was 12 years old to stay with her older sister following the death of her father. She came to the UK on a visa. But she was kicked out of home at 14 and began selling sex in order to survive. She was abused by older men but stayed with them because she had no place to go. She then became pregnant. When she came to The Children's Society she did not know her immigration status. With support from a partner organisation she received free immigration advice to put in an application for leave to remain in the UK as this was before 2013 when legal aid was removed for all non-asylum immigration cases. She was eventually found to have a lawful reason to be in the UK even though she had been undocumented for some time. She was granted leave to remain. During the interview she told us: *'I wish I could've stayed in Jamaica. Maybe I would've survived. But I'm so much older now. I can't go back. How would I survive with my children?'* This highlights the difficult choices that families have to make to ensure their children are protected.

Damage done by cuts to legal aid

Despite having legitimate reasons for being in the UK, many undocumented children will not be able to regularise their status or obtain citizenship to settle due to financial barriers and a lack of legal aid. It has become infinitely more difficult for children to know their rights and evidence them without legal aid for immigration cases. In 2013 legal aid was removed for all non-asylum immigration cases, including for cases involving separated and unaccompanied migrant children. This means that all children and young people no longer have access to free legal advice about their options, help to gather evidence and make representations on their behalf to the Home Office about their claim for leave to remain or citizenship. It means thousands of children, including those that have grown up here, are unable to regularise their status or gain citizenship. By cutting legal aid and creating barrier to regularisation, the government has in effect done the opposite of tackling irregular migration by perpetuating young people's precarious status.

Yemi – separated and undocumented young person from Nigeria^{vi}

Yemi was 9 years old when she came to the UK from Nigeria to stay with an aunt. She was told by her mum that her visit was a holiday but shortly after her arrival, her mum went missing and Yemi had no contact with her mum since. She has always thought that she was British and only recently found out, at the age of 17, when applying for university that she wasn't. Anxious about her lack of status, she immediately set about trying to secure legal support to help her regularise her status. She relied upon a friend in a similar situation to recommend lawyers to her. Yemi knew that the stakes were high and she

^{iv} The Children's Society (2015) ['Not Just a Temporary Fix: The search for durable solutions for separated migrant children'](#):

^v The Children's Society (2012) ['I don't feel human'](#)

^{vi} The Children's Society (2015) ['Cut Off From Justice'](#)

feared removal to a country that she no longer knew. She needed legal advice to support her through her application for leave. She became terrified all the time. She was not only fearful of her application being rejected, but also about raising the funds to pay for her lawyer which totalled £3,000. In the end her application was rejected and she was faced with the prospect of the uncertainty of further costs to appeal the refusal. She was faced with a process that was even more complex, intimidating and unrealistic in terms of costs. Her college attendance and work were severely impacted. In addition to all these burdens, as soon as she turned 18, she was sent letters and texts from Capita warning of her impending return and emphasising her 'illegal' stay in the UK.

Unfair financial barriers

Many undocumented young people have grown up in the UK without realising that immigration is even an issue, their lack of regular status only becoming evident at critical junctures in their lives such as trying to secure their first job or access higher education. Many are British citizens but are just unable to apply for the documentation to prove it because of staggeringly high fees. For example, children who are entitled to register as British citizens, which is a unique right for children, have to pay £1,012 for this application, of which £639 (63%) represents profit to the Home Office. Fees are also a problem for those who have other legitimate reasons to remain in the UK but are prevented from establishing their status. Home Office immigration fees for limited leave to remain have increased by 79% between 2014 and 2018 to £1,033 per person and an application for 'indefinite leave to remain' in the UK, which often marks the end of an individual's immigration journey, has increased by 127% to £2,389 during this time.^{vii} In addition, they will also have to pay the NHS surcharge which will be £1,000 from later this year. If young people are successful in gaining permission to stay, they will be granted leave for 2 ½ years and will need to make five applications, **wait ten years and pay over £10,000 before they can obtain settled status.** This figure does not include the cost of paying for legal advice which can also be in the thousands. These fees pose huge, insurmountable financial barriers for many young people and their families who are often living in poverty and cannot afford these kinds of costs. As a result these 'hostile environment' measures are leaving thousands of young people trapped in a precarious legal position, some facing homelessness, destitution, an inability to study or work, and possible exploitation as they transition to adulthood.

Esther – a young undocumented person from Nigeria

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 (currently £1,533 in total). Therefore she remained undocumented but is lawfully in the UK and her daughter has no documents to prove that she is a British national unlike her mother. As there was no legal aid available for her immigration claim, Coram Children's Legal Centre took on her case pro bono. Her solicitor advised her exactly what evidence to obtain, and assisted her to collate 53 items in support of her application. She 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 but she was only 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'. If she fails to make one of those further applications, she will fall back out of the system and find herself undocumented again.

A new approach is needed after Brexit

The Windrush crisis has also highlighted the problems of particular relevance to EU migrants in the wake of Brexit. Many of these individuals came to the UK decades ago, as citizens, under free movement rules and

^{vii} An application for Indefinite Leave to Remain was £1,051 per person in 2013/14 and has increased to £2,389 in 2018/19: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697987/Gov_uk_fees_revision_2018.pdf

without the need for regularisation and documentation. Many may have extensive gaps in their documentation, or lack documentation because they arrived in the UK as children (or are children separated from their families). In 2016, 679,000 European national children under the age of 18 resided in the UK, 38% of whom were born in this country. We have repeatedly raised concerns that some of these children will fall through the gaps to become undocumented.^{viii} The guarantee of settled status for those EU citizens who have lived in the UK for five years is still provisional, and will require that the British immigration authorities do not apply the same policies as under the 'hostile environment' to those who status becomes uncertain or make the same kind of errors they have made in relation to Windrush. And these errors are not isolated - last August for example, it emerged that the Home Office accidentally sent at least a hundred letters wrongly threatening EU nationals with deportation.^{ix} As Brexit negotiations continue, and we wait to fully understand the future settled status of EU children and families in the UK, it is more important than ever to ensure that children and young people who have grown up here are able to have secure status and build their futures in this country. Unless urgent steps are taken to ensure that we have an immigration system that is fair, accessible and affordable, we can look forward to many more Windrush scandals in the future, with thousands of young lives ruined.

Recommendations

- Remove the profit-making on children's citizenship applications: children who apply for registration as a British citizen by entitlement are simply registering a right that they have already been given by Parliament.
- Fee waivers should be available for all children in families and young people in all immigration applications, for those who cannot afford to pay the high fees, and for all children's indefinite leave to remain and citizenship applications.
- The government should freeze the fees for leave to remain pending an independent review of the impact of high fees on young migrants. This review should take into account how the high fees can prevent young migrants from staying on the 10 year route to settlement.
- The government should amend its policy to apply the 'no recourse to public funds' condition on leave granted to families with dependent children to make sure that no child is left homeless or destitute and growing up in extreme poverty as a result of Home Office policy.
- The government should ensure that all children in England and Wales can get free legal advice and representation for their immigration and citizenship cases, and urgently reinstate immigration legal aid for all separated and unaccompanied children and young people.

Suggested questions to the Minister

- What assessment has the Minister made of the impact of the government's 'hostile environment' policies on over 100,000 undocumented children and young people living in the UK?
- What discussions has the Minister had with Justice Ministers about the impact of legal aid cuts to non-asylum immigration advice and representation on children and young people? What assessment has been made on the impact of taking immigration out of scope for legal aid on the quality of applications submitted to the Home Office from applicants who don't have the benefit of legal advice and representation?
- When families are being forcibly removed from the UK, how does the Home Office check whether there are any British children within the family who have not been able to secure their documents or proof of citizenship and how does it respond in these cases?
- Will the Minister consider waiving the profit element of the British registration fee for children's applications? Can she explain how this is consistent with her duty under s.55 of the Borders, Citizenship and Immigration Act 2009 to promote the welfare of children within its nationality function?

For more information please contact: Ilona Pinter, The Children's Society
(ilona.pinter@childrenssociety.org.uk / 07713 878 207) or Kamena Dorling, Coram Children's Legal Centre (Kamena.Dorling@coramclc.org.uk / 07828 189 354)

^{viii} http://www.childrenslegalcentre.com/wp-content/uploads/2017/08/CCLC-briefing-EU-children_November_2017_Final.pdf

^{ix} <http://uk.businessinsider.com/home-office-accidentally-threatened-to-deport-100-eu-nationals-2017-8>