

**Chief Inspector of Borders and Immigration review of Home Office fees
Evidence from Coram Children's Legal Centre and Let Us Learn, July 2018**

Let Us Learn is a youth-led campaign group made up of 900 migrants aged 16-24, supported by the award-winning charity Just for Kids Law.¹ Let Us Learn launched in 2014 in response to a policy change which meant that many of us with insecure immigration status were ineligible to apply for student loans and could not continue our education. Since then, we have continued to campaign on access to student loans but have also focused on the high cost of leave to remain and citizenship applications. Let Us Learn's campaigns are planned and delivered by young people with lived experience of the UK immigration system. We are devoted to empowering others in similar situations to lead while campaigning to remove the systemic barriers that make it difficult for them to thrive in the country they call home.

Coram Children's Legal Centre (CCLC),² part of the Coram group of charities, is an independent charity working in the UK and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. The Migrant Children's Project at CCLC provides specialist advice and legal representation to migrant and refugee children and young people on issues such as access to support and services. CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the European Court of Human Rights, the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children's rights and best interests.

1. Introduction

Coverage of the 'Windrush' cases has shone a light on the barriers facing individuals who came to this country as children and are entitled to remain in the UK but struggle to regularise their status. This problem extends to other generations, including the undocumented children and young people living without status in the UK today. The Home Office does not have statistics on those living in the UK without leave to remain and the best estimate we have at present is the University of Oxford's figure from 2012 that there were 120,000 undocumented children in the UK, 65,000 of whom were born here.³ Home Office data is extremely limited but research by Coram Children's Legal Centre (CCLC) last year estimated that only 15% of the estimated number of undocumented children had been able to regularise their status or had left the UK.⁴ These young people have spent the entirety (or almost the entirety) of their lives integrating into British society but cannot afford the process to

¹ For more information see <http://letuslearn.study/> and <https://www.justforkidslaw.org/>

² For more information see <https://www.childrenslegalcentre.com/>

³ N. Sigona and V. Hughes, *No way out, no way in: Irregular migrant children and families in the UK*, University of Oxford, 2012

⁴ Coram, *'This is my home': Securing permanent status for long-term resident children and young people in the UK*, 2017, at <https://www.childrenslegalcentre.com/this-is-my-home/>

settlement and citizenship. High application fees have been identified by charities and youth groups as one of the main barriers to regularisation.⁵

CCLC and Let Us Learn's evidence for this submission will focus on fees charged in the following applications, most commonly used by children who have grown up in the UK but have uncertain immigration status:

1. Immigration applications based on length of residence and private and/or family life:

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 applicant or dependent 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.

Where an applicant does not meet the thresholds set out in the Immigration Rules, they can still apply because Article 8 of the European Convention on Human Rights – the right to respect for private and family life – may require a grant of leave.⁶ These are also paid applications unless leave is granted as a result of an asylum application.

2. Citizenship applications:

A child or young person may apply for citizenship a year after having been granted Indefinite Leave to Remain. In addition, there are several provisions of the British Nationality Act 1981 under which a child is entitled to be registered as British, chief among which are:

- Section 1(3): applies to children born in the UK, who are entitled to be registered as British if during their childhood either parent becomes a British citizen or settled
- Section 1(4): applies to children born in the UK, who are entitled to be registered as British if they have spent the first ten years of their lives in the UK⁷ (with absences of no greater than 90 days in any of those years unless there are special circumstances).

⁵ See, for example, politics.co.uk, Home Office makes young Brits choose between immigration status & education, 27 March 2018, at <http://www.politics.co.uk/comment-analysis/2018/03/27/home-office-makes-young-brits-choose-between-immigration-status>; The Guardian, Commonwealth youth forced to pay thousands or risk 'illegal' status, 18 April 2018, at <https://www.theguardian.com/uk-news/2018/apr/18/commonwealth-youth-forced-to-pay-thousands-or-risk-illegal-status>; BBC Sunday Politics, Windrush Scandal: Facing the threat of deportation, 22 April 2018, at <https://www.bbc.co.uk/programmes/p06526wt>; Radio 4 Moneybox Live: The cost of citizenship, 25 April 2018, at <https://www.bbc.co.uk/programmes/b09zt3jx>

⁶ There are a number of additional discretionary applications for children, which are outlined in *Securing Permanent Status*.

⁷ Unlike in the case under section 1(3), a child entitled to register as a British citizen under section 1(4) retains this entitlement into adulthood.

- Section 3(1): includes provision whereby children not born in the UK may apply to be registered as British at the discretion of the Secretary of State.

2. Amount of fee charged

A one off application for limited leave to remain (not for study or work) is £1,033 and will normally result in 2 ½ years' leave. On top of this, there is an immigration health surcharge of £200 per year, which is set to double.⁸ This means that by the end of 2018, 30 months of leave to remain will cost £2,033 up front.⁹ An application for settlement – indefinite leave to remain (ILR) – is even more expensive. It costs £2,389 to become settled in the UK.

Many children and young people will need to have had limited leave for ten years before they can apply for settlement, so the total cost over the ten years would be £8,521 at today's rates (£10,521 when the health surcharge is doubled). The cost for a family of four to acquire settled status would be equivalent to a deposit on a detached house.¹⁰

An adult who is on the ten year route to settlement must apply for ILR before they can apply for citizenship. There is no fee waiver for the ILR fee: if someone cannot afford it then they will need to apply for a further period of limited leave to remain.

Appendices I and II contain a series of case studies of young people involved with Let Us Learn who have struggled to afford to pay the fee for their application, and evidence from CCLC's casework regarding vulnerable families unable to afford the fees needed to secure their children's futures.

3. Rationale and authority for particular fees

The Department currently sets fees for visa, immigration and nationality services under the provisions in the 2014 Immigration Act. The Act, which consolidated and built on similar powers provided under previous primary legislation, enables the Home Office to set fees taking account of the following factors (among others):

- the costs of exercising the function;
- benefits that the Secretary of State assesses are likely to accrue to any person in connection with the exercise of the function; and
- the costs of exercising any other function in connection with immigration or nationality.

a. The costs of exercising the function

Immigration and nationality fee levels far outstrip the unit cost to the Home Office of processing applications.¹¹ Most of these fees rise year-on-year, so it might be expected that the cost to the Home Office of exercising its functions is also rising. However, for the years for which the Home

⁸ <https://www.gov.uk/government/news/health-charge-for-temporary-migrants-will-increase-to-400-a-year>

⁹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/691146/Gov_uk_fees_revision_2018_final.pdf

¹⁰ <https://www.gov.uk/government/publications/uk-house-price-index-summary-january-2018/uk-house-price-index-summary-january-2018>

¹¹ See Table of Fees and Unit Costs – April 2018, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691200/Fees_Unit_Cost_Table_-_April_2018.pdf

Office has published data (2016 to present) transparency data shows the unit cost for several kinds of application falling. In the case of limited leave to remain, the cost to the Home Office of processing applications has more than halved, where the fees have risen by more than 25% over the same period.¹²

Table 1: Limited leave to remain (other standard)

Year	Fee	Unit cost	% profit
2018-19	£1,033	£142	86%
2017-18	£993	£147	85%
2016-17	£811	£343	58%

Table 2: Indefinite leave to remain (in country)

Year	Fee	Unit cost	% profit
2018-19	£2,389	£243	90%
2017-18	£2,297	£252	89%
2016-17	£1,875	£434	77%

In the case of other applications where the unit cost has fallen in the past year, those savings were passed on to the applicants.¹³

b. Benefits that the Secretary of State assesses are likely to accrue to any person in connection with the exercise of the function

The Home Office has justified high fees on the grounds that being granted permission to stay in this country brings considerable benefits. For examples, government spokesperson in the Lords Baroness Manzoor stated recently that a grant of immigration status ‘gives the person concerned the right to live, study and work in the UK and the right, in appropriate circumstances, to receive benefits from public funds’.¹⁴ However, since that argument was first used, it is important to note the significant changes made to the immigration system.¹⁵ Prior to the Immigration Rules changes in 2012, families with human rights cases were rarely barred from accessing public funds. Since 2012, ‘No Recourse to Public Funds (‘NRPF’) conditions have routinely been applied to migrants as a condition of their leave to remain in the UK – even if they have previously persuaded the Home Office that they require recourse to public funds to avoid destitution.¹⁶ Before 2012, most people were expected to acquire indefinite leave to remain in six years after two applications, or in some cases after two years and one application. At that time an application for limited leave for a dependent child on human rights

¹² Visa fee transparency data, at <https://www.gov.uk/government/publications/uk-visa-fees-for-2016-to-2017>

¹³ See for example applications for leave to enter as a refugee dependent relative and applications for a certificate demonstrating a right of abode.

¹⁴ HL Deb (12 June 2018) vol. 791 col. 1674

¹⁵ In Sept 2009 a consultation under the Labour government proposed the link between benefits of permanent forms of leave and temporary leave. 50% of respondents also disagreed with a proposal to charge more for dependants. This consultation was referenced when fees for dependents were increased in 2013. Available at: <http://webarchive.nationalarchives.gov.uk/20100408165257/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/charging09/>

¹⁶ NRPF Network, Home Office policy on granting leave to remain with recourse to public funds, August 2014, at <http://www.nrpfnetwork.org.uk/Documents/Home-Office-recourse-policy-changes.pdf>

grounds cost £261, and the cost of a settlement application for a child was £496. Limited leave to remain is now granted for only a short period, with a much longer route to settlement, as described above. The benefits of having leave have been significantly reduced since the fee increases were first proposed, while the costs have snowballed.¹⁷

c. The costs of exercising any other function in connection with immigration or nationality

A further rationale for high fees is the Government's aim 'to reduce taxpayer contributions towards the border, immigration and citizenship system and ensure that by 2019–2020 the system is self-funded by those who use it.'¹⁸ The Autumn 2015 Spending Review stated that:

*'Around £600 million of overall border, immigration and citizenship system costs are currently funded by the Exchequer (in addition to customs and asylum support costs). By investing in streamlined and automated processes, saving time for immigration officials and border officers, this funding requirement will be more than halved. For example, the government will invest over £250 million to enable passports and visas to be processed online. The remainder will be funded through targeted visa fee increases, which will remove the burden on the UK taxpayer while ensuring the UK remains a competitive place for work, travel and study internationally.'*¹⁹

This implies that the benefits of regularisation are only felt by the individuals making applications, and so the responsibility for funding it should fall to them. It ignores the benefits to society brought by migration²⁰ and that we all benefit from an efficient and well administered borders and immigration system. Further, the impact of fee increase has not been distributed fairly – the increases have been greatest for those whose applications are based on their length of stay. In 2016, fees for settlement, residence and nationality applications rose by 25% whereas fees for study, work or visits rose by only 2%.²¹

As highlighted by Lord Scriven in a recent House of Lords debate focusing on fees in children's citizenship applications 'if we take a look at the accounts for last year, we see that the Home Office underspent by £60 million',²² raising questions as to the justification of the current high levels of fees. When pressed by the Home Affairs Select Committee, the Home Secretary conceded that the

¹⁷ In Sept 2009 a consultation under the Labour government proposed the link between benefits of permanent forms of leave and temporary leave. 50% of respondents also disagreed with a proposal to charge more for dependants. This consultation was referenced when fees for dependents were increased in 2013. Available at: <http://webarchive.nationalarchives.gov.uk/20100408165257/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/charging09/>

¹⁸ <https://www.gov.uk/government/news/new-immigration-and-nationality-fees-for-2016-to-2017>

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479749/52229_Blue_Book_PU1865_Web_Accessible.pdf#page=88, section 2.14

²⁰ See, for example, Migration Observatory, University of Oxford, 'The Fiscal Impact of Immigration in the UK' (May 2018), House of Commons, 'Impacts of immigration on population and the economy' (July 2016), the National Institute for Economic and Social Research, 'Immigration and the UK's Productivity Challenge' (July 2015), University of Birmingham, 'Super-diverse Britain and new migrant enterprises' (2015)

²¹ Ibid

²² HL Deb (12 June 2018) vol. 791 col. 1667

Home Office needs to get the 'right balance' between funding its work and what he described as 'a huge amount of money to ask children to pay'.²³

4. Impact on human rights

In its messaging on fees, at no point has the government addressed the significant impact it has on individuals trying to make applications based on their human rights, or on children specifically. The government has repeatedly stated its commitment to 'giving due consideration to the United Nations Convention on the Rights of the Child (UNCRC) when developing new policy and legislation' and ensuring that government policies – 'whether they hold direct or indirect consequences—consider children'.²⁴ Yet the Impact Assessment for Immigration and Nationality (Fees) Regulations 2018 makes no reference to the children and their rights.²⁵ If an immigration application is so prohibitively expensive that it exists in theory only, it is not fulfilling its statutory purpose. It is CCLC and Let Us Learn's view that these fees are set at an unnecessarily high level, infringing human rights.

5. Looked after children, and families supported by the local authority

Looked after children are fee exempt for applications for limited leave to remain or ILR.²⁶ This prevents an unnecessary cost shift—from local to central government. In the 2018 fees regulation, this included children looked after under section 22 of the Children Act 1989, and its equivalents in the devolved nations. Until 2016, the fee exemption was extended to all children being provided 'with assistance' by the local authority. This included families supported under section 17 Children Act 1989 on the basis that the children of the family were 'in need'. In practice, section 17 is a safety net for children who would otherwise be absolutely destitute, and who do not have recourse to public funds. As noted above, families granted leave to remain on the ten year route are, as a matter of Home Office policy, barred from accessing public funds. The removal of this fee exemption means that destitute families who are living off subsistence payments are still required to find the immigration fee. No justification for this change was provided in the explanatory memorandum that accompanied the 2016 fee regulation.

6. Affordability

Children, young people and families living in the UK without status are prohibited from working, which invariably makes saving for fees for first applications a challenge. However, even where individuals have the right to work and are, for example, making a repeat application for leave to remain in the UK it can be impossible to save the fees. Leave to remain is only granted for relatively short periods of time: two and a half years is the standard grant period, which is a short period of time in which to find £1,000 - £2,000. A family of four would need to save over £8,000 every two and

²³ See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2017/windrush-home-secretary-evidence-17-19/>

²⁴ See UN Convention on the Rights of the Child: Written question - HL1585, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-07-16/HL1585> and Commitment to UNCRC: Written statement - HLWS197, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-10-17/HLWS197/>

²⁵ http://www.legislation.gov.uk/ukia/2018/59/pdfs/ukia_20180059_en.pdf

²⁶ This exemption is set out in the Immigration and Nationality (Fees) Regulations, which are updated annually.

a half years. This does not include any legal fees to help complete the application. Shelter estimates that 4 in 10 adults in the UK do not have enough savings to meet one month's rent,²⁷ yet the fee that a young person needs to find far exceeds the average monthly rent. Each year, families are expected to pay more in immigration fees than the average UK household would pay for food.²⁸ Between 2012 and 2017, the application fee for a dependent child's indefinite leave to remain application increased by 363%, while the average weekly wage rose by only 9%. Over the same period, the application fee for citizenship for a child increased by 77%.²⁹

Saving is made even more difficult by the unpredictability of annual increases. In one case seen by CCLC, a single mother had saved enough to apply for indefinite leave to remain for her and her child, but just before she was able to submit the application, the fees increased with only two days' notice.³⁰ This left her £844 short of the total to make the application with only seven days to go until her leave expired.

7. The fee waiver 'safety net'

The government has argued that setting fees at above cost 'also enables the Home Office to exempt some people from having to pay a fee, for example where they are in an identified protected, or vulnerable group. It also enables the Department to waive fees in certain individual circumstances, for example where people are destitute and need to access their Human Rights, for example their right to a family life'.³¹ However, the Home Office grants very few fee waiver requests. At the 2016 estimate (the earliest publically available) of the unit cost of processing applications (£343), the fee waiver system only cost the Home Office £61,740, plus the cost of processing the waiver. In 2016, 3,655 fee waiver applications were made by children under 18, of which only 255 (7%) were granted. 505 applications were made by young people aged 18-24, only 40 (8%) of which were granted.³² These numbers are strikingly low, and call into question the idea that fees are rising to cover the cost of an expensive safety net for destitute migrants.

Part of the reason for the low success rate of fee waiver applications is because the eligibility threshold is very high.³³ An applicant must demonstrate that they are either currently destitute, or would be rendered destitute by paying the fee. If in the latter category, they must also show that they cannot borrow the money from friends and family, would be unable to 'save the required amount within a reasonable period'³⁴ without compromising their ability to meet their essential

²⁷ https://england.shelter.org.uk/_data/assets/pdf_file/0005/960314/Final_summary.pdf

²⁸ £53.20 a week based on Office of National Statistics figures. See <https://www.moneyadviceservice.org.uk/blog/how-does-your-household-food-spend-compare>

²⁹ See the ONS Average weekly earnings time series dataset (EMP), 13 September 2017 when compared from April 2012 to April 2017. Available at

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/timeseries/kai7/emp>

³⁰ On 4 April 2017 the Home Office published an updated Immigration and Nationality fees table with effect from 6 April 2017. <https://www.gov.uk/government/publications/visa-regulations-revised-table#history>

³¹ [https://www.parliament.uk/documents/lords-committees/Citizenship-civic-](https://www.parliament.uk/documents/lords-committees/Citizenship-civic-engagement/180628%20CCS207_CCS0618952710-001_Government%20Response%20to%20House%20of%20Lords%20Select%20Committee%20on%20Citizenship_Text_PRI)

[engagement/180628%20CCS207_CCS0618952710-001_Government%20Response%20to%20House%20of%20Lords%20Select%20Committee%20on%20Citizenship_Text_PRI_NT.pdf](https://www.parliament.uk/documents/lords-committees/Citizenship-civic-engagement/180628%20CCS207_CCS0618952710-001_Government%20Response%20to%20House%20of%20Lords%20Select%20Committee%20on%20Citizenship_Text_PRI_NT.pdf)

³² FOI response from UK Visas and Immigration to Coram Children's Legal Centre, 8th February 2018

³³ Home Office, 'Fee waiver: Human Rights-Based and other specified applications, Version 1.0', August 2017, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638790/fee-waiver-guidancev1.0EXT.pdf

living needs, and that there is no basis for concluding their circumstances would change within a reasonable period (and it would be reasonable in all the circumstances to expect the applicant to delay their application for this length of time). A family being in receipt of support under section 17 of the Children Act 1989 – in itself a test for destitution – is insufficient evidence of destitution to support waiving fees.³⁵ The onus is on the applicant to demonstrate that they qualify for a fee waiver and they must provide evidence of their income, their accommodation, the type and adequacy of this, spending on things like food, utility bills, all of which should be supported by independent evidence, such as their pay slips, bank statements, tenancy agreement, utility bills. In all cases evidence must be up-to-date and the Home Office guidance makes clear that ‘documents dating back more than a couple of months...should be given little weight’. There is no partial fee waiver available.

Low rates of success could also be attributed 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 simply do not have the capacity to collate the required evidence, evaluate their finances and articulate that they cannot pay the fee. The burden of documentary evidence for this kind of application is so high that CCLC is of the view that a solicitor is required to make a successful application. However, because there has been no legal aid for immigration cases since 2013, it can be assumed that destitute families who would be eligible for a fee waiver are also not able to afford to pay for legal representation.

In recent years, local authorities have reported several problems with fee waivers being refused when a person's only income is social services' support, or without the Home Office making further checks with the local authority. Rejected fee waivers have resulted in extending the time that a person is dependent on social services' support due to the resulting delay in getting their application for leave to remain accepted and an associated cost-shift from central to local government.³⁶

a. Impact of a fee waiver refusal

Someone who cannot afford the fee, but is not granted the fee waiver, is given 10 days to pay the fee if their fee waiver application is refused. If they are unable to do so, their application will be considered invalid and they will lose their immigration status. This means that they cannot work, so will have less chance of being able to pay the fee. It also means that any time they have spent in the UK is not counted towards the ten years' continuous leave they need before they can apply for settlement, effectively sending them back to square one.

In some cases, families are only able to afford for some members to apply for leave to remain. This means that they are forced to choose who is the highest priority, leaving other children without status. People who are struggling might borrow money from loan sharks, at very high interest rates, then they are trapped trying to save for the future as well as paying off the debt from the past.

³⁵ NRP 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>

³⁶ <http://www.nrpfnetwork.org.uk/News/Pages/fee-waiver-policy-august-2017.aspx>

b. Lack of fee-waiver for citizenship applications

Fee waivers are only available for applications for limited leave to remain. There is no fee waiver for settlement (ILR) or citizenship. There is a fee exemption for children in care to apply for settlement, but not for citizenship.

CCLC runs a pro bono project helping families to make children's citizenship applications and has made 66 applications to date. In the majority of the children CCLC has registered, where the child is not in care, the families have all been on a very low income and struggled to raise the very high and ever-increasing application fee. The submission of many of the applications is delayed for over a year whilst the entire fee is raised. There is an ongoing concern that many more families of undocumented children will be deterred from seeking legal advice to help with these registration applications knowing that the application fee is out of their reach.

For children in care, it is a cost-shift to use the limited local authority resource to pay a Home Office application fee to register a child as a British citizen. However, without the local authority paying the fee no citizenship application can be made, as there is no fee exemption for citizenship cases. The present cost-shift means that local authorities are de-incentivised to apply for citizenship for children in their care. This is problematic because citizenship can be available to children in care where other immigration routes are closed to them. The stakes in such cases are very high, and bad practice is well-documented: in 2016 Local Government Ombudsman case found that one London Council failed to act appropriately and in a timely manner to help a former relevant child regularise her immigration status after she became looked after, and was made to pay out £5,000 in damages.³⁷

On 13 July 2018 the Ministry of Justice announced that legal aid would be provided for the legal cases of migrant children in care – a move towards regularising all children in care which is both urgent and welcome. It should be recognised that it will be in the best interests of some children in care to make applications for citizenship – either by eligibility or by discretion – and that it is therefore in the best interests of these children for the Home Office's fee waiver to extend to citizenship applications for looked after children.

The government has stated that 'becoming a citizen is not necessary to enable individuals to live, study and work in the UK, and to be eligible for benefit of services appropriate to being a child or a young adult. The decision to become a citizen is a personal choice, and it is right that those who make that decision should pay a fee.'³⁸ This not only incentivises applying for short, unstable periods of leave over establishing a firm and permanent connection to the UK, but cuts off citizenship from those children who may well be entitled to it but are unable to afford it – leaving them instead forced to pursue a ten year route to settlement later down the line during which time they could find themselves undocumented once more.

³⁷ See Local Government Ombudsman, Investigation into a complaint against Royal Borough of Greenwich, reference number: 13 019 1061 (January 2016)

³⁸ [https://hansard.parliament.uk/Lords/2018-06-12/debates/5DE6605F-5F9C-4D5E-909A-55CD245CC5F3/ImmigrationAndNationality\(Fees\)Regulations2018](https://hansard.parliament.uk/Lords/2018-06-12/debates/5DE6605F-5F9C-4D5E-909A-55CD245CC5F3/ImmigrationAndNationality(Fees)Regulations2018)

8. Efficient and effective service delivery

The Independent Chief Inspector is rightly looking at ‘whether the Home Office is providing the services in question efficiently and effectively, including meeting agreed service levels where these exist, and at the means of redress where individuals are dissatisfied with the service they have received’.

Home Office Service Standards currently state that applications to remain on a temporary basis should be decided within 8 weeks, while applications for indefinite leave to remain should be decided within 6 months.³⁹ In CCLC and Let Us Learn’s experience, these targets are rarely met and it is not uncommon for a young person to wait a year or more for a decision on their application, during which time all their documents are with the Home Office. Within the Let Us Learn core group of members who have made applications to renew their leave to remain, 1 person waited six months for a decision, six young people waited ten months and five waited for over a year.

With citizenship applications under section 1(4) of the British Nationality Act, if an application is refused an applicant must pay if they want the decision to be reviewed. This fee is currently £372 and is not reimbursed if the review finds that the application should have been successful. Furthermore, when a review is requested it can take an extremely long time for a decision to be made – in one CCLC case, a review application was submitted in May 2017 and decision not made until the end of March 2018. They were refused the application and CCLC issued a pre action protocol letter, after which the Home Office granted citizenship.

In the case of fee waivers, even though Home Office caseworkers must make reasonable efforts to decide such applications promptly, no service standards apply to the assessment of whether the applicant qualifies for a fee waiver. It is only where the applicant qualifies for a fee waiver and their application is passed to a case-work team for substantive consideration that normal service standards will apply to the consideration of the application. In practice therefore, a fee waiver application can take up to five months to be considered. The consideration of the substantive application itself can then take six months or more to be considered.

9. Recommendations

- **The government should undertake a child rights impact assessment of the impact of fees on children and families subject to immigration control before making any changes to fees and related policy.**⁴⁰
- **Remove profit making on children’s applications.** The need for a child to have immigration status and certainty should not be jeopardised by the Home Office profit-making. It cannot be in the child’s best interest to pay more than their application costs to process, and profit-making should be removed on these applications.
- **Amend and extend the fee waiver system so that ability to pay is assessed on means rather than the extremely high destitution threshold.** Fee waivers should be means tested on a sliding scale, similar to legal aid. This would ensure those **reapplying** who are receiving benefits or in

³⁹ <https://www.gov.uk/government/organisations/uk-visas-and-immigration/about-our-services>

⁴⁰ The Impact Assessment for Immigration and Nationality (Fees) Regulations 2018 makes no reference to the children and their rights: http://www.legislation.gov.uk/ukia/2018/59/pdfs/ukia_20180059_en.pdf

low-paid employment are able to renew their leave. Pushing low-paid individuals and families out of lawful status is in no one's interest.

- **Fee waivers should be available for citizenship and indefinite leave to remain applications.** Leaving someone who cannot afford the high fees to continually apply for limited leave past the ten year period serves no purpose in terms of immigration control. It punishes those who are too poor to buy their way to stability and prevents young people from making decisions about their future.
- **Introduce certainty around fee increases:** increases, if justifiable, should match inflation and other government increases. This provides certainty in terms of how far increases will rise year on year, and allows individuals the opportunity to save for the next increase. The current system to increase fees is arbitrary, and fees are set at a level too high for most people to afford. Fees should not go up every year without a business case for doing so.
- **Families in receipt of local authority support should automatically be exempt from paying fees where they provide a copy of the support given to them, or where it can be easily ascertained by the Home Office.** This minimises the work required by preventing the duplication of assessments.
- **An exemption to citizenship fees for looked after children should be introduced.** In some cases, looked after children will qualify for citizenship but not ILR. High fees can deter applications, and represent a cost shift onto local government as local authorities will have to pay for them.

Appendix I – Let Us Learn case studies

Name: Cynthia

Age: 22

Country of Origin: Nigeria

Length of time in the UK: 13 years

I am currently a first-year university student because I was fortunate enough to receive an Article 26 scholarship in 2017. Without this scholarship, I would not have been able to attend university as I do not qualify for student finance. Despite living in the UK since I was 9 years old and feeling British in every way, I am constantly reminded that the government does not believe I belong here. Not being able to continue my studies because I was entitled to student finance after leaving college affected my mental health and I quickly fell into depression. Thankfully, Kent University gave me a scholarship that covers my tuition fees but unfortunately doesn't cover my accommodation which is £6,500 a year. During my first year at university, I haven't been able to focus as I should have done because I am constantly worrying about paying for my university accommodation and my upcoming immigration renewal. If the government increase the NHS surcharge by the end of the year as promised, my total fees will be £2,033. If I am being entirely honest, I'm not sure how I'm going to get the total sum. Being out of status is, however, not something I can afford otherwise I would be subjected to the hostile environment and could potentially be removed from the UK to a place I no longer know. Unfortunately, I haven't been given the same opportunities as most of my university peers as I am in constant state of worry regarding money. This has taken a heavy toll on me and I will battle for the next 8 years to raise the money needed to become settled in the UK. I'm currently surviving finically by working 40 hours in 3 days while attending university which is both physically and mentally draining.

Name: Andrella

Age: 20

Country of Origin: Nigeria

Length of time in the UK: 8 years

It is very expensive for me to pay for fees and because I can't work I need my family to pay for me. It's very difficult for them to do that on top of all the other things they have to pay for. Paying for the fees as well as the NHS Surcharge and lawyer fees is too much and very overwhelming. For me I had to pay £3,000 in total to my lawyer not including the £2,033 I will have pay for application if the NHS doubles from £500 to £1,000. It's frustrating because if you can't pay the fees you are right back to square one. If you can't pay there is no way to rectify or regularise your status, so how do they expect children and families to pay that amount of money per person. Even the comparison between the price that EU nationals and Commonwealth citizens must pay is unbelievable. It's all very annoying. I feel that it's just a way for England to damage their relationship with Commonwealth countries. Because we didn't have enough money and it took a long time to save up it delayed my application process. Coming to this country as a child I have somehow inherited some sort of crime and now I am being forced to be a criminal by not being able to afford settled status. I've lost lots of educational opportunities because I've had to pay for fees. It feels like the Home

Office see me and people on my situation as cash cows and are charging people who are already vulnerable and have little money an extortionate amount.

Name: Agnes

Age: 20

Country of Origin: The Gambia

Length of time in the UK: 16

I had to renew my Limited Leave to Remain in April and unfortunately for me, I had to take out loans to pay for it. I am 20 years old and already in debt for something that shouldn't have cost me a huge sum of money. I recently found out that the processing cost for LLR is actually £142 but I've had to pay almost £1,500, which includes the NHS fees. I'm grateful I was able to renew without the doubling cost of NHS otherwise I would have paid £2,033. I'm not sure when I will finish paying off my loans but I'm praying I can pay it off soon so that I can start to save for my next renewal. I know that the government increase the fees each year, so who knows how much I'll be paying in 2 years' time. Trying to gather together money to pay the application fee caused anxiety and worry especially because of the need to take out a loan. That worry and anxiety didn't leave me after completing my application unfortunately, as I now worry daily about paying off my debts.

I would also like to mention that my first application took four years to be dealt with. This caused my family and I constant uncertainty. As I've just renewed my first application, I'm unsure of how long Home Office will take to get back to me. I have friends whom I know waited ten months to 1 and a half years for their renewal to come back to them. It is very frustrating and draining, especially because I cannot plan for the future. Furthermore, the amount of money we are having to fork out constantly should mean we are able to get a response from the Home Office a lot quicker!

Name: Andrew

Age: 23

Country of Origin: Guyana

Length of time in the UK: 12

The fee cost has made it almost impossible for me to make an application. My mother was forced to save up for several years to actually be able to pay both the application fee and lawyer fee for my brother and I. On two occasions we were scammed by bad lawyers who had no intention of submitting a valid application. The application fees have burdened our family on numerous occasions. We were forced to not pay rent which therefore caused us to be evicted from our home. After saving money towards the fees my mother was never able to become financially stable again which led to various other evictions later. The impact the current immigration fees have on me and my family is something I wish on no one because it's a devastating place to be.

Name: Muhammad

Age: 22

Country of Origin: Pakistan

Length of time in the UK: 12

The immigration application fees have affected my quality of life. For example, my parents worry about saving money for our next renewal every day. They should be worrying about a proper future for themselves and what they're going to do when they retire or buying a home they can be proud of. Instead, my father and I must work, only to save for our renewal and that limits what I can and cannot do in this life. It is constantly in the back of my mind because if I do not renew on time, then I am suddenly "illegal" and possibly starting the 10-year route again. Because fees are so high it also meant that my family and others are having to prioritise which family member gets to apply for their status first. I have seen this cause division, tension and rip apart families. The fees young people like myself have to pay to remain in the UK cannot be compared to any fees other migrants are required to pay such as EU migrants. This makes it difficult to integrate because we're constantly made to feel different and prove our existence. Although we feel we're British in every matter, we're reminded that we are outsiders.

I remember that my mum once had to sell the jewellery she was given at her wedding as part of her tradition. This is something that is meant to be kept throughout her life and is a representation of her marriage. However, she was forced to sell it because they couldn't afford to pay for their application.

Fees aren't the only thing we worry about as young people in the UK. The delay in my application process affected me when I was trying to go to university. It has felt like my life was forcibly slowed down because I wasn't progressing at the same speed as my peers and, as a result, couldn't contribute to society in the way I wanted to. I have another renewal coming up and I am extremely worried because of how long it can take to get a decision back from the Home Office. I am worried that it will affect my ability to get a job because I won't have the necessary documents to show to employers.

APPENDIX II – Evidence from Coram Children's Legal Centre's frontline services

Coram Children's Legal Centre (CCLC) provides immigration advice in drop-ins at Hackney Migrant Centre and Haringey Migrant Support Centre. Destitution and high-levels of debt have prevalent in the 314 cases we have seen since 1 June 2017. The cases we see tend to require additional financial support either under section 17 of the Children Act from the local authority, or another form of financial assistance including foodbank referrals and destitution fund payments. Last year we saw 15 families for whom the fee acted a barrier to accessing lawful leave in the UK. This does not include a large number of visitors who were destitute or homeless and who would struggle to raise the fee but who did not raise it as their primary concern during a face- to-face appointment. Of the 314 cases, 21% were identified as being absolutely unable to pay the fee to regularise their stay. This figure represents families for whom there are no options to pay the fees, and discounts families who are able to borrow money from friends, family or community services.

We have seen a number of cases where visitors have managed to obtain credit when they had leave to remain, and where they are now faced with huge levels of debt because they have paid their fees

using credit cards, or high-street loans. In some instances we have come across female visitors who have resorted to selling sex to raise the money for the application fees.

Of the 68 families unable to pay the fees, 24 were parents of British citizen children. These children have a right to remain in the UK under EU law, and section 117B Immigration and Asylum Act 2002 also confirms the UK position that it will generally be in their best interests to remain in the UK. Yet their parents were unable to raise the funds to regularise. This therefore means they cannot work to support their children, and are reliant on section 17 Children Act support from the local authority.

GA is a mother who was street homeless and her and her children were sleeping on buses when they attended our drop in. The daughter was eligible to register as British, but GA could not afford this, and so although we made a referral for her to receive pro bono citizenship assistance, she opted to apply for leave to remain under the immigration rules, a much less stable form of status, because a fee waiver was available.

AKO was supported by Hackney council and receiving a subsistence payment of £35 per week. Her daughter was ten years old and had lived all of her life in the UK. She was therefore eligible to register as British under the British Nationality Act but only if her mother could afford the fees as there is no fee waiver for citizenship applications – this was impossible for her on the limited amount of support she was receiving.

CE and her partner had three children. One was entitled to register as British, and whilst working part-time, CE and her partner had managed to save £2,000 since their grant of leave 27 months beforehand. However, the family needed to renew their leave to remain, which at the time would have cost them £5,972 for the adults and the two children who not eligible to register as British, plus the cost of the other child's registration at £973. The parents had to make a decision about renewing leave, and whether they could apply for a fee waiver to renew their own leave given that they would be unable to afford the remaining £3,972.

CCLC's pro bono project advised a 23 year old single mother who was born in the UK and has lived all her life in the UK, she had spent a number of years in care and only discovered that she wasn't British when she was evicted from her accommodation by the local authority as an adult. Whilst challenging the local authority decision to evict her she had to spend what money she had saved and borrowed on living costs for herself and her daughter. After being rehoused she had to save and borrow more money to be able to submit her application – the case was delayed by 12 months as a result.

CCLC worked with a family who were undocumented were being supported by the local authority under section 17 Children Act 1989 on the basis that their daughter is a child in need, and there is a

barrier to removal.⁴¹ They were able to borrow the funds necessary to register their daughter as a citizen but then faced eviction as the local authority believed the family were able to support themselves. After facing eviction the family had to spend the money that they had raised for the fee on accommodation costs whilst pursuing the local authority for unlawful withdrawal of support. The local authority support has now been reinstated and the parents are once again trying to save and borrow to gather the application fee. The parents have nearly raised the full fee.

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 that Hannah did not have any bank accounts because her 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

⁴¹ Support is provided to families without access to public funds following *Birmingham City Council v Clue* [2010] EWCA Civ 460

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.