# Simplifying the Immigration Rules
# Coram Children's Legal Centre's Response, April 2019

*A note to the Law Commission:* This response to the consultation has been jointly prepared by solicitors and staff from legal charity CCLC and young migrants from campaigning group Let Us Learn. This consultation contained many technical questions which we believe will be comprehensively answered by other parties. We have also chosen to exclude in our response the perspectives of solicitors, barristers and other legal professionals as users of the Rules. Instead, we have focused our responses to select questions below on the immediate and pressing need for the Immigration Rules and the wider immigration system to be accessible and fit for purpose not just for legal professionals, but also for migrants who for whatever reason – not least because of the removal from the scope of legal aid of immigration matters by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 – must navigate the system without legal representation, advice or support.

It is our hope that the inclusion in this response of the voices and direct experiences of young migrants is given significant weight by the Commission, because these are the people today being failed by the Rules and the immigration system, and for whom this review will have the most profound and lasting consequences.

**1. Do consultees agree that there is a need for an overhaul of the Immigration Rules?**

'Solicitors are accountable, and if they get anything wrong you have someone to blame. Making an application on your own is fearful because you don't have anyone to fill back on and you don't know what to expect. Unfortunately, I have to do the application myself as I cannot afford the lawyer. The fees are just too high and my hope is that the immigration application online is simple enough for me to use.' **Adeola, Let Us Learn campaigner**

The immigration system in the UK, and the broader legal context in which migrants must operate, has changed beyond all measure since the Rules were introduced in 1971. Coram Children's Legal Centre (CCLC) and Let Us Learn strongly support the Law Commission's on-going review of the simplification of the Immigration Rules. We support this not just because the Rules are unusable and unnavigable to a direct applicant, but further as a means by which some of the complexities of the immigration system as a whole may be mitigated.

**2. Do consultees agree with the principles we have identified to underpin the drafting of the Immigration Rules?**

CCLC agrees with the principles underpinning the drafting of the immigration Rules, particularly (1) suitability for the target audience; and (4) accessibility. Many of our service users, whether approaching us through our advice line, outreach or training, find the Immigration Rules and wider immigration system far too complex. With significant cuts to legal aid, social services budgets and support services over the last few years, many of our service users no longer have access legal advice and support. Many of our service users, who are some of the most vulnerable members of our society (care leavers, destitute families and homeless young people), are having to make

applications with limited or no legal support. It is therefore essential that the Immigration Rules are accessible and understandable.

While we understand the Commission's view that even if the Rules are written for a non-expert audience, the drafting style should not necessarily differ too much from a style for legally trained professionals, we think this writing style may still present a significant access barrier.

'Although I found the online form easy to use there where a few parts of the application that I had no easy answers for and no way of explaining myself or what I meant. Even though I was educated in the UK there were a lot of technicalities/ words I couldn't quite understand which were anxiety-inducing and made the whole application take a lot longer than necessary. I can't even begin to guess how difficult the process would be if I had a complicated case or English wasn't my main language. In the end I had to submit my application with so many uncertainties and hope for the best.' **Olayinka, Let Us Learn campaigner**

'The system is complicated, and the language used is sometimes hard to understand. It would help if Home Office use simple and plain words. Sometimes, even trying to figure out what application you need to use can be confusing without asking a lawyer.' **Pelumi, Let Us Learn campaigner**

**3. We provisionally consider that the Immigration Rules should be drafted so as to be accessible to a non-expert user. Do consultees agree?**

The Home Office recently stated that legal support for immigration applications was not something the Government believed to be necessary. In its formal response to the Windrush Compensation consultation, it is noted that

*"The Government's position is that obtaining legal advice is not necessary in making an immigration application and that no advantage in the application process should accrue to people who choose to access, and are able to afford legal advice, over those who cannot."* (4.15)

In light of this stated position, it is not just desirable that the Rules be redrafted so as to be accessible to a non-expert user, but absolutely crucial. CCLC fundamentally disagrees with the Home Office's statement quoted above; immigration law in the UK is immensely complex. There is and will continue to be a huge need for legal advice and representation to navigate the system, even more so in the case of individuals who are vulnerable – such as many children and young people – or who have cases which are complex. However, while redrafted and thoughtfully presented Rules, guidance and forms will not solve the problem of this extreme complexity, we hope that these things would partially mitigate that complexity and go some way to acknowledging the lived reality of many migrants in the UK: that legal advice and assistance is financially beyond the reach of many.

'When I was trying to apply for leave to remain and looking at what route I was eligible for, I realised I didn't fit in any of the rules and the only way for me to apply was outside the rules. When looking through the website and advice that was given, the examples that were given for why you could apply outside the rules were not relevant to my case, and my reasons were apparently not significant enough to make a successful application. To me it feels like applications outside the rules are not actually a viable route for someone who doesn't have a lawyer.' **Mariam, Let Us Learn campaigner**

**4. To what extent do consultees think that complexity in the Immigration Rules increases the number of mistakes made by applicants?**

Complexity in the Immigration Rules undeniably increases the probability that mistakes will be made by applicants. This is true of applicants who have legal representation, but given the removal of legal aid for immigration and nationality matters this is especially true of unrepresented applicants who do not have the benefit of support by immigration specialists.

The consultation paper identifies a number of areas that increase complexity, including inconsistent numbering systems, the requirement to cross-reference Rules with one another and with the guidance, discrepancies between the Rules and guidance, and the policy objective of incorporating the requirements of Article 8 of the European Convention of Human Rights within the Rules. We agree that the identified areas increase complexity.

We would add that the following also contribute to the complexity and incomprehensibility of the Rules:

- difficulty in locating the relevant guidance
- the removal of guidance for updating and (often significant) time lag in replacing it
- the failure to update the Rules and guidance in a timely manner (we suggest within 10 working days) to reflect case law where the Rules or guidance are found to be unlawful.

Through our outreach advice clinics at the Migrant Children's Project, we regularly provide one-off advice to unrepresented individuals seeking to make immigration or nationality applications. It is exceptionally rare that these individuals have been able to identify the Immigration Rule under which their application falls, and unusual for them to have identified the relevant guidance. Those that have found (or are directed by us to) the relevant application form are often extremely anxious about filling in the form correctly as the application forms are perceived as complex. The applicants we advise generally struggle to correctly identify the supporting evidence required, as they struggle to decode the Rules and guidance.

This anxiety is heightened by the consequences of making a mistake. Should a mistake lead to an application being rejected or refused, not only could the applicant risk becoming an overstayer (subjecting her to the full force of the hostile environment policies) and losing any period of leave accrued towards being able to apply for indefinite leave in the future, but she could also lose her application fee (which for many applications, including those incorporating the requirements of Article 8 ECHR, is over £1,000). The consequences of making a mistake for many of those who access our support services can be extreme poverty, homelessness, lack of access to essential healthcare, and having less chance of being able to gather the money to make a paid application in the future. The penalty for even minor mistakes can therefore be very high.

'We have made wrong decisions when dealing with our immigration applications in the past. My parents misunderstood the law and made applications when we did not meet the rules, which has caused us to lose a lot of money. The Home Office keeps your money even if you make a mistake.'
**Ijeoma, Let Us Learn campaigner**

We also advise young people and families who have had poor advice from immigration advisers and solicitors – some of which must be attributable to the complexity of the Rules. When the young

people we surveyed were asked about mistakes made on immigration applications in the past, many had examples of serious errors committed by professionals, as can be seen below.

'When I was 18, my lawyer misunderstood the law and made a wrong application for me. He applied for my renewal based on a misunderstanding of the law. His first mistake was that he made an application for me in which he said I was dependent on my family, when I was no longer and child and therefore couldn't be. When he realised the error he made a new application but made more mistakes, and the application was refused not just for me but for my sister as well. My sister and I were undocumented for two years as we had spent so much money there was no money to apply again. Even though we qualified for status under the half-life rule, [Rule 276ADE] that right isn't a reality without money. High fees mean that many families such as mine rely on less qualified lawyers who charge less.' **Michelle, Let Us Learn campaigner**

'When we hired a lawyer for our case, my dad was on the path to receiving Indefinite Leave to remain (ILR), which he did receive. However, the lawyer gave me, my mom and brother the wrong advice on the application and told us to apply with my dad, although my dad had been in the UK much longer than us. Unfortunately, due to poor advice, myself, mum and brother were rejected by the Home Office on more than one occasion. We ended up going to court and having to fight for our lawful stay in the UK. When we arrived in the UK, we had lawful status under my dad, and we would have finished our route to settlement a while ago, had we not been wrongly advised. We now have to start the 10 year long settlement process again and it's painful.' **Arkam, Let Us Learn campaigner**

The first lawyer we had gave us the wrong information about what we should be applying for. He told us to apply for citizenship, probably knowing we would be rejected which we were as we didn't fit the eligibility criteria and hadn't been in the UK for long enough during that time. Even though we were eligible to apply under other Immigration Rules, this lawyer's mistake led to us receiving a removal letter from the Home Office which created a lot of panic and confusion. We ended up having to go into hiding for well over a year because of the fear that crippled us and the fact that we thought the Home Office was coming to physically remove us from the UK. **Tosin, Let Us Learn campaigner**

**7. To what extent is guidance helpfully published, presented and updated?**

In the area of family migration, the guidance is difficult to find. Many young people who had previously made (sometimes multiple) applications to the Home Office in the past did not know that guidance for particular application routes existed.

CCLC believes that this lack of knowledge is directly due to the difficulty involved in first finding and then applying the relevant guidance for many immigration application routes. This is best illustrated by way of an example:

> *Sarah and David, both Ghanaian nationals, came to the UK 11 years ago with student visas. Despite many attempts to renew their leave, they were unable to do so, and so have been in the UK without immigration status for 7 years. They have two daughters who were born in the UK and are 6 and 10 years old. Their eldest daughter has registered as British.*

To make an application to regularise their status, Sarah, David and their children would rely on their right to respect for family and private life, protected by Article 8 of the European Convention on Human Rights, reflected in Part 7 and Appendix FM of the Immigration Rules. The two most relevant guidance documents which relate to their application are:

- Appendix FM Section 1.0b: family life (as a partner or parent) and private life: 10-year routes, and
- Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10-year routes

Finding the guidance documents

If they wanted to find the relevant guidance on the gov.uk website, they would need to navigate from the home page > 'Visas and immigration' > 'Family in the UK' > 'Visas and immigration operational guidance'. Visas and immigration operational guidance then provides links to 15 different policy and guidance topics,[1] none of which state that they relate to applications based on family and private life.

If Sarah and David click on each link, they will eventually find that the page on 'Immigration directorate instructions' provides links to two pages about family migration: 'Chapter 08: appendix FM family members (immigration directorate instructions)' and 'Chapter 08: family members (immigration directorate instructions)'. Maybe they will know that Appendix FM applies to their application, and so go to that page. Or maybe they will try and navigate the various pages on Chapter 08: family members (immigration directorate instructions) - which include links to six pages, such as 'spouses' and 'children born in the UK who are not British citizens'. If they do, for example, select the link to 'children born in the UK who are not British citizens' (which would, on the face of it, appear to be very relevant to their application), they may (if they are paying attention) notice that it only applies to applications made before 9 July 2012. If they do not notice that caveat, and open the guidance, they will be reading a guidance document which does not state that it does not apply to applications made after 9 July 2012, but which is entirely irrelevant to their application.

Even if they do select the first page (Chapter 08: appendix FM family members (immigration directorate instructions)), they will be directed to a page with links to 14 different guidance documents. One of these documents is relevant to their application (Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10-year routes), but not the other (Appendix FM Section 1.0b: family life (as a partner or parent) and private life: 10-year routes).

To find the other (more relevant) guidance document, they would have to go back to Visas and immigration operational guidance, and keep clicking through each of the 15 links on that page until they select 'Modernised guidance'. There are 16 links on that page,[2] one of which is relevant to their

[1] Asylum policy, Business and commercial caseworker guidance, Enforcement, Entry clearance guidance, Fees and forms, Immigration directorate instructions, Immigration rules, Modernised guidance, Nationality guidance, Non-compliance with the biometric registration regulations, Rights and responsibilities, Sponsorship,
[2] Appeals (modernised guidance), Applications (modernised guidance), Armed forces (modernised guidance), Common travel area (modernised guidance), Criminality and detention (modernised guidance), EEA, Swiss

application: Family of people settled or coming to settle (modernised guidance). On that page, they will find a link to Appendix FM 1.0b: family life (as a partner or parent) and private life: 10-year routes.

Another way they may be able to navigate to the guidance from the home page is by following 'Visas and immigration' > 'Family in the UK' > Family visas: apply, extend or switch. They would then need to work through this guide, and hopefully notice that on the page on 'Apply as a parent', there is a suggestion that they should 'Read the guidance for parents before applying'. That is the only page where it suggests that the applicant should read guidance (there is no link to the guidance on the pages for applying as a partner or spouse, a child, an adult coming to be cared for by a relative or on the basis of your private life. The 'guidance for parents' again takes applicants to the page with the link to one of the guidance documents (Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10-year routes), but not the other guidance document (Appendix FM Section 1.0b: family life (as a partner or parent) and private life: 10-year routes).

It is clearly unrealistic for applicants to be able to find the guidance documents relevant to their application, unless they are given the direct link.

'I had to make a Home Office application by myself and gathered the information I needed online which was really difficult as the information online is neither clear nor easy to understand. Information about the application process is completely inaccessible, there's too much information online and no way of knowing what's true and relevant to your case. I have made two applications, but through all my research I never once knew that there was any online guidance.' **Olayinka, Let Us Learn campaigner**

Applying the guidance

Even if applicants are directed to the correct guidance documents, it is not clear how to apply the information contained within them.

Taking our example family - sections of both Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10-year routes), and Appendix FM Section 1.0b: family life (as a partner or parent) and private life: 10-year routes apply to the family's application. The documents are 125 and 105 pages long respectively - and many of those pages are not relevant to the family's application.

Even though Sarah and David are partners, because neither has immigration status in the UK, they would not be making an application as a 'partner' for the purposes of the Immigration Rules. Even though they are parents, they are also not able to make an application as a 'parent', because under the Immigration Rules, the parent route is not for couples who are living together. Therefore, they would be applying on the basis of their 'private life' in the UK. The children would also be applying

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nationals and EC association agreements (modernised guidance), Enforcement and criminal investigations (modernised guidance), Family of people settled or coming to settle (modernised guidance), General grounds for refusal (modernised guidance), Identity checks (modernised guidance), Immigration intelligence Other cross-cutting guidance (modernised guidance), Other immigration categories (modernised guidance), Returns and removals (modernised guidance), Studying (modernised guidance), Working in the UK (modernised guidance)

on the basis of their own private lives in the UK. The sections on applying on the basis of private life are in Appendix FM Section 1.0b: family life (as a partner or parent) and private life: 10-year routes.

The family will also need to make representations about the children's best interests, and there may be exceptional circumstances requiring leave to be granted on the basis of Article 8 ECHR. Whilst there is some guidance on children's best interests in Appendix FM Section 1.0b: family life (as a partner or parent) and private life: 10-year routes, further information on best interests and considering exceptional circumstances is contained in Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10-year routes. The vast majority of that guidance document is wholly irrelevant to the family's application, but it would be important to consider the 14 pages in the section on 'Exceptional Circumstances'.

Once they have identified the relevant sections in the two guidance documents which will be applied to their application, Sarah and David then have to read and understand the information in those sections. This guidance is not written with applicants in mind, and is not easy to understand.

For example, in relation to the private life that parents have developed - paragraph 276ADE(1)(vi) of the Immigration Rules states that leave to remain will be granted if "*there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK*". Pages 58-61 of Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10-year routes provides guidance to Home Office caseworkers when considering whether there are 'very significant obstacles' to integration into the country of return. The language used is complex, and the guidance heavily focusses on what will not amount to a very significant obstacle to someone's integration into the country of return, without providing examples of what might be considered a very significant obstacle.

Immigration law is not very clear and the rules are complex. They should have something like Q&A sessions outside of the guidance they provide because people still have more questions, and it's not all the time people can afford to approach their lawyers for simple questions. **Tosin, Let Us Learn campaigner**

Updates

As the Law Commission is aware, updates are made to the guidance without consultation or scrutiny. The changes can be significant, and can therefore have an important impact on the way cases are decided.

For example, in February 2018, Appendix FM Section 1.0b: family life (as a partner or parent) and private life: 10-year routes was first published as 'Modernised Guidance'. Previously the guidance was published under 'Immigration Directorate Instructions'. Since February 2018, there have already been three updates (in December 2018 and in January and April 2019). We have been able to find the guidance from February 2018 in the National Archives, but have been unable to find the versions published in December 2018 and January 2019. There is nothing in the current guidance to indicate what has been changed from the previous version.

To take the example of Sarah and David - if their eldest daughter had registered as British, the guidance which applied in February 2018 is significantly different to the current guidance.

In February 2018, the section titled 'Reasonable to expect a child to leave the UK?' (pages 70-77) made a distinction between: 'Where the child is not a British citizen and has lived in the UK for seven years or more' (pages 74-76) and 'Where the child is a British citizen' (pages 76-77). In the section titled 'Where the child is a British citizen', the guidance states that "*it will not be reasonable to expect them to leave the UK with the applicant parent or primary carer facing removal.*" It goes on to state:

> "*In particular circumstances, it may be appropriate to refuse to grant leave to a parent or primary carer where their conduct gives rise to public interest considerations of such weight as to justify their removal, where the British citizen child could remain in the UK with another parent or alternative primary carer, who is a British citizen or settled in the UK or who has or is being granted leave to remain. The circumstances envisaged include those in which to grant leave could undermine our immigration controls, for example the applicant has committed significant or persistent criminal offences falling below the thresholds for deportation set out in paragraph 398 of the Immigration Rules or has a very poor immigration history, having repeatedly and deliberately breached the Immigration Rules.*
>
> *If the decision maker is minded to refuse an application in circumstances in which the applicant would then be separated from a child in the UK, this decision should normally be discussed with a senior caseworker.*"

In summary, if a child is British:

- it would not be reasonable for them to leave the UK
- their parent should be granted leave to remain, unless there is another carer in the UK who can look after the child and the parent's conduct gives rise to public interest considerations of such weight as to justify their removal

Following the February 2018 guidance, if Sarah and David's eldest daughter was British, Sarah and David would likely be granted leave to remain in the UK, as there is no other carer who could look after her.

However, in the updated guidance published in April 2019, the same section titled 'Reasonable to expect a child to leave the UK?' (pages 65-70) makes no such distinction between children who have lived in the UK and children who are British citizens. The guidance states (at pages 68-70), that where there is a qualifying child (either a child who is British or a non-British child who has lived in the UK for at least the 7 years immediately preceding the date of application):

> "*The starting point is that we would not normally expect a qualifying child to leave the UK. It is normally in a child's best interest for the whole family to remain together, which means if the child is not expected to leave, then the parent or parents or primary carer of the child will also not be expected to leave the UK.*
>
> *…The parents' immigration status is a relevant fact to establish that context. The determination* [in KO and Others 2018 UKSC 53] *sets out that if a child's parents are both expected to leave the UK, the child is normally expected to leave with them, unless there is evidence that that it would not be reasonable.*"

There is nothing in the April 2019 guidance which states that if a child is British it would not be reasonable for them to leave the UK. The guidance lists a number of examples of when it may be reasonable for a qualifying child to leave the UK with the parent or primary carer, but no examples of when it would not be reasonable.

The incredibly brief summary of the Supreme Court's determination in in KO and Others 2018 UKSC 53 is at least incomplete, and at most misleading.

Following the April 2019 guidance, as Sarah and David do not have leave to remain in the UK, they would be expected to leave the UK and so their eldest daughter, a British citizen, would be expected to leave with them, unless there is evidence that that it would not be reasonable.

This is an entirely different position to the earlier version of the same guidance and materially changes the decision about whether or not to grant the family leave to remain in the UK.

**8. Are there any instances where the guidance contradicts the Immigration Rules and any aspects of the guidance which cause particular problems in practice?**

There are mistakes and typos in Home Office guidance. We have been unable to collate many in preparation of this consultation response, but by way of example:

- 'Aged 18 to 24' Page 57 of Appendix FM 1.0a: Family Life (as a Partner or Parent): 5-year routes and exceptional circumstances for 10-year routes:

  *Paragraph 276ADE(1)(iii) sets out the criteria to be applied, together with the other requirements of the rules, in assessing whether to grant leave to remain to an applicant who is aged between 18 and 24, on the basis of their private life.*

This is incorrect – it is Paragraph 276ADE(1)(v)

**9. To what extent are application forms accessible? Could the process of application be improved?**

Even prior to the mandatory online application system introduced by the Home Office in November 2018, it was not clear to many applicants which form is the correct one to use for different application routes. In late 2016, for example, there were 89 different visa, immigration and citizenship application forms listed on the government website. Application form titles are obscure, and often do not indicate clearly which kinds of valid applications can be submitted on them. For example, 'Application to extend stay in the UK: appendix 1 FLR(FP) FLR(O)' was previously the correct form to submit if applying for a fee waiver, and 'Application to extend stay in the UK: form FLR(FP)' was the correct form for an initial application under several Immigration Rules in Appendix FM, and not just for renewal applications.

'Recently, when making a renewal application, I printed off the wrong form and this could have been a terrible waste of money if I wasn't corrected by a friend who had already been through the application process. It wasn't clear what form was needed or the fact that they change every so often.' **Ijeoma, Let Us Learn campaigner**

Accessing forms under the online-only application system

Almost all immigration applications must now be made via a mandatory online system, and these forms are no longer available to view. Previously, legal professionals could check to see if particular forms had been updated recently, as the Home Office published new versions with a date from which they applied. However, there is now no way of knowing if a form has changed within actually filling in each page of an application. As such, forms are significantly less accessible than they were previously. This is already having serious consequences on direct applicants.

It is not at all clear to CCLC why forms could not be published online even if the Home Office would not accept postal applications. This would allow applicants to look ahead at all the questions that must be answered before beginning an application. The publication of all forms would seem to CCLC to be a key example of transparent and fair governance.

It is unclear on what basis, and when, the Home Office decided to make online applications mandatory for immigration applications. What is clear is that on March 22 2019, the Home Office issued an announcement stating that nationality applications (for example, an application to register a child as a British Citizen under section 1(4) of British Nationality Act 1981) were online-only. This was questioned in Parliament by Baroness Lister of Burtersett on 1 April (Written Question HL14965). On 9 April the Home Office confirmed to Baroness Lister that, contrary to the information still available at that time on the gov.uk website, that applications could be made either by post or online. As noted by campaigning organisation the Project for the Registration of Children as British Citizens, the online application system for nationality applications could not be made mandatory without a change to the British Nationality (General) Regulations 2003 – a change which has not yet been publically proposed or made. However, for the period between the forms being removed from the gov.uk website and the Home Office conceding to this Parliamentary challenge, applicants could not access the forms to apply by post.

As such, the application procedures for immigration and for nationality are now different. Although it is possible to apply online, the form on which an applicant must apply is also published online. This means that an applicant can view the whole form before beginning the application process, and has the option to apply by post if they would prefer to do so. Based on CCLC's experience giving advice to vulnerable (including digitally excluded) children, young people and families, making the online system non-mandatory for immigration, as well as nationality, applications would be of enormous benefit for vulnerable direct applicants.

Online forms impede support for vulnerable applicants

CCLC provides one-off immigration advice at drop-ins hosted by organisations including schools, community centres, youth groups and, historically, children's centres. In these settings, we provide advice and support for those who cannot afford to pay for a private immigration lawyer so are therefore making the applications themselves. Much of the advice we give includes information on the practicalities of applying for leave to remain and on the questions applicants must answer in the application form – in this outreach context hard-copy forms were vital. The benefits of being able to go through the form with a vulnerable direct applicant included that: it provided valuable reassurance and empowerment to the applicant, particularly in light of the risk of losing more than £1,000 per applicant in application fees if an application is refused (fees are not refunded in case of

refusal); it allowed the solicitor to explain to clients with more limited English what the wording of questions meant in practice; it ensured that applicants would use the correct form for their kind of application; and it allowed direct applicants of limited means to have a solicitor check the validity of a completed application form before submission. Support in this manner is not ideal and does not replace having a legal representative. However, it does provide a legal lifeline for destitute individuals unable to access private immigration representation.

Now that the application forms are online, we are unable to provide this kind of support. Individuals cannot see the questions before they start the process and are therefore unable to think about the questions they might have in advance. We are unable to go through the questions online with them at the drop-in services because there is a lack of computers but also because even there were not, the questions are not provided until the individual has filled out all of the relevant registration process and started to fill it in. It is also not usually possible to proceed to the next page without completing the current page and often individuals do not have all the answers they need for each page. As such, the process is now far more time-consuming and no longer appropriate for a drop-in advice setting which is time sensitive. This means that it is no longer possible to advise precisely on the content of the forms or check over application forms in one-off advice appointments, which is the some of the only support that this client group can access on the application process.

Digital exclusion

Much of our client group are destitute and do not have regular access to computers. This means there are obvious practical barriers to accessibility when filling out the form by themselves. It should be noted that applicants are more likely to apply without the support of a solicitor if they cannot afford one, and individuals who are financially excluded from legal advice are also likely to be digitally excluded by virtue of cost. Although support for digital access for Home Office applicants is offered through a third party called 'We Are Digital', there is some cost incurred in accessing their helpline, and there is no evidence that any support can be provided for applicants who are both digitally excluded and who do not speak English. Considering the demographics of the potential users of this service, no obvious or advertised language support seems to be a serious omission.

'The online application system is easier because it feels like you're progressing through the application rather than sitting and looking through a 61-page document. Some aspects are easier and some aspects harder. The harder part is not being able to go past the section that I didn't have information for at the present time. It would be useful to be able to look ahead in the application regardless of documents that you don't have at that moment, and then come back to certain questions at the end or have the system remind you of the section(s) that are unfilled.' **Andrew, Let Us Learn campaigner**

'I feel for the older generation because the online application is a huge change and it would be good to have a visual presentation of how to use the system. For example, video/ YouTube explanation of how to use the system would be great. The system is simple for young people like me because we're used to navigating computers, but my dad and his friends are not.' **Arkam, Let Us Learn campaigner**

**15. We seek consultees' views on the respective advantages and disadvantages of a prescriptive approach to the drafting of the Immigration Rules.**

**16. We seek views on whether the Immigration Rules should be less prescriptive as to evidential requirements (assuming that there is no policy that only specific evidence or a specific document will suffice).**

**17. We seek views on what areas of the Immigration Rules might benefit from being less prescriptive, having regard to the likelihood that less prescription means more uncertainty.**

Any of the Immigration Rules being less prescriptive, especially on evidential requirements, does in theory sound positive. However, it relies on a certain amount of trust in the decision-maker which is lacking in the direct applicants that we work with. There is a long-standing and historic distrust of the Home Office amongst the client group we work with, namely young vulnerable asylum seekers and migrants. At outreach advice sessions, it is common for individuals to express extreme anxiety at the decision-making process and to feel as though the Home Office tries to refuse applications rather than looking to allow them.

'The Home Office has track record of terrible service. They are a business and their customer service is atrocious.' **Tosin, Let Us Learn campaigner**

CCLC helps individuals to make Exceptional Case Funding applications to the Legal Aid Agency where we feel that they would really struggle to make the applications themselves and they cannot afford fees for lawyers. In these meetings we ask a set of questions about the Home Office's decision making process: *How do they think the Home Office makes decisions? What do they think would help their case? What do they think would make it less likely to succeed? Who has told them what they know about the Home Office decision-making process and criteria?* The overwhelming response to the first three of these questions in a sample of ten is that they do not know. Eight in ten of the most recent respondents thought that the Home Office looked to refuse applications.

This worry and distrust in decision-making is not unfounded. As revealed by the *Guardian* last year, nearly three-quarters of final immigration court appeals brought by the Home Office against ruling allowing asylum seekers and other migrants to stay in the UK are dismissed. In the year from April 2017 to March 2018, 11,974 cases were determined in court, with 4,332 of the Home Office's decisions being overturned. Of those decisions granting leave to remain, the Home Office then referred 1,235 to the Upper Tribunal for further appeal, with 900 (73%) rejected by an independent judge, according to a freedom of information response.

As there is a clear culture of poor decision-making by immigration officials at the Home Office, the idea of bringing in an element of discretion to interpreting the Rules is unsettling given that there is so little trust in their ability to make sound lawful decisions. To some extent the prescriptive nature of the evidential requirements in Appendix FM, for example, does allow individuals to be sure that they have the documents that are listed, rather than rely on trusting that the Home Office will make a favourable assessment on the evidence provided. Without a shift in the culture of poor decision-making, making the immigration rules less prescriptive risks giving caseworkers ways to refuse even more applications.

**22. Do consultees agree with our analysis of the possible approaches to the presentation of the Immigration Rules on paper and online set out at options 1 - 3? Which option do consultees prefer and why?**

**23. Are there any advantages and disadvantages of the booklet approach which we have not identified?**

**24. Are there any advantages and disadvantages of the common provisions approach which we have not identified?**

In response to the questions on the structure of the Immigration Rules as a single set of rules with one set of common provisions, or as booklets (Chapter 8, questions 22-24 and 26), we consider that the booklet or editorial booklet approach would be most accessible. We agree with the advantages and disadvantages of all three options as outlined in the consultation paper.

From a direct applicant's perspective, it is considerably more straightforward to identify (or be provided with) one 'booklet' which contains all the rules relevant to their application. Leaving it to applicants to cross-reference which parts of the Immigration Rules apply to their case can be overwhelming, and will increase the risk that they miss relevant provisions.

CCLC provides advice in outreach settings – we see a number of people who need to make immigration applications but do not know how to find out what rules apply to their case. Often, we are unable to prepare applications for individuals, but instead signpost them to the relevant section of the Immigration Rules and Home Office guidance and explain how they can make the application themselves. It is normally unrealistic to expect applicants to review the Immigration Rules in their current format. Even if we do provide a link to the webpage with the most relevant Part or Appendix, most of the webpage will not be relevant, and there will be a number of other Immigration Rules which apply to their case in different Parts or Appendices.

If we were able to hand out, or link to, a booklet which contains all the relevant Immigration Rules, that would far better equip those we have seen to review and understand what Immigration Rules will be applied in their case. We notice that generally, individuals are reassured by having a hard-copy document to review, rather than having to click on links to a number of different web pages. Having all the Rules in one document would also allow the advisor to review the booklet with the individual, and answer questions the individual has.

The fact that each booklet will still contain information not relevant to every applicant is also a disadvantage – however, there would be significantly less irrelevant material than if an applicant is faced with the Immigration Rules presented as a whole. Additionally, we agree with the Law Commission's proposal to include some requirements as appendices (e.g. tuberculosis screening).

**26**. **We provisionally propose that:**

a. **(1) definitions should be grouped into a definitions section, either in a single set of Immigration Rules or in a series of booklets, in which defined terms are presented in alphabetical order;**
b. **(2) terms defined in the definitions provision should be identified as such by a symbol, such as # when they appear elsewhere in the text of the Immigration**

**Rules. Do consultees agree?**

We provisionally agree with the Law Commission's proposal to group all definitions into sections arranged in alphabetical order, but would note that this will only be appropriate if the proposal to cease using definitions as a vehicle for importing additional requirements not otherwise found within the Immigration Rules is adhered to. Furthermore, should the booklet model be adopted, it would be important for all terms in need of clarification used within that booklet to be defined within the same document – and not in a separate 'definitions' booklet.

We agree that for online presentation marking defined terms is important. However, we suggest that a system of embedded definitions (accessible, for example, by hovering over a term which is marked in a different colour and underlined) may be better presented through colour or alt-text than by a symbol, which might make the Rules more cluttered and harder to read.

**36. We provisionally propose that definitions should not be used in the Immigration Rules as a vehicle for importing requirements. Do consultees agree?**

We agree that definitions should not be used as a vehicle for importing requirements not otherwise outlined in the Immigration Rules. As an example, provisions within appendix EU which bring Zambrano carers into scope of the EU settlement scheme are spread across Rule 11.3 and Annex 1: Definitions. Rule EU 11.3 of Appendix EU sets out that, among others, a person meets the requirements for indefinite leave to remain where a person has a Zambrano right to reside and has lived in the UK for a continuous period of five years. However, also in Appendix EU, under Annex 1: Definitions, a person with a Zambrano right to reside is defined as:

> *a person:*
> *(a) with, by the specified date, a right to reside in the UK by virtue of regulation 16(1) of the EEA Regulations, by satisfying the criteria in:*
> *(i) paragraph (5) of that regulation; or*
> *(ii) (ii) paragraph (6)(c) of that regulation where that person's primary carer is, or (as the case may be) was, entitled to a derivative right to reside in the UK under paragraph (5); and*
> *(b) without leave to enter or remain in the UK granted under another part of these Rules*

Condition (b) is a requirement not otherwise found in Appendix EU, and means that many individuals who have a long-held Zambrano right to reside will be ineligible to apply under Appendix EU because they have since made an application under a different part of the Immigration Rules. However, under the pre-existing EEA Regulations 2016 a Zambrano right to reside by virtue of regulation 16(1) is not lost by making a new application. As such, a person who thinks they know what holding a Zambrano right to reside is – including those who have previously relied such a right – may not look to Annex 1: Definitions and as such may not realise that they are ineligible.

**39. We seek consultees' views on whether repetition within portions of the Immigration Rules should be eliminated as far as possible, or whether repetition is beneficial so that applicants do not need to cross-refer.**

We agree that unnecessary repetition should be avoided. However, we would not suggest that repetition be replaced by cross-referrals – in particular if applicants would need to cross-refer to

different sections of the Immigration Rules. Relying on applicants to check various sections of the Immigration Rules increases the risk that relevant provisions are missed.

**51. Could a common provisions approach to the presentation of the Immigration Rules function as effectively as the booklet approach through the use of hyperlinks?**

This could work for the online presentation of the Immigration Rules. However, it would be important to ensure that there was still a centralised 'landing page' for each type of leave, which provides links to all sections of the Immigration Rules relevant to that type of leave.

The issue with ensuring that the Immigration Rules are user-friendly through their online presentation is that applicants and advisors who do not have access to the internet are left with a system which is much harder to navigate. Many applicants are not comfortable using computers and there are occasions where advisors provide advice without access to the internet. In such circumstances, we consider that the booklet approach would be preferable, as set out in our response to questions 22-24 above.

In any online presentation of the Immigration Rules, it would be very important to ensure that it is optimised for mobile access.

**52. We seek views on whether and how guidance can more clearly be linked to the relevant Immigration Rules.**

For individuals seeking to make applications to the Home Office without the assistance of a legal representative, it is absolutely vital that the Immigration Rules are clearly linked to both the correct guidance documents and the relevant form for each application. As noted above in answer to question 7, many direct applicants go through the whole application process alone without realising that guidance on their particular application exists. This is extremely poor customer service from the Home Office, especially considering the fees charged by the Home Office for many immigration applications

In addition to the above, we ask the Commission to consider that there is a significant body of Home Office guidance that does not relate directly to the Immigration Rules, but rather acts to give domestic implementation to international agreements and conventions on matters that interact with the Rules. We suggest that where there is no direct legislation, only executive policy, guidance is as significant as the Immigration Rules, and ask that the Commission also include such guidance in the scope of this consultation.

Examples of areas which are not directly covered by the Rules, and Home Office guidance provides the only domestic interpretation of what applicants can expect include:

- Victims of trafficking. The UK is a signatory to the Council of Europe *Convention on Action against Trafficking in Human Beings*. Domestic interpretation of Article 14 of the Convention is provided solely through the 'Victims of Modern Slavery – Competent Authority' guidance and 'Discretionary leave considerations for victims of modern slavery' guidance. Version 3.0 of the former was found to be unlawful by the Court of Appeal in a decision promulgated on 8 February 2018 (*PK (Ghana) v Secretary of State for the Home Department* [2018] EWCA Civ 98). However, the guidance was not updated until 27 September 2018, over 7 months later.

- Those who have obtained refugee status under the Rules, who subsequently discover family members in other EU countries who have obtained refugee status in that country, and wish to apply for a transfer of refugee status to bring their family member to join them in the UK. This is technically possible as the UK is a signatory to the European Agreement on the Transfer of Responsibility for Refugees (EATRR), a Council of Europe agreement of 16 October 1980, which does not form part of UK domestic law. As a signatory to the Agreement, the UK undertakes to consider applications for transfer of refugee status lodged within the terms of the EATRR, providing the country which recognised the applicant as a refugee has ratified the EATRR. However, the asylum policy and guidance on Transfer of Refugee Status was withdrawn for review and replaced with a four paragraph 'interim notice' on 5 February 2013, 'pending the outcome of the review of the policy and guidance'. If the review has been completed, the guidance has yet to be updated.

**53. In what ways is the online application process and in-person appointment system as developed to date an improvement on a paper application system? Are there any areas where it is problematic?**

'The online application system is easier because it feels like you're progressing through the application rather than sitting and looking through a 61-page document. Some aspects are easier and some aspects harder. The harder part is not being able to go past the section that I didn't have information for at the present time. It would be useful to be able to complete the application regardless of documents that you don't have at that moment, and then come back to it at the end or have the system remind you of the section(s) that was unfilled.' **Andrew, Let Us Learn campaigner**

'After I completed my application online, I had to print everything off, physically sign it, which was annoying because what happens if I don't have a printer. Apart from that, when I got to the centre, I had forgotten to print off a section and then had to go back home to do all of that. There could have easily been a check box at the end of the online application where everything was signed for. If the application is going to be online, then everything surrounding the application should also be online.' **Zeno, Let Us Learn campaigner**

'The new online system is very different. In regard to making appointments, which was never the case before unless you went through fast track, it's made the whole application process more difficult. The appointments now mean you have to take a day out of work, which can cost people. In addition to this, if you miss an appointment, the next one is usually quite far away. Appointments are also not free! You have to pay which isn't right! On the other hand, the online system is better because Home Office no longer keep your passport. They scan it and give it straight back to you which is a big relief. Before, you couldn't have any of your documents back until the decision from Home Office was made and it causes issues in terms of identification. I welcome this particular change.' **Arkam, Let Us Learn campaigner**

'My mum has been the first in my family to use the new system. However you have to go to a centre to upload your documents, and for people who don't live in London this is extremely inconvenient. My mum lives in Portsmouth and she had to go all the way to Cardiff. Her application is complicated and she has anxiety therefore she couldn't go alone – she was so terrified she would make a

mistake. Because of the complication of her application she then had to pay extra money for her lawyer to go with her all the way to Cardiff and for them to stay there because it's so far. It was also hard booking a date for the centre as some are more booked up than others forcing people to have to go really far and spend even more money on top of their fees. One of our family friends had to go all the way to Scotland as that was the only place available in time for his application deadline. This is making the process harder more expensive and inconvenient.' **Michelle, Let Us Learn campaigner**

As can be seen from the above quotes, the new mandatory online application system for immigration applications has had a mixed reception from direct applicants – who we must presume are the constituency the system was created to assist the most beyond the Home Office itself.

Below are some examples of the ways in which the system appears to be flawed, as noted by immigration professionals. Please note that there is much information provided in response to question 9 above on accessing forms which is also relevant to this question.

Appointments at service centres

Although the application forms must now be submitted online, the process requires applicants to make and attend an appointment at one of a limited number of centres to scan and submit their original documents, and to file their biometrics – a service which used to be completed at an applicant's local post office. The need to attend an appointment means that children often have to miss at day at school to attend. The free service centre closest to London, where CCLC's offices are located, is Croydon. The vast majority of service centres require a fee to be used, which must be paid above and beyond the extremely high fees charged by the Home Office for processing applications. One legal charity which works closely with CCLC recently noted that in two of their recent cases when people have phoned for appointments they have been told to post the documents anyway and that biometric letters will be sent out. The new system of online applications and service centres was rushed out with very little warning, and little evidence of consultation or planning. Now we see that it may not be working, and caseworkers are instead relying on the old application system instead.

Outrageously, the helpline people are offered to assist them with this service costs £2.50 per minute. In practice, this means that many applicants simply cannot speak to anyone at the Home Office or even via the designated third party supplier if there are problems.

Technical issues

Many direct applicants and legal advisers have encountered the same technical issues with the mandatory online application forms – particularly when trying to submit an application following the acceptance of a fee waiver application. After submitting a fee waiver application an applicant is sent a code that they must input into the immigration application which correspondents to the fee waiver application. However, the online forms seem sensitive to additional spaces, meaning that many applicants and advisers have struggled to make the online system accept the generated code. This is the kind of technical glitch that someone who is not particularly digitally literate will really struggle to overcome – especially when working against tight deadlines and at risk of becoming undocumented.

The forms also require exact dates, for example when an applicant gives their addresses from the past five years they must give the exact date they moved into and out of each property. Making an

online system that requires this kind of specificity sets applicants up to fail: they are forced to give estimated information while the Home Office is actively looking for ways in which to question an applicant's credibility and truthfulness.

Incorrect information on the application portal

CCLC has come across several incorrect statements on the online application portal, which is a cause of serious concern. For example, it is possible to request a fee waiver if an applicant cannot afford to pay the application fees for human rights-based applications; this application must be submitted online here. This page contains several misleading statements:

1. "*If you make a fee waiver request using the paper form ('Appendix 1'), you must apply for your leave to remain application using the paper form and submit both at the same time.*"

   The paper form (Appendix 1) is no longer available, and it is not possible to apply for leave to remain using a paper form. It is unclear why this statement is included in the landing page for the online fee waiver application.

2. "*A fee waiver request may be made only if you are applying to remain in the UK for one of the following reasons (relevant application form is in bold):*
   *…*
   *b. under the 5-year parent route – **Form FLR(M) or form FLR (FP)***

      If applying under the five year parent route, applicants would need to use **form FLR(M)**, not FLR(FP).

   c. *on a 10-year route based on your family life as a partner, parent or dependant child or based on your private life in the UK – **Form FLR(M)**…*"

      If applying under the 10-year route, applicants should use **form FLR(FP)**.

Applicants who require a fee waiver could become confused by which online application form to use, and may worry if they are directed to FLR(FP), but they made a fee waiver request for form FLR(M).

About Let Us Learn

Let Us Learn is a youth-led campaign group made up of more than 900 migrants aged 16-24, supported by the award-winning charity Just for Kids Law. Let Us Learn launched in 2014 to fight for young migrants with insecure immigration status access higher 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.

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About Coram Children's Legal Centre

Coram Children's Legal Centre (CCLC), 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.

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