

Evidence for British Future Citizenship Inquiry, October 2019

What should citizenship policy aim to achieve in the UK?

Citizenship policy should aim to:

1. Realise the rights to citizenship enshrined in law, especially for children born in the UK and children born to British parents abroad. To do this, it must actively aim to make families aware of which children are automatically citizens and which children can become citizens. Policy must involve a proactive approach to establishing children's citizenship rights. Policy must aim to diminish administrative and financial barriers to the realisation of citizenship rights.
2. Facilitate the integration of long-term residents for whom the UK is home. This includes especially children and young people who have grown up in the UK. Citizenship policy must aim to minimise situations where someone is emotionally, socially and in every way British other than in legal fact. Policy should aim to shorten the route to citizenship for those who are long-term residents and diminish administrative and financial barriers.

What eligibility criteria should applicants fulfil before becoming British citizens?

Eligibility for citizenship should primarily be based on time spent in the UK or family connection. There should be a review of the length of routes to citizenship. In particular, children and young people who have grown up in the UK should not have to wait eleven years before becoming eligible for citizenship. Under the long residence rules at paragraph 276ADE of the Immigration Rules, children and young people can apply for leave to remain and are then on a ten-year route to settlement, having to wait one further year to apply as British. This eleven-year route is inappropriate for a young person aged 18 to 24 who, at the outset of the process, has already established that they have spent half their life in the UK. Such a long route runs counter to the aim of promoting integration.

Citizenship policy should not be based on a premise of 'earning' citizenship. This was unsuccessfully tried with the never-implemented provisions of the Borders, Citizenship and Immigration Act 2009.

Coram Children's Legal Centre (CCLC) supports the recommendations on the application of the good character requirement to children made by the Project for the Registration of Children as British Citizens.¹ We believe that there should be no good character requirement for children, in line with international child rights standards on children's rehabilitation. If there is such a requirement, there must be a distinction between adults and children in how it is applied and it must be applied in accordance with children's best interests.

Does the current application process act as a barrier to those who would otherwise be eligible for British citizenship?

In Coram Children's Legal Centre's experience, many children and young people are prevented from being recognised as citizens due to a lack of awareness and understanding on the part of individuals

¹ <https://prcbc.org/research/>

and professionals, and because of high fees. As the Joint Committee on Human Rights has recently highlighted, the fees children must pay to register as British 'are now well above cost recovery' and as a result 'children from more disadvantaged backgrounds, and children in local authority care who are less likely to be able to afford the fees are more likely to be disadvantaged by the fee level impeding their ability to register as British nationals'.² There are thousands of children in the UK who were born here and who have grown up here but who are denied legal recognition of their Britishness because of the impossibly high fee.

Nationality applications have, since 2007, been subject to the same escalation of fees as immigration applications. The fee for citizenship applications is now £1012, of which the actual cost of processing the application is only £372. 63% of the fee is revenue-raising. Fee waivers are only available for applications for limited leave to remain; there is no fee waiver for settlement (ILR) or citizenship.

CCLC runs a pro bono project helping families to make children's citizenship applications and has made over 90 applications. In the majority, 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. Recent evidence provided to the Treasury Select Committee showed that over a third of all households have no savings at all, let alone over £1,000 in savings, with this figure rising to almost half of low-income households.³ Many applications are delayed for over a year whilst the fee is raised, or have to be abandoned entirely. In some cases, children are instead having to apply for short, unstable periods of leave over establishing their permanent legal connection to the UK, because they can only get a fee waiver for leave to remain applications.

In many of these cases what is being charged for is a recognition of pre-existing entitlement under the British Nationality Act 1981, where the Home Office has not been asked to grant but merely to recognise.

Case study

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 was not 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.

Case study

CCLC assisted a mother who was street homeless and she and her children were sleeping on buses when they attended our drop in. The daughter was eligible to register as British, but the mother could not afford the fee, 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.

² Joint Committee on Human Rights, Good Character Requirements: Draft British Nationality Act 1981 (Remedial) Order 2019 - Second Report

³ <https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/565/56507.htm>

The previous Home Secretary Sajid Javid recognised that the fee ‘is a huge amount of money to ask children to pay for citizenship’⁴ and the government has repeatedly stated that the government is keeping the level of citizenship fees ‘under review’ in light of parliamentary attention and the recent inspection by the Independent Chief Inspector of Borders and Immigration,⁵ but no action has been taken.

Children in care

Children in care are a particularly vulnerable group, including European national children who now need to apply for some form of status.⁶ CCLC has repeatedly highlighted that, as a corporate parent, a local authority has a duty to act in a child’s and care leaver’s best interests and secure the best possible outcomes for them. This includes helping them to secure the most permanent form of status that they can, in line with the child’s wishes and feelings. There are routes under nationality law that disappear on a young person’s 18th birthday – crucially including the right to register as a British citizen at the discretion of the Secretary of State under section 3(1) of the British Nationality Act 1981; there is no way to make use of this discretion as an adult.

Local authorities should be making every attempt to facilitate legal advice on nationality as well as on children’s immigration and EU law rights. The Ministry of Justice has brought back immigration and nationality legal aid for separated children in care – a move towards regularising all children in care which is very welcome but requires extensive awareness-raising if it is to have impact.⁷ However, concern remains that decisions on which immigration or nationality route is followed for a child will be made on the basis of cost rather than of the child’s best interests. There is no fee for the EU Settlement Scheme and a fee exemption for limited and indefinite leave applications, but not for a child’s application to register as a British citizen. As a result, local authorities are de-incentivised from applying for citizenship. Bad practice in this area 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 £5000 in damages.⁸

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. The Home Office should recognise that it will be in the best interests of some children in state care to make applications for citizenship – either by entitlement or by discretion – and that it is therefore in the best interests of these children, and in the interests of the state as their corporate parent, for looked after children’s fee exemptions to extend to citizenship applications.

⁴ See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2017/windrush-home-secretary-evidence-17-19/>

⁵ See, for example, [https://hansard.parliament.uk/lords/2019-07-23/debates/35861621-1271-4443-8D91-F93CABEF11C4/BritishNationalityAct1981\(Remedial\)Order2019](https://hansard.parliament.uk/lords/2019-07-23/debates/35861621-1271-4443-8D91-F93CABEF11C4/BritishNationalityAct1981(Remedial)Order2019)

⁶ Coram Children’s Legal Centre, *Uncertain Futures*, at https://www.childrenslegalcentre.com/wp-content/uploads/2019/03/EUSS-briefing_Mar2019_FINAL.pdf

⁷ <https://www.childrenslegalcentre.com/legal-aid-for-separated-children-guidance/>

⁸ See Local Government Ombudsman, Investigation into a complaint against Royal Borough of Greenwich, reference number: 13 019 1061 (January 2016)

Recommendations:

The government should remove the profit element of children's nationality fees, charging only what it costs to process the application.

The fee waiver system should be extended to cover *all* children and young people's applications, including citizenship applications.

All children and care leavers supported by local authorities should be exempt from paying fees for citizenship applications.

Any further fee increases should match inflation and other Government increases and be accompanied by a clear business case justifying them, and a child rights impact assessment.

The government should disseminate information to local authorities to raise awareness of the availability of legal aid for children's citizenship cases, and extend this availability to care-leavers.

What changes to citizenship policy should be prioritised?

Children not born in the UK should have a route to citizenship through accrual of time

It is anomalous that a child who arrives in the UK and lives in the UK for a number of years is not on a clear route to citizenship akin to their parent(s) and instead has to rely on discretion under section 3(1) of the British Nationality Act 1981. You cannot get to citizenship through time as a child. For example, if parents arrive with their two-year-old under Tier 2 of the Points Based System, the parents have a clearly outlined six-year route to citizenship, but when the parents apply, their then-eight-year-old must apply in parallel at discretion. As another example, an EU national young person aged 16 who has been in the UK care system since the age of four would have no route through time to become British and would have to rely on discretion.

Discrimination based on parents' marital status should be abolished

It has been a long road for children to get closer to avoiding discrimination in nationality acquisition, visited on them because of their parents' marital status. Through the tortured history of proof of paternity for nationality purposes there have been some attempts to get rid of discrimination based on parents' marital status. This can be seen in the British Nationality (Proof of Paternity) Regulations 2006 and also amendments to the British Nationality Act 1981 to allow for fee-free registrations as British for children of unmarried parents who would have been British automatically but for the fact that their parents were not married. Yet discrimination for these children persists and reverberates down to the next generation.

For example, a father who is 30 would have been British through his British father but is not because his parents were not married at the time of his birth. He can register for free under section 4G of the British Nationality Act 1981. But meanwhile he has had a daughter, who should have been automatically British but instead has wait for her father to register and then register herself and pay a fee.

Furthermore, section 50 (9A) of the British Nationality Act 1981 means that children born to mothers married, at the time of their birth, to a man other than the natural father, cannot acquire British citizenship from the natural father. A case on this is being heard in the Court of Appeal in November 2019.

Children born in the UK between 2000 and 2006 to European parents should be recognised as automatically British

Thousands of children born in the UK to EU, EEA and Swiss parents between 2 October 2000 and 29 April 2006 are not British. These young people are now between 13 and 19 years old and may have paid to register as British, or applied to the EU Settlement Scheme, but arguably should have had to do neither. The reason they are not British automatically is because of the way the term 'settled' was defined at the time of their birth, including only those with ILR, which very few EU/EEA nationals had or applied for at the time. This has resulted in a 'lost generation' so that, as the Home Office states, 'most children of EU or EEA citizens born between 2 October 2000 and 29 April 2006 are not automatically British citizens'. These children lost out arbitrarily: a child born one day before this period on 1 October 2000 is automatically British simply by dint of having a parent in the UK exercising Treaty rights; a child born one day after this period on 30 April 2006 is automatically British simply by having a parent who had worked in the UK for five years. What a difference a day makes.

The government should disseminate information on who is a citizen

One primary problem with the process is that it is not clear to families which children are automatically British and can apply for a British passport. Much of CCLC's work involves advising on children's automatic acquisition of British citizenship, as well as for other children, their right to register. It should clearly be an important aim for citizenship policy to spread awareness of who is a citizen. We believe that this could be done by:

1. Including government information and a passport application form in the Bounty pack;
2. Including government information and a passport application form in the pack parents receive when they register the birth of their baby;
3. Improving the information available on the Gov.uk site at <https://www.gov.uk/get-a-child-passport> so that it at least links to information on who is British at <https://www.gov.uk/check-british-citizenship> – the latter page should be improved, promoted and translated so that more families check it and read it;
4. Sending information and this link <https://www.gov.uk/check-british-citizenship> to families via Public Health England's Start4Life service.

The Home Office should take a proactive approach to establishing children's citizenship rights

CCLC's experience is that the Home Office will undertake work to cross reference a child's citizenship with a mother's entry clearance or immigration application where the result is to deny a child their citizenship right, even revoking a passport years after it was issued. This is in stark contrast with the reluctance to attempt – even when requested – to cross reference for example an absent father's immigration or nationality status where it would help to establish a child's citizenship right.

For example, CCLC has seen a number of cases where a child has been born in the UK and since the child's birth their father has obtained indefinite leave to remain. They have a right to register as a British citizen under section 1(3) of the British Nationality Act 1981, but in these cases the father is either estranged or unwilling to cooperate after the mother fled domestic violence. We have liaised with the Home Office in relation to them confirming whether the father has ILR *in advance* of submitting the application. This would allow us to conclusively advise the mother in these cases of the merits of the application and lower the risk of losing the application fee which would happen if the application is refused. The Home Office has refused to confirm in advance, leaving the mother having to risk losing over £1,000 if she goes ahead with her child's application.

In some cases, the Home Office not only declines to take a proactive approach, but actively makes establishing the right more difficult, including for example not accepting parentage based on a child's birth certificate following a 2015 amendment to the British Nationality (Proof of Paternity) Regulations. This results in a punitive system for potentially British children who are denied the acquisition of the rights enshrined under the British Nationality Act 1981.

The government should acknowledge that having British citizenship for those entitled to it is a fundamental part of a child's security and right to an identity

CCLC believes that there is a desperate need for a shift in the government's portrayal of British citizenship as a *right* for those eligible, rather than a luxury that children can simply live without if or until they can pay for the fee.⁹ The government has also suggested that having indefinite leave to remain affords the same rights and benefits. For example, in a speech in March the then Immigration Minister, Caroline Nokes MP, stated that 'the removal of this [citizenship] fee is unnecessary, given that becoming a citizen is discretionary and not necessary to enable an individual to live, study and work in the UK'. Yet, the Home Office's own guidance states that:

*'...becoming a British citizen is a significant life event. Apart from allowing a child to apply for a British citizen passport, British citizenship gives them the opportunity to participate more fully in the life of their local community as they grow up.'*¹⁰

Citizenship is a unique legal bond and only citizenship confers equal rights with other British citizens. It is the most secure position for a child – it is permanent and can only in very rare cases be revoked. By contrast, if someone has indefinite leave to remain (i.e. is settled), the Home Office can revoke their leave and deport them in certain circumstances, where the individual has been convicted of a criminal offence or used deception to be granted leave. Too many young people in the criminal justice system, including those who have been in care, face having their leave revoked and being deported, sometimes to a country they have not been to since they were an infant. Some of these young people could have obtained British citizenship if only the right application had been made for them. British citizenship affords diplomatic protection and, for the time being, EU citizenship. Obtaining British citizenship is also important for progression in education including accessing scholarships, going on study trips and going to university and for pursuing certain career paths, including joining the armed forces, civil service or the police. Citizenship determines children and young people's political participation and enfranchisement once they turn 18.

⁹ HL Deb 21 March 2016, vol 769, part 129, col 2217, available at:

<http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160321-0004.htm#16032216000138>

¹⁰ Guidance on the MN1 form on which children register as British

Recommendations:

Children not born in the UK should have a route to citizenship through accrual of time.

Discrimination based on parents' marital status should be abolished, including fee-free applications for the children of those eligible to register under section 4G BNA 1981 and ceasing exclusion of children from citizenship based on section 50 (9A) BNA 1981.

Children born in the UK between 2 October 2000 and 29 April 2006 to EU, EEA and Swiss parents should be recognised as automatically British or, at minimum, be exempt from paying a fee if they make an application to register.

The government should proactively disseminate information on who is a British citizen and how to get a passport.

The Home Office should take a proactive approach to establishing children's citizenship rights.

The government should acknowledge that British citizenship and indefinite leave to remain are not the same in terms of the entitlements and security they bring and that having British citizenship for those entitled to it is a fundamental part of a child's right to an identity. This should be reflected in government discourse and policy making.

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