

Shorter routes to settlement for long-resident children & young people

The current immigration system is failing young people who have grown up in the UK and have the right to stay and contribute to the country they consider home. There are over 215,000 children and young people who are living without status in the UK today,¹ over half of whom were born here, who face a long, complex and expensive process before they are able to obtain the permanent status needed to plan for their futures and contribute fully to society.

The current system

In the UK today, a child or young person who is undocumented (has no legal permission to be in the UK) has several different routes by which they might regularise their status.² They may be eligible to register as British. If they have spent seven years living continuously in the UK, and can prove that it would not be reasonable to expect them to leave, or if they are over 18 and have lived here for half their life, then they should be granted 'leave to remain'. However, the options available narrowed in 2012 and there is no legal aid for these cases unless the child is in care. It is now more complex, expensive and lengthy for children and young people who have grown up in the UK to regularise their status.³

If a child or young person is able to submit an application, they would usually only be granted just two and a half years' leave, meaning that without further action in just 30 months they would be undocumented again. They are then on a ten-year route to indefinite leave to remain (the 'ten year route to settlement'), requiring five applications currently costing a total of £10,521 in fees and charges before they will have secure, permanent status.⁴ If the Immigration Health Surcharge is increased as outlined in the Conservative Manifesto,⁵ this total cost will increase to £12,771 over ten years.

The need to repeatedly make detailed and expensive applications increases the likelihood of children and young people falling back into undocumented status as, for example, they cannot raise the fees or afford a lawyer. Research by the Children's Commissioner has highlighted the trauma, stress and anxiety caused by 'living in a 'state of limbo'.⁶ In 2019, the Independent Chief Inspector of Borders and Immigration recommended that the Home Office 'review the routes to settlement, including assessing the negative effects on individuals and families of requiring repeated applications': the government responded that it would 'reflect' on this.⁷ The current system also increases the burden on Home Office administration: requiring consideration of five separate applications when a long-term solution could be provided in one or two is inefficient and ineffective.

Discretionary grants of indefinite leave to remain

Home Office policy gives decision makers the discretion to grant indefinite leave to remain to those children who apply for limited leave to remain on the ten year route but who request indefinite leave

¹ <https://www.childrenlegalcentre.com/londons-children-and-young-people-who-are-not-british-citizens-a-profile/>

² See Coram Children's Legal Centre (CCLC), [Securing Permanent Status: existing legal routes for children and young people without leave to remain in the UK](#), 2017

³ CCLC, ['This is my home': Securing permanent status for long-term resident children and young people in the UK](#), 2017

⁴ CCLC, We Belong, JCWI, Citizens UK and On Road Media, [The fee barrier](#), January 2020

⁵ <https://www.freemovement.org.uk/conservative-manifesto-2019/>

⁶ Office of the Children's Commissioner [Children's Voices: A review of the evidence on the subjective wellbeing of children subject to immigration control in England](#), August 2017

⁷ Independent Chief Inspector of Borders and Immigration, [An inspection of the policies and practices of the Home Office's Borders, Immigration and Citizenship Systems relating to charging and fees](#), April 2019

because it would be in their best interests.⁸ However, this discretion appears to be rarely used. In 2016 only 25 grants of indefinite leave to remain for children under 18 were granted on this discretionary basis,⁹ despite the courts having highlighted that ‘where there is strong evidence to suggest that the child’s life would be adversely affected by the grant of limited leave’, indefinite leave to remain should be granted.¹⁰ There is no such discretion once a child turns 18. Research and case law has also highlighted examples of Home Office failure to assess what would be in the best interests of the child when making decisions in these cases, and to appropriately apply the policy.¹¹

A shorter route to permanent status would ensure that children and young people who have grown up and been educated in this country are able to fully integrate both financially and socially, at great benefit both to them and to our society. It would reduce the risk of their falling back out of the system if they are unable to raise the funds for application fees or a lawyer, increasing the undocumented population, and would ease the burden on the Home Office in processing these applications.

It is only human rights claims that are on the ten year route to settlement. All other categories of migrant have shorter routes to settlement. For example, as a partner/spouse or as the parent of a British child you will be on a five year route to settlement. The new EU Settlement Scheme allows European citizens who have resided lawfully in the UK for five years to apply for settlement. The government has committed to a system that is free, ‘simple’ and ‘straightforward’, avoiding any unnecessary administrative burdens. Home Office guidance states that individuals should ‘serve a probationary period of limited leave before being eligible to apply for ILR’¹² but young people who have grown up in the UK must endure a ‘probationary period’ that is twice as long as other individuals eligible for leave to remain, without clear reason.

Recommendations:

- **Shorten young peoples’ route to settlement.** The government should amend the immigration rules to allow children and young people applying for leave to remain on the basis of long residence and/or their right to a private and family life to be on a five year route to settlement.
- **A one-step process for children and young people.** The Home Office should revise its guidance on discretionary grants of Indefinite Leave to Remain (ILR) so that a child or young person applying for leave on the basis of long residence and/or their right to a private and family life whose future lies in the UK automatically qualifies for consideration for a grant of ILR.

Case study

Eve came to the UK when she was four and has lived here ever since. Because she came to the UK so young, Eve grew up not knowing that she was undocumented, and assumed she was British like her friends. Eve’s mother tried to regularise the family’s status around the same time that Eve began secondary school, but received poor advice from unregulated solicitors. As a result, the family remained undocumented. As Eve studied for her A levels, she realised that her status would stop her from going to university, and her mental health suffered badly. She nevertheless got good grades, but could not get a student loan because of her immigration status. She had no right to work, and so was unable to pay for a private solicitor to take on her case. Eve was finally assisted by a pro bono solicitor when she was 20 and had been in the UK for 16 years, but she was only granted leave to remain for two and a half years just before her 21st birthday. She will not be eligible for settlement until she is 30 and has lived in the UK for 26 years.

⁸ Home Office Family Policy, [Family life \(as a partner or parent\), private life and exceptional circumstances](#), p 81

⁹ Updated Home Office statistics have been via several Freedom of Information requests but these have been refused.

¹⁰ *SM & Others v Secretary of State for the Home Department* [2013] EWHC 1144

¹¹ For example, see CCLC ‘[This is my home](#)’ and [SM v SSHD \[2019\] UKAITUR JR008852018](#)

¹² Home Office, Leave outside the Immigration Rules, v. 1.0, February 2018