

The Local Government Ombudsman has criticised a local authority for not ensuring a child in its care received specialist legal advice and assistance to sort out the child's right to British citizenship. Having British citizenship has a profound impact on a child's future and identity. Yet failing to secure a child's citizenship can lead to that right to citizenship being lost altogether.

Social services departments have responsibilities to ensure that children in their care have effective access to specialist legal advice so their citizenship or any entitlement to citizenship is secured. Doing so is an important means towards safeguarding and promoting their welfare and can avoid problems for the children in the future. This emphatically does not mean social workers should become British nationality law advisers – but that they should recognise that nationality might be an issue and consider it as part of the six-monthly review of a long-term looked-after child.

Two stories of children, with names and some details changed, illustrate some potential problems:

Marie was born in the UK in 2000. Her parents separated before she was born. Her mother, with whom she lived, suffered from mental health problems. When her mother died in 2014, Marie was taken into care. Now nearly 17, she wants to travel abroad on holiday with her foster family. However, her application for a British passport was refused because the Passport Office was not satisfied she had established she was British. Marie, and the family, do not understand how this can be right.

Tommy came to the UK when he was six months old. He travelled on a British passport, but when much later the Passport Office discovered the person he thought was his mother was in fact a different relative, Tommy's passport was cancelled because his birth mother was not British. Tommy was then 14, and had already spent many years in care. However, nobody took any action to resolve Tommy's situation, and when he turned 18 – having spent all but the first six months of his life in the UK – he lost the right to apply to be registered as British.

Citizenship by birth

Since 1983, being born in the UK has not been enough in itself to mean someone is British. Many people are surprised by this. Someone can live in the UK through their childhood, and well into adulthood, have a birth certificate confirming they are born here, and not realise they are not British – perhaps until they apply for a British passport to go on holiday and it is refused. By then, collecting the evidence to show they are, or are entitled to be, British can be very difficult – especially so if their parents have died or become estranged. Ensuring a child has documentary evidence – regarding where they were born, the length of their life in the UK and the citizenship or immigration status of their parents – and specialist legal advice and assistance to establish their status or to apply to become British is vital.

Before 1983, anyone born in the UK was born British. From 1 January 1983, a child born here is only British if at the time of birth either parent was British or had indefinite leave to remain or a right to permanent residence under EU law (indefinite leave to remain and permanent residence are often referred to as being 'settled'). However, for many years, where the father was the British or settled parent, the child was only born British if the parents were married to each other. This injustice was eventually rectified for children born on or after 1 July 2006. In April 2015, a further correction was made enabling many people born before that date to register as British.

However, the onus for establishing that someone – including a child – is British rests on them, not the Home Office. They must prove their citizenship, and this requires evidence. Original documents needed by children who are British by being born in the UK include such things as the child's full birth certificate with both parents' names on it; the full birth certificate of a parent if she or he was born in the UK before 1983; a parent's naturalisation or registration certificate if she or he became British before or after the child's birth; or a parent's passport from the time the child was born showing an indefinite leave to remain or 'no time limit' stamp.

Ensuring these documents are held for a child in long-term local authority care will be vital for a child born in the UK to be able successfully to establish she or he is British and obtain a British passport.

Children born in the UK but not born British

A child born in the UK to parents neither of whom are British or settled will not be British by birth. The child may have the nationality of one or both parents, but this will depend on the nationality law of the country or countries of the parents' nationality, not the law of the UK. Otherwise, a child may be stateless – i.e. with no nationality at all. Stateless children have an entitlement to register as British citizens after five years living in the UK.

The British Nationality Act 1981 establishes several ways by which a child born in the UK is entitled to register as British. Two of the most common of these are:

- if one of their parents becomes British or settled after the child is born but before she or he turns 18;
- if the child lives in the UK for the first ten years of her or his life, with no absences from the UK of more than 90 days in any particular year (unless there are special circumstances).

As in other cases, the child must prove her or his entitlement. The following documents can all prove vital: the child's baby book; letters from playgroups, nurseries, primary and secondary schools confirming the dates of the child's attendance; letters from GPs confirming when the child joined the practice list and the dates the child was seen after that; and letters from others confirming how long the child and the family have been known to them, such as churches,

temples, mosques, sports centres and libraries. Social services' records of the time during which the child has been known to them can also prove to be key.

Social services departments should ensure they clarify and understand the citizenship status of looked-after children who are unlikely to be able to return to live with their family, keeping evidence of the entire duration of the child's life in the UK on file. This might be added to matters considered by the reviewing officers in their six-month reviews.

General discretion to register a child as British

Whether or not she or he is born in the UK, the Home Office has a general discretion to register any child as British. Home Office guidance seeks to restrict the exercise of this discretion to, for example, the cases of children with indefinite leave to remain and a parent who is British or applying to be naturalised as British. However, where it is established a child's future clearly lies in the UK, she or he should be registered.

Good character

Children aged 10 or older (unless applying to register on grounds of being stateless) are subject to a good character requirement. If the Home Office considers the child is not of good character, for example because the child has a conviction or caution, this may result in refusal of her or his registration as a British citizen. However, the strict application of this requirement by the Home Office may be open to legal challenge, especially as their current practice fails to have any proper regard to the duty to safeguard and promote the welfare of children.

Consequences of not securing a child's British citizenship

Not establishing a child to be, or not registering a child as, British can have serious consequences. Even where the child may obtain a regularised immigration status, their situation in the UK is made far less secure. They may be unable to travel outside the UK with the expectation of being allowed back in. They may be unable to prove the right to work, such as when taking a holiday job; and they may not qualify for student finance or as a home student. They may be unable to access secondary healthcare for free, or at all.

These problems are likely to get even more serious as children approach adulthood. They may even face being detained and deported from the UK; and even if they avoid this, they are likely to be required to pay hundreds of pounds in immigration fees each time they are required to renew their permission to stay.

Conclusion

This article gives a taste of some of the problems children may experience if their right to register as British is not exercised; and highlights some of the complications of the law and process surrounding this.

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[The Project for the Registration of Children as British Citizens](#) (PRCBC) is a small, legally-specialist charity, established and managed by solicitor, Solange Valdez, assisted by half a dozen skilled and knowledgeable volunteer advisers, assisting children to understand and claim their British citizenship rights. Several of the children referred to PRCBC have been in long-term local authority care. (PRCBC) is a registered charitable company and is hosted by Migrants Resource Centre (MRC).

The fee for a child to register as British is currently £973, whether by entitlement or discretion. There is no fee exemption, waiver or reduction. The Home Office explains £386 is the cost of processing an application; £587 is just profit. PRCBC also [campaigns for the fee](#) to be exempted for looked after children and reduced for other children to cover costs only.

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April 2017