

“SYSTEMIC OBSTACLES TO CHILDREN’S REGISTRATION AS BRITISH CITIZENS”

LEGAL RESEARCH REPORT



Photo: Taken at PRCBC’s monthly Saturday advice sessions, September 2014



EALING LAW CENTRE

24 November 2014

Version 30 November 2014



Copyright © Ealing Law Centre 2014

We welcome the reproduction of this publication for the purposes of representation, education, training and campaigning, provided that no charge is made for the use of the material and the source of the information is acknowledged.

CONTENTS

Legal Research Team	1
Acknowledgements	2
Executive Summary/Key Findings	3-4
Introduction	5-6
Preliminary research on means of raising the registration application fee	7
Statutory research on the introduction of registration of children by entitlement and discretion under the British Nationality Act 1981	8-19
Feedback from organisations on the registration application fee and the importance of registration	20-29
Feedback from children who are seeking to register or have registered as British	30-34
Lack of adequate reasons given by the Secretary of State in discretion applications made under section 3(1) of the British Nationality Act 1981 and the application of Chapter 9 Nationality Instructions	35-40
UKVI subject access requests for files to explore the application of discretion and lack of adequate reasons given by the Secretary of State in refusing applications	41-45
Freedom of Information (FOI) requests to understand reasons behind the registration application fee and statistics on grants and refusals on registration applications	46-59
Concluding Remarks	60
Recommendations	61
Appendix 1: Index to objective evidence bundle - Volume A	62-66
Appendix 2: Index to legal authority bundle- Volume B	67-70

LEGAL RESEARCH TEAM

Solange Valdez:

Instructing Supervising Solicitor and co-founder of PRCBC,
Ealing Law Centre

Sonali Naik:

Instructing Counsel, Barrister
Garden Court Chambers

Carol Bohmer:

LL.M., Ph.D., Research co-ordinator and co-founder of PRCBC,
Visiting Research Scholar, Dartmouth College and Teaching Fellow
Department of War Studies, Kings College, London UK

Laura Williams:

LLB (Hons)
Paralegal/Caseworker,
Ealing Law Centre

Harshna Patel:

BA (Hons) Economics, Graduate Diploma in Law,
Volunteer,
Ealing Law Centre

Natalya Segrove:

BA (Hons) History, Graduate Diploma in Law,
Volunteer,
Ealing Law Centre

Unless otherwise stated, references in square brackets in the report are to the Objective Bundle [A] or the Legal Bundle [B].

ACKNOWLEDGMENTS

We would not have been able to write this report without a number of people who gave their time to help us collect this material. We gratefully acknowledge the following:

Aimee Ashton-Freeman, Just for Kids Law
Peter Bartram, Solicitor, sole practitioner of the former Bartram & Co Solicitors
Diana Baxter, Solicitor, Wesley Gryk Solicitors
Jonathan Butterworth, Garden Court Chambers
Jo Bezzano, Solicitor, Elder Rahimi Solicitors
Pam Case, Retired Nursery Teacher
Patrick Casey, British Library
Hannah Chandler, Bodleian Law Library
Alan Cripps, Volunteer/Interim Business Manager Ealing Law Centre
Benedetta D'Angri, Child's Rights Advocate, Kids Company
Solange De Carvalho, Solicitor, Legal Rights Partnership Solicitors
Laurie Fransman QC, Garden Court Chambers
Tatiana Garavito, Director, Latin American Women's Rights Service
Carolina Victoria Gutiérrez, Crèche Coordinator, Latin American Woman's Rights Service
Alison Harvey, Legal Director, Immigration Law Practitioners' Association
Leonie Harvey-Rolfe, Just for Kids Law
Sumiya Hems, Solicitor, Birnberg Peirce & Partners Solicitors
Anita Hurrell, Legal and Policy Officer at Coram Children's Legal Centre
Lola Mattos, British Library
Kalyani McCarthy, The Children's Society
Claire McGuinness, The Children's Society
Alice Myers, The Children's Society
Declan O'Callaghan, Landmark Chambers
Teresa Redman, Just for Kids Law
Sue Shutter, Assistant to Fiona Mactaggart MP
Anna Skehan, Solicitor, Islington Law Centre
Steve Symonds, Programme Director for refugee and migrants Amnesty International - UK

We offer great thanks to the Strategic Legal Fund for Vulnerable Young Migrants (SLF). As well as funding this research, without their help it would not have been possible for us to extend our knowledge in the registration applications for the benefit of children. Further, their funding allowed us to be better equipped and provide support and expanding training to lawyers and relevant organisations and support groups. It has also enabled other organisations to be aware of issues surrounding the rights and importance for children to be registered as British. We would also like to offer great thanks to Unbound Philanthropy, Trust for London, Declan O'Callaghan and the research team involved in compiling this report who have given extra time, including evenings and weekends.

EXECUTIVE SUMMARY/KEY FINDINGS

A. The Importance of British Citizenship

- Our experience and our surveys of those who work with children strongly emphasised the significance of British citizenship to children. This supports statements of the Government as to its importance.
- Children are troubled and embarrassed by not being registered as British. There are both emotional and practical consequences, particularly for older children as they are more fully able to understand their position in British society. Having their citizenship status clearly defined would enable them to contribute to and participate more fully in British society. We were able to document this both from organisations which work with children and the children themselves.

B. The fee

- Our clients have serious difficulties finding the fee of £ 669 for registration
- Because of their status and circumstances, they are generally unable to borrow the fee
- Social Services in practice do not generally pay the fee for children under their care or for children who they are providing assistance under the Children's Act even where registration is in the child's 'best interests'
- PRCBC has tried with little success to fundraise the fees
- The Home Office does not have a programme of waiving the fee for destitute applicants or for those children in care
- The government has justified their fee structure in terms of the benefit to applicants of citizenship. This is by (false) analogy between naturalisation, registration by discretion and registration by entitlement
- The government has calculated that it costs £144 to process a registration application, as compared to the £669 charged in actuality.

C. The refusal letters

- The Secretary of State sends decision letters where the reasons for refusal of registration are either not addressed at all, or are so brief as to be of no assistance to the applicant with regard to where or how they went wrong [recently described as "skeletal" by one deputy high court judge]. We collected many refusal letters and found a pattern of very short and non-responsive letters, many of which were worded identically. Statements such as "the child is not settled" and "sufficient grounds to exercise discretion could not be found" were frequently used.
- For a review of the Secretary of State's refusal, she asks that an additional fee of £80 be paid. It is unclear, firstly, why such a fee should be paid in addition to the £669 initial

application fee, and secondly, the benefit of requesting a review in relation to a decision where a person does not know where s/he went wrong in the first place.

D. The exercise of discretion

- The case notes from the disclosure files which we obtained, showed that the reasons for refusing to register a child at the Secretary of State's discretion were often contradictory and ill-thought out, generally indicating poor decision-making in children's applications.

INTRODUCTION

Ealing Law Centre hosts the Project for the Registration of Children as British Citizens (PRCBC). PRCBC was founded in November 2012. It is a project which relies on professional volunteers and aims to support the increase in the number of children who register as British Citizens. It has a small one-year grant from Unbound Philanthropy.¹ PRCBC deals with complex² registration applications from vulnerable children and young adults who are unable to afford legal advice. The project's client group consists mainly of children and therefore reference to children in this report will very often mean to these children or their carers. The majority of PRCBC's clients do not have any form of immigration status in the UK. Only a very small number of PRCBC's client's have indefinite leave to remain in the UK (ILR).

The benefits of a child having British citizenship as opposed to ILR is that citizenship gives the child full rights as a UK citizen, including the right to a British passport and the rights of a citizen of the European Union.

Since 1 April 2013³, due to legal aid cuts, there is no longer legal aid available for children to receive advice and assistance in their immigration or registration applications. This makes it even more difficult for children who do not have the financial means to pay for advice and assistance to register, either by entitlement or discretion.

In addition to this, changes in immigration policies and rules have meant that fewer children qualify for settled status or that it takes longer for them to qualify.⁴ On 9 December 2008 the concession which had allowed children who had completed 7 years in the UK to qualify to apply for indefinite leave to remain (ILR), was withdrawn. [B7.10]. Further, on 9 July 2012 the Secretary of State withdrew the policy which had allowed for children to be granted 3 years discretionary leave to remain on Article 8 (ECHR) grounds before they would become eligible for ILR after 6 years. [B4.152-4.168]. On the same date the immigration rules were amended to allow a child who has lived in the UK for 7 years to apply for leave to remain (LTR) based on long residence/private life⁵. A child now has to complete 10 years LTR in order to qualify for ILR under these rules. An additional barrier in making applications for LTR and ILR are the high prescribed UKVI application fees⁶. Unreasonable delays in grants of leave to remain and refusals without decisions to remove, which would have given them a

¹ <http://www.unboundphilanthropy.org/index.php>

² With regard to complexity this refers to the level of understanding of the client.

³ Legal Aid, Sentencing and Punishment Offender's Act 2012

⁴ ILR policy DP5/96 to grant children who have completed 7 years in the UK was withdrawn on 9 December 2008: See Minister's statement, Mr P Woolas:

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081209/wmstext/81209m0002.htm>

⁵ Paragraph 276ADE (iv) Immigration Rules

⁶ Fees regulations 2014 (SI/2014/922), ILR applications set at £1,093 and LTR at £601. Although some very limited fee waivers have been introduced- see Table 4 of Schedule 1 of these regulations

right of appeal to the First Tier Tribunal has also added to many of these children's unsettled immigration status.

The above changes have had a serious effect on children qualifying for registration at the Secretary of State's discretion. Under her Chapter 9 Policy Guidance, the Secretary of State would expect a child to have ILR before registering him/her as British.

This report explains the legal research done by Ealing Law Centre⁷ and provides a summary of our findings.

We aimed to research three key aspects surrounding the area of registration of children. This legal research has been funded by the Strategic Legal Fund for Vulnerable Young Migrants (SLF) on the three key issues. [A1.1 – A1.3]

These were:

First Issue: the mandatory registration application fee currently set at £669⁸, and absence of fee waivers for those children who are unable to afford this

Second Issue: the current Secretary of State's policy guidance on registration of children under the discretionary powers given to her under s3(1) of the British Nationality Act 1981 i.e., Chapter 9 of the Nationality Instructions

Third Issue: the lack of adequate reasons given by the Secretary of State in relation to refusal of applications under her discretionary powers.

This report will discuss our research in detail on the above three issues.

⁷ <http://ealinglawcentre.org.uk.gridhosted.co.uk/>

⁸ The fee for a person 18 or over is set at £823

PRELIMINARY RESEARCH ON MEANS OF RAISING THE REGISTRATION APPLICATION FEE

With regard to the first issue - the application registration fee - we first conducted preliminary research. The first possibility was that children or their carers raise the fee themselves. To this end, we researched the eligibility criteria of various banks and money lenders; we found that PRCBC's client group would not be eligible to use these services as they do not meet the minimum requirements. Many of PRCBC's clients do not have a formal photo identity document such as a passport, some do not have mobile phones, and many do not have a bank account, a necessary pre-requisite in order to apply for a loan from a bank itself.

Due to PRCBC's clients' lack of access to loans, we then looked into charity organisations that might have funds for registration fees for PRCBC's client group. We researched the Buttle Trust, who we thought may offer one-off help with application fees; however we found that they do not. We also researched organisations such as Reach Out, the Paul Hamlyn Foundation and Refugee Action. Whilst they are either supporting or funding organisations working with children, we discovered that they do not have any scope with regard to paying for registration application fees. We discussed this with a consultant for children's funding foundations, who told us that there are no organisations that will fund application fees of any sort.

In addition to this, we explored funding for educational purposes as a basis to get a sense of the criteria used to grant children funding. We were disappointed to find that there has been a real crisis even for funding of children's education. The Education Maintenance Allowance in England used to be available, but it has been replaced by the 16-19 Bursary Fund. In the United Kingdom, there is a total erosion of sources of funding for children, including for advanced educational purposes. Our basic initial research supported what we already suspected; if there is no funding available for basic needs such as books, uniform and food, there is less of a prospect of governmental funding for registration application fees.

Due to the PRCBC's scarce resources, including reliance solely on volunteers, fundraising for a child's application fee is not feasible for the PRCBC. However, PRCBC has been compelled by certain exceptional cases to undertake a few individual fundraising campaigns, notably through pleading messages via social media such as Twitter, Facebook, LinkedIn and Virgin Money. More recently, with the help of other volunteers, PRCBC has created an appeal leaflet asking individuals to sponsor a child's registration fee.⁹ [A5.42]. The leaflet has increased publicity and awareness about registration and the project, but sadly it has not done much in terms of raising funds for application fees, given the high level of the fee. PRCBC has had some response by way of small contributions, but this does not solve the problem for those very vulnerable children in desperate need of registration. Due to these difficulties, fundraising for even one fee is time consuming and often unsuccessful.

⁹ <http://ealinglawcentre.org.uk.gridhosted.co.uk/sponsor-registration-fee/>

STATUTORY RESEARCH ON THE INTRODUCTION OF REGISTRATION OF CHILDREN BY ENTITLEMENT AND DISCRETION UNDER THE BRITISH NATIONALITY ACT 1981¹⁰

As part of our legal research, we reviewed all relevant current nationality provisions by way of Acts, statutory instruments, policy guidance, case law and UKVI practice, including both current legislation¹¹ as well as those relevant provisions that are waiting to come into force.¹³ We also undertook statutory research on the background to these various provisions, focusing particularly on our client group. This consisted of researching the historical legal background and the purpose of the introduction of the discretion and entitlement provisions under s1 (3), s1 (4) and s3 (1) of the British Nationality Act 1981. We utilised resources such as Hansard and also consulted the guidance which has accompanied the various Fee Regulations in recent years. Furthermore we looked at all relevant memoranda and impact assessments carried out in connection with some of these legislative changes.

Historical legislative background to registration by entitlement and discretion under BNA 1981

We looked into the policy behind the introduction of the British Nationality Act 1981 to assist us with an understanding of the policy underpinning the Act in respect of registration of children under s1(3), s1(4) and s3(1).

Nationality and immigration are two sets of distinctive laws and must not be treated as the same. Immigration law comprises national policies that control the immigration of people to a country, whereas nationality law concerns how nationality and citizenship of a country can be acquired, transmitted or lost etc.

The main source of law on the registration of children as British citizens is the British Nationality Act 1981. This Act has gone through various amendments since it came into force on 1 January 1983. The various statutory instruments, regulations, policy guidance and case law that relate to the Act also need to be considered for the purpose of understanding any rights children have to register as British citizens.

¹⁰ s1(3), s1(4) and s3(1) BNA 1981

¹¹ s51-52 Immigration, Asylum and Nationality Act 2006, [B1.20 – B1.25]

¹² s42 Asylum and Immigration (treatment of claimants, etc) Act 2004 [B1.26 – B1.28]

¹³ Immigration Act 2014 [B1.29 – B1.40]

The introduction of the British Nationality Act 1981 meant that for the first time, people who had been born in the United Kingdom were not automatically entitled to British citizenship. As the White Paper *British Nationality Law: Outline of Proposed Legislation* (presented July 1980) set out, citizenship would be based on having a ‘*close personal connection with the United Kingdom*’¹⁴. [B6.1 – B6.3]

When the Bill had its second reading in the House of Commons, Timothy Raison, then Minister for Home Affairs, reaffirmed the government’s reasons for introducing the Bill:

*‘In designing our citizenship we are clearly looking for some kind of commitment on the part of those who seek to acquire it. Citizenship is a mixture of rights and duties. The country that grants it needs to protect those to whom it gives it, but at the same time the citizen has obligations to the country of his choice. Thus, we are looking for commitment in the proposal that those who have our citizenship but were not born here will not automatically be able to transmit citizenship to their children if they are born overseas, although Crown servants whose commitment is obvious will be able to do so.’*¹⁵ [B6.18 – B6.19]

s1(3) British Nationality Act 1981

“A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1) or (2) shall be entitled to be registered as a British citizen if, while he is a minor—

- (a) his father or mother becomes a British citizen or becomes settled in the United Kingdom; and
- (b) an application is made for his registration as a British citizen”.

The reasoning for this provision is found in the White Paper at paragraph 42:

‘42. The Government consider however that a move to the complete adoption of the jus sanguinis would have a serious effect on racial harmony. It would mean that children born in this country to parents who had settled here would not have our citizenship, and this could hinder their integration into the community. But the Government are concerned about the children born here to parents, neither of whom is a British Citizen, and neither of whom is free of conditions of stay. Births of this kind occur in a wide range of circumstances: not only for example, to the couple who are here in the country for a short stay, when the birth takes place unexpectedly early;

¹⁴ White Paper – British Nationality Law: Outline of proposed legislation, presented July 1980, para. 18, p. 3

¹⁵ House of Commons 28/1/1981 – 2nd reading British Nationality Bill (HC Deb Vol 997, col. 1038)

*but to others who are here for long periods, but temporarily, for example as students; and also to people who have remained here in breach of conditions of entry, or who have entered illegally. In many such circumstances there seems no real justification for continuing to allow the child to have our citizenship unless one of the parents is subsequently accepted for settlement here. It may indeed sometimes be to the case that the acquisition of our citizenship will be something of a handicap to a child later in life when he has returned to his parents' country, if the law of that country requires him to renounce other citizenships by a certain time and he forgets to do so.'*¹⁶ [B6.3]

The above was further discussed in the Standing Committee for the British Nationality Bill. This discussion made it clear that in the context of s1(3), 'settled' means residence free from conditions relating to remaining in the UK. Raison further clarified:

*'The term "settled here" is about living in this country, and about having the intention of continuing to do so.'*¹⁷ [B6.14]

The reason given for the s1 (3) provision was that:

*'It is the Government's view that it is in the interests of good race relations in this country that children born to settled parents should be British Citizens.'*¹⁸ [B6.13]

This was because:

*'We believe that it is extremely important that those who grow up in this country should have as strong a sense of security as possible.'*¹⁹ [B6.13]

s1(4) British Nationality Act 1981

"A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1) or (2) shall be entitled, on an application for his registration as a British citizen made at any time after he has attained the age of ten years, to be registered as such a citizen if, as regards each of the first ten years of that person's life, the number of days on which he was absent from the United Kingdom in that year does not exceed 90."²⁰

¹⁶ White Paper – British Nationality Law: Outline of proposed legislation, presented July 1980, para. 42, p. 8

¹⁷ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 183

¹⁸ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 177

¹⁹ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 177

²⁰ NB: s1(7) allows a discretion for the Secretary of State to allow a person to exceed a period of absence of 90 days in special circumstances

s1(4) was originally amendment no. 115 to the British Nationality Bill and was introduced to aid children who have lived in the UK since birth, but whose parents were not lawfully settled:

“We feel that, after the passage of time, those children will be so deeply rooted in this country that it would be harsh to deprive them of citizenship”.²¹ [B6.14]

s1(4) was intended to free children from having to account for, or provide evidence as to, the status of their parents, while still recognising that:

*“to confirm that citizenship as of right upon children who happen to be born here of parents, neither of whom is a citizen and neither of whom is free of conditions of stay, really is to fly in the face not only of prudence but also of reality.”*²² [B6.24]

The reason for the amendment was the fear expressed by many MPs and others as to what the status of children who had grown up in the UK, but whose parents were not settled, would be. It was tied by Raison to the wider reasoning behind the British Nationality Bill:

*‘An important part of the argument is about children who do not grow up in this country and who have no connection with it, except for the accident of their having been born here. A child, who grows up here – perhaps spending 10 years here – and who is really absorbed into our society, having known no other, will be protected under amendment No. 115, provided that it is accepted.’*²³ [B6.8]

Raison also set out the reason why the cut-off point was at ten years:

‘We have chosen the tenth birthday as the cut-off point because we would not want to insist on the deportation of a child born here who had lived here for ten years. If his parents were subject to conditions of stay or in breach of the immigration control at the time of the birth, ten years seems to the Government to be a long-enough period in which to expect these problems to have been resolved.

Furthermore, the first ten years of a child’s life are clearly the formative years. By the age of ten, we believe, the child’s roots could be regarded as being set firmly in this country. Our amendment would require the child to have been in the United Kingdom since birth, except that he would be permitted to up to 90 days absence for each year of his life. This is to enable reasonable account to be taken of temporary absences which may have taken place – for example, on holidays or visits to relatives living

²¹ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 183

²² House of Lords 7/7/81 – Committee Stage (HL Deb Vol 422, col 607)

²³ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 51

*overseas – but it is not intended to be a way round the fact that we expect a child who we are trying to help to have been basically living in this country during the first 10 years of his or her life.*²⁴ [B6.15]

It was felt that a period of less than ten years would enable the children of serious overstayers to gain citizenship.²⁵ [B6.16]. It was anticipated that some parents would feel that it was unreasonable for the Home Secretary to withhold citizenship, and so they would be able to go to court to challenge the decision.²⁶ [B6.7] However, it was also assumed that s3(1) British Nationality Act 1981 would work with s1(4), so that the Home Secretary would use discretion to register where reasonable.²⁷ [B6.9]

The position of the government was effectively summed up by Raison, who stated:

*‘We are trying to find in this world of citizenship and nationality, a sense of commitment, obligation or loyalty.’*²⁸ [B6.11]

s3(1) British Nationality Act 1981

“If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen”.

This section is a continuation of an existing discretion under s7 British Nationality Act 1948 which allowed the Home Secretary to register any minor child. It would allow for cases where there were compelling reasons why the child should be able to register, but which did not fall within the provisions of the Bill. An intention was expressed in Standing Committee that s3(1) would work with s1(4) that the Home Secretary would use discretion to register where it was reasonable to do so:

*“...Clause 3.1, which gives him the power to confer citizenship on any minor. That power, although it is wide and discretionary and therefore odious to some, is an extremely valuable safety net when dealing with cases of hardship such as those that the hon. Gentleman has described...In any system which draws any lines – it is inevitable that any nationality law must, almost by definition, do that – it is extremely valuable to have a last resort power which is used benevolently to deal with those who happen to fall on the wrong side but who are really clearly hard luck cases”*²⁹
[B6.9]

²⁴ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 221

²⁵ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 223

²⁶ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 45

²⁷ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 63-4

²⁸ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 93

²⁹ HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, col 63

Law and policy behind the existence and level of the registration application fee

To explore our first issue, we looked at the law and policy behind the existence and level of the fee.

The power to charge application fees for registration as a British citizen comes from **s51 Immigration, Asylum and Nationality Act 2006** [B1.20] and **s42 of the Asylum and Immigration (treatment of claimants, etc) Act 2004** [B1.26 – B1.29]

s51 of the 2006 Act, states:

*(1) The Secretary of State may by order require **an application** or claim in connection with immigration or nationality (whether or not under an enactment) to be accompanied by a specified fee.*

.....

(3) Where an order under this section provides for a fee to be charged, regulations made by the Secretary of State—

- (a) shall specify the amount of the fee,*
- (b) may provide for exceptions,*
- (c) may confer a discretion to reduce, waive or refund all or part of a fee,*
- (d) may make provision about the consequences of failure to pay a fee,*
- (e) may make provision about enforcement, and*
- (f) may make provision about the time or period of time at or during which a fee may or must be paid.*

(4) Fees paid by virtue of this section shall—

- (a) be paid into the Consolidated Fund, or*
- (b) be applied in such other way as the relevant order may specify. [B1.20 – B1.21]*

s42 of the 2004 Act, states:

Amount of Fees

(1) [In prescribing a fee under section 51 of the Immigration, Asylum and Nationality Act 2006 (fees) in connection with a matter specified in subsection (2)] the Secretary of State may [...] prescribe an amount which is intended to—

(a) exceed the administrative costs of determining the application or undertaking the process, and

(b) **reflect benefits that the Secretary of State thinks are likely to accrue to the person who makes the application**, to whom the application relates or by or for whom the process is undertaken, **if the application is successful or the process is completed.**

[emphasis added]

.....
(4) **Where an instrument prescribes a fee in reliance on this section it may include provision for the refund, where an application is unsuccessful or a process is not completed, of that part of the fee which is intended to reflect the matters specified in subsection (1)(b) or (3)(b).**

[emphasis added]

.....
(5) Provision included by virtue of subsection (4)–

(a) may determine, or provide for the determination of, the amount to be refunded;

(b) may confer discretion on the Secretary of State or another person (whether in relation to determining the amount of a refund or in relation to determining whether a refund should be made).

s51 of the 2006 Act and s42 of the 2004 Act are due to be repealed and replaced by s68 Immigration Act 2014. This will come into force on 15 December 2014.³⁰

Fees and Statutory Instruments

The Secretary of State has exercised her power in relation to fees under the above Act by the introduction of the Immigration and Nationality (Fees) Order 2011. [B2.38]. The requirement for a fee in relation to registration applications arises from Article 3(2)(k) of this Order. [B2.41]

...

3 Requirement to pay a fee for applications connected with immigration or nationality

(1) *Applications to which this article applies must be accompanied by the fee specified in regulations made under section 51(3) of the 2006 Act.*

(2) *This article applies to applications for—*

³⁰ SI/277/2014, Article 8

(k) registration as a British citizen under section 1(3), (3A) or (4), 3(1), (2) or (5), 4(2) or (5), 4A, 4B, 4C, 4D, 10(1) or (2), or 13(1) or (3) of the 1981 Act, or paragraph 3, 4 or 5 of Schedule 2 to that Act;

Under the Immigration and Nationality (Fees) Regulations 2014 Schedule 4 Regulation 6 Table 11, the cost of applying to register as a British citizen is £669, a reduction of 0.6% (£4) from 2013. [B2.108]

Explanatory Memorandum

The Explanatory Memorandum to the Immigration and Nationality (Fees) Regulations 2014 [B2.220 – B2.233] makes it clear that the cost of processing the application for registration as a British Citizen is less than is charged for the application – **the cost is £144, while the fee is £669**. Any charging of a fee which is higher than the cost price has to be approved in draft by Parliament before it is made.³¹ [B2.220 – B2.221]

Below are the relevant paragraphs from the Explanatory Memorandum which set out the reasons for charging more than the actual cost of processing nationality applications:

*‘7.1 The fees contained in these regulations are set above the administrative cost of providing the application, process or service in line with the government’s flexible charging model. Charging fees above the cost of administration helps raise the revenue required to fund the immigration system and to cross-subsidise fees set below cost for immigration routes where a lower fee supports government objectives. As a direct result of the fees referred to in this instrument, **the Home Office is able to generate sufficient income to support the immigration system, maintain public confidence and ensure that migration is controlled for the benefit of the UK.*** [emphasis added]

.....

*7.3 Fees may be set above cost to reflect the value of the products in terms of the **benefits and entitlements that would accrue to a successful applicant** or where they are intended to contribute to the cost of providing other immigration products. The Home Office takes into account the different rights and entitlements applicable for each application route. For example, some routes give a successful applicant valuable entitlements such as access to the UK labour market without the need for a sponsor, leave that qualifies for settlement, and the ability to bring dependants to the UK who can also work without restriction and access valuable entitlements. The fees charged for such routes are set at a higher level to reflect these valuable entitlements. In comparison, other routes may not attract entitlements of the same level and are*

³¹ Explanatory Memorandum to the Immigration and Nationality (Fees) Regulations 2014, para 4.2

therefore priced accordingly. **Where fees are set higher for certain routes, it enables the Secretary of State to minimise fee increases in others, including those considered to be the most economically sensitive (for example visitors, workers, students and businesses).** [emphasis added]

.....

7.5 The Home Office has also reviewed its charging policy for nationality registration applications. **Fees for these applications have been adjusted to better reflect entitlements, bringing them closer to the fee for other nationality applications where the entitlements available to a successful applicant are similar. Concessions have also been reviewed and a new lower fee introduced for registration applications from minors.** [B2.221 – B2.222]

.....

Applications relating to nationality

7.12 Last year, the fees charged for registration as a British citizen applications were reviewed in relation to the fees for Naturalisation (Nationality) applications. **Both categories of fees are set at levels above cost recovery to reflect the significant entitlements and benefits available to applicants for citizenship.** For example, successful applicants in both of these categories have the ability to apply for a British passport that provides them with free movement rights within the European Economic Area (EEA) and allows them to live and work in any part of the European Union (EU). [B2.228]

The discount when applying for multiple minors to register was removed in the 2014 Regulations. The statement given in the Explanatory Memorandum in relation to this says:

*‘7.15 Furthermore, the Home Office proposes to separate fees for applications for registration as a British citizen from minors from the fees that apply to adult registration applications. The Home Office proposes a new lower registration fee for minors of £669, from the previous level of £673. **The Home Office has also removed the previous provisions for fee reductions that applied only in respect of multiple minor applications, meaning in future each individual application from a minor will benefit from the reduced fee.***³² [emphasis added] [B2.228]

Impact Assessment

There is also an Impact Assessment attached to the 2014 Regulations. This provides some the thinking behind the 2014 fees:

³² Explanatory Memorandum to the Immigration and Nationality (Fees) Regulations 2014, para 7.15

‘What is the problem under consideration? Why is government intervention necessary?’

The Home Office must ensure that there are sufficient resources to control migration for the benefit of the UK in a way that achieves value for money for the taxpayer. Government intervention is necessary to ensure a balanced budget. The Home Office’s taxpayer funding will be reduced in 2014-15, and there will be fewer migrants applying for high value products as policy changes to limit net migration come into effect. Taking account of efficiency savings of at least £450m over the current spending review period and estimates of reductions in application volumes, an income shortfall of around £40m is estimated for the financial year 2014-15. To address this shortfall, and as part of the Spending Review, HM Treasury has agreed that an increased contribution is to be made by migrants who benefit directly from the services offered by the Home Office.’³³ [B2.234 – B2.235]

It goes on:

‘What are the policy objectives and the intended effects?’

*The specific policy objective of this legislation is to generate sufficient income to ensure the Home Office has a balanced budget for the financial year 2014-15. This will enable the Home Office to run a sustainable immigration system –making timely, correct decisions on who may visit or stay and deterring, stopping or removing those who have no right to be here – in a way that achieves value for money for the taxpayer. Policy objectives on Immigration and Nationality fees are: (1) **that those who benefit directly from our immigration system (migrants, employers and educational institutions) contribute towards meeting its costs, reducing the contribution from the taxpayer;** (2) *that the fees system is simplified where possible, aligning fees where entitlements are similar;* (3) *that fees are set fairly, at a level that reflects the value of a successful application to those who use the service.**

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing, maintain fees at current levels.

Option 2: To increase fees from April 2014, to ensure migration is controlled in a way that achieves value for money for the taxpayer. Combination of 4% flat rate increase and targeted increases to meet strategic fees policy objectives. Specific fees set out at Annex 3.

³³ Impact Assessment for the Immigration and Nationality (Fees) Regulations 2014, p. 1

*Option 2 is preferred. This gives the Home Office greatest assurance that fees income will deliver a balanced budget for financial year 2014-15. It meets the Home Office's general fees policy objectives and also wider government objectives to protect the most economically sensitive routes from large fee increases.'*³⁴
[emphasis in original] [B2.234 – B2.235]

Thirteenth Delegated Legislation Committee

The 2014 Regulations were discussed at the Thirteenth Delegated Legislation Committee on Thursday 20 March 2014. Nothing was said specifically with regard to the registration of minors nor as to whether the fees regulations impacted on them adversely. Further, there was no express account taken of the 'best interests' of children in drawing up these regulations. James Brokenshire, Immigration Minister, re-iterated the thinking behind the Regulations:

'Moving on to the specifics of the draft regulations, we must balance the need for effective immigration controls with excellent customer service, so that those coming to visit, study or work here feel welcome. Such a system needs adequate funding. It is right for the Home Office to make savings and to improve customer service by increasing efficiency and improving value for money; it is also right that those who use and benefit most from the immigration system contribute more than other UK taxpayers. The proposals that we are debating today further support that principle and will mean that in 2014-15 the Home Office will recover more than half the cost of the immigration system through the fees charged for applications and services.'

*The draft regulations contain fees that exceed the cost of processing the relevant application or of providing the relevant service in order to reflect the value of the entitlements provided or the costs of processing other applications.'*³⁵ [B6.28 – B6.29]

Previous Impact Assessment

The 2014 Regulations replaced the Immigration and Nationality (Fees) Regulations 2013. The Impact Assessment for the Immigration and Nationality (Fees) Regulations 2013, provides a further insight into the thinking behind the current fee regime:

'What is the problem under consideration? Why is government intervention necessary?

The UK Border Agency must ensure that there are sufficient resources to control migration for the benefit of the UK in a way that achieves value for money for the

³⁴ Impact Assessment for the Immigration and Nationality (Fees) Regulations 2014, p. 1

³⁵ Thirteenth Delegated Legislation Committee on Thursday 20 March 2014, col 3

*taxpayer. Government intervention is necessary to ensure a balanced budget. The UK Border Agency's taxpayer funding will be reduced by around 24% over the period 2010-11 to 2014-15, and there will be fewer fee-paying migrants as policy changes to limit net migration come into effect. Taking account of efficiency savings of up to £500m over the current spending review period and reducing application volumes, we estimate (at current fee levels) an income shortfall of around £60m in the financial year 2013-14. To address this, and as part of the Spending Review, HM Treasury has agreed that an increased contribution is to be made by migrants who benefit directly from the services offered by the UK Border Agency.*³⁶ [B2.235]

Fourth Delegated Legislation Committee

At the Fourth Delegated Legislation Committee on *Monday 28 March 2011*, the Immigration and Nationality (Fees) Order 2011 was discussed, and Damian Green MP, then Immigration Minister, spoke briefly on fee waivers and the general justification for charging, in response to a question:

*'If we allow a system to operate where a migrant can raise a claim without a fee, it may encourage migrants to remain unlawfully in the UK and submit speculative claims, which would have an impact on the total costs of the system. The costs have to be met by someone, and therefore, we would need to raise fees from other applicants who have followed the rules, or require a greater contribution from the UK taxpayer.'*³⁷ [B6.26 – B6.27]

³⁶ Impact Assessment for the Immigration and Nationality (Fees) Regulations 2013, p. 1

³⁷ Fourth Delegated Legislation Committee on *Monday 28 March 2011*, col 9

FEEDBACK FROM ORGANISATIONS ON THE REGISTRATION APPLICATION FEE AND THE IMPORTANCE OF REGISTRATION

Convention on the Rights of the Child:

...

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being,

.....

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

s55 Duty regarding the welfare of children, Borders, Citizenship and Immigration Act 2009

(1) The Secretary of State must make arrangements for ensuring that—

(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and

(b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.

(2) The functions referred to in subsection (1) are—

(a) any function of the Secretary of State in relation to immigration, asylum or nationality;

(b) any function conferred by or by virtue of the Immigration Acts on immigration officer;

(c) any general customs function of the Secretary of State;

(d) any customs function conferred on a designated customs official.

71 Duty regarding the welfare of children, Immigration Act 2014³⁸

For the avoidance of doubt, this Act does not limit any duty imposed on the Secretary of State or any other person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children).

As part of our initial research we discovered that in order to fully address the first and second issues regarding the application fee, it was also necessary to research the importance of registering a child as British. We decided to make enquiries of other organisations working with children to see what they do to help to raise the application fee, as well as the importance of registration, and the reasons why it would be in the child's best interests for them to be registered.

Our research has been complemented by the work of the PRCBC. It has been very beneficial to have the project in-house as it has meant we have been able to access a significant number of children's cases, allowing us to carry out in-depth research. Furthermore, we have considered the PRCBC's own casework experience from working with clients, including seeing twelve children each month at appointments on Saturdays. This has proven to be extremely useful when deciding what steps to take to ensure we provided detailed findings.

In order to do this, we collected over 120 PRCBC client referral forms and over 45 contacts (only addressing those that have been recorded) made by lawyers. We also analysed 68 closed client files, as well as 32 active files. Moreover, we utilised other external lawyer google groups, such as Refugee Legal Group. After collecting this data, we formulated a referral agency spreadsheet which allowed us to see where our clients had been referred from. We were then able to undertake the next stage of our research, which was to make contact with these various agencies.

The questions we asked were:

1. What does your organisation/firm do?
2. What is your role in the organisation/firm?
3. What is your direct work and experience with respect to children?
4. How important would you say it is for a child to register as British? And why?
 - a) What is your experience of the benefits, both physical and psychological, that being a British citizen brings to a child [how is age relevant to this]?
 - b) How does their age affect their understanding of what it means to be British?

³⁸ In force from 28 July 2014 (SI 2014/1820)

c) Is nationality something they discuss at both primary and secondary school – is nationality, citizenship part of the International Primary Curriculum?

d) Is this something they would discuss with their friends?

e) How would a refusal of registration impact on a child? [Again how is age relevant].

5. How difficult would it be for a destitute child or his carer to raise the Home Office application registration fee of £669? From your knowledge and experience, is there any way for the fee to be obtained from any sources? Please provide as much detail as possible? Are there any charities or other organisations who might fund this?

Below is a summary of the responses which we have received.

The responses came from people with a variety of roles within organisations and firms. They ranged from the director of one organisation, to a crèche coordinator, to those who work as advocates, and caseworkers. In the final stage of our research we ensured that all responses were approved by the relevant organisation's policy makers and directors. All of the organisations' responses emphasised the great importance to children of registering as British. With regard to nationality being part of the curriculum, all respondents were either unsure or presumed that it was not part of the national curriculum.

Just For Kids Law (JFKL)

JFKL provide legal representation and advocacy support to young people in London, as well as supporting young people into education, employment and other activities. They think it is important for a child to be registered as British citizen because it can affect many different areas of their lives. They comment on the effect this has on children's education, particularly higher education and employment. They described how many of the young people that they work with have spent many years, or for some their entire lives, in Britain and identify themselves as being British.

JFKL said that lack of citizenship causes a child's situation to be more complex and that the benefits of citizenship can be both physical and practical (for example a roof over their head and money in their bank), and psychological (for example a sense of identity, being the same as their peers, part of their family). They commented on how many of the young people they work with would not realise the short or long term implications of British citizenship until they reached a point at which it became problematic, typically in their late teens. They commented on how children with learning support needs find it even harder to understand the concept of citizenship and consequently struggle to formulate reasons why they want to be British. They also comment on how it is "near impossible!" to raise the funds for a fee for a registration application and that funding is very challenging. [A2.3 – A2.5]

The Children's Society (CS)

CS is a national charity that aims to alleviate poverty and neglect in children and young adolescents, with four projects that focus specifically on migrant children, called New Londoners Project.

CS spoke about problems when dealing with Social Services. First, that it can be difficult to get them to accept that they have a duty to provide subsistence to families and second, that many social workers do not know about registration and consequently do not consider it a priority. CS further mentioned that there is a marked variation in how much financial assistance different Local Authorities are prepared to provide for immigration or citizenship applications. The Society runs a project funded by Support Options which concerns undocumented 18 to 21-year-olds and provides long-term casework.

They emphasised that it was the “most” important thing to register children as British. Again, they mentioned that it is a strange concept for children who have lived here their whole life to try and understand that they are not British. CS commented on the psychological importance of registering children as British and stated that the children they are dealing with are vulnerable to exploitation and could face being sent back to a country they have no ties with. They also commented on the issue of stability and the peace of mind and reassurance that comes from not having to deal with these issues again. CS tells us that most children without any immigration status in the UK are unaware that they do not have the right to be here. They emphasise that citizenship is extremely beneficial for children who are approaching university age, and without citizenship or indefinite leave to remain they would be unable to attend university. Furthermore, they stated that without citizenship, children of all ages experience psychological problems, including mental health issues and depression. With regard to age, they said they found it hard to explain, even to older children, that citizenship is not the same as getting a passport. However, those who want to go to university understand that getting citizenship is very important. CS emphasise the importance of dealing with issues concerning citizenship early so that there are no complications when the children are older. They commented on how children only realise that they are not British when they are prevented from going on school trips abroad which leads to them feeling embarrassed. CS said that the impact of a refusal of a citizenship application leads to the children feeling angry, and they cannot believe that they could face removal from the country when they have been allowed to live here all this time. With regard to the fee, they state that it is “nearly impossible” to raise it. [A2.6 - A2.9]

Kids Company (KIDSCO)

KIDSCO is a charity that provides a wide range of support to vulnerable and disadvantaged inner city children and their families. KIDSCO have more experience of the specific problems that are related to children having no lawful immigration status in the UK. They also see children who have a right to register as British citizens. In citizenship applications, they liaise with the Nationality Checking Service for assistance with non-complex registration applications.

KIDSCO commented that registering a child as a British Citizen gives the child a higher sense of belonging to their local community in this country. Again, they said that children usually realise they have no status when they want to go on school trips. They emphasise that the overall impact on the child is that, without papers, they are unable to study or work, and are excluded from society. With regard to the fee, they said it is extremely difficult for clients to raise it. KIDSCO try to convince Local Authorities to pay for the registration if the child is in care, however in their experience, this has not been very successful. [A2.10 – A2.12]

Latin American Women's Rights Services (LAWRS)

LAWRS promote women and migrant women's rights, offering advice, advocacy, and information and counselling services to Latin American women. LAWRS also work with young people to provide education and general support, rather than specific advice in relation to immigration or nationality matters. However, as their clients are migrant children or children born to migrant parents, they have experience of the effect that uncertain citizenship status has on children.

LAWRS commented on the extreme importance for a child to register as British, emphasising access to further education and services that these children are missing out on. They mentioned that many of their clients are too afraid to access public services, such as healthcare, meaning that their children do not receive treatment when ill. In terms of higher education, children who are not registered are sometimes unable to attend university as have to pay international student fee rates, which are very high. They commented on how children often express their feelings through the arts, and that when asked to draw or paint their dreams of the future, they all think of things such as British passports, houses and holiday breaks, which show the importance of the need for them to register as British.

They commented on how the children, as well as the parents, also experience distress and feel that they have no future prospects. They described a child feeling isolated at school and under pressure not to disclose her situation, as she was afraid she would be sent back to a country that she had no ties with. With regard to age, they said that the older the children are, the more they understand about what it means to be British. Younger children are often unaware that they have no lawful immigration status as their parents have hidden it from them in an effort to protect them. They said that nationality is not discussed amongst children and their friends because the children are afraid of being bullied at school and they are scared to share issues of lack of lawful immigration status and British citizenship even with their local community. With regard to impact of a refusal, they described children being distressed and living in fear which leads to them not wanting to socialise, and stops them from being themselves. They commented on how children are afraid they will have no future and no normal life, with older children finding it more shocking. Once again with regard to the fee, they commented on how it is near impossible for their clients to raise it as most of the parents of these children work as cleaners and hardly manage to meet their daily living essentials. [A2.13 – 2.16]

Islington Law Centre (ILC)

ILC is a community law centre providing advice that is free at the point of delivery for those who live, work or study in Islington. The response we received was written by a specialist children's solicitor. With regard to the importance of registering a child as British, she commented that she can think of no occasion in her work when she has considered that being British would not be in the best interest of a child who is her client. She commented on particular circumstances where she feels it is more important for a child to register as British, particularly where the child has had a difficult beginning to life or is in the care of Social Services. She also mentioned children with behavioural difficulties, but emphasised that registration is still important to children in safe and settled families too. She believes that society benefits from young people who have a connection to the country they live in and by becoming British, psychologically it makes children feel safer and more connected to the UK. Physically, it allows children to have access to basic rights such as food and clothing.

She emphasised the relevance of age and commented on how, as children get older, their awareness increases. She also commented on how it allows children to access further education and that lack of travel documentation is something that children become aware of. With regard to whether children discuss nationality with their friends and the impacts of refusal on a child, she said that it depends on each individual child. Many find the concept mystifying. Once again, as seen in all previous responses, she stated that the fee is "virtually impossible" to raise and she has significant concerns about carers or older children placing themselves in vulnerable positions to obtain the funds to pay the fee. [A2.17 – A2.22]

She feels that it is incredibly important to register a child as British before they turn 18 as there is a discretion to register under 18 year olds. As soon as they turn 18 years the element of discretion goes and then a person must have ILR before they can apply for British citizenship, regardless of how long they have lived in the UK. She believes these children were not registered as British before they turned 18 because most of the young people are in this position due to neglectful parenting either by their parents, carer/guardian or the local authority if the children were in care. Most of the young people she works with have experienced family breakdown or bereavement, and many were abused or exploited by those who were supposed to care for them.

She points out that, in relation to children who have spent time in care, local authorities seem to take a short sighted view in cases of those who were born abroad. They don't use the tools they have open to them to protect these children. They get stuck with looking at the child as an immigrant, and not as a child. They don't think that in the long term there could be a lot more done for the child if they are registered as British. She has had experience of some children who have been to the local authority for help but are told they can't do anything even though these are under 18 young people sleeping rough. The impact of over 18's not registering as British before they turn 18 is that they may have nowhere to live, or if they have, they have no recourse to public funds, and they cannot engage in lawful employment.

Many have spent 7-14 years living in the UK and they have completed their whole education in the UK. They have worked hard at school and want to go to university. It is soul destroying for them. This situation won't change for some of these children for at least 10 years until they qualify to apply for ILR under the current immigration rules. So if they get granted Leave to Remain at 18 years they can't go to university until age 28, and this is if there are no delays or further changes to the Immigration Rules and they have no minor offences etc. that trip them up.

It also affects them psychologically. It's hard for them to learn that the State that they consider to be their home and country does not want them. These children see and consider themselves to be British. They know their way around London and no one would pick them out as being any different from other British kids they hang out with. When it comes down to it they don't have the same rights; it's hard for them. It really stresses these kids out. They already have ill health and vulnerabilities and are often survivors of abuse. They have limited options to actually do things to improve their situation psychologically e.g. if a child needs therapy, then there are some forms of therapy where it is not considered emotionally or psychologically safe to start therapy unless the patient has indefinite leave to remain. If they don't have ILR then there is a risk that they will be left to deal with things alone when they are not emotionally or psychologically capable of doing so.

Another impact of not registering and then having LTR as opposed to ILR or British citizenship is that the child's access to the employment market is impeded. Not all children want to go to university, some want to work, but the kind of work you can get with LTR is different. The person is therefore vulnerable to work place abuse or may miss opportunities to further their career. [A2.33 – A2.35]

Legal Rights Partnership (LRP)

LRP is a niche law firm dealing exclusively with immigration and human rights law. We received a response from the director, who is also a solicitor. She commented that registration as British is of paramount importance for children, and that it is essential not only for their own wellbeing, but also for society as a whole. She also commented that a sense of inclusiveness is very important and refusals to grant citizenship to children isolates them and makes them feel unwanted and excluded from the country in which they have lived the majority of their lives. Indeed, some of these children were born in the UK.

With regard to age, she emphasised that even if a child has only been here for 5 years, the importance of them registering as British should not be underestimated. She stated that a period of 5 years is very significant, and these children want to feel part of their peer group. With every year that passes the importance of registration increases. She commented that children under the age of 12 are bewildered by the idea of nationality, but what they do understand is that they are different from their peer group. They feel left out as their friends discuss their next steps in education. With regard to the impact of a refusal of a citizenship application, she stated it has a significant impact on older teenagers and leads them to feel

extremely rejected by the society which is effectively the only society they have known. With regards to the fee, she commented that destitute children cannot raise it at all and that in other cases the carer often raises the fee, sometimes putting themselves in situations where they are exploited. [A2.23 – A2.25]

Project for the Registration of Children as British Citizens (PRCBC)

PRCBC's solicitor stated that it is extremely important for a child to register as British because, without registration, children are completely emotionally displaced and feel a certain level of oppression by the system. She stated that some children are initially bemused by the concept of not being British or after being refused registration as British followed by a sense of anger and anxiety and an overall feeling of oppression and exclusion. With regard to the benefits of being a British citizen, she described the end product as being the best way to see what registration means to these children. With regard to age, she commented that it makes a difference to the reaction you get when the child is registered. She comments that under 13s adopt the reaction of the parent, whereas those children over the age of 13 express more of a reaction because it is of more importance to them as they fully understand the benefits of registration, notably access to further education and employment. She commented on how there is sheer anxiety and urgency from young adults to seek help and advice to see if they can change their status when they realise it is an obstacle preventing them from going to university or in doing that job they have always wanted to do when they reach the age of majority

She commented that children do not discuss that they are not British with their friends because they do not want to feel inferior to their peers. With regard to the impact of a refusal of registration application, she commented on how it would prevent the child from carrying out their ambitions, goals and dreams. With regard to the fee, yet again, there is no one that provides assistance with it, and she said that from casework, the fee is sometimes the only obstacle preventing those children who have been born in the UK or who came to the UK at a young age from registering as British either by entitlement or at the discretion of the Secretary of State. [A2.26 – A2.28]

Wesley Gryk Solicitors LLP (WGS)

WGS is a boutique law firm dealing exclusively with immigration and nationality law. We obtained a response from a solicitor at the firm. She stressed how registration as British citizens is of crucial importance to children living in the UK. She commented that sometimes children and even their parents do not realise this until the children are grown up, often at the point they wish to travel, work or attend further education. She stated that becoming a British citizen, for both children and adults, confers a sense of inclusion and acceptance in what has either always been, or has become their home and by including children in society in this way, it also confers a sense of responsibility to the UK that may help prevent alienation and disassociation of the child. With regards to the fee, from her experience clients find it very

difficult to raise the high application fee of £669 or £823 for those over 18 wishing to register by entitlement under s1(4). [A2.29 – A2.30]

Peter Bartram Solicitor (sole practitioner of the former Bartram & Co Solicitors)

Peter recently joined a UK and Canada immigration law practice as an immigration consultant, but prior to this he worked for 30 years as a specialist immigration solicitor in law centres and in private practice.

He has often come across cases where a failure to apply for British nationality, when a child or young adult would have been entitled to do so, has resulted in serious immigration complications later in life which could easily have been avoided. He tells us that children may be more seriously affected, and it can be especially distressing for them, as they have had no choice in the matter, and may have more to lose from not having registered as British.

He explains that one can understand why those children with parents may not always seize the chance to register their children as British. The cost of registering a single child is £669. Most children are registered as British at the same time that their parents apply for naturalisation. Nationality applications for a family of two parents and two children applying all together cost a staggering £3,150. It may be tempting for the parents to try and save money by just applying for naturalisation for themselves and defer the children's applications, which then may never get done before the child becomes aged 18.

He adds that the situation has been exacerbated by the current fees approach. It used to be the case that registration fees were only charged for the first child when a number of children were applying together. This made sense as the relevant family circumstances for one child would rarely be much different from those of their siblings. No convincing explanation has ever been given for this change in approach, except the apparent desire to extract as much as possibly financially from applicant families. (Cynics might wonder whether it reflects wishful thinking that if migrants are deterred from becoming British, they might feel more inclined to return to their countries of origin - and this might possibly be true in some cases, but rarely will children born or brought up here feel that they are anything other than British to start with.)

With regard to the effect on children, he says that the exclusion of mid-or younger teenagers who have lived here most of their lives seems strange, as it is unlikely that the future of such children would not clearly lie in the UK. Instead the policy seems to regard such children largely as appendages of their parents. The policy also underestimates the benefits of citizenship - it cannot see much beyond exceptions where British nationality may be important for a job, for example. And overall, the failure to direct nationality caseworkers to consider primarily what is in the best interests of the child seems unlawful. The fact that the child's parents may have been living in the UK illegally since the child was born here should not (as at present) carry the most weight. As the Supreme Court ruled in the case of ZH, a child in the immigration context should not be held responsible for the sins of its parents. [A2.31 – A2.32]

Coram Children's Legal Centre (CCLC)

Coram Children's Legal Centre (CCLC) works to protect and promote the rights of children. They have over 30 years' experience in providing legal advice and representation to children, their parents and carers and professionals throughout the UK.

CCLC consider that it is extremely important for a child to register as British. They believe that citizenship goes to the core of a child's identity. Many children who can apply to be registered as British already feel themselves to be British. Furthermore, language is central to their identity. They belong within their communities and the UK is indisputably their home. An important part of this is not feeling 'different', not being singled out from their peers, siblings or family, or denied opportunities others have. CCLC also think that registering as British creates security for the child and important for the child's development giving them security and stability. They feel that uncertainty can be extremely disruptive and distressing for teenagers, especially as they start to make future plans towards their aspirations.

CCLC recognise education as being a priority with these children. If a child or young person has not had their immigration status or citizenship resolved, they may have difficulties progressing in further education, and university may be inaccessible for them, irrespective of their academic achievements. Furthermore, other opportunities are not available such as having a passport, travelling and living in other countries in the knowledge of being able to return to the UK. British citizenship brings with it the benefits of being a citizen of the European Union. It includes the protection of the state, including protection from British embassies abroad.

CCLC emphasise the importance of citizenship especially for older children in terms of their political participation. They feel that unless these young people, who are long-term residents of their communities, have British citizenship they cannot vote. Depriving them of the democratic franchise in the only political community to which they can be said to belong is to restrict their political agency in a very significant way.

With regard to the physical and psychological aspects, being granted citizenship can bring real relief, peace of mind and a feeling of safety. Older children's notion of what it means to be British can be disturbed by their realisation that they are not British. They may have felt British in every sense, but then an event will trigger the realisation that they are not British, and this can cause confusion about what being British really means. If a childhood spent in the UK does not mean Britishness, understanding what it is about can be mystifying for young people.

In relation to the fee, they tell us how it represents a significant obstacle for children who could in law apply to be registered as British and also some families appear not to understand the critical importance of the application for the child so may not prioritise paying for it. For a destitute family, payment of the fee will be impossible.

[A2.33-A2.34]

FEEDBACK FROM CHILDREN WHO ARE SEEKING TO REGISTER OR HAVE REGISTERED AS BRITISH

We interviewed a number of clients of the in-house PRCBC who were selected at random. We formulated a questionnaire so we could ask the children specific questions, and also be adaptable to these children's circumstances and special needs [A2.36]

The rapport and trust which the staff at Ealing Law Centre and PRCBC have established with these vulnerable children enabled us to gain the children's views and opinions in relation to citizenship. Without PRCBC, we would not have been able to obtain such information, particularly from these children, as they are extremely vulnerable. Those whom we interviewed are a mixture of ages and all have different personal circumstances and backgrounds. Some of the children have been registered; however, they are still finding their feet, settling into life after their unsettled lives, and, in some cases, facing the difficult process of gaining citizenship. Even though these were PRCBC clients, it was difficult to gain full answers as the children were reluctant to respond. Some of the children are looked after or receiving assistance from Social Services, and others have parents or relatives who care for them or are providing some form of limited support. We learnt that the mere fact that some children had parents who took an active role in supporting their child with their registration, made a difference in their ability and confidence to answer our questions.

Below is a summary of the responses received. We also tried to get some background information on the children from PRCBC's solicitor. In all cases, we had to ring the children at least twice in order to speak to them, and some we rang more often.

Children who are seeking to register

OA is a 15 year old child who plays football for a well known football Club. An application to register him under the Secretary of State's discretion has been submitted and he is waiting for a decision. He came to the UK when he was 2 years old and found out through his parents that he was not British. When he was young, he did not feel different with regard to his lack of citizenship, but as he became older, and built aspirations of a professional football career, lack of British citizenship became a big setback for him. He had problems in playing for his team outside the UK. He feels different to his friends and tells us how he is always the odd one out. Furthermore, he wants to play football for England when he is older but he feels that he is unable to do so without being a British citizen. His registration application fee was paid by the football club. [A2.37] Delays and errors by the UKVI in OA's parents' past applications for ILR have meant that OA does not have ILR.

At time of writing this report, the Secretary of State has registered OA as a British citizen.

KC: We called KC 6 times before we eventually got through to him. He is 17 and has lived in the UK since the age of 5. He has no lawful immigration status in the UK. He knew about his lack of citizenship at the age of 6 when he was told by his mother. When asked about how this made him feel, he commented:

“I only realised what it meant over the last 2 years when it became apparent that if you weren’t British or had anything in that way, your life pretty much ended. It made me feel worried; the thought of not being able to go to university depressed me at times. It has meant I am not motivated at times and have actually put off applying to university as I don’t even know if it is going to work due to not having citizenship.”

KC’s constant worry is that after the age of 18, he won’t be able to support himself or be able to work, and therefore questions how he will even afford to eat. Without citizenship he is unable to carry on with further education and feels helpless as it closes off all options open to him. He plans to study Politics in a London university. If he doesn’t get citizenship by September 2015, then he can’t go to university, he can’t go to an apprenticeship or even a traineeship, so basically after 18, there is pretty much nothing he can do without it. He tells us that at that point his life will end and there is nothing he can do.

KC is much loved and valued by his tutors and peers at the Sixth Form Academy he is currently attending. He is a high academic achiever and has worked really hard to get excellent grades. [A2.38]

RC is 17 years old, and is a high academic achiever who has high career aspirations. She has lived in the UK since the age of 4 and found out that she was not British through her mother, with whom she is close, when she was 13 years old. She has no lawful leave to remain in the UK. Upon finding out she felt:

“Devastated. When you’re young, they teach you to have future ambitions goals and aspirations and I did like any other pupil would do. To know that this (citizenship) hinders the possibility of it happening was very straining on me.”

She tells us how, without citizenship, she is unable to further herself in education, unable to pay for university fees, unable to work and unable to support her mother. She plans to go to a prestigious London University. However, without citizenship, she is unable to afford the fees, which she says hinders her ambitions greatly. [A2.39] Delays and errors by the UKVI in RC’s mother’s past applications have meant that RC has no current lawful leave to remain.

PB: We called PB 3 times; she was born in the UK and aged 19. She is in the process of applying for British citizenship. She was a looked after child. After receiving advice from PRCBC it became clear to her that she is not British and has no lawful immigration status in

the UK. She is scared and tells us that it is stopping her from doing things in college and going further with her education. [A2.40] No steps were taken by Social Services to regularise PB's stay or register PB as British when she was a minor and under their care.

JV is a 14 year old boy who was born in the UK. JV has been in the care of social services for most of his life, and is now under a private foster parent arrangement. His citizenship application was refused on the basis that he is not of good character due to one spent caution he previously received for an offence which he committed when he was aged 13. He found out that he was not British when his foster parents tried to take him on holiday abroad. When applying for a British passport, they found out that he was not British. This made him feel sad as he was unable to travel and it hurt him a lot. He also gave us an example of this:

"I won a trip at school, me and my group we worked together on ideas to help the school and we won. Our prize was to go to Paris but we had to go to Alton Towers because I can't travel abroad as I don't have a passport or proper immigration status here."

He also tells us how he is unable to go on trips with the church. Not being British will prevent him from going to university and fulfilling his ambitions. [A2.41]. No steps were taken by Social Services to regularise JV's stay in the UK or register JV as British when he was a minor and under their care.

SK is aged 18 years and has had his citizenship application refused. He came to the UK with indefinite leave to enter when he was 12 in 2009, to join his British father. By the time he was 17, he applied for citizenship but his application was refused as he has a spent rehabilitation order, but his sibling was registered as British. He felt sad and says it would mean a lot to him to be British and that this would change his life in different ways for example, getting a job, getting a driving licence, getting ID. For his current career training he requires ID. To get onto the apprenticeship that follows. He has lived in the UK for many years and cannot remember most of his family back in his country of birth. He does not speak the language there, and English is the only language he knows. He went to school here and was brought up here; everyone he knows is British, and citizenship is something that he would like to have too. He has had a good education and life here. Now he is 18 he wants to vote for someone who helps young people. His long term ambitions are to either work in engineering or be a professional football player. As a British citizen he tells us there wouldn't be any restrictions on his career. He is really sad and disappointed his application has been refused because it stops him from travelling with football teams or in the future as an engineer. He says that if granted citizenship he will feel truly settled in the UK, which he thinks of as home.

SK got into trouble a few years ago after his father abandoned SK and his sibling. He and his sibling were taken into care. His father died soon after they were taken into care. SK struggled the most with the initial abandonment, followed so soon after by the loss of his father. He felt a lot of despair and anger after losing his father. [A2.42]

GM is a 20 year old young adult whom we tried to call 7 times but were unable to get through to. Her solicitor tells us that GM was born in the UK and was under the care of Social Services for most of her childhood. She came to a PRCBC Saturday appointment to accompany and support a friend who had an appointment at a PRCBC's monthly slot. During her friend's PRCBC's advice session, she realised, she, like her friend, was not British. She then self-referred to PRCBC. [A2.43]

No steps were taken by Social Services to regularise GM's lawful stay in the UK or to register GM as British when she was a minor and under their care.

ZM is a vulnerable young man; he was too low in mood and did not feel he could give us a response, but like all other clients, has given his authority for us to refer to his circumstances and case. ZM's solicitor is very worried about him. He came to the UK from Somalia aged 10, where his mother had been killed. He has settled status but no formal photo identity. ZM has been receiving assistance from Social Services; however this will shortly cease when he turns 18 years old. ZM was caught up as a passer-by in a street fight during the time he was waiting for a decision on his application to register as a British citizen. He was advised to agree to a caution by a duty criminal lawyer who represented him at the police station, even though he had no involvement in the crime, as he was told this was easiest for him and it would have no effect on his life. The police told him the same. ZM took a long time to save up to pay the registration fee of £669, which was his life savings. As a result of his application being refused, ZM is too distraught and devastated to describe how he feels at the moment. [A2.44]

Children who have been registered as British citizens

We also managed to speak to 3 children who have successfully been registered as British citizens.

DB is aged 18 and arrived in the UK when he was 3; his parents told him that he was not British when he was in secondary school. Once he realised what this meant, it affected every part of his life and he was very insecure about his future. He felt that he had no proper identity and without citizenship was unable to take up a place at a drama school this year. Once being registered he felt as if a massive weight had been lifted off his shoulders. DB commented on what it feels like for him to now be British:

“It gives an identity and it gives you stability. A chance to do everything. Now I am British, I have more of a chance to pursue my career as an actor.” [A2.45-A2.46]

Delays and refusal by the UKVI in DB's parents' past applications for ILR has meant that DB had no lawful leave until he was registered as British this year. His registration application was refused under Chapter 9. He was later registered after judicial review proceedings were issued.

SS is 15 and was registered as British when she was 13 years old. She arrived in the UK when she was a few months old and she describes the freedom she gained once obtaining citizenship. She tells us how she is able to pursue her ambitions in the field of creative media and is able to travel freely. She felt overjoyed when she was registered as British, whereas before she felt excluded out of society. She tells us that:

“I have been in the UK since I was a little girl. I haven’t learnt any other ways other than the British ways.”

She has made lots of friends here in Britain and describes it as her home. It was a relief for her when she was registered as the worst case scenario was that she could have been sent back to Jamaica. She has no friends or family in Jamaica. She now has a British passport. At school she is now able to go on school trips abroad, such as the modern foreign languages trips to France/Spain/Germany. In future she will be able to go to College and University and will be able to get a scholarship or loan to pay for this. She intends to study music, creative media and beauty at University. She wouldn’t have been able to do this without British citizenship.

We also managed to get comments from **SS**’s mother. She tells us that it was so important for **SS** to become British and her, her daughter and **PRCBC** worked really hard for it and she fully supports anyone else who is in the same situation as her. [A2.47 – A2.48]

Delays and refusals by the **UKVI** in **SS**’s mother’s past applications for **ILR** meant that **SS** only had Discretionary leave to remain until she was registered as British last year.

TT is a 16 year old who arrived in the UK when she was a few months old. She has been registered as a British citizen and feels relieved that the whole thing is now over, as it was a long and stressful process. She is now able to do more things, start her life and hopes to go to university. [A2.49]

Before **TT** was registered as British, she had no lawful immigration status in the UK. Her mother and siblings were all British at the time of her registration application. However, her registration application was refused under Chapter 9. She was later registered after judicial review proceedings were issued.

LACK OF ADEQUATE REASONS GIVEN BY THE SECRETARY OF STATE IN DISCRETION APPLICATIONS MADE UNDER SECTION 3(1) OF THE BRITISH NATIONALITY ACT 1981 AND THE APPLICATION OF CHAPTER 9 – NATIONALITY INSTRUCTIONS

This part of our research was in relation to our second and third issues regarding applications made under s3(1) of the British Nationality Act 1981, which concerns the Secretary of State's discretion to register a child as British, as well as regulating the lack of adequate reasons given when refusing these applications.

The Secretary of State has published policy guidance on how she may exercise the discretion given to her under s3(1). The guidance is found in Chapter 9 of the Nationality Instructions [B4.1 – B4.68]

Chapter 9 guidance states:

'IT IS IMPORTANT TO REMEMBER that the guidance in this Chapter does not amount to hard and fast rules. It will enable the majority of cases to be dealt with, but because the law gives complete discretion each case must be considered on its merits. All the relevant factors must be taken into account, together with any representations made to us. If we do not, we are open to criticism for not exercising our discretion reasonably...'

9.17.1 Chapters 9.6 to 9.16 deal with applications from minors in a variety of different circumstances. This section [section 9.17] deals with all other applications. It sets out, broadly in order of importance, criteria which other minors are normally expected to meet.

Future intentions

9.17.2 The most important criterion is that the child's future should clearly be seen to lie in the UK. A reliable indicator should be the applicant's and/or the family's past behaviour. If that suggests an established way of life in the UK, and we have no reason to think that this will not continue, we should accept at face value that the child intends to live here".

'Illegitimate' children

An illegitimate child born in the UK before 1 July 2006 to a British or settled father will normally be registered under this section of the Act. This is confirmed in the guidance. However, registration will be subject to the 'good character' test (see below) and at the present time will only apply to children under 18 years of age.

NOTE: The Immigration Act 2014, which received Royal Assent on 12 May 2014, contains an amendment to the British Nationality Act 1981 to allow all illegitimate persons who were born before 1 July 2006 to register as British citizens by entitlement. It would appear that this amendment may come into force by the end of this year³⁹.

Specific circumstances

The guidance also makes reference to specific circumstances where a child may be registered, such as a child wishing to follow a certain career path where citizenship is a requirement.

General criteria

In respect of most other children, the Secretary of State will consider a number of criteria. These general criteria are referred to at paragraph 9.17 onwards of the guidance. These criteria are as follows: [B4.39 – B 4.68]

1. Future intentions. The child's future should clearly be seen to lie in the UK.
2. Citizenship and immigration status of the parents. Normally expected that one parent is British and the other at least has settled status/ILR or leave to remain. However, if one of the parents has leave to remain (LTR/DLR) and is not returnable in the short or medium term, then this is also acceptable⁴⁰
3. Child's conditions of stay in the UK
4. Length of residence in the UK (at least two years of residence)
5. Consent of the parent(s)
6. Child's best interest
7. Exceptional circumstances
8. Good character

The application form guide to the MN1 registration application form states as follows:

'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.'

Page 4 of the MN1 registration application form guide also states that applications:

³⁹ S65 Immigration Act 2014

⁴⁰ This factor was amended after judgment in *Ali v SSHD* [2007] EWHC 1983 (Admin)

‘should demonstrate that it would be right for the Home Secretary exceptionally to allow a child to be registered as a British citizen because of the compelling nature of the child’s circumstances’. [B4.93 – B4.129]

Case Files analysis

When analysing PRCBC clients’ files, we selected a number of section 3(1) discretionary applications. Our initial findings show that refusal letters are often a few standard lines with one small paragraph providing the standard reasons for refusal, stating that the Secretary of State “...*has carefully considered to see whether there were sufficient grounds for treating it exceptionally. However, sufficient grounds could not be found to exercise her discretion in this case. The application is therefore refused*”. These short standard paragraphs fail to explain and address the Secretary of State’s reasons for failing to exercise discretion.

The initial remedy to a decision to refuse a registration application is an internal review by the Secretary of State where a request for a review form⁴¹ [B7.1 – B7.9] and a prescribed fee of £80 is required.⁴² [B2.74]. The lack of proper reasons for refusing to register a child makes it extremely difficult for our clients to exercise the right to review effectively, particularly when they have no idea where they have gone wrong in the application, or how they can address any issues of concern raised by the Secretary of State.

We formulated an email requesting samples of letters used by the Secretary of State when refusing to register a child under s3 (1). We circulated it widely among the legal community and received a number of samples, all confirming our initial concerns. We noticed a repetitive pattern in the format and wording of the letters, and they are all very brief. Furthermore, we found that the above quote was present in almost every refusal letter we obtained, as well as there being a number of other similarities.

Looking at the each letter in detail, below is a summary of what we discovered.

Child 1 TT: The refusal letter received by TT is an example of the lack of proper reasons given by the Home Office. The explanation given is that the child is:

“not settled in the UK as defined by immigration laws.” [A3.1]:

Child 2 SS: This is also the case with the letter received by SS which states the same reason, [A3.7 – A3.8].

⁴¹ NR Form

⁴² The Immigration and Nationality (Cost Recovery Fees) Regulations 2014 Table 10.2.1

Child 3 DV: As does the letter received by DV [A3.17]. With regard to DV's 2 siblings, the refusal letter they received states:

“One of the requirements for registration under s1(3) of the British Nationality Act 1981 is that the child’s parents have become British citizens or settled in the UK. As you are neither settled in the UK nor a British citizen, that requirement is not met.”
[A3.18]

This is also very short. The siblings are later registered, *“because they were born in the UK and spent the first ten years of their lives here,”* [A3.19], which shows that their application was not carefully considered when it was first received.

Child 4 DB: A further refusal letter in DB states that:

“DB is not settled in the UK as defined by immigration laws... Although D appears to have established some links to the UK through his friends and attendance at College there are no exceptional circumstances to justify the grant of citizenship at this present time...” [A3.26 – A3.27]

Child 6 BE: The letter received by BE gives the following reasons:

“It has also been noted that neither your client nor his mother are settled in the UK.” [A3.41]

Child 9: The letter received gives the following reasons:

“Your client’s application was refused because neither parent is a British Citizen nor settled in the UK. Also as your client is currently on discretionary leave to remain and therefore her future does not clearly lie in the UK.” [A3.45 – A3.46]

Child 11: The letter received states:

“As neither of Child 11’s parents nor Child 11 herself have been granted this status they cannot be deemed to be settled in the UK.” [A3.48 – A3.49].

Child 12 TS: The letter received states:

“we cannot also be completely satisfied of the relationship between [mother] and [child].” [A3.50 – A3.51]

Child 13 BS: The refusal letter states:

“Normally, minors will not be registered if, as appears in this case, neither parent is a British citizen. Furthermore, a minor will not be registered if, as appears in this case, she is not ‘settled’ in the UK as defined by the immigration laws. We would also expect both parents to be settled within the United Kingdom.” [A3.52 – A3.53]

Child 5 FI [B3.72 – B3.84]: The series of three letters with regard to FI provides another example of the SSHD’s poor decision making. The refusal letter states that

“sufficient grounds could not be found to exercise discretion in this case.” [A3.34]

The letter received after a request for review and the payment of an £80 fee, in which the Secretary of State responds to the reconsideration request, states that:

“I acknowledge that the refusal letter did not fully explain the rationale behind the decision taken and a more detailed explanation is provided below. As you are aware, the normal expectations for registration under section 3(1) are set out at Chapter 9.17 of the published policy” [A3.36]

FI received a third letter during court proceedings, which reviewed the earlier decision. It states:

“When considering the use of discretion in cases that do not meet the usual expectation of this provision, the overriding factor is whether the child’s future is seen to lie in the UK. Your client is currently cared for by his mother and his father albeit resident overseas, has regular contact with him providing both emotional and financial support. Whilst I note your client’s preference is to remain in the UK with his mother, it is not unreasonable to conclude that given his mother’s undetermined immigration status alongside the potential he could join his father in New Zealand, that he fails to meet the expectation that his future can clearly be seen to lie in the UK.” [A3.36 – A3.40]

With respect to the application registration fee paid by the children, all the letters also contain the same wording which states:

“as explained in our schedule of fees, the application of British citizenship is not refundable and has been retained to cover the cost of handling and processing your client’s application.”

Further decisions made after a request for a review or pre-action response

In order to highlight the Secretary of State’s poor decision making process regarding children’s registration applications, we also sought to look into and review any decisions that had been made either after internal review, or after a pre-action letter had been sent. Below are extracts from responses issued after a pre-action letter had been sent.

Child 1 TT: The letter received states:

“T does not meet the normal requirement to be settled in the UK – in fact she is only on temporary admission.” [A3.2]

Child 3 DV: The letter received by Child 3 DV states:

“I am satisfied that our decision to refuse to register DV is correct in line with our current policy and as such there are no grounds to reopen her application.” [A3.19]

Child 4 DB: The response to his pre-action letter states:

“As your client did not meet one of the requirements for citizenship, we considered the exercise of discretion to overlook this, both in line with our instructions and agreed precedents and by considering the individual circumstances of the case with a view to creating a fresh precedent, but could not find sufficient reasons to do so. Your client’s application was therefore refused.” [A3.28 – A3.29]

We at Ealing Law Centre, have also received 4 very short refusal letters on the grounds of spurious good character issues, however these have not been included in this report as we believe this matter deserves separate legal research. However, we object to the inappropriate use by the Home Office of good character grounds of refusal for children on the same or similar basis as in refusals of naturalisation for adults.

UKVI SUBJECT ACCESS REQUESTS FOR FILES TO EXPLORE THE APPLICATION OF DISCRETION AND LACK OF ADEQUATE REASONS GIVEN BY THE SECRETARY OF STATE IN REFUSING APPLICATIONS

With regard to the third issue, we made Subject Access Requests to UKVI to look into the decision making process of the Secretary of State in relation to section 3(1) discretion applications. We first looked through the PRCBC current caseload, closed files, and selected a number of cases of children in which section 3(1) applications had been made and refused. We then made contact with former and current PRCBC clients to obtain their consent and to complete the UKVI Subject Access request forms with them. The subject access process requires formal authority to release the information, formal proof of the child's identity by way of a photo identity and other formal documentary evidence showing the child's current home address. This took up a vast amount of time, trying to collect all of the documents we needed in order to make a subject access request. We selected about 10 children and, for the reasons explained, we were only able to gather full documents to request 5 subject access files. Out of this, we have received responses from all five requests; however some did take longer to come through than the statutory timescale.

The information in these subject access files confirmed the lack of proper reasoning by the Secretary of State in discretion applications under section 3(1) of the British Nationality Act 1981. This is what we expected and they are in line with the brief reasons which were given in the Secretary of State's refusal letters issued in response to the above mentioned children's registration applications.

The applications made by DV, DB and TT referred to below all went through judicial review proceedings after which these children were successfully registered as British.

Subject Access - Minutes/Case Notes from UKVI caseworkers

Child 4 DB [A3.31 – A3.33]

20/3/14 states:

“proposal to refuse agreed.”

“Neither parent is settled or a BC and minor is not settled either”

“file to c/w to continue with action”

“thanks”

5/6/14 states:

“pre-action from Ealing Law Centre dated 5/6/14”

“reps have requested we grant the claimant British citizenship and essentially reconsider our decision to refuse their client’s recent application which was refused on the grounds of parent no being a BC or settled, subject not settled in the UK.”

21/7/14 states:

“decision to refuse registration was reconsidered in line with JR Acknowledgement of Service Application reopened. Registration under s3(1) BNA 1981 agreed in principle by DCCW on grounds of long UK residence and future intentions.”
[A3.33]

Child 1 TT [A3.6]

30/7/13 states:

“Minor does not have ILR and would appear to never had any valid leave in the UK.” [A3.6]

With regard to Child 1 TT, the Subject Access Request has pages 4 and 5 missing, both of which are crucial pages. We are in the process of trying to get hold of these two pages. Although these particular pages are missing, the child was registered after a review.

Child 2 SS [A3.9 – A3.16]

5/11/12 states:

“I am proposing to refuse the application made on behalf of Child SS in accordance with Chapter 9 Paragraphs 17.9 & 17.24 because the child along with her mother is on Discretionary Leave until 13 January 2013 and the father Is unknown.

....Solicitors have asked us to Consider the application for Child SS On the grounds

*Family unity because her brother
Is being registered as an illegitimate child of a
British citizen father
I have taken the agent's comments into
Consideration but I can find no reason to
Offer discretion in this particular case and
Ad on mind to refuse
Child 2 SS" [A3.10]*

15/1/13 states:

*"there is otherwise no reason to think that the child's future does not lie in the
United Kingdom*

And as SS has spent the majority of her life here since age one, she also falls under

*9.7.11 It will rarely be right to register a child neither of whose parents is or is
about to become a British citizen. However, each case should be considered on its
merits, and there may be circumstances to justify registration in a particular case,
such as for example:*

*Older teenagers who have spent most of their life here,"
[A3.13]*

*"Response to PAP sent confirming on initial consideration we believe there could
be scope for discretion on SS case and her file has now been recalled to facilitate
this. As relationship to mum has already been determined I need to ensure she has
lived in the UK since age 1 as claimed by her reps. To expedite (sic) matters I have
asked that evidence is provided." [A3.14]*

After the child's solicitor sent a pre-action letter to the Home Office the Secretary of State realised her initial decision was incorrect and subsequently registered SS as a British Citizen.

Child 3 DV & 2 siblings [A3.21 – A3.25]

1/10/12 states:

"EO all 3 minors fall for refusal. Please see DGP minutes," [A3.21].

10/1/13 states:

*"the two eldest children were born in the UK and are eligible to register as British
citizens by entitlement under s.1(4) BNA 1981 as they were ten years old on*

application. Given the circumstances of their excess absences from the UK between 2003 and 2005 we should waive and register,” [A3.22]

This means that DV’s siblings were registered as British.

Furthermore notes from 20/6/13, are in line with the letter:

“The circumstances of this case are summarised by my case note of 15 April under 2 siblings. Our decision to refuse to register Child DV is challenged again in a fresh letter before claim but I can see nothing in the solicitors latest, 8-page letter that covers new ground: their argument is simply that registration of DV is in her best interests in order to “provide stability and to feel settled; to provide legal settled status and freedom from restrictions.....; to provide future educational and emotional needs; and to enable full access to...services...”

“DV and her mother have DL and their future stay in the UK is not clear beyond September 2014. It is not appropriate to register DV as a British citizen in these circumstances

Decision upheld. See DGT letter” [A3.24]

Notes from 10/9/13, are in support of DV’s registration stating:

“Both DV and her mother were granted ILR on 21 August 2013 following JR proceedings. Neither of her parents is British but DV has spent virtually the whole of her life so far in the UK and there is no reason to suppose her future does not lie here with her newly settled mother and British siblings – we should register her under s3(1) BNA 1981 in her own best interests if all other normal criteria are met.” [A3.25]

Child 6 BE [A3.42]

17/4/14 states:

“I have considered the points raised by the representative. It is not clear when the applicant and his mother entered the UK and exactly how long they resided here. Neither currently has any basis of stay in the UK. For registration under section 3(1) it is an expectation that parent(s) are settled, one is or is about to become a BC and the child is free of conditions.

These expectations are not met. Although it could be argued that the child's future lies in the UK, given the claimed length of residence, both mother and child are still subject to possible removal and action on the immigration matter is still continuing.

At this point I can find no grounds to exercise such wide discretion to register the child. The application should be refused."

12/5/14 states:

"SCW has decided this appl should be refused as neither parent is BC as per chapter 9 para 9.17.9 and there are no compassionate or compelling reasons to justify exercising discretion in this case Application refused returned supporting docs 2nd class"

7/7/14 states:

"Reps have requested we granted the claimant British citizenship and essentially, reconsider our decisions to refuse their client's recent application which was refused on the grounds of:- Parent not a BC/settled, Subject not settled in the UK.

CID confirms that the subject nor their reps have formally asked to have their case reconsidered. Therefore PAP response sent advising the subject of the reconsideration process and that this should be pursued rather than lodging a Judicial Review claim." [A3.42]

At the time of writing this report, BE has been granted permission by the High Court to issue judicial review proceedings.

After careful analysis of the Subject Access Requests, we have, as expected, discovered contradictory statements in respect of decision making with regard to children's registration applications. The information from the children's UKVI Subject Access Requests confirms the Secretary of State's poor decision-making in children's applications.

FREEDOM OF INFORMATION (FOI) REQUESTS TO UNDERSTAND REASONS BEHIND THE REGISTRATION APPLICATION FEE AND STATISTICS ON GRANTS AND REFUSALS OF REGISTRATION APPLICATIONS

As part of our research, we formulated fourteen new Freedom of Information (FOI) requests to the UKVI and to Local Authorities. We also had responses from four previous requests.

Below is a summary of the responses we received.

1. The application registration fee and absence of a fee waiver for children who are receiving assistance from Social Services

FOI Response:

'...You asked us to supply you with the reasons for the introduction of a fee waiver for children being provided with assistance by a local authority who are applying for limited or indefinite leave to remain. You then asked us to supply you with the reasons why this waiver was not extended to children being provided with assistance by a local authority who are applying for registration as British citizens.

.....I can understand that if one takes the two kinds of application identified in your enquiry, then it can look as if two children might be treated in very different ways even though they are both in local authority care. However, the distinction that the government makes is based on the very different nature of the two kinds of application.

The application for limited leave to remain, or for indefinite leave to remain, is mandatory under the immigration legislation. The local authority has no choice but to make such an application on behalf of a child in its care. It is therefore a case of complying with the law, rather than exercising a choice in order to obtain a benefit. In addition, the local authority not only has no choice, but it will be taking money from public funds to pay the fee. For these two reasons the fee is waived.

*The application to become a British citizen though is not mandatory. It is perfectly possible for the child to remain in the UK indefinitely and lawfully without becoming a British citizen. **To become a British citizen is an act of allegiance to the UK based on a personal choice for that citizenship.** It is not mandatory for the local authority to make such an application for a child in its care. **It is more in the realm of the***

child's wishes and something that the local authority can choose to support or not. It becomes a discretionary payment out of the local authority's funds and on that basis the fee is not waived, even though it is for a child in local authority care.' [A4.1 – A4.2]

2. Reasons why the application fee for registration of a minor as a British citizen was set at £669.

3. The Immigration and Nationality (Fees) Regulations 2014 abolished the reduction in the fee in respect of applications for registration as British citizens for more than one child. Please provide all information relating to the reasons for this decision.

FOI Response to Requests 2 and 3:

'We have changed the concession offered to families where applications for registration as a British Citizen are made for children so that all applications for children receive a concession, not just those from families with more than one child. Until 5 April 2014, fees for registration as a British Citizen for both adults and children were set at the same level. Where multiple applications were made by families which included two or more children, a concession was offered to reduce the fee for the second and subsequent child applications. This approach meant that a reduction was not available to all children applying as part of a family unit. It also introduced an element of complexity to the charging structure, with different fees applying to applications from children, depending on how many children applied together.

We wanted to simplify this charging structure and ensure any concession would be available more widely to all family units that included an application from a child. So, in April this year, we changed the way the concession operated by offering a reduction on applications from all children. The new concession applies equally to all applications from children, regardless of whether multiple applications are made at the same time.

When setting fees, we are required to work within strict financial limits agreed with HM Treasury and to obtain agreement from Parliament. The fees for applications for registration as a British citizen are contained in the Immigration and Nationality (Fees) Regulations 2014 (No 922). Information explaining the basis on which we set immigration and nationality application fees in those regulations for the financial year 2014/15 forms part of the explanatory memorandum and the Impact Assessment

that accompanies the regulations. These documents have been published and are available via the National Archives website.

They can be viewed electronically at:

<http://www.legislation.gov.uk/ukxi/2014/922/contents/made> [A4.3 – A4.4], [A4.5 – A4.6]

4. The Fee – Local Authority Policy Guidance

Southwark Council

- i) Request for all policy guidance concerning a child under the care of Social Services or receiving assistance under the Children's Act in regard to instructing and paying the legal fees for a child to receive immigration and/or advice on registration as a British citizen.
- ii) Request for all policy guidance concerning a child under the care of Social Services or receiving assistance under the Children's Act in regard to paying any immigration and citizenship application fees to the UKVI.

FOI Response:

“Regarding Section 17 (no recourse to public funds) – the Council does not hold any specific policy guidance concerning a child under its care or receiving assistance under the Children's Act in regards to instructing and paying the legal fees for a child to receive immigration and/or advice on registration as a British citizen.

The Local Authority does not pay towards legal advice or fees on registration as a British citizen for families; it is the responsibility of the families involved.”

[A4.7 – A4.8], [A4.9 – A4.10]

Croydon Council

- i) Request for all policy guidance concerning a child under the care of Social Services or receiving assistance under the Children's Act in regard to instructing and paying the legal fees for a child to receive immigration and/or advice on registration as a British citizen.
- ii) Request for all policy guidance concerning a child under the care of Social Services or receiving assistance under the Children's Act in regard to paying any immigration and citizenship application fees to the UKVI.

FOI Response:

“There is no procedure as the decision applies to very few unaccompanied asylum seeking children.

The decision to apply for Citizenship is an adult decision at age 18 or after, following the required period of residence in the UK. We do not consider fees for citizenship to be a welfare need and we do not pay these.

[A4.11 – A4.12], [A4.13 – A4.14]

5. UKVI Staff Seniority and Number of Home Office Staff

Request for all information about the number of people, and their level of seniority, who work in the Home Office team that deals with applications for the registration of children as British Citizens.

FOI Response:

‘Applications are dealt with by HEO, EO or AO grade staff; staff do not deal solely with these applications so we cannot give a number specific to grade, however in total 102 staff are fully casework trained in the Nationality unit.

- HEO – Higher Executive Officer*
- EO - Executive Officer*
- AO – Administrative Officer’*

[A4.15 – A4.16]

6. Statistics in connection with children’s registration applications -- s1(3)

All information about the **number of applications** for registration as a British citizen by minors which were made under **s1(3) British Nationality Act 1981 between 2002 and 2014** (including grants, refusal and detailed reasons for refusals). Confirmation of age of applicants and refusals for the following age groups:

- i) aged between 0-10
- ii) aged between 10-14
- iii) were aged between 14-16 and
- iv) were aged between 16-17?

FOI Response:

**Applications received
between 01-January
2002 and 30-Jun-2014
Section code is equal to
1(3)
Outcome of those
applications received
between 01-January
2002 and 30-June-2014
Split by age at date of
application**

	Granted	Other	Pending	Refused	Rejected	Total:
0	9,925	5	65	2,195	740	12,930
1	20,705	5	115	1,235	370	22,420
2	27,535	10	125	985	240	28,900
3	28,950	10	130	810	215	30,115
4	28,690	10	115	660	180	29,655
5	21,850	5	115	575	145	22,685
6	15,735	5	105	495	150	16,495
7	11,470	5	65	365	125	12,030
8	8,845	*	45	320	90	9,305
9	6,980	*	35	275	70	7,365
10	5,120	5	50	210	55	5,440
11	3,705		20	195	50	3,970
12	2,680	*	20	170	45	2,915
13	1,920	*	10	140	35	2,110
14	1,550	*	5	125	35	1,720
15	1,300	*	5	125	35	1,465
16	1,025	*	10	110	30	1,175
17	915	*	15	135	25	1,095
18	*			*		*
26	*					*
28	*					*
34	*					*
Total:	198,910	70	1,055	9,130	2,630	211,790

**Applications received
between 01-January
2002 and 30-June-2014
Section code is equal to
1(3)
of the processed
applications- decision is
refused
Grouped age at date of
application**

[A4.17 – A4.19]

7. Statistics in connection with children's registration applications –s3(1)

FOI Request

All information about the number of applications for registration as a British citizen by minors which were made under s3(1) British Nationality Act 1981 between 2002 and 2014 (including grants, refusals and detailed reasons for refusals). Confirmation of age of applicants and refusal according to the following age groups:

- i) aged between 0-10
- ii) aged between 10-14
- iii) were aged between 14-16 and
- iv) were aged between 16-17?

FOI Response:

Applications received between 01-January 2002 and 31-March-2014

Section code is equal to 3(1)

Outcome of those applications received between 01-January 2002 and 31-March-2014

Split by age at date of application

Age at Date of Application	. Not Available	Granted	Other	Pending	Refused	Rejected	Total:
0		2,990	*	5	440	120	3,555
1		3,140	5	5	375	70	3,595
2		3,015	*	5	385	60	3,450
3		3,565	*	5	405	65	4,040
4		4,570	5	5	440	70	5,085
5		7,200	5	5	650	110	7,975
6		11,655	10	5	980	90	12,720
7		15,265	5	10	1,270	105	16,655
8		17,170	10	10	1,380	120	18,690
9	*	18,765	10	15	1,610	120	20,525
10		19,335	5	20	1,685	120	21,165
11		19,985	10	25	1,820	135	21,975
12		20,375	5	20	1,945	135	22,485
13		20,170	5	25	2,150	130	22,475
14		20,055	10	25	2,305	160	22,560
15	*	20,550	5	20	2,425	165	23,165
16		19,265	*	25	2,435	155	21,880
17		19,255	5	50	3,125	215	22,650
18		5			5		10
22					*		*
23		5					5
25		*			*		*
26		*					*
28					*		*
34		*					*
40					*		*
Total:	*	246,335	100	280	25,795	2,145	274,655

Applications received between 01-January 2002 and 31-March-2014

Section code is equal to 3(1)

of the processed applications- decision is refused

Grouped age at date of application

Grouped Age at Date of Application	Refused
Age 0-9	7,895
Age 10-13	7,600
Age 14-15	4,730
Age 16-17	5,560

[A4.20 – A4.23]

It is possible that the statistics which show so many successful s3(1) applications are slightly misleading. One practitioner suggested that in many cases, parents apply to naturalise at the same time as their children, hence the apparently modest number of refused child applications. They suggested that it would be interesting to see statistics about children whose parents are neither British nor becoming British. Consequently, a FOI request for this information has been sent. However, they speculated that such figures may themselves be misleading because the high fees will put off most from ever applying at all in s3(1) cases.

8. Statistics in connection with children's registration applications –s3(1)

i) Request for statistics on applications for, grants and refusals of registration as a British citizen under section 3(1) of the British Nationality Act 1981. This was a previous request. [A4.20 – A4.23]

ii) All information about the number of applications under s3(1) British Nationality Act 1981 which were granted after they had initially been refused, but were then challenged by applicants:

- (a) Where the application was settled following an internal review, and
- (b) Where the application was settled after judicial review proceedings had been issued

The Home Office's response was that this data would exceed the cost limit and therefore they were unable to provide this information. [A4.24 – A4.26]

9. Statistics in connection with children's registration applications –s 1(4) Applications

All information about the number of applications for registration as a British citizen by minors which were made under s1(4) British Nationality Act 1981 between 2002 and 2014 (including grants, refusal and detailed reasons for refusals).

Confirmation of age of applicants and the number of applicants refused under the following age groups:

- i) aged between 0-10
- ii) aged between 10-14
- iii) were aged between 14-16 and
- iv) were aged between 16-17?

FOI Response:

Based on Applications received between 01 April 2002 and 31 March 2014

Section code is equal to 1(4)

Case Types are listed in worksheet below.

Age at date of application groupings have been defined by the requester.

The number of cases received between the above dates, split by the outcome of that case (granted, refused, rejected, other and pending) and the grouped age at date of application.

grouped age at date of application	Outcome					Total:
	Granted	Other	Pending	Refused	Rejected	
Age 0-9 inc	40			20		60
Age 10-13 inc	3,295	*	10	165	5	3,480
Age 14-15 inc	335			40	5	380
Age 16-17 inc	310		*	50	5	370
Total:	3,980	*	15	280	15	4,290

All figures quoted are Official Statistics based on management information which have been subject to internal quality checks.

Figures are rounded to 5 with * indicating 1 or 2 so may not sum exactly to any totals shown.

Source: Home Office, Performance Reporting & Analysis Unit

Report number WL-14-1172

[A4.29 – A4.31]

10. Registration of illegitimate persons who missed out under the changes in force from 1 July 2006

All published and unpublished information regarding the registration of illegitimate persons who are unable to benefit from the amendment to s50 of the British Nationality Act 1981 as introduced on 1 July 2006.

FOI Response

The FOI response was that it was already available.

On the unpublished information, a clarification was requested.

This was also an old FOI response [A4.36 – A4.37]

11. Justifications for not returning difference in costs to unsuccessful applicants who applied to register?

- i) Where an application for registration of a minor as a British citizen has been refused, the decision letter from the Home Office states: *‘As explained in our schedule of fees, the application fee for British citizenship is not refundable and has been retained to cover the cost of handling and processing your application.’* The ‘Explanatory Memorandum to the Immigration and Nationality (Fees) Regulations 2014’ makes it clear that the cost of processing the application is less than is being charged – the cost is £144, while the fee is £669. Request for all information relating to the reasons for not returning the difference in cost to an unsuccessful applicant (i.e. for the registration of a minor, £525).
- ii) The Secretary of State’s justification for the additional £80 review fee to challenge the refusal to register a minor (NR form [A7.1-A7.9]).

FOI Response

*‘In line with our legislative powers, we set fees for immigration and nationality applications that take **into account the benefits and entitlements typically given to an individual on the grant of a successful application**, as well as the administrative costs of processing an application. Our policy on refunds is that applications fee are refunded only where an application cannot be processed because it is invalid, or void, or where an application is fee exempt. We do not refund a fee if a person makes an application but fails to demonstrate that they meet the requirements of the Immigration Rules or other relevant legislation for that category. I have attached a copy of the relevant extracts of the Home Office’s [ARCHIVED] guidance on refunds [emphasis added].*

*We use income from application fees to help fund the operation of effective immigration and border controls. **If we were to refund fees to unsuccessful applicants, this would result in a reduction in income to us that would have to be made up through charging other customers higher fees. We believe this would be unfair.** We believe that our policy encourages applicants to check that they meet the requirements and provide sufficient evidence; it also discourages fraudulent and speculative applications. [Emphasis added].*

You also asked about the justification for the additional £80 review fee to challenge a refusal decision. When a refusal decision is made, the citizenship ceremony part of the application fee is refunded. If an applicant requests a review of a refusal decision, we look again at the application. There is a fee of £80 to cover the cost of the review as this is a separate process. If after reconsideration, the original decision taken is upheld, the fee is retained to cover the administrative costs of the reconsideration.

For adults, if the original decision is overturned, the fee is retained to cover the £80 cost of the citizenship ceremony fee which would have been refunded to them earlier. Minors are not required to attend a citizenship ceremony, but if an applicant becomes an adult by the time the case is decided, they will have to pay the citizenship ceremony fee to enable them attend a citizenship ceremony and make an oath of allegiance and pledge.’ [A4.41 – A4.47]

Response to the letter sent by Fiona Mactaggart MP

In order to aid our research we asked Fiona Mactaggart MP to write to the Immigration Minister James Brokenshire to ask for the reasons why:

- (1) The difference in cost between the application fee and the cost to the Home Office of processing an application to register as a British citizen (the surplus application fee) is not returned to children who have been refused registration
- (2) The level of the review fee is £80
- (3) The review fee is not refunded if applications to review the decision are successful

Fiona Mactaggart MP sent her letter on 16/10/14 and a response was received on 19/11/14. It provided no further information; in content it was almost identical to the response received to FOI 11 above. [A4.38 – 4.40]

12. Information on the revenue raised by the Department from fees for registering children and total cost for administering all such applications etc

(for clarity, the responses are underneath each answer here)

- 1) Confirmation of amount of revenue raised by the Department from fees for registering children as British citizens for the most recent complete financial year.

‘The total Earned Income for Nationality Dependents for financial year 2013 – 2014 was £26.4m’

- 2) The ‘Explanatory Memorandum to the Immigration and Nationality (Fees) Regulations 2014’ makes it clear that the cost of processing a single application to register a child as a British citizen is £144. Disclosure of the total cost to the department of administering all such applications in the most recent complete financial year.

‘The Explanatory Memorandum you quoted relates to fees charged and relevant indicative unit costs in the current financial year of 2014-15. We have responded to your request to provide information related to the most recent complete financial year, i.e. 2013-14. The 2013 Immigration & Nationality (Fees) regulations published the indicative unit cost for child registration at £187, thereby showing that for 2013-

14 the total cost to process these applications for 2013-14 was £8.5m. A link to the regulations has been provided below for your assistance.

<http://www.legislation.gov.uk/uksi/2013/749/schedule/4/made>

3) If the total revenue raised from charges for registering a child as a British citizen exceeds the total cost of administration, is excess revenue raised from the fee charged for registering children as British citizens ring-fenced for any specific purpose in the department? If so, for what purpose is it ring-fenced? If the money contributes to the Department's general funds, please make this clear.

'Excess revenue from applications to register children as British citizens is not ring-fenced for any specific purpose but is used to fund the wider running costs of the Immigration and Border System. Details on these wider costs are explained in the Department's published accounts. Section 21 of the Freedom of Information Act exempts the Home Office from having to provide you with this information, because it is already reasonably accessible. If you have any difficulties in accessing this information at the source which I have indicated, please contact me again. However, a link has been provided below; for your assistance. The detail is on page 81:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321446/ARA_web_enabled_18_June.pdf

4) A rough breakdown of the costs of administering an application for the registration of a child as a British citizen.

5) A statement from the department on why the charges for the scheme exceed the costs.

Fees are reviewed annually and are set within strict financial limits agreed with HM Treasury and Parliament. The fees for applications for registration as a British citizen are contained in the Immigration and Nationality (Fees) Regulations 2014 (No 922). Information explaining the basis on which we set immigration and nationality application forms part of the explanatory memorandum and the Impact Assessment that accompanies the regulations. These documents have been published and are available via the link below to the National Archives website.

<http://www.legislation.gov.uk/uksi/2014/922/contents/made>

The fee for an application for registration as a British citizen where the applicant is a child is set at £669. This reflects a reduction of 10% on the fee for similar applications from adults, which is set at £743. We set fees for immigration and nationality applications to reflect the benefits and entitlements given to those who make a successful application, as well as the administrative costs to us of processing an application. The benefits of a successful citizenship application include the right to apply for a British passport, and free movement rights with the right to live and work in any country within the European Union. The fees for applications to register as a British citizen are set above the administrative costs of processing an application in recognition of such entitlements. The Home Office believes the entitlements from the products it offers justify the fees.

The table below outlines an estimate of the different elements that make up the fees for registration as a British citizen:

Application type	Direct costs (£)	Indirect costs (£)	Estimated unit cost (£)	Contribution towards benefits and entitlements (£)	Application fee (£)
Adults	64.80	79.20	144	599	743
Children	64.80	79.20	144	525	669

Direct costs are those directly incurred in considering the application. Indirect costs are overheads and other attributable costs incurred by us that are essential to the infrastructure required to deliver an overall immigration service. These are apportioned out to the various application types. ' [A4.48 – 4.50]

Further FOIs requested and awaiting response

As a result of the FOI responses received, we formulated five new FOI requests which were sent off in November 2014. We are currently awaiting responses. The requests are as follows:

1. How many minors who apply for registration as British citizens and are refused, apply for administrative review of this decision? How many of the original decisions are overturned on administrative review? How long does the process of administrative review take?

Please also confirm how many applicants for administrative review were:

- i) aged between 0-10
- ii) aged between 10-14
- iii) were aged between 14-16 and
- iv) were aged between 16-17?

2. What grade(s) of staff within the Home Office carry out administrative review? Is it a process of peer review or are the decisions made by more senior staff than those who considered the original application?

3. What is the reason that the fee for applications to register as a British citizen made under s4C British Nationality Act 1981 are only charged the ceremony fee of £80?

4. Please provide all published and unpublished guidance from 1983 to 2004 on how the Secretary of State exercises her discretion under s3(1) British Nationality Act 1981 to register children as British Citizens. For the avoidance of doubt, here, 'unpublished' means not in the public domain.

5. Please provide the number of applications for registration as a British citizen by minors which were made under s3(1) British Nationality Act 1981 between 2002 and 2014 where:

- (i) neither of the applicant's parents were British citizens
- (ii) neither of the applicant's parents were in the process of becoming British.

Please include grants and refusals.

Please also confirm age of applicants. Please also confirm how many applicants who were refused were:

- i) aged between 0-10
- ii) aged between 10-14
- iii) were aged between 14-16 and
- iv) were aged between 16-17?

CONCLUDING REMARKS

Our research indicates that there are serious problems with the process for registering children as British Citizens. The problems are found in all three of the areas addressed in this research. It is clear from both the response of the children themselves, and those who work with them, that registration is a very important issue for the children in our research.

We found that many barriers to registration related to a lack of awareness, and the expense of the process itself. Children cannot afford to engage a lawyer to help with this process now that legal aid is no longer available. Nor can many of them afford the substantial fee required. We have found that social service agencies do not help children pay the fee, and that it is very difficult, and sometimes impossible, to raise the funds needed to provide the fee. The justifications for the fee being significantly higher than the costs to the government are not convincing.

We have also learnt that the Secretary of State provides very little feedback as to the reasons for refusal in those cases where a child's application is refused. Also, our investigations have highlighted the poor decision making process by the Secretary of State in many of the applications with which we are familiar.

RECOMMENDATIONS

- Bringing back legal aid for children's immigration cases;
- Bringing back the policy to grant ILR to children who have had a significant period of residence in the UK of 5 years or more;
- Active expedition of applications for ILR where it involves children;
- Fee waiver for ILR applications for children who cannot afford to pay the fee;
- Fee waiver for registration applications for children who cannot afford to pay the fee;
- Increasing public awareness of the importance of registration of children;
- Encouraging organisations to be more proactive in raising awareness of registration of children;
- Stakeholder meetings with Senior Management of Social Services on how to actively protect children in their care, or in receipt of their assistance under the Children Act, by paying these children's legal costs and application fees, thereby enabling them to regularise their stay in the UK and/or register as British;
- Stakeholder meetings with relevant immigration and nationality sections of the UKVI.

APPENDIX 1: INDEX TO OBJECTIVE EVIDENCE BUNDLE - VOLUME A

SECTION 1 : INTRODUCTORY MATERIAL		
1.	Extract from SLF Grant Application	1.1 – 1.3
2.	Extract from Legal Action Group Magazine (LAG) – A best practice guide to strategic litigation	1.4 – 1.12
SECTION 2: FEEDBACK FROM ORGANISATIONS WORKING WITH CHILDREN & FEEDBACK FROM CHILDREN WHO ARE CURRENTLY APPLYING/HAVE RECENTLY BEEN REGISTERED AS BRITISH		
3.	Letter to Organisations to find out their views on the affordability of the fee, the importance of registering children as British Citizens and their experience	2.1 – 2.2
4.	Just For Kids	2.3 – 2.5
5.	The Children’s Society	2.6 – 2.9
6.	Kids Company	2.10 – 2.12
7.	Latin American Women’s Rights Service	2.13 – 2.16
8.	Islington Law Centre	2.17 – 2.22
9.	Legal Rights Partnership	2.23 – 2.25
10.	Project for the Registration of Children as British Citizens	2.26 – 2.28
11.	Wesley Gryk Solicitors LLP	2.29 – 2.30
12.	Peter Bartram Solicitor	2.31 – 2.32
13.	Coram Children’s Legal Centre	2.33 – 2.35
14.	Questionnaire for children who are currently trying to apply seek/have recently been registered as British	2.36
15.	Responses to Questionnaire from Children	
	- OA	2.37
	- KC	2.38
	- RC	2.39
	- PB	2.40
	- JV	2.41
	- SK	2.42
	- GM	2.43
	- ZM	2.44
	- DB	2.45 – 2.46
	- SS	2.47 – 2.48
	- TT	2.49

SECTION 3: DECISIONS, REVIEW FROM THE SECRETARY OF STATE & EXTRACTS FROM SUBJECT ACCESS REQUESTS

16.	<p>Child 1: TT</p> <ul style="list-style-type: none"> - SOS Refusal Letter, (30/8/13) - Response to Pre-Action Letter, (15/11/13) - Court Order, (25/2/14) - Extract from United Kingdom Visas and Immigration (UKVI) Subject Access File 	<p>3.1 3.2 – 3.3 3.4 – 3.5 3.6</p>
17.	<p>Child 2: SS</p> <ul style="list-style-type: none"> - SOS Refusal Letter, (3/4/99) - Extract from UKVI Subject Access File 	<p>3.7 – 3.8 3.9 – 3.16</p>
18.	<p>Child 3: DV & 2 siblings</p> <ul style="list-style-type: none"> - SOS Refusal Letter DV, (17/10/12) - SOS Refusal Letter 2 siblings, (17/10/12) - Response to Pre-Action Letter, (21/6/13) - Citizenship Certificate, (17/9/13) - Extract from UKVI Subject Access File 	<p>3.17 3.18 3.19 3.20 3.21 – 3.25</p>
19.	<p>Child 4: DB</p> <ul style="list-style-type: none"> - Secretary of State (SOS) Refusal Letter, (19/3/14) - Response to Pre-Action Letter, (10/6/14) - Court Order, (20/8/14) - Extract from UKVI Subject Access File 	<p>3.26 – 3.27 3.28 – 3.29 3.30 3.31 – 3.33</p>
20.	<p>Child 5: FI</p> <ul style="list-style-type: none"> - SOS Refusal Letter, (20/2/13) - SOS Response to Reconsideration Request, (16/5/13) - SOS Review of decision during Judicial Review Proceedings,(7/8/13) 	<p>3.34 – 3.35 3.36 – 3.37 3.38 – 3.40</p>
21.	<p>Child 6: BE</p> <ul style="list-style-type: none"> - SOS Refusal letter, (14/5/14) - Extract from UKVI Subject Access File 	<p>3.41 3.42</p>
22.	<p>Child 7: SOS Refusal Letter, (12/3/14)</p>	<p>3.43</p>

	<p>Child 8: SOS Refusal Letter, (1/10/13) 3.44</p> <p>Child 9: SOS Refusal Letter, (2/10/12) 3.45 – 3.46</p> <p>Child 10: SOS Refusal Letter, (24/8/12) 3.47</p> <p>Child 11: SOS Refusal Letter, (27/7/12) 3.48 – 3.49</p> <p>Child 12: TS SOS Refusal Letter, (9/10/12) 3.50 – 3.51</p> <p>Child 13: BS SOS Refusal Letter, (29/10/14) 3.52 – 3.53</p>	
SECTION 4: FREEDOM OF INFORMATION (FOI) RESPONSES		
23.	<p>The Fee – Responses from the Home Office</p> <p>- Response 1: Reasons for the introduction of a fee waiver for ILR applications for children under the care of a local authority and reasons why this has not been extended for registration as British citizen applications (1/10/14) 4.1 – 4.2</p> <p>- Response 2: Reasons why the fee for registration of a minor as a British Citizen was set at £669 (4/9/14) 4.3 – 4.4</p> <p>- Response 3: Reasons why the Immigration and Nationality (Fees) Regulations abolished the reduction in the fee in respect of applications for registration as British Citizens for more than one child (2/9/14) 4.5 – 4.6</p>	
24.	<p>The Fee - Local Authority Policy Guidance</p> <p>- Response 4: Policy guidance in relation to paying UKVI fees for children under their care - Southwark Council, (26/9/14) 4.7 – 4.8</p> <p>- Response 5: Policy guidance for children in relation to paying for immigration fees - Southwark Council, (26/9/14) 4.9 – 4.10</p> <p>- Response 6: Policy guidance in relation to paying UKVI fees for children under their care - Croydon Council, (7/10/14) 4.11 – 4.12</p> <p>- Response 7: Policy guidance for children in relation to paying for immigration fees - Croydon Council, (7/10/14) 4.13 – 4.14</p>	

25.	<p>Staff Seniority and Number of Staff</p> <p>-Response 8: Number of staff and their seniority who work for the Home Office team that deal with registration applications, (2/9/14)</p>	4.15 – 4.16
26.	<p>Statistics in connection with children’s registration applications – Responses from the Home Office</p> <p>Applications made under s1(3) - Response 9: the number of applications for registration as a British citizen by minors which were made under s1(3) British Nationality Act 1981 between 2002 and 2014 including grants, refusal and detailed reasons for refusals and age of applicants. (10/10/14)</p> <p>Applications made under s3(1) - Response 10: the number of applications for registration as a British citizen by minors which were made under s3(1) British Nationality Act 1981 between 2002 and 2014 including grants, refusal and detailed reasons for refusals and age of applicants. (2/9/14)</p> <p>- Response 11: s3(1) application statistics on grants and refusals, (31/10/12)</p> <p>- Response 12: s3(1) applications which were granted by the Home Office after they had been initially refused but then were challenged by the applicant, (25/9/14)</p> <p>Applications made under s1(4) - Response 13: the number of applications for registration as a British citizen by minors which were made under s1(4) British Nationality Act 1981 between 2002 and 2014 including grants, refusal and detailed reasons for refusals and age of applicants, (16/9/14)</p> <p>- Response 14: number of s1(4) applications in 2011, 2012 and 2013, refusals, refusals on the grounds of good character, (19/6/14)</p> <p>- Response 15: number of s1(4) applications granted in 2011, number of refusals on the grounds of good character, (14/12/11)</p> <p>- Response 16: Reasons for Amendment to s50 BNA 1981, (27/2/12)</p>	<p>4.17 – 4.19</p> <p>4.20 – 4.23</p> <p>4.24 – 4.26</p> <p>4.27 – 4.28</p> <p>4.29 – 4.31</p> <p>4.32 – 4.33</p> <p>4.34 – 4.35</p> <p>4.36 – 4.37</p>

27.	Letter from Fiona Mactaggart MP asking the Immigration Minister on reasons for not returning the surplus application fees to children who have been refused registration and level of review fee of £80 (16/10/14)	4.38
	Letter from James Brokenshire MP(Immigration Minister) in response to Letter from Fiona Mactaggart MP dated 16/10/14. (19/11/14)	4.39 – 4.40
28.	- Response 17: Reasons for not returning surplus application fees to children who have been refused registration and level of review fee of £80 (21/10/14)	4.41 – 4.47
	- Response 18: Various information regarding the financial aspects of the fee to register a child as a British citizen. (21/11/14)	4.48 – 4.50
SECTION 5: OTHER LITERATURE ON NATIONALITY AND CITIZENSHIP		
29.	The “Mere Fortuity of Birth”? Children, Mothers, Borders, and the Meaning of Citizenship – Jacqueline Bhabha	5.1 – 5.41
30.	Project for the registration of children as British Citizens flyer: Sponsor a child with his registration fee	5.42

APPENDIX 2: INDEX TO LEGAL AUTHORITY BUNDLE -VOLUME B

SECTION 1: UNCR ARTICLES AND ACTS		
1.	Article 2 & Articles 3-8, The United Nations Convention on the Rights of the Child	1.1-1.2
2.	s55 Borders, Citizenship and Immigration Act 2009 (Child's Best Interest) and s71, Immigration Act 2014 (in force from 28/7/14)	1.3-1.5
3.	s1- 3, s41A and s50 (9) British Nationality Act 1981	1.6-1.19
4.	s51-52 Immigration, Asylum and Nationality Act 2006 (application fees, reductions and waivers) s42 Asylum and Immigration (treatment of claimants, etc.) Act 2004	1.20-1.28
5.	Immigration Act 2014, s68-70 (will repeal s51-52 of IAN 2006) Schedule 9, Part 11, paras 73-76	1.29-1.40
SECTION 2: REGULATIONS, ORDERS, EXPLANATORY MEMORANDUMS, IMPACT ASSESSMENTS		
6.	The British Nationality (General) Regulations 2003, (SI/2003/548)	2.1-2.34
7.	s1-3 British Nationality (Proof of Paternity) Regulations 2006 (SI 2006/1496)	2.35-2.37
8.	The Immigration and Nationality (Fees) Order 2011 (SI 2011/445)	2.38-2.47
9.	The Immigration and Nationality (Cost Recovery Fees) Regulations 2014 (SI 2014/581)	2.48-2.84
10.	The Immigration and Nationality (Fees) Regulations 2014 (SI 2014/922)	2.85-2.119
11.	Explanatory Memorandum to the Immigration and Nationality (Fees) Regulations 2014 (see par 7.12-7.17 and Table	2.220-2.233
12.	Impact Assessment for the Immigration and Nationality (Fees) Regulations 2014 (IA No: HO0100), p.1 – Summary: Intervention and Options Impact Assessment for the Immigration and Nationality (Fees) Regulations 2013 (IA No: HO0082), p.1 – Summary: Intervention and Options	2.234-2.235

SECTION 3: CASELAW

LACK OF FEE EXEMPTION AND BREACH of Article 8 (ECHR)

13.	Osman Omar v SSHD [2012] EWHC 3448 (Admin)	3.1-3.19
14.	QB v SSHD [2010] EWHC 483 (Admin)	3.20-3.31
15.	AS (Somalia) v Secretary of State for the Home Department [2009] UKHL 32	3.32-3.44
16.	Carter v SSHD [2014] EWHC 2603 (Admin)	3.45-3.62

CHAPTER 9 (nationality instructions) – Guidance on discretion to register children as British

17.	Ali v SSHD [2007] EWHC 1983 (Admin)	3.63-3.71
18.	FI v SSHD [2014] EWHC 2287 (Admin)	3.72-3.84

ARTICLE 8/14 (ECHR) NATIONALITY ISSUES

19.	Genovese v Malta (application no. 53124/09), 11/1/12	3.85-3.98
20.	Karrasev and family v Finland (1999) 28 EHRR CD132	3.99-3.104
21.	Johnson v SSHD [2014] EWHC 2386 (Admin)	3.105-3.118

LACK OF REASONS

22.	SSHD v ex parte Mohammed Fayed (unreported), Court of Appeal, 13/11/1996	3.119-3.147
-----	--	-------------

DISCRIMINATION ON BASIS OF IMMIGRATION STATUS (Access to student loans)

23.	Tigere v Secretary of State for Business [2014] EWHC 2452 (Admin)	3.148-3.172
24.	R(on the application of Tigere) v Secretary of State for Business, Innovation and Skills [2014] EWCA 1216	3.173-3.184

CHILD'S BEST INTEREST (s55)

25.	ZH Tanzania 2009 EWCA Civ 691	3.185-3.206
26.	DS Afghanistan 2011 EWCA CIF 305 (duty to be proactive and enquiring where best interests of children lie)	3.207-3.230
27.	Salad's (Fowsiya) v SSHD [2014] NIQB 37	3.231-3.244
28.	SM v SSHD [2013] EWHC 1144 (Admin)	3.245-3.262

SECTION 4. UKVI POLICY AND GUIDANCE

29.	Nationality Instructions Chapter 9, Registration of minors at discretion	4.1-4.68
30.	Every Child Matters: Change for children Statutory Guidance for UKBA on making arrangements to safeguard and promote the welfare of children - November 2009	4.69-4.92
31.	MN1 application Guide - June 2014 Registration as a British Citizen – A guide about the registration of children under 18	4.93-4.129
32.	Guide T - January 2014 Registration as a British Citizen- A guide for those born in the United Kingdom on or after 1 January 1983 who have lived there up to the age of 10	4.130-4.151
33.	Discretionary Leave Guidance, 19 May 2014	4.152-4.168
34.	Extracts of Domestic Violence Policy Guidance on the issue of fee waiver and exemption -28 January 2014 (pages 13-16)	4.169-4.173
35.	Appendix 1 FLR (P)/FLR (O) – Request for fee waiver in order to exercise ECHR rights, December 2013	4.174-4.190

SECTION 5. APPLICATION FEES TABLE, SCALE OF FEES

36.	Nationality Fees table and payment form, April 2014	5.1-5.4
37.	Nationality Instructions Annex D to Chapter 6: Scale of Fees from 1975 to 6/4/2014	5.5-5.17

SECTION 6: WHITE PAPER, HOUSE OF COMMONS DEBATES, COMMITTEE PAPERS

38.	White Paper, British Nationality Law: Outline of Proposed Legislation (presented July 1980)	6.1-6.3
39.	Standing Committee: Committee F – British Nationality Bill (Acquisition by birth or adoption) – Official Reports, (HC/OF/SC/229 Hansard: Vol. V – Standing Committees F & G 1980/1981, cols 40, 42, 43, 44, 45, 51, 63, 93, 99, 177, 183, 184, 221, 223, 331)	6.4-6.17
40.	House of Commons 28/1/1981 – 2 nd reading British Nationality Bill (HC Deb Vol 997, col. 1038)	6.18-6.19
41.	House of Commons 28/1/1981 – 2 nd reading British Nationality Bill (HC Deb Vol 997, col. 936)	6.20-6.21

42.	House of Lords 22/6/81 – 2 nd reading British Nationality Bill (HL Deb Vol 421, col 885);	6.22-6.23
43.	House of Lords 7/7/81 – Committee Stage (HL Deb Vol 422, col 607)	6.24-6.25
44.	Fourth Delegated Legislation Committee on Monday 28 March 2011, col 9	6.26-6.27
45.	Thirteenth Delegated Legislation Committee on Thursday 20 March 2014, col 3	6.28-6.29
SECTION 7. NATIONALITY REQUEST FOR RE-CONSIDERATION FORM & miscellaneous		
46.	Request for re-consideration of the decision to refuse an application to British citizenship – Form NR and guidance	7.1-7.9
47.	Withdrawal of 7-year children ILR Concession, DP5/96, Minister, Mr Phil Woolas' statement	7.10

Ealing Law Centre,
210 Northfield Avenue,
London W13 9SJ
Main office number: 0208 579 4598
Fax: 0208 840 0555
E-mails: solange.valdez@ealinglaw.org.uk
Prcbc2013@aol.com
Website: <http://ealinglawcentre.org.uk.gridhosted.co.uk/>



FUNDED BY:

**STRATEGIC LEGAL FUND
FOR VULNERABLE YOUNG MIGRANTS**