



**Submission to the
Independent Chief Inspector of Borders and Immigration**

**Fee Waiver Applications
(Children's Citizenship Fee Waiver)**

1. This submission is made in response to the inspectorate's Call for Evidence for an inspection into:

"...the effectiveness, efficiency, and consistency of the Home Office's management of fee waiver applications."

2. The submission is solely concerned with fee waivers for children to be registered as British citizens (hereafter referred to as "the children's citizenship fee waiver"). The relevant power, introduced on 16 June 2022, is provided under paragraph 8 of the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330, which states:¹

"The Secretary of State may waive the fee specified in 19.3.1 or 19.3.2 in a case where the Secretary of State considers that the fee is not affordable, taking into account the financial circumstances of the child in respect of whom the application is made and of any person who (in the Secretary of State's opinion) might otherwise reasonably be expected to bear the cost of paying all or part of the fee."

3. The remainder of the submission is broken down into the following sections:
 - 3.1. **PRCBC experience**
 - 3.2. **Relevant background**
 - 3.3. **Effectiveness in meeting policy objectives**
 - 3.4. **General efficiency**
 - 3.5. **Conclusion and summary of recommendations**

¹Paragraph 8 was introduced by the Immigration and Nationality (Fees) (Amendment) Regulations 2022, SI 2022/581.

PRCBC experience

4. The Project for the Registration of Children as British Citizens (PRCBC) has extensive experience of assisting children, their parents and carers in connection with registration of British citizenship over more than a decade. Our casework experience in this time has been disproportionately weighted to assisting children for whom the children's citizenship fee waiver was introduced. Our litigation, to which reference is made below, led directly to the introduction of this waiver. It was informed by the evidence we amassed from that casework experience, which the courts found to constitute a "*mass of evidence*" showing both the prohibitive impact of the fee upon children's citizenship rights and the alienating impact upon children of being unable to make the application required to secure their citizenship.
5. Amnesty International UK has worked with PRCBC for many years to help draw attention to children's citizenship rights and barriers to these, including a particular focus on the registration fee.
6. PRCBC's experience, since the introduction of the children's citizenship fee waiver, confirms that the way in which this waiver has been implemented has in effect substituted one barrier to children's citizenship rights with another. We acknowledge that the formal availability of a fee waiver is a marked improvement on the position before its introduction. It has undoubtedly assisted several children. However, the process and application form are themselves prohibitively lengthy, time-consuming and complex, including unrealistic demands for evidence. Even with our assistance, it has taken many hours in individual cases for a fee waiver application to be made. Our experience indicates that, without assistance, many children who cannot afford the fee – including children born in the UK who have lived here their entire lives and are entitled to British citizenship – will not be able to secure the waiver. Our experience also indicates that the children most at risk of being unable to secure the waiver intended for them are disproportionately amongst the most poor, marginalised and otherwise socially disadvantaged.
7. The critical problems that PRCBC has experienced with the process and form adopted by the Home Office are:
 - 7.1. The demands for complex financial information are exceptionally demanding, especially for children and their families living under the strain of poverty and other marginalisation. This includes the demand for detailed financial information for sometimes several accounts going back six months for each household member, and requiring explanation of deposits, withdrawals and transfers of even relatively

modest size over the period of these is seriously difficult to satisfy. Even assuming individuals (parents and others) are reasonably able to obtain records, attempting to recall an often complex financial situation of muddling through day-to-day with transferring funds and relying on family and friends is at best an extremely time-consuming exercise – far out of proportion to the task at hand from a legal representative’s perspective, and a task that many individuals cannot be expected to undertake without assistance. That task is complicated by the demand to present detailed income-expenditure for the household. It is also complicated by the increasingly cashless world in which we all now live, with money being transferred into our clients’ children’s accounts by parents for purposes of family, travelling, food and other essential expenses that might previously have been carried in cash. The task is also fraught with risk, since any error or oversight may be treated by the Home Office as some sort of deception that may have serious consequences over and above undermining the fee waiver request.²

- 7.2. There is no legal aid for nationality applications. Hence many children may not have specialist legal assistance.
- 7.3. Many of our clients live in complex households, including where several adults or even families may be living together at least temporarily to avoid homelessness. This significantly complicates a household income-expenditure and makes a demand for all household members’ financial information extremely intrusive or incapable of being met.
- 7.4. The length of the application form – both paper and online – is intimidating and prohibitive. Even with specialist legal assistance these can be extremely difficult and time-consuming to complete. The online form (as with some other such forms) also makes completion of various information boxes mandatory in circumstances where these may not be relevant. This is a particular problem with larger households.
- 7.5. Clients or parents may be compelled to spend money they do not have to amass the evidence demanded – including photocopying, printing or scanning costs, postage (also travel to a representative’s office to deliver documents, explain them and/or give a statement). Inevitably, our clients tend not to have access to various facilities (including

² On the face of Home Office caseworker guidance, an applicant treated as having used deception in applying to be registered could effectively be barred from registration for a further 10 years: see Home Office *Nationality: good character requirement*, version 4.0, section on ‘deception and dishonesty’. The propriety or legality of this is open to doubt, but that does not alter the potential enormity of an error or oversight being treated as deception.

internet) and High Street services, in particular, are extremely expensive.

- 7.6. The process itself can be long delayed. Our experience includes waiting several months after making a request only to receive a demand for extensive further financial information within 14 days. That period proved far too short to deal with the unanticipated request, yet the fee waiver request was summarily rejected immediately on the period expiring. We made representations at a more senior level leading to the refusal being reconsidered and the waiver being granted. However, this took significant time and correspondence on our part, also on the part of the department. We fear that many representatives, let alone individual claimants acting for themselves or their children, would not or would not be able to pursue such an injustice.

Relevant background

8. The origins and purpose of the children's citizenship fee waiver is set out in an Annex to this submission. The importance of this is that:
 - 8.1. It identifies the specific policy objective for the introduction of the children's citizenship fee waiver ("the specific policy objective").
 - 8.2. It identifies the context in which that specific policy objective arose, thereby giving further clarity as to what is the specific purpose of the citizenship fee waiver.
9. In summary, the specific policy objective is to give effect to the conclusion that the registration of children as British citizens, in accordance with the rights set out in the British Nationality Act 1981 for their registration, is in children's best interests.³ The objective is expressly to ensure that children, whose circumstances fall within those for which the Act provides a right to be registered, can and do make the application that is necessary for their registration.⁴

³As protected by the 1989 UN Convention on the Rights of the Child and adopted, for the purposes of immigration, asylum and nationality functions, by section 55 of the Borders, Citizenship and Immigration Act 2009.

⁴The right to registration may arise by way of statutory entitlement, such as under section 1(3) or (4) of the British Nationality Act 1981, or by way of a wide discretion given to the Secretary of State under section 3(1) of the Act to secure the citizenship rights of children connected to the UK, whose circumstances either do not fall within a statutory entitlement or whose circumstances are such that they are unable to substantiate their entitlement or, in some cases, that they are already British citizens having acquired that nationality automatically (e.g., at birth).

10. As the inspectorate has previously recognised, there is considerable controversy about the underlying position maintained by the Secretary of State that fees for people, including children, to be registered as British citizens provide an appropriate vehicle for raising money to fund the immigration system.⁵ This is something we have raised with the Inspectorate in support of previous inspections relating to citizenship rights.⁶
11. We note that the relevant legislative provision for the children's citizenship fee waiver is expressed in terms that are distinct from the various provisions made for immigration fee waivers.⁷ This reflects the separate origins and purpose of the children's citizenship fee waiver. In any event, the Secretary of State's function of registration, to which the waiver relates, is wholly distinct from her immigration functions. The continued failure to fully recognise and give effect to this distinction is itself an important consideration for the inspectorate, including in the present inspection.
12. In summary, the Secretary of State's position fails to recognise that her function of registration of British citizenship is separate from her immigration functions:
- 12.1. That function of registration is distinct in both form and substance. Registration is, under nearly all relevant provisions of the British Nationality Act 1991, a matter of statutory entitlement. The Secretary of State's function is to give effect to that entitlement.
- 12.2. The registration function is to fulfil a wider objective concerning British citizenship. That wider objective is to secure the nationality of the UK (i.e., British citizenship) for a body of people (British people) on the basis of their shared connection to the UK.
- 12.3. Importantly, for the purposes of the children's citizenship fee waiver, that wider objective is reflected in statutory entitlements to British citizenship for children born in the UK, which were introduced expressly to mitigate the impact of ending *jus soli* in British nationality law. While intending to ensure British citizenship was preserved for people connected to the UK, Parliament was concerned to ensure that all

⁵[An inspection of the policies and practices of the Home Office's Borders, Immigration and Citizenship Systems relating to charging and fees, June 2018 – January 2019](#), April 2019

⁶We have done so in connection with inspections on fees (2019), good character (2017 and 2019) and the EU Settlement Scheme (2021).

⁷ See paragraph 8 of Schedule 8 to the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 (as amended).

children born in the UK who did grow up here should be entitled to that nationality, in recognition of their shared connection to this country.⁸

- 12.4. These considerations are entirely distinct from those that relate to the Secretary of State's many and separate immigration functions by which she determines who may come to and stay in the UK, and on what conditions.⁹

Effectiveness in meeting policy objectives

13. Two aspects to the question of effectiveness in meeting policy objectives are considered in this section:

- 13.1. Whether the specific policy objective in introducing the children's citizenship fee waiver is being fulfilled.
- 13.2. The degree to which the children's citizenship fee waiver gives effect to the parliamentary intention in passing the British Nationality Act 1981 to ensure that the connection of all children born in the UK who grow up here is recognised and secured by citizenship ("the nationality objective").

The specific policy objective

14. This objective is expressly stated in the impact assessment. In summary, it is to enable children who qualify for registration as British citizens, for whom the fee (currently £1,214) would otherwise be a practical barrier, to make their applications for registration. The impact assessment accordingly sets out various estimates of the number of children expected to benefit from the children's citizenship fee waiver.
15. The inspectorate may wish to assess the impact of the children's citizenship fee waiver against the estimates provided in the impact assessment, having regard to the actual figures for fee waiver requests, decisions and grants. In doing so, the inspectorate may also wish to assess the quality of the Home Office monitoring of the impact of this waiver. In this regard, we note the

⁸A summary of the relevant parliamentary debates on the British Nationality Act 1981 as these relate to children's rights to be registered as British citizens is provided by [PRCBC's commentary on Parliament's intention in introducing registration provisions for children in the British Nationality Act 1981 as this relates to fees](#), August 2018

⁹Not only are the Secretary of State's immigration functions distinct from her nationality functions, but her immigration functions concern policy that is delegated to her to make and operate under the Immigration Act 1971 whereas her nationality functions (save in respect of naturalisation of adult migrants) concern statutory rights set by Parliament that she is required to fulfil.

express commitment made in the impact assessment concerning monitoring and evaluation:¹⁰

“162. *The impact will be monitored by the Home Office to ensure that the fee waiver is being used and whether this done by the individuals most in need of it, measured by the fee waiver take up.*

“163. *Monitoring will be undertaken with support, as appropriate, from other government departments. The Home Office will maintain open lines of communication with applicants via email and may also receive feedback as part of its normal visa issuing processes, through its public enquiry lines, and through formal correspondence with interested parties.*

“164. *After five years there will be an evaluation of this policy, in October 2025. Due to the inherent uncertainty set out above, evaluation could be justified before the end of the five-year period.*”

16. We note certain inconsistencies within this express commitment concerning monitoring and evaluation. Five years will not have passed by October 2025, so it is unclear if the original intention was for evaluation after a shorter period (e.g., 3 years to October 2025) or by a different date (e.g., October 2027). It is equally unclear how the Home Office envisaged its “*normal visa processes*” would contribute to the monitoring and evaluation of a nationality function that is unconnected to any visa process. On the face of it, this statement appears to confirm a continued misunderstanding at the department about its nationality functions, specifically those relating to registration. The impact of this is to some extent obscured by the relative paucity of statistics published by the Home Office on its registration functions, including the absence of statistics on fee waivers.

17. Nonetheless, the commitment is clear that the take up of the fee waiver is to be monitored to *ensure* the waiver is being taken up. The importance of this is emphasised by what is briefly summarised in the previous section as to the distinct nature of the Secretary of State’s function of registration and the statutory purpose behind that function.

The nationality objective

18. The provision of statutory rights for children to be registered as British citizens is intended to promote the security and sense of belonging of all children

¹⁰[Child Citizenship Affordability Fee Waiver Impact Assessment](#), HO0415, 16 May 2022

whose connection is to this country. We have previously raised with the inspectorate concerns about the registration fee and its undermining of this nationality objective.¹¹ An important aspect of the fee waiver is, therefore, the degree to which it mitigates this undermining of the nationality objective.

General conclusions concerning these objectives

19. The children's citizenship fee waiver is implemented via caseworker guidance given by the Secretary of State¹² and a mandatory application form that in its paper version is 54 pages.¹³ In its online version, the complication of the form is exacerbated, in our experience, by mandatory fields or responses that do not properly reflect the variable circumstances of any particular individual applicant.
20. The current approach, led by the form, makes excessive demands on people who – by reason of their circumstances of relative or absolute poverty, and characteristics and conditions related to this including social exclusion or marginalisation, mental and other health needs and disabilities, educational disadvantage, financial instability, and single parent households – are least able to meet these demands.
21. Among the children most at risk of being unable to secure the waiver intended for them are many children in families, often single parent families, in receipt of means-tested state assistance. This assistance includes means-tested benefits, legal aid and asylum support. Our recommendation is that some or all such assistance should be treated as a 'passporting' benefit – i.e., it should be sufficient to demonstrate receipt of the assistance to show the fee is unaffordable at least as a matter of presumption. Such an approach could be operated with capacity to make further inquiries if, in a particular case, there were any significant reason, on consideration with the relevant department or authority responsible for providing the relevant assistance, for doing so. Operated sensibly, such an approach would not only make the children's citizenship fee waiver significantly more accessible. It would also significantly reduce Home Office time and cost in processing waiver requests.
22. Other excessive demands include for detailed financial information relating to all household members, including independent adults. It must be remembered that children cannot generally compel their parents or adult carers to disclose information to assist them, let alone other independent adults whether siblings

¹¹*Op cit*

¹²[Affordability fee waiver: Citizenship registration for individuals under the age of 18](#), version 3.0, October 2023

¹³[Children Citizenship: Fee Waiver Request](#), October 2022

or more distantly related. Moreover, they are owed no particular duties by such other independent adults.

23. Neither the specific policy objective nor the nationality objective is properly or adequately promoted by this guidance and form. The approach is exceptionally bureaucratic.

General efficiency

24. The implementation of the children's citizenship fee waiver is not, for reasons given in the previous section, effective. It is also generally inefficient.

25. As confirmed by the Minister in July 2022, the then estimated cost to the department of processing a children's citizenship fee waiver request was £177.¹⁴ The inspectorate may wish to assess whether this estimation has proved accurate and/or what the processing cost to the department of such an application is. In doing so, it would be useful to have regard to further applications that are successfully made following a refusal; and, insofar as the inspectorate is able, applications that are refused with no further application made and no application for registration made in circumstances where a child cannot afford the fee. It would equally be useful to identify whether and what data is held at the department on children's citizenship fee waiver requests and decisions.

26. In any event, Home Office caseworkers are being required to address caseworker guidance, forms and evidence that are, on their face, excessive.

Conclusions and summary of recommendations

27. Whether from a perspective of the specific policy objective for the fee waiver's introduction, the wider policy objective of registration under the British Nationality Act 1981, or general concern regarding Home Office efficiency, the children's citizenship fee waiver is implemented in a way that is neither effective nor efficient.

28. Having regard to the foregoing, we make the following recommendations to the inspectorate:

As regards the inspection process

29.1 The children's citizenship fee waiver should be considered in its own right according to the specific fee and nationality function to which it relates, and the specific policy objectives that relate to it.

¹⁴[Hansard HL, 6 July 2022 : Col 1070](#) per Baroness Williams of Trafford, Minister of State, Home Office

- 29.2. In giving the children's citizenship fee waiver discrete consideration, it is generally important to distinguish nationality rights (and functions related to these) from immigration functions.
- 29.3. The efficiency and effectiveness of the children's citizenship fee waiver should be assessed according to each of the specific policy objectives in that waiver's introduction, the wider nationality objective, and general efficiency at the Home Office.
- 29.4. Consideration should be given to the Home Office impact assessment relating to the introduction of the children's citizenship fee waiver, the expectations at that time, the children's best interests assessment that led to the waiver's introduction, and the monitoring and evaluation commitment made in the impact assessment.

Suggested recommendations the inspectorate may make

- 29.5. Consideration should be given to making recommendations to significantly reduce the bureaucracy surrounding how the children's citizenship fee waiver is implemented. This should include reflection on how to ensure that the children's citizenship fee waiver is implemented in a way that does not act as its own barrier by making excessive demands – often on parents and other adults for whom the child, whose rights are at stake, has neither control nor responsibility. Our experience clearly indicates that the demands being made to secure a waiver are excessive and likely to bar many of the children for whom the waiver was expressly introduced.
- 29.6. **Specific consideration should be given to recommending that confirmation of receipt of certain state assistance be treated as a 'passport' to the grant of a waiver, at least as a matter of general presumption.** Of all the recommendations the inspectorate may make this, and the following recommendation are those most likely to significantly improve accessibility of the waiver, in keeping with both the specific policy objective and nationality objective, and to improve general efficiency for the department.
- 29.7. **Specific consideration should be given to recommending that demands for detailed financial information regarding independent adults (i.e., those who are not the parents or primary carers) should not, or not generally, be made.**

- 29.9. **Consideration should be given to recommending that published statistics include greater specificity concerning registration applications and data on children’s citizenship fee waivers.**
- 29.10. **Consideration should be given to recommending the Home Office makes greater efforts to publicise the children’s citizenship rights to which the children’s citizenship fee waiver relates, including publicising the waiver.** We note that the introduction of a fee exemption for children in local authority care has been accompanied by a particular commitment to encourage local authorities to act to register the citizenship rights of children in their care. There is equal reason to take positive action to ensure that children not in care are enabled to have their citizenship rights acted upon, and so effort ought to be made to raise public awareness of these rights.

PRCBC and Amnesty UK
5/9/2024

ANNEX

Origins and Purposes of the Children’s Citizenship Fee Waiver

1. The children’s citizenship fee waiver was introduced following a review of the relevant fee that was undertaken in response to findings of fact and law by the higher courts in litigation brought jointly by PRCBC and by children assisted by PRCBC. The Explanatory Memorandum to the regulations by which the waiver was introduced states:¹⁵

“7.2 ...The Court of Appeal in R (Project for the Registration of Children as British Citizens and O) v. Secretary of State for the Home Department [2021] EWCA Civ 193, found that the Secretary of State had breached the duty under section 55 of the BCIA 2009 in setting this fee in the Regulations 2018 (and in previous fees regulations in 2017). Furthermore, the department has become increasingly aware of concerns regarding the impact of this fee on some children’s ability to register as a British Citizen and consequential impacts on their individual rights both in childhood and later adulthood, and on their wellbeing. Consequently, the Secretary of State has undertaken

¹⁵[Explanatory Memorandum to the Immigration and Nationality \(Fees\) \(Amendment\) Regulations 2022 No. 581, CO/EM/2021.2](#)

a review of this fee in line with her duties under section 55 of the BCIA 2009.

“7.3 These Regulations make changes reflecting the outcome of this review by substituting the related fee provisions, and by further introducing a specific affordability-based fee waiver for child citizenship applications, and a fee exception for children who are looked after by a local authority. They also include an exception to the fees for arrangement for a citizenship ceremony or administration of a citizenship oath and pledge for individuals benefiting from that waiver or exception, who have turned 18 before their application decision is communicated.

“7.4 By introducing these changes, the policy aim is to ensure that the fee does not serve as a barrier to the acquisition of British citizenship for eligible children who cannot afford to pay the fee, whilst also continuing to protect the funding of a borders and migration system that is critical to delivery of the Government’s key objectives. The guidance setting out how the affordability waiver is to be administered will be placed on the GOV.UK website on laying these Regulations. The fee exception will also serve to relieve an administrative and financial burden from local authorities, while enabling them to work more proactively to register children under their care, who are eligible and where it is in their best interests.”

2. There is no published report of the considerations and findings of the review, to which the Explanatory Memorandum refers. However, in response to a Motion in the House of Lords that directly related to the review and its outcome, the Minister gave the following information:¹⁶

“The conclusion of that assessment [i.e., the review] was that it was clearly in children’s best interests to apply for citizenship if they were eligible and willing to do so, given the specific legal, practical and intangible benefits that accrue to a child as a result of obtaining that status, and for the fee not to pose a practical barrier to such an application.”

3. Prior to this, the Minister had made a Written Statement on the same matter, including that:¹⁷

¹⁶[Hansard HL, 6 July 2022 : Col 1069](#)per Baroness Williams of Trafford, Minister of State, Home Office

¹⁷[Hansard HC, 26 May 2022 : Col 28WS](#)per Kevin Foster, Parliamentary Under-Secretary of State for the Home Department

“By introducing the affordability based waiver, our aim is to ensure the fee does not serve as a significant practical barrier to the acquisition of British citizenship for children who are eligible to apply, where the unaffordability of that fee can be demonstrated. This recognised the particular value British citizenship can have for children who have been born in or spent a substantial part of their lives in the UK, particularly those intangible benefits in terms of the sense of identity and belonging which develop during an individual’s formative years, and the impact this can on their wider wellbeing. At the same time, it reflects our belief that a waiver offers the most effective means of facilitating applications from children for whom affordability of the fee does represent a practical barrier, while balancing against the wider financial impact on the Department, relative to other options.”

4. These ministerial statements demonstrate the clear finding of the review was that it is in children’s best interests to be registered as British citizens in the circumstances for which the British Nationality Act 1981 provides a statutory right for a child to be so registered. The statements also give some indication of the harmful impact to a child of being without citizenship in those circumstances. That harmful impact was demonstrated in the litigation that led to the review, and its demonstration was summarised in the findings of fact of the High Court in that same litigation:¹⁸

“The Impact of the Fee

“19. I consider that I may take this aspect of the case very shortly because the Secretary of State does not dispute it.

“20. First, there is a mass of evidence supporting the proposition that a significant number of children, and no doubt the majority growing up in households on low and middle incomes, could only pay the fee by those acting on their behalf being required to make unreasonable sacrifices. In this sense (see R (UNISON) v Lord Chancellor [2017] 3 WLR 409) the registration fee is unaffordable.

“22. Secondly, there is an equivalent mass of evidence supporting the proposition that children born in the UK and identifying as British... feel alienated, excluded, isolated, ‘second-best’, insecure and not fully assimilated into the culture and social fabric of the UK.

¹⁸[\[2019\] EWHC 2019 \(Admin\)](#)

“23. Although I have reduced the Claimants’ case on this important aspect into two short paragraphs, I can assure the parties that I have studied the supporting evidence respecting Mr Drabble’s economical and efficient approach to it on oral argument.”

5. It is against this background that the children’s citizenship fee waiver was introduced. Its introduction was accompanied by an impact assessment, which expressed the following objective:¹⁹

“The policy objective is to facilitate applications for British citizenship from those under the age of 18 years who are eligible and willing to apply, but for whom the fee level represents a practical barrier to an application, while protecting departmental income that supports the sustainable funding of the borders and migration system.”

¹⁹[Child Citizenship Affordability Fee Waiver Impact Assessment](#), HO0415, 16 May 2022