

Briefing for House of Commons Adjournment debate - Treatment of People under Immigration Control, 6 September 2018

As one of the only children's charities providing direct support to all children subject to immigration control, Coram Children's Legal Centre's (CCLC) is briefing to highlight the impact that the 'hostile environment' is having on generations of children and young people.

CCLC's 2013 report 'Growing up in a hostile environment' raised concerns that children and young people with unresolved immigration issues were often unable to access appropriate education, healthcare and support. Through our advice work, we had seen that many children and young people faced extreme poverty, but were 'trapped in a limbo, unable to regularise their status following the removal of legal aid from immigration cases, a lack of quality legal advice [and] soaring application fees'.¹ Five years on, not only has the hostile environment become significantly more pervasive, now prohibiting undocumented migrants from driving, opening bank accounts, working, renting privately and accessing secondary healthcare, but the immigration system is also more inaccessible than ever.

The government risks creating a new 'Windrush generation': children and young people who have grown up in the UK but are excluded from our society. Much more must be done if we are to address the needs of the long-settled individuals currently suffering as a result of a hostile environment and to create an immigration system that works to the benefit of us all.

Key messages

- * There are an estimated 120,000 undocumented migrant children living in England and Wales without status, over 65,000 of whom were born here.
- * In many cases, children and young people without status do have a legitimate right to be in the UK, having grown up here, and may even be British citizens. But exorbitant application fees, systemic complexity and lack of funded legal advice prevents them from presenting their case to the Home Office, leaving them trapped in 'legal limbo'.
- * The 'hostile environment' regime (now called the 'compliant environment') has failed to tackle 'illegal migration' – fewer than 15% of undocumented children have either regularised their status or left the UK in the last five years. Instead, young people remain, unable to study, to work or to fully integrate into society. Thousands have been pushed into poverty and destitution.
- * The UK needs a new approach to immigration, which includes shorter, more affordable routes to settled status for children and young people who have grown up here.

Complexity of immigration status

Many of the government's positions focus on the need to distinguish between those individuals who are here 'legally' and those who are here 'illegally'. In reality, immigration status is of a fluid nature and the Windrush scandal highlighted the difficulties people can face when trying to demonstrate their right to be in the UK. Distinguishing between 'good' and 'bad' migrants is unhelpful and stigmatising. Thousands of children and young people will be deemed to be in the country 'illegally' even though they have a clear right to be here – either because they are

¹ Coram Children's Legal Centre, Growing Up In A Hostile Environment: The rights of undocumented migrant children in the UK, 2013, at <https://www.childrenslegalcentre.com/growing-hostile-environment/>

entitled to British citizenship or have grown up in the UK and have a right to remain under Article 8 of the European Convention on Human Rights (the right to respect for private and family life). Some have been living here legally and then lost their status due to Home Office error. Children's rights under immigration and nationality law are different to adults, and some rights vanish when a child turns 18.

Barriers to regularisation

Many undocumented young people have grown up in the UK without realising that immigration is even an issue, their lack of regular status only becoming evident at critical junctures in their lives such as trying to secure their first job or access higher education. When they do take steps to regularise their status, they are blocked by the complexity and unaffordability of the system.

In the UK today, a child who is undocumented (has no permission to be in the UK) might be able to regularise through a number of different routes,² including if they have spent seven years living continuously in the UK and it would not be reasonable to expect them to leave – or, if they are over 18, if they have lived in the UK for half their life. These rules were introduced in 2012 – the same year legislation as passed removing legal aid for immigration cases – and replaced shorter and simpler routes to settlement.³ An undocumented child or young person whose right to be here is accepted will usually be granted just two and a half years' leave, which they must repeatedly renew. The five applications required cost between £8,000 and £10,000 total in fees and healthcare surcharges.⁴ The need to repeatedly make detailed and expensive applications increases the likelihood of their falling back into undocumented status, if for example they cannot raise the fees. CCLC's 2017 research report 'This is my home' estimated that fewer than 15% of all undocumented children had either regularised their status or left the country.⁵

Case study - Esther

Esther, a 24 year old from Nigeria, has lived in the UK since she was 12 years old. She was brought to the UK and left in the care of her step-mother and half-siblings, and her visa expired. No-one helped her address her immigration status while she was a child. At 18, Esther had a child whose father is British, so the child was automatically British by birth. Esther meets the Immigration Rules, but could not have the right to work so could not save the necessary fees (£1,533), and remained undocumented. As there was no legal aid available for her immigration case, CCLC took on her case pro bono. Her solicitor helped her to collate 53 pieces of evidence and prepared a 21 page covering letter. This application was successful but Esther was only granted 2½ years' leave. Esther identifies as British – her formative years have been spent here and she has no connections to Nigeria. However, she will need to make four further applications and will have been in the UK here for over 23 years before she will be 'settled'. If she fails to make one of those further applications on time, she will fall back out of the system and find herself undocumented again.

² See Coram Children's Legal Centre, Securing Permanent Status: existing legal routes for children and young people without leave to remain in the UK, 2017 at <https://www.childrenslegalcentre.com/wp-content/uploads/2017/06/Securing-permanent-status-legal-routes.pdf>

³ Coram Children's Legal Centre, 'This is my home': Securing permanent status for long-term resident children and young people in the UK, 2017, at <https://www.childrenslegalcentre.com/this-is-my-home/>

⁴ Coram Children's Legal Centre, The fee barrier: can you afford the place you call home?, 2018 at <http://www.childrenslegalcentre.com/wp-content/uploads/2018/03/CCLC-The-fee-barrier-March2018.pdf>

⁵ Coram Children's Legal Centre, 'This is my home', 2017

The impact of the hostile environment

Last year, CCLC provided initial advice in 297 cases through a drop-in service in North East London, of whom 277 were families and 20 were young people. Most of the individuals CCLC see through our outreach sessions are facing homelessness and destitution. This is compounded by increased 'gatekeeping' from social services, which sometimes withhold from families with 'no resource to public funds' even though section 17 of the Children Act 1989 places a duty to safeguard and promote the welfare of all children 'in need' in their area. Five years ago, CCLC warned that children's services had 'in effect, become accommodation providers for the Home Office whilst it makes decisions on immigration claims'. We highlighted examples of families being refused statutory support, having support withdrawn unexpectedly, and parents being threatened with the taking of their child into care. These problems are getting worse. We also now see families with limited leave to remain but unable to pay to renew it or so indebted that they cannot borrow funds: families locked into a cycle of poverty for more than a decade.

Case study - Ola

Ola spent 9 years in the UK on a work visa before her employer went bust. While looking for new work, her four year old daughter Nina became dangerously ill, and was close to death when she was admitted to hospital. After six months of hospitalisation, Nina was diagnosed with a rare auto-immune disease. Ola made a new application to the Home Office in which she explained Nina's illness, but this was refused. Ola had used up all her savings when she became pregnant again by accident, but she and her husband hoped that the new baby could be the bone marrow donor Nina needed. Instead, and very unusually, the new baby had the same auto-immune disease. Ola lived in the hospital with her two sick children until the strain brought on a profound mental health crisis. The hospital asked for help, and CCLC took on Ola's case pro bono. We successfully challenged the Home Office's refusal, then successfully challenged the Home Office's decision to grant the children only short-term leave to remain. The family now have indefinite leave to remain and home nursing care can be put in place to allow Nina to live at home with her siblings while she waits for her transplant. Despite the fact their right to be in the UK was ultimately recognised, Ola now has a medical bill in the tens of thousands of pounds from the time her child was in hospital that she cannot afford to pay.

The need for a new approach to immigration

The Windrush crisis highlighted problems of particular relevance to EU migrants in the wake of Brexit. Like the Windrush generation, many EU nationals and families came to the UK decades ago under free movement rules and without the need for documentation. Many may have extensive gaps in their documentation, or no evidence because they arrived in the UK as children (or are children separated from their families). In 2016, 679,000 European national children under the age of 18 resided in the UK, 38% of whom were born in this country. We have repeatedly raised concerns that some children and young people will fall through the gaps to become undocumented, especially without funded legal advice for those with complex cases.⁶

As Brexit negotiations continue, it is more important than ever to ensure that children and young people who have grown up here can securely build their futures in this country. We must take

⁶ <https://www.childrenslegalcentre.com/settled-status-to-eu-citizens-in-the-uk/>

urgent steps to create an immigration system that is fair, accessible and affordable, or there will be many more Windrush scandals in the future, with thousands of young lives ruined.

Recommendations

- **The government should remove the profit element of the fee in all applications children make to the Home Office.**
- **Fee waivers should be available for all children in families and young people in all immigration applications, for those who cannot afford to pay the high fees, and for all children's indefinite leave to remain and citizenship applications.**
- **The government should amend the immigration rules to allow children and young people applying for leave to remain on the basis of long residence and/or their right to a private and family life to be on the five year route to settlement.**
- **A child or young person applying for leave to remain on the basis of long residence and/or their right to a private and family life whose future lies in the UK should automatically qualify for consideration for a discretionary grant of Indefinite Leave to Remain**
- **Government policy on applying the 'no recourse to public funds' condition on leave granted to families with dependent children should be amended to ensure that no child is left homeless or destitute and growing up in extreme poverty as a result of that policy.**
- **The government should ensure that all children in England and Wales can get free legal advice and representation for their immigration and citizenship cases.**
- **All children should have access to free healthcare based on need, not status.**

Suggested questions to the Minister

- What assessment has the Minister made of the impact of the 'hostile environment' on the estimated 120,000 undocumented children and young people living in the UK?
- What assessment has the Minister made of the risk of children and young people falling out of documented status while on the 10 year route to settlement?
- The government has repeatedly stated its commitment to 'giving due consideration to the United Nations Convention on the Rights of the Child (UNCRC) when developing new policy and legislation' and ensuring that all relevant government policies consider children.⁷ Will the Minister commit to conducting a Child Rights Impact Assessment prior to the creation of new Home Office policies going forwards?

Coram Children's Legal Centre CCLC is an independent charity working in the UK and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. The Migrant Children's Project (MCP) at CCLC provides specialist advice and legal representation to migrant and refugee children and young people. The Child Law Advice Service (CLAS) at CCLC provides free legal advice and information to members of the public on family, child and education law. For more information, contact:

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⁷ See UN Convention on the Rights of the Child: Written question - HL1585, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-07-16/HL1585> and Commitment to UNCRC: Written statement - HLWS197, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-10-17/HLWS197/>