

Refugee & Migrant Children's Consortium

Evidence for 'Windrush: lessons learned review', October 2018

Introduction

The Refugee and Migrant Children's Consortium (RMCC) is a group of over 50 NGOs working collaboratively to ensure that the rights and needs of refugee and migrant children are promoted, respected and met in accordance with the relevant domestic, regional and international standards.¹ RMCC's diverse membership covers work with children, young people and families subject to immigration control as well as British and settled families often living in disadvantage and poverty.

From our experience in supporting young people and families, the research conducted by our members and our collective work with government and decision-makers, we believe that the problems experienced by the Windrush generation were caused by the range of measures introduced since 2012 under the government's broad 'hostile environment' policy agenda. As we have tried to highlight in our evidence, since that time, the Consortium and its members have continually raised concerns with government about the wide-reaching impact of hostile environment policies, including on British and settled children and young people. Without a systematic overhaul of culture and decision-making at the Home Office in favour of evidence-based policy design which involves listening to and collaborating with affected individuals and communities, civil society organisations and academics, as well as some investment in evidence gathering, research and effective public communication, it's unlikely that much will change and we can anticipate many more scandals like Windrush in the future.

- 1. What, in your view, were the main legislative, policy and operational decisions which led to members of the Windrush generation becoming entangled in measures designed for illegal immigrants?**

Artificial distinctions

One of the key lessons from the Windrush scandal has to be that the government's approach to date of distinguishing between 'good', 'legal' migrants and 'bad', 'illegal' migrants is fundamentally flawed and damaging. This approach underpinned its 'hostile environment' agenda (now called the 'compliant environment') which sought to exert indirect immigration control over migrants through employers, landlords, banks and public services as an alternative to (or in addition to) direct enforcement through arrests, detention and enforced removal². However, not only has the 'hostile

¹ For more information about our members and our work visit www.refugeechildrensconsortium.org.uk

² For example the Immigration Act 2014 under the 'hostile environment' agenda sought to "stop migrants abusing public services to which they are not entitled, reduce the pull factors which draw illegal immigrants to the UK and make it easier to remove people who should not be here." As the overarching impact assessment sets out: "The Government is determined to reduce illegal immigration and to take a tougher approach to dealing with those who have either entered the country illegally or overstayed their visa. The Immigration Bill contains a raft of important measures to make it more difficult for illegal migrants to live in the UK, encouraging them to depart. For those who still fail to depart the Bill will make it easier for the Home Office to enforce their removal. Additionally the Bill will underline the important principle that entitlement to our public services is earned, not an automatic right.": <https://www.gov.uk/government/publications/immigration-bill-overarching-documents>

environment' agenda failed in its stated purpose,³ it has had devastating consequences for British society, including for those with every right to be in the country and these could've been avoided.

While political and public rhetoric often presents a clear binary division between 'legal' and 'illegal' migrants, the reality is far more complicated. As research has highlighted⁴, there are a number of different pathways into irregularity, which tend to be fluid rather than static processes and the reasons for which individuals become irregular are often multi-faceted and complex. For example individuals can move from being in the UK lawfully to being in the UK unlawfully through no fault of their own – clear examples being where Home Office error or delay has resulted in an individual losing their lawful status. Those seeking international protection from war and persecution often have no choice but to enter the UK without permission or on false documents due to limited safe and legal routes to travel. Those who are trafficked into the UK for exploitation will similarly travel on false documents or enter the country clandestinely, and may have little opportunity to regularise their status unless they have an asylum claim. For many of those who come to the UK on visas, changes in their circumstances in the UK over time or in their country of origin, or experiences of domestic violence, abuse or exploitation, may also lead them to be left without a regular immigration status in the UK.

Equally, there are many people living in this country who have a clear legal basis for being here but who are unable to demonstrate their rights. Research last year estimated that less than 15% of undocumented children living in the UK had been able to regularise their status or had left the UK.⁵ Determining someone's immigration status is complex and often requires specialist legal advice, particularly where children are concerned.

For example, it is estimated that of the 120,000 irregular migrant children in the UK, over half were born here⁶ and may be British citizens, while others who came here with their parents or to stay in private fostering arrangements arrived lawfully on visas but overstayed. Children's rights under immigration and nationality law are different to adults and therefore very often their status may be different. For example, children have different rights under the immigration rules than their parents, and some children have the right to register as British citizens where adults do not. These family circumstances influence why a family would have a right to and would want to remain in the UK, if this were in their children's best interests. But this may mean that their access to services and support may be limited while they recognise and establish their lawful basis to remain in the UK. This also highlights another important complexity which is that children can be simultaneously British citizens but be treated as undocumented and be barred from vital support, such as mainstream benefits targeted at children in poverty like Free School Meals and the Pupil Premium⁷, because of their or their parents' status⁸.

³ See, for example, <https://www.freemovement.org.uk/hostile-environment-backfiring-on-the-home-office-chief-inspector-finds/>

⁴ Sigona, N. & Hughes, V. (2012) 'No Way Out, No Way In: Irregular migrant children and families in the UK: https://www.compas.ox.ac.uk/2012/pr-2012-undocumented_migrant_children/; Migration Observatory (2011) Briefing on Irregular Migration in the UK: Definitions, Pathways and Scale: <https://migrationobservatory.ox.ac.uk/resources/briefings/irregular-migration-in-the-uk-definitions-pathways-and-scale/>

⁵ Coram Children's Legal Centre (2017) 'This is my home': Securing permanent status for long-term resident children and young people in the UK: <https://www.childrenslegalcentre.com/this-is-my-home/>

⁶ Sigona, N & Hughes, V. (2012)

⁷ The Children's Society (2016) 'Making Life Impossible: How the needs of destitute migrant children are going unmet': <https://www.childrensociety.org.uk/sites/default/files/making-life-impossible.pdf>

⁸ These complexities are highlighted further in the COMPAS report on 'Safeguarding Children From Destitution: Local authority responses to families with 'No Recourse to Public Funds'. The data from local authorities on how many children and families are supported by local authorities shows that 23% of the supported families had at least one British child and the primary carers of those British children therefore had a right to reside in the UK as a 'Zambrano carer'. This data also shows that the majority of families being supported are from commonwealth countries: Jamaican and Nigerian nationals

Understanding the flawed distinction between ‘legal’ and ‘illegal’ is fundamental to understanding why ‘*members of the Windrush generation [became] entangled in measures designed for illegal immigrants*’. It was inevitable that a wider group of individuals would be affected by the ‘hostile environment’, especially in light of the range of administrative measures (including cuts to legal aid; tightening of the immigration rules on long residence and article 8; and rising application fees) which have made the immigration system increasingly difficult to access.

As charities working with refugee and migrant children, in the last six years our research and policy work with government and parliament has attempted to highlight the devastating impact of the changes to immigration law and policy on children and young people.⁹ Measures designed to make life so difficult for individuals without papers that they will leave the UK have also devastated thousands of children and young people who have grown up here in the UK, many from Commonwealth countries themselves having come here into established communities because of historical, colonial and family links.

Many hostile environment measures were accompanied by a range of administrative changes that have rendered the immigration system increasingly inaccessible, leaving those without status trapped in that state, and those with status at increased risk of losing it. Despite having legitimate reasons for being in the UK, many undocumented children, young people and families are not able to regularise their status or obtain citizenship due to financial barriers and a lack of legal aid.

Access to legal advice

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed legal aid for all non-asylum immigration cases, including for cases involving separated and unaccompanied migrant children. This has meant that since 2013 all children and young people have no longer had access to free legal advice about their options, help to gather evidence and make representations on their behalf to the Home Office about their claim for leave to remain. It means thousands of children, including those that have grown up here, are unable to regularise their status or gain citizenship. By cutting legal aid and creating barriers to regularisation, the government has in effect done the opposite of tackling irregular migration by perpetuating young people’s precarious status.

The government has recently announced that they will be reinstating legal aid for separated and unaccompanied children in all non-asylum immigration cases¹⁰. This is very welcome and RMCC members have been working with government in developing this policy. If implemented as intended, this policy will go a long way in protecting some of the most vulnerable children who are in this

make up 51% of cases, with a smaller but significant number from Ghana and Pakistan: https://www.compas.ox.ac.uk/wp-content/uploads/PR-2015-No_Recourse_Public_Funds_LAs.pdf

⁹ RMCC members highlighted research about the impact of the ‘hostile environment’ policies on children and families, and our concerns around these provisions to officials through the National Asylum Stakeholder Forum as well as to the bill managers before and during the passage of the two immigration bills. During the passage of the bills we raised our concerns with parliamentarians at different stages – see for example the RMCC briefing to the House of Lords at Second Reading of the Immigration Bill (2014) highlighting a range of concerns around the ‘right to rent’ scheme, NHS charging, changes to Article 8 provisions including on British and migrant children and families:

https://www.childrensociety.org.uk/sites/default/files/tcs/rcc_general_hol_2r_10_02_14_final.pdf. We also wrote to Home Office ministers in March 2014, highlighting our concerns about the impact of the Bill’s provisions on British and undocumented migrant children. During the passage of the second bill, as well as briefing parliamentarians at various stages of the bill, the RMCC co-chairs were called on to give oral evidence to the Commons bill committee on Tuesday 20 October 2015 by Ilona Pinter, The Children’s Society and Kamena Dorling, Coram Children’s Legal Centre:

<https://publications.parliament.uk/pa/cm201516/cmpublic/immigration/151020/pm/151020s01.htm>. Regarding legal aid specifically, the Consortium and individual members have consistently highlighted concerns about the impact of cuts to immigration matters to decision makers at different levels through briefings, meetings and research – we would be happy to provide examples as needed.

¹⁰ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-12/HCW5853/>

country on their own, including many undocumented children from commonwealth countries who were born here or have ended up in the UK due to historical, colonial and family links.

However, while separated children will be able to access legal aid, children who are here with their families will continue to miss out. Based on data provided to us at the time of LASPO, the government had estimated that each year around 2,500 cases involving child claimants (under 18s), 8,500 cases involving 18-24 year old claimants and around 43,000 cases involving claimants over 25s would go out of scope for immigration and asylum matters¹¹. No data was available on how many dependent children would be affected within family cases because their parents would be unable to get legal aid and we are not aware of any assessments that have been made by government since on the numbers of children within families and young adults affected within this cohort.

While the equality and impact assessments conducted at the time of LASPO did not consider the impact of removing immigration legal aid from scope specifically on commonwealth communities, they did reveal that there would be an overwhelmingly disproportionate impact on BAME individuals: the government estimated that 92% of clients (excluding unknowns) who would be affected by the change in the scope of the immigration category would be from BAME groups (see Table 5)¹². However, it was decided that individuals in immigration cases should be capable of dealing with their immigration application and should not require a lawyer.

Tightening of the Immigration Rules and an increasingly complex system

In the UK today, a child might be able to regularise their status through a number of different routes, including under nationality legislation, immigration and asylum legislation (including the Immigration Rules), and human rights law.¹³ However, changes to the Immigration Rules since 2012 have made it harder and more onerous for children and young people who have lived in the UK for many years to regularise their status on the basis of long residence, the right to respect for private and family life under Article 8 of the European Convention on Human Rights, and on the grounds that it would be in their best interests to remain in the UK.

Under the current Immigration Rules an individual can apply for leave to remain on the grounds of long residence and private and/or family life. An application fee and yearly immigration health surcharge must be paid unless the child is either eligible for a fee waiver (for example because the applicant can demonstrate they are destitute) or exempt (for example a child in care). One of the requirements for leave to remain is a condition of residence for a set period, dependent upon the age of the applicant.¹⁴ This criterion is based on when someone is considered to have established a private life, but excludes many who have lived in the UK for years. There is a particular problem for young people becoming adults, who upon turning 18 face a leap in the requirements from seven years of residence to nine.

One judge in the Court of Appeal has stated:

¹¹ This data was provided to The Children's Society and JustRights by the Ministry of Justice and was based on 2009-10 closed cases: http://justrights.org.uk/sites/default/files/Data_on_legal_aid_and_CYP%202011.pdf

¹² Reform of Legal Aid in England and Wales: Equality Impact Assessment (EIA) 2011: <http://webarchive.nationalarchives.gov.uk/20111013060745/http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-eia.pdf>

¹³ For more information on the routes to regularisation, please 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

¹⁴ An adult applicant must have lived in the UK for at least 20 years or face very significant obstacles to return to their country of origin; If under the age of 18 years, the requirement is residence of at least seven years and it must not be reasonable to expect them to leave the UK; If over 18 but under 25 years, the individual must have lived in the UK for at least half of their life.

*'I fully recognise that the Immigration Rules, which have to deal with a wide variety of circumstances and may have as regards some issues to make very detailed provision, will never be "easy, plain and short" (to use the language of the law reformers of the Commonwealth period); and it is no doubt unrealistic to hope that every provision will be understandable by lay-people, let alone would-be immigrants. But the aim should be that the Rules should be readily understandable by ordinary lawyers and other advisers. That is not the case at present.'*¹⁵

This is not an unusual assessment. The Supreme Court has described UK immigration law as 'an impenetrable jungle of intertwined statutory provisions and judicial decisions'.¹⁶ It has also made clear that the Immigration Rules are not a complete code: the rules do not permit consideration of the best interests of children in all cases and 'family life is not to be defined by the application of a series of rules'. The interplay between the immigration rules and Article 8 'outside the rules' has been subject to a significant amount of litigation and adds an extra layer of legal complexity for those attempting to make an immigration application based on their rights under Article 8.

High fees

Fees are another barrier to regularisation. For example, children who are entitled to register as British citizens, which is a unique right for children (though it extends into adulthood in a few select cases), have to pay £1,012 for this application, of which £639 (63%) represents profit to the Home Office. Fees are also a problem for those who have other legitimate reasons to remain in the UK but are prevented from establishing their status. Home Office immigration fees for limited leave to remain have increased by 79% between 2014 and 2018 to £1,033 per person and an application for 'indefinite leave to remain' in the UK, which often marks the end of an individual's immigration journey, has increased by 127% to £2,389 during this time. In addition, they will also have to pay the NHS surcharge which it has been announced will double to £1,000 per application from later this year. If young people are successful in gaining permission to stay, they will be granted leave for only 2 ½ years and will need to make five applications, wait ten years and pay between £8,000 and £10,000 before they can obtain settled status. This figure does not include the cost of paying for legal advice which can also be in the thousands. These fees pose huge, insurmountable financial barriers for many young migrants and their families who are at greater risk of poverty than those who have been in the UK longer¹⁷ and cannot afford these kinds of costs.

Administrative measures that have made the immigration system increasingly inaccessible have left the 'Windrush' generation cut off from employment, housing and healthcare while also leaving a new generation of young people unable to work, rent, unable to open a bank account or drive a car and effectively barred from college, university and secondary healthcare¹⁸. The breadth and ubiquity of these measures mean that it cannot be considered surprising that other people resident in the UK who are not migrants but lack paperwork are caught up in punitive measures.

2. What other factors played a part?

It is vital that the Home Office acknowledges the broader impact of the hostile environment in creating a climate of fear around engaging with any form of government service (or those perceived to be), such as police, NHS or children's services.

¹⁵ *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74

¹⁶ *Patel and others (Appellants) v Secretary of State for the Home Department* [2013] UKSC 72, available at: <https://www.supremecourt.uk/cases/docs/uksc-2012-0177-judgment.pdf>

¹⁷ Vizard, P., Burchardt, T., Obolenskaya, P., Shutes, I. & Battaglini, M. (2018) 'Child poverty and multidimensional disadvantage: Tackling "data exclusion" and extending the evidence base on "missing" and "invisible" children': http://sticerd.lse.ac.uk/case/_new/research/child_poverty_and_disadvantage.asp

¹⁸ See videos from Let Us Learn's campaign 'Young Gifted and Blocked': <http://letuslearn.study/access-to-university/younggiftedandblocked-campaign/>

For example, some RMCC members work regularly with undocumented women experiencing domestic violence, and in many of these cases immigration status is used as a form of abuse and control. In some circumstances, these women's partners have immigration status and they work, but they have refused to provide the fee for immigration applications or they have been obstructive in providing evidence to support an application. In other cases, the women, their partners and their children are undocumented but the women are nevertheless dependent on their husbands, who provide for the family financially by working illegally. Immigration status can be used as a form of control over women in abusive relationships and trafficking situations, a situation which is only worsened by the narrowing options these women have in accessing advice and support.

The women we have worked with in these circumstances have expressed their fears of reporting their partners to the police as they believe that it would lead to the police contacting the Home Office. The undocumented women we have met who are experiencing domestic violence have been extremely socially isolated and have not felt able to share their experiences with anyone. As a consequence, they are not aware of how or where to seek advice – either in relation to the violence they are suffering or their immigration position.

In some circumstances, women who have contacted national domestic violence organisations have been told that, due to their immigration status, they cannot be assisted. These cases raise serious concerns about how women in these situations will be able to safeguard their children without adequate support. Victims of trafficking are particularly affected by immigration restrictions, for example, preventing them from reporting crimes to the police and accessing services for fear of being deported.

3. Why were these issues not identified sooner

The specific issues facing the Windrush Generation *were* identified sooner. One clear example of this was the report 'Chasing Status: if not British, then what am I?',¹⁹ based on research carried out in 2014 as part of Legal Action Group's Immigration and Asylum Law Project, was published in October 2014 and highlighted the plight of thousands of long-term UK residents who were unable to prove their immigration status, despite having lived legally in the country for most of their lives. It also highlighted how they were being targeted for detention and deportation under the 'hostile environment' measures. The report was itself covered by a *Guardian* article on 15 October 2014.

This major injustice did not hit the headlines until April 2018, after a series of articles in the *Guardian* about the shocking treatment of the children of Caribbean Windrush immigrants, and immigrants from other Commonwealth countries. This led to a letter of concern from over 140 MPs being sent to the Prime Minister. But that does not in any way mean that the issues were not identified sooner, and that they had not been brought to the attention of the relevant officials.

Other examples of these issues being highlighted by the work of Refugee and Migrant Children's Consortium members include:

- Prior to and throughout the passage of the Legal Aid, Sentencing and Punishment of Offenders Act 2013, the RMCC warned of the negative impact on children, young people and families of removing legal aid for immigration cases. For example in our briefing to parliamentarians (2011) we stated that: *'The RCC is extremely concerned that the Bill as it is currently devised would generally remove all immigration cases, except asylum cases and challenges to immigration detention, from the scope of Legal Aid. This would apply to all non-asylum cases without distinction, including cases of children and families, even though*

¹⁹ Legal Action Group, Chasing Status: if not British, then what am I?, 2014, at <https://www.lag.org.uk/about-us/policy/campaigns/chasing-status>

*the Government recognised in its consultation paper that immigration cases involve human rights, especially the right to family and private life (Article 8 of the European Convention on Human Rights).*²⁰ Members also raised concerns through the consultation process, directly with officials at the Ministry of Justice and the Home Office through the National Asylum Stakeholder Group Children's Subgroup with a particular focus on how these changes would impact Home Office decision making. Members continued to raise concerns over the years including through research reports and other engagement.²¹

- Coram Children's Legal Centre's 2013 report '*Growing up in a hostile environment: the rights of undocumented migrant children in the UK*' highlighted that children and young people without status were being blocked from accessing appropriate education, healthcare and support but that they were often unable to either return to their (or their parent/s') country of origin, or to take the necessary steps to regularise their status, even when they have strong claims for remaining in the UK. It looked at the challenges facing children trapped in a limbo, unable to regularise their status following the removal of legal aid from immigration cases, a lack of quality legal advice, soaring application fees and poor quality decision-making by the Home Office.²² The report also highlighted how the Immigration Bill at the time, if passed, would put the welfare of some of the most vulnerable children at greater risk - further restricting their legal options and access to accommodation and healthcare.²³ It was shared with parliamentarians and the Home Office through the National Asylum Stakeholder Forum Children's Subgroup.²⁴
- The Refugee and Migrant Children's Consortium raised concerns throughout the passage of the Immigration Act 2014, briefing both houses about its potential to exacerbate the destitution, exploitation and social exclusion that children subject to immigration control were already facing, particularly since simultaneously routes and means to regularisation were becoming increasingly restricted. The Bill included provisions to limit children's access to vital services such as healthcare and private renting on the basis of their families' immigration status as well as proposals to limit appeal rights and further constrain the consideration of children's best interests in the Immigration Rules.²⁵ As well as communicating our concerns to officials involved with the Bill, the RMCC wrote to both the Immigration Minister (then James Brokenshire MP) and the Minister of State for the Home Office (Norman Baker MP), copying in the deputy Prime Minister. The RMCC's repeated message was that '*if implemented in its current form, the Bill will have significant detrimental consequences for children, including many who are British citizens.*'
- During the passage of Immigration Act 2016, the RMCC raised concerns around a number of provisions in the bill which would likely impact on children and young people including British nationals: for example we highlighted the negative impact of 'deport first, appeal later' on children and sought to challenge the extension of the provisions that are already in force for the deportation cases of ex-foreign national offenders to *anyone* appealing an

²⁰ https://www.childrensociety.org.uk/sites/default/files/tcs/rcc_briefing_for_laspo_bill_-_november_2011.pdf

²¹ The Children's Society and the University of Bedfordshire (2015 and 2017) 'Cut off from Justice: The impact of excluding separated and migrant children from legal aid': <https://www.childrensociety.org.uk/legal-aid>; Coram Children's Legal Centre (2017) 'Rights without remedies: legal aid and access to justice for children': <https://www.childrenslegalcentre.com/rights-without-remedies/>

²² https://www.childrenslegalcentre.com/wp-content/uploads/2018/06/ImmigrationBill_CCLC_HoCCommitteeStage_Final.pdf

²³ Children's Rights Alliance England, <http://www.crae.org.uk/news/rights-of-undocumented-migrant-children-not-being-protected/>

²⁴ Minutes from National Asylum Stakeholder Forum Children's Subgroup, 13th February 2014

²⁵ For example, see House of Lords – Second Reading Briefing Immigration Bill – February 2014:

https://www.childrensociety.org.uk/sites/default/files/tcs/rcc_general_hol_2r_10_02_14_final.pdf

immigration decision relying on article 8 of the ECHR, the right to respect for private and family life. We warned that this would lead to children being separated from their families and disruption to an established life in the UK and highlighted the significant practical difficulties in appealing from abroad.²⁶ We highlighted our concerns that rather than tackling irregular migration, provisions in this legislation would also affect those who are here lawfully including British nationals.²⁷

Despite the concerns raised with decision-makers by civil society organisations and parliamentarians over the years, the government put in place only very limited safeguards²⁸ and implemented many of its intended policies with hugely damaging consequences for young people, families and communities.

4. What lessons can the Home Office learn to make sure it does things differently in the future?

Listening to migrants and civil society organisations

A key lesson the Home Office can learn is the value of listening to civil society and those providing frontline services to individuals in the immigration system as well as to individuals who are subject to immigration control including those who are undocumented and have first-hand experience of its policies. Scrutiny, criticism and hearing about the experiences of those in the immigration system are a key part of improving policy and practice. There appears to be no effective, systematic engagement with user groups who have first-hand experience of the immigration system, including young people and families, which means that Home Office decision-makers have no way of fully understanding the true human cost of its policies.

While there is a well-developed means of engagement with civil society organisations to look at issues in the asylum system, through the Strategic Engagement Group and a range of National Asylum Stakeholder Forum subgroups (including one on children), thus far there have been limited opportunities to engage with Home Office officials on how the immigration system can be made fairer and more effective for children and families who are not seeking asylum. RMCC members have begun discussions with the Home Office on barriers to regularisation faced by children and young people who have grown up in the UK and would encourage the Home Office to ensure that these issues are covered in regular stakeholder engagement in the future. For that engagement to be meaningful, civil servants of sufficient seniority need to attend and there needs to be a commitment on both sides to working together and share information to identify practical, meaningful ways to improve the system. This work also needs a firm commitment from and support of Ministers.

Need for an evidence base

Another lesson is the clear need for evidence based policy. The effects of the hostile environment have been poorly understood due to an absence of research, monitoring or data collection, and

²⁶ See written evidence submissions to bill committee from RMCC members ILPA, BID, Coram Children's Legal Centre: <https://publications.parliament.uk/pa/cm201516/cmpublic/immigration/memo/immigrationconsolidated.pdf>; Coram Children's Centre briefing to the Commons bill committee: https://www.childrenslegalcentre.com/wp-content/uploads/2018/06/ImmigrationBill_CCLC_HoCCommitteeStage_Final.pdf; RMCC briefing to the Lords at second reading: <https://www.childrenssociety.org.uk/sites/default/files/RCC%20-%20Immigration%20Bill%20Second%20Reading%20House%20of%20Lords.pdf>

²⁷ The Children's Society's briefing on the Certification of Human Rights Claims: <https://www.childrenssociety.org.uk/sites/default/files/Immigration%20Bill-%20Commons%20Committee%20Stage-%20Clause%2031%20Certification%20of%20Human%20Rights%20Claims.pdf>

²⁸ For example in both immigration bills the government introduced a clause to confirm its ongoing commitment to safeguarding children – see Section 71 in the 2014 Act and Section 90 in the 2016 Act. Certain parts of the 2016 Act to do with limiting support for migrant families and care leavers has yet to be commenced and no commitment has been made as to whether these provisions will be repealed.

when research *has* highlighted problems, such as the Independent Chief Inspectors of Borders and Immigration's report, these have not been acted on satisfactorily – the Chief Inspector himself has complained that close to half of his recommendations since taking office in May 2015 have not been implemented (4% rejected and over 40% accepted but not acted upon).²⁹

The impact assessments for various hostile environment measures in the Immigration Acts 2014 and 2016 were very poor and provided extremely limited to no information about what considerations had been given to the impact of policies on children, protected characteristics and other factors. At no point has the RMCC seen a genuine consideration of the impact of new law and policy on children, despite the government's repeated 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 government policies – 'whether they hold direct or indirect consequences– consider children'.³⁰ The Home Office should both fully consider the impact of any new law or policy, including its impact on children's rights, and also research the effect of existing policies before extending those policies.

As the 'hostile environment' policies have developed, we are not aware of any research that has been commissioned or made public by the Home Office on these complex policy issues. While civil society organisations and academics have continued to provide evidence to inform debates, the Home Office has done little to share the evidence upon which it bases its decisions. For example, the Home Office often refers to 'push' and 'pull' factors to justify policy decisions to limit the provision of services and support for those subject to immigration control, yet the evidential basis for these assumptions are never cited or made publicly available, making it impossible to understand and scrutinise its validity. An important step forward in developing policies that tackle irregular migration would be to first understand the irregular migrant population; its scale and composition; the pathways into and out of irregularity; and then to consider the policy solutions that are most *effective* in resolving these issues.

5. Are corrective measures now in place? If so, please give an assessment of their initial impact

We understand that the corrective measures put in place specifically for the Windrush generation appear to be effective, although there continues to be delays. However, there are still no proper figures on the numbers affected by hostile environment measures and the Home Office still needs to take a number of concrete steps to remove barriers to regularisation facing other groups subject to immigration control, including lack of legal aid, appeal rights, Home Office decision making and a failure to address the pernicious effects of the hostile environment.

The Windrush crisis has also highlighted the problems of particular relevance to EU migrants in the wake of Brexit. Many of these individuals came to the UK decades ago, as citizens, under free movement rules and without the need for regularisation and documentation. Many may have extensive gaps in their documentation, or lack documentation because there was previously no need to document their stay or 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. RMCC members have repeatedly raised concerns that some

²⁹ Freemovement.org, Home Office fails to carry out nearly half the immigration inspectors recommendations, at <https://www.freemovement.org.uk/home-office-fails-to-carry-out-nearly-half-the-immigration-inspectors-recommendations/>

³⁰ 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/>

of these children will fall through the gaps to become undocumented,³¹ and while we are pleased that the Home Office has taken some of these on board, many concerns remain.³² For those who fall through the gaps in the current EU settlement scheme, it is vital that legal advice is available and that they do not risk becoming undocumented.

Unless urgent steps are taken to ensure that we have an immigration system that is fair, accessible and affordable, we can look forward to many more Windrush scandals in the future, with thousands of young lives ruined.

6. What (if any) further recommendations do you have for the future?

Below is a selection of recommendations put forward by the RMCC which, if implemented, would dramatically improve the immigration process and ensure that fewer children, young people and families are trapped in insecure status and blocked from the essentials of daily living:

Fees

- The Home Office should remove the profit-making element from all children's citizenship and immigration application fees.
- Fee waivers should be made more accessible for all children in families and young people in all immigration applications, and should be introduced for all children's indefinite leave to remain and citizenship applications as well.

No Recourse to Public Funds Conditions

- Since 2012, the government's policy has been to apply a 'no recourse to public funds' condition on leave granted to human rights claims including for families with dependent children. We strongly urge the government to reform this policy by not applying the NRPF condition to families with dependent children to make sure that no child is left homeless or destitute and growing up in extreme poverty as a result of Home Office policy.

Routes to settlement

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

Access to legal advice and representation

- While the RMCC welcomes the Ministry of Justice's decision to bring back immigration legal aid for separated children, further steps are needed to ensure that *all* children in England and Wales can get free legal advice and representation for their immigration and citizenship cases. While this is not the Home Office's remit, we would recommend that it work closely to ensure that children engaging with the immigration system are able to have their best interests represented and taken into account in all decision making.

³¹ See briefings at <https://www.childrenslegalcentre.com/promoting-childrens-rights/policy/brexit-childrens-rights/>

³² <https://www.childrenslegalcentre.com/settled-status-to-eu-citizens-in-the-uk/>

- Legal aid should be available for those engaging with the EU settlement scheme (including both the original application and/or the appeals process) and the sector should be resourced to offer support to vulnerable groups engaging with the EU settlement scheme.

EU settlement scheme

- The Home Office and the OISC must be clear about the regulation of this work and what assistance civil society organisations can give. The OISC should look at how regulation can be simplified to allow for support to be provided, and provide clear guidance to that effect.
- The Home Office should ensure that stakeholders are able to comment on draft guidance that will accompany Immigration Rules Appendix EU, particularly on the definition of compelling practical or compassionate reasons.
- The UK should broaden the scheme to ensure that no children and young people are excluded from the settlement scheme who would otherwise lose their lawful residence. This includes amending the dependency requirements for young people over 21.
- There should be a fee exemption for those receiving support from children's services under section 17, section 20 and the leaving care provisions of the Children Act 1989.
- Zambrano carers and any other groups whose right to remain derives from EU law who will be required to apply under new Immigration Rules must not be subject to high fees or any other barriers to making an application.

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