

PRESS RELEASE

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HIGH COURT RULES HOME OFFICE £1,000 FEE FOR CHILDREN TO REGISTER AS BRITISH CITIZENS UNLAWFUL

Court finds “mass of evidence” against Home Office child citizenship fee

Lawyers and campaigners urge Government to act quickly to end its practice of “shameless profiteering” from children's citizenship rights

‘This is a landmark ruling. But the fight for justice for children born and growing up in the UK goes on’ - Carol Bohmer

The High Court in London has today ruled the £1,012 fee the Home Office charges children to register as a British citizen unlawful.

In a landmark case, brought forward by the Project for the Registration of Children as British Citizens (PRCBC), the court found a “mass of evidence” showing that the fee prevents many children from registering British citizenship, leaving them feeling “alienated, excluded, ‘second-best’, insecure and not fully assimilated into the culture and social fabric of the UK.”

The case, which is supported by Amnesty International UK, has been brought by three claimants – two children, A and O, aged 3 and 12 and both born in the UK; and the Project for the Registration of Children as British Citizens.

The current administrative processing cost of a child’s registration claim is only £372. The Home Office uses the remaining £640 to cross-subsidise the immigration system.

Today’s judgment requires the Home Office to reconsider the fee and ensure that children’s best interests are taken fully into account in doing so. The court has made clear that where a child has a right to British citizenship it will generally be in the child’s best interests to be registered as British – something the Home Office had denied in evidence to the court.

Responding to the judgment, O, who has lived in the UK her entire life and gave a witness statement to the court, said:

“I am glad I got to tell the court my story.

“I was born in this country and have lived here all my life. I feel as British as any of my friends and it’s not right that I am excluded from citizenship by a huge fee.

“I want to be able to do all the things my friends can. I don’t want to have to worry they will find out I don’t have a British passport and think that means I am not the same as them.”

Solange Valdez-Symonds, solicitor for the two children, A and O, said:

“It is significant that the court has recognised British citizenship is the right of these and thousands of children and that the consequences of blocking their registration rights is alienating and harmful.

“While that recognition is a great step forward, the fact remains that tens of thousands of British children are growing up in this country deprived of their rights to its citizenship, including by this shamelessly profiteering fee.

“For too long, children and their citizenship rights have not been respected. That must change. The Government should make an immediate start by ending the use of this fee to raise revenue for the Home Office.”

Court ruling

While the court ruled the Home Office failure to consider children’s best interests rendered the fee unlawful, it rejected a separate argument that there was simply no power in law to set the fee above administrative cost and beyond the reach of many children entitled to citizenship.

The court described that argument as “powerful and sustained” but decided it could not uphold the argument due to an earlier ruling of the Court of Appeal. However, the court has today granted a certificate to the claimants to apply direct to the Supreme Court for permission to appeal on this point. It has also granted permission to appeal to the Home Office.

Carol Bohmer, Chair of the Project for the Registration of Children as British Citizens (PRCBC) said:

“This is a landmark ruling. But the fight for justice for children born and growing up in the UK goes on.

“PRCBC was founded barely seven years ago because of the scandal of children entitled to British citizenship being treated as if they had no more right to be in their home country than a visitor.

“The damage done to thousands of children is dreadful and still far from fully quantifiable. So much more still needs to be done so that children, their parents and carers, know their citizenship rights and to ensure the many barriers to exercising these rights are removed, including this profit-making fee.”

PRCBC was represented pro bono by Mishcon de Reya solicitors (Maria Patsalos, Lucy Grant, Lydia Boateng) instructing pro bono Richard Drabble QC of Landmark Chambers and Miranda Butler of Garden Court Chambers; and A and O were represented by Solange Valdez-Symonds of Consonant instructing Richard Drabble QC and Admas Habteslasie of Landmark Chambers and Jason Pobjoy and Isabelle Buchanan of Blackstone Chambers.

Maria Patsalos, Immigration Partner at Mishcon de Reya who acted for the Project for the Registration of Children as British Citizens, said:

“This hugely important case touches the lives of thousands of children and we have seen that it affects generations of families living in difficult circumstances. British citizenship is essential for a sense of belonging and securing rights in the UK, and the current fee is creating a barrier which for some is impossible to overcome.

"It has been an honour to work with so many articulate and passionate young people to help fight for their rights. Whilst this is a step in the right direction, we encourage urgent action to set the fee at a much lower and more accessible level, removing the profit element, and to introduce fee waivers for children who need them."

Amnesty International UK attended the hearing on 26-27 November 2019 in support of PRCBC. The day before, Amnesty's Children's Human Rights Network handed in a 40,000 strong petition calling upon the Home Secretary to:

- Remove any element of the registration fee over and above the actual cost of administration
- Exempt the entire fee in the case of children in local authority care
- Introduce a waiver of the fee in the case of any child who is unable to afford the administrative cost of registration.

ENDS

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Notes to Editors:

1. The claim referred to as *R (PRCBC & Ors) v Secretary of State for the Home Department* was heard in the High Court by Mr Justice Jay over two days on 26 and 27 November 2019.
2. The £1,012 fee for children to register as British citizens is set by the Home Secretary by regulations. The Court has held that the current regulations – the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 and their predecessor – are unlawful insofar as they set this fee.
3. Academic estimates have indicated that as many as 120,000 children, most of whom were born in the UK, may be affected by this fee. More information is available in a detailed joint briefing of PRCBC and Amnesty International UK which can be found online here: https://prcbc.files.wordpress.com/2019/03/fees_briefing_revised_march_2019.pdf
4. Children born in the UK are not born British citizens unless one or other of their parents are themselves British citizens or settled in the UK. People with indefinite leave to remain or permanent residence are settled for the purposes of UK law. Children born in the UK who are not born British citizens become entitled to that citizenship if they have lived in the UK for the first ten years of their life or if, while they are children, one or other of their parents becomes a British citizen or settled.
5. Other children growing up in the UK, particularly where they have been brought to the UK at a young age, may be registered as British citizens while they are still children.

6. The main rights of children to register as British citizens are summarised in PRCBC leaflets available online here: <https://prcbc.org/information-leaflets/>
7. The claimants have succeeded before the High Court on their argument that the Home Secretary failed to assess and give effect to children's best interests when setting this fee. Lawyers for the Home Secretary sought to argue it was obvious that citizenship would be in children's best interests and so there was no need for the Home Secretary to have spelled that out anywhere. But as the court highlighted, in her evidence to the court the Home Secretary had presented exactly the opposite case, saying that British citizenship was not generally in children's best interests but rather it was in their best interests to be able to apply for permission to stay in the UK under the Home Secretary's immigration powers. The court concluded that the Home Secretary had "*fallen far short*" of showing she had discharged her duty, under section 55 of the Borders, Citizenship and Immigration Act 2009, regarding children's welfare and best interests. The Home Secretary sought to persuade the court that because PRCBC, Amnesty International UK and several parliamentarians had repeatedly drawn attention to this failure, this should be enough for the court to conclude that the Home Secretary must have considered the matter. The court rejected that defence.
8. The Court of Appeal decision, which the High Court has ruled requires it to reject the claimants' alternative argument that there is no legal power to set the fee at its current level, is [R \(Williams\) v Secretary of State for the Home Department](#) [2018] EWCA Civ 98. In view of that earlier decision, the claimants have applied for a certificate from the High Court allowing them to apply directly for permission to appeal to the Supreme Court. An appeal from the High Court straight to the Supreme Court, bypassing the Court of Appeal, is known as a 'leapfrog' appeal and is only permitted in restricted circumstances which must include that the Court of Appeal has previously decided the issue in the appeal.
9. A's claim also concerns a further injustice in British nationality law. A was born in the UK to a British father. However, because her mother was married to another man at the time of her birth, that man was treated as A's father by British nationality law and she was not born a British citizen. The Home Secretary has accepted, following a declaration of the High Court in a case called [R \(K. A Child\) v Secretary of State for the Home Department](#) [2018] EWHC 1834 (Admin) that the law which prevented a child in A's circumstances acquiring British citizenship at birth was incompatible with the Human Rights Act 1998. That law is section 50(9A) of the British Nationality Act 1981. The Home Secretary has yet to indicate whether and how she will act to remedy this but had told the High Court, when resisting K's claim, that children in this situation could apply to register under section 3(1) of the British Nationality Act 1981 to put them in the position they would have been but for the effect of section 50(9A). A sought to make such an application to be registered only to be told by the Home Office that her application would be treated as invalid unless she paid the £1,012 fee.