Government Response to Justice and Home Affairs Committee: All families matter: An inquiry into family migration

LIST OF CONCLUSIONS AND RECOMMENDATIONS

The state of play

Conclusions and recommendations

1. Family migration rules and practices are inconsistent when it comes to which relatives are eligible to join a relative in the UK and to the criteria for their entry and stay. (Paragraph 36)
2. There is a tendency towards creating bespoke routes to address emerging crises, but these are also inconsistent in terms of who may enter and on what terms. These distinctions are confusing and create the impression of unplanned, arbitrary, and unfair policy. (Paragraph 37)
3. We recognise that strict criteria and vetting of applications is necessary in order to secure public support, not least through the verification of the nature of the relationship and by ensuring adherence to any requirements relating to access to public funds. Fair but tightly drawn criteria can help with both timely processing of claims and reduced bureaucracy, as well as public confidence in the system and reassurance regarding the number of those using the agreed routes. (Paragraph 38)
4. ***The Government should harmonise which relatives are, or are not, eligible for entry and stay across immigration pathways and the Government should be transparent about the reasons for any differences. The Government should also aim to harmonise, so far as possible, the conditions to be met for the entry and stay of family members. The Government should update us by the end of 2023 about progress made as part of these harmonisation processes. (Paragraph 39)***
5. ***Rather than introducing new "bespoke" immigration pathways in response to particular geopolitical crises, the Government should revisit existing "mainstream" immigration pathways and ensure that these offer available and workable routes to the UK for those who need them. (Paragraph 40)***

Government Response;

We do not think it is the right approach to fully harmonise the conditions of entry and stay for family members.

There are clear differences between immigration routes relating to family members. Given the broad and diverse offer for family members across the immigration system, it is right that requirements vary according to the nature and purpose of their stay in the UK.

There is also a balance to be struck between the right to family life, and the need for effective immigration control and public spending.

Where possible, we use existing pathways in response to events, for example, since the devastating earthquakes took place across Turkey and Syria, UK Visas and Immigration (UKVI) have been fully engaged with the Foreign, Commonwealth and Development Office (FCDO) in Turkey and Syria on the crisis response, including increasing Visa Application Centre capacity in the region., in order to support British nationals with relatives impacted Where family members do not have a current UK visa, they can apply online via one of our standard visa routes.

However, there are some events so critical we need to provide bespoke routes to that best serve the issue at hand –

- The Afghan Relocations and Assistance Policy was specifically required because there was no other compatible route to allow those who have worked alongside the UK overseas to settle here;
- Similarly, the Afghan Citizens Resettlement Scheme was required because the situation of those fleeing Afghanistan is different from the policy in place for the UK Resettlement Scheme.
- The Homes for Ukraine built on previous resettlement schemes but took into account the huge outpouring of support from the British public opening up their homes

But we are always learning from these in order to adjust our offer.

Conclusions and recommendations

6. Current family migration policies reflect an outdated understanding of family based on the nuclear family. It is more difficult for some groups such as single parents, young adults, and those in unmarried or same-sex relationships to reunite with family members. (Paragraph 47)
7. The approach taken by the Immigration Rules is narrower than that taken in family law and in other policy areas. (Paragraph 48)
8. ***Family migration policies should be updated to reflect the diversity of contemporary families. Inspiration should be taken from the approach in family law. The Home Office should give British citizens, permanent residents, and refugees the right to reunite with adult children and extended family members (siblings, nephews, nieces, aunts, uncles, grandchildren). Significant, long-term care relationships, such as those nurtured with stepfamilies, should be recognised. (Paragraph 49)***

Government Response;

The current Immigration Rules provide for immediate family members to apply to come to the UK to join their family who are in the UK and are British citizens, are settled here or who have protection status. Where an extended family member, such as a sibling, nephew, niece, aunt or uncle, wishes to come to the UK under the family rules, they must be able to show that they have more than the normal emotional ties expected in such a relationship. Where they can show that the relationship engages Article 8 of the European Convention on Human Rights (ECHR), then the Immigration Rules already make provision for that person to be allowed to enter and stay in the UK.

The government is aware of the diversity of contemporary families and how that diversity can affect how, and where, families might choose to live. For example, where there are children of a couple who subsequently separate and begin new relationships, we are aware of the issue of parental responsibility and how this is viewed in the Immigration Rules. We do recognise that proving sole responsibility can be difficult, and that in modern family life it is not unusual for parents to work, study or live in different countries, particularly following a divorce or separation. In these circumstances parents may retain joint parental responsibility in the best interests of their child or children.

The government's current approach is in line with guidance provided by the courts in *TD (Yemen) 2006 UKAIT 491*. The Court in that case, which remains the main guidance on sole responsibility, stated:

“Sole responsibility” is a factual matter to be decided upon all the evidence. Where one parent is not involved in the child’s upbringing because he (or she) had abandoned or abdicated responsibility, the issue may arise between the remaining parent and others who have day-to-day care of the child abroad. The test is whether the parent has continuing control and direction over the child’s upbringing, including making all the important decisions in the child’s life. However, where both parents are involved in a child’s upbringing, it will be exceptional that one of them will have “sole responsibility”.

This established when a parent could be considered to have sole responsibility for a child under 18 and provides the basis upon which decision makers in the Home Office will make their decisions.

Our family reunion policy is intended to allow those granted protection status in the UK to sponsor pre-flight, immediate family members to join them here. Since 2015, we have granted 44,659 visas under the family reunion route.

We recognise that children over 18 may not be living an independent life and can still be emotionally and financially dependent on their parents. For these reasons, our policy also permits adult children are permitted to be sponsored under the Family Reunion route, in exceptional circumstances.

The family reunion policy makes clear that there is discretion to grant visas outside the Immigration Rules, which caters for extended family members where there are compelling compassionate factors.

Extending family reunion without careful thought would significantly increase the number of people who could qualify and place further pressure on Local Authorities which are already strained.

Conclusions and recommendations

9. While it is a legal requirement that the best interests of the child are treated as a primary consideration in all immigration proceedings, the Government has not systematically integrated them into its policy and practice. (Paragraph 59)
10. The consequences of this are widespread, creating gaps in provision for children and families to be reunited or achieve a secure status. We are puzzled by the contradiction between the Home Secretary taking the welfare of children “incredibly seriously” and the large number of children precluded by the Immigration Rules from growing up with one of their parents. When this affects British children, it undermines the value of their British citizenship. (Paragraph 60)
11. ***Mechanisms should be introduced to ensure that the best interests of the child are properly and systematically identified, considered, and treated as a primary consideration, among other relevant considerations, by everyone encountering children in all immigration proceedings. This extends to the judiciary. Following best practice in family law, these mechanisms could include the systematic use in decision-making of the “welfare checklist” (Children Act 1989, section 1) and the provision of specialist representation of children before immigration tribunals. (Paragraph 61)***

Government Response;

Section 55 of the Borders, Citizenship and Immigration Act 2009 (S.55) imposes a duty on the Secretary of State to make arrangements to ensure that certain specified functions are carried out having regard to the need to safeguard and promote the welfare of children who are in the UK. Keeping the best interest of the child - is at the heart of what we do, it is a

central tenet in our policy and operational decision making and, at times, make specific decisions based on.

Home Office caseworkers are routinely trained and have access to guidance that lays specific reference to S.55. Further legal requirements that are considered by caseworkers are also set out in the Children and Social Work Act 2017 (and preceding legislation), Children and Young People (Scotland) Act, Social Services and Well-being (Wales) Act 2014), and The Children Order (Northern Ireland) 1995 (Order 1995). The impact of other legislation is also considered including, but not limited to, The Children Act 1989, the Children and Families Act 2014, The United Nations convention on the Rights of the Child 1992.

Further to this, every member of staff in Customer Services is responsible for alerting their safeguarding lead officer of any high profile or serious safeguarding children concerns. Delivery of this aim is supported by the Safeguarding Advice and Children's Champion (SACC) within the Home Office. The SACC is responsible for promoting the section 55 child safeguarding duty, as well as the wider department's safeguarding responsibilities to children and vulnerable adults. The SACC provides professional advice to frontline and policy staff as well as reviewing and assuring policy and processes and helping business units to develop systems for assurance.

Conclusions and recommendations

12. The immigration pathway for adult dependent relatives is essentially closed. The absence of a pathway impoverishes society and damages family life. It places enormous stress on potential sponsors. (Paragraph 74)
13. The ADR route should be reformed to allow families to reunite in the UK. The threshold for dependency should be reduced and the range of eligible relatives extended within tight definitions to secure ongoing public confidence and support. Instead of focussing on the availability of care in other countries, the ADR route should concentrate on the ability of the sponsor to care for their dependent relative. Where the dependent relative cannot be cared for by their family abroad, applications should normally be granted. (Paragraph 75)

Government Response;

Those who choose to come to the UK and ultimately settle here, do so in the knowledge that they will be leaving behind family members in their country of origin. There should be no expectation that family members will automatically be able to join them in the UK.

The family Immigration Rules were reformed in July 2012 to prevent burdens on the taxpayer, promote integration and tackle abuse, and thereby ensure family migration to the UK is on a properly sustainable basis which is fair to migrants and the wider community by not being reliant on access to public services funded by UK taxpayers.

The route for adult dependent relatives (ADR) was reformed because of the significant NHS and social care costs which can be associated with these cases. When the policy changed in 2012, the Department of Health and Social Care estimated that a person living to the age of 85 costs the NHS on average around £150,000 in their lifetime, with more than 50 per cent of this cost arising from the age of 65 onwards.

The changes we made promote a policy aim whereby only those who have a genuine need to be physically close to and cared for by a close relative in the UK settle here. Where care is required and that care can only be provided by family members in the UK, then the rules make provision for that and an application to come to the UK in those circumstances would

be successful. Those who do not have such care needs can continue to visit their relatives in the UK and be supported financially in the country in which they live by their relatives in the UK.

The ADR route therefore provides for those most in need of care, but not for those who simply have a preference to come to live in the UK. The Rules have been upheld as lawful by the Court of Appeal in the case of *BritCits v The Secretary of State for the Home Department [2017] EWCA Civ 3683*.

14. We did not receive any evidence suggesting that the financial requirement is achieving its aims. It does not promote social cohesion, nor does it protect public finances. It achieves the opposite. We recognise that, to foster social cohesion, families need sufficient resources, set at around benefits level. (Paragraph 83)
15. The Migration Advisory Committee regrets that the 2012 reform placed too great an emphasis on economic and fiscal considerations. We share their concern. (Paragraph 84)
16. ***The financial requirement should be revisited to be more flexible and to focus on the likelihood of future income of the family unit rather than on the sponsor's past income. The threshold should not increase. (Paragraph 85)***

Government Response;

Family life must not be established here at the taxpayer's expense and family migrants must be able to integrate if they are to play a full part in British life. The purpose of the minimum income requirement, implemented in July 2012 along with other reforms of the family Immigration Rules, is to ensure family migrants are supported at a reasonable level so they do not become a burden on the taxpayer, and they can participate sufficiently in everyday life to facilitate their integration into British society.

There is no flexibility with regard to the level of the minimum income requirement which must be met in all cases subject to the requirement. It has long been a requirement for a family migrant to demonstrate they are able to support themselves without becoming a burden on the taxpayer, but the purpose of the minimum income requirement was to ensure that requirement is consistently applied; that is; right and fair.

The requirement acts as a test to ensure the UK based sponsor, where the applicant is applying for entry clearance from abroad, or both partners where they are both in the UK, have a stable and ongoing level of income, so that we can have confidence they can support themselves for the period of permission to stay they will be granted.

Changing the requirement to look at potential future income would not be as reliable and potentially be harder for applicants to evidence and caseworkers to assess. Further, changing this requirement to allow people to apply before their sponsor can show sufficient income could result in people arriving in the UK where their sponsor is unable to support them, leaving them either in danger of destitution or seeking to access public funds to avoid this.

This situation would not build public confidence in the immigration system and create inevitable burdens for the UK taxpayer, as well as being unfair to those who have waited until they have met all the requirements.

Conclusions and recommendations

17. The Immigration Rules almost never allow child refugees to sponsor the immigration of their family members. This is harmful to children, disrespects their best interests, and

encourages further dangerous journeys. There is no evidence that providing such a right would encourage families to send children on unaccompanied journeys. (Paragraph 93)

18. Recent reports of large numbers of children going missing from Home Office accommodation are a vivid example of Home Office failures. These children are vulnerable, and particularly so as they have not been able to be accompanied by an adult relative. (Paragraph 94)

19. We endorse the conclusions and recommendations of the 2016 report of the Lords European Union Committee, Children in Crisis.

"We found no evidence to support the Government's argument that the prospect of family reunification could encourage families to send children into Europe unaccompanied in order to act as an 'anchor' for other family members. If this were so, we would expect to see evidence of this happening in Member States that participate in the Family Reunification Directive. Instead, the evidence shows that some children are reluctant to seek family reunification, for fear that it may place family members in danger."

"We recommend that the UK Government reconsider its restrictive position on family reunification. Legal aid should be available to unaccompanied migrant children for the purposes of proceedings for family reunification." (Paragraph 95)

20. The right to family reunion for child refugees should be extended and brought within the Immigration Rules to create an effective path to family reunion for child refugees. They should be able to be joined by at least their parents and siblings. (Paragraph 96)

Government Response;

If children were permitted to sponsor family members under the family reunion route, this would risk creating incentives for more children to be encouraged, or even forced, to leave their families and risk hazardous journeys to the UK. This plays into the hands of criminal gangs who exploit vulnerable people and goes against our safeguarding responsibilities.

Our policy is not designed to keep child refugees away from their parents, but in considering any policy we must think carefully about the wider impact to avoid putting more people unnecessarily into harm's way.

Legal aid for family reunion may be available under the Exceptional Case Funding (ECF) scheme, where failure to provide legal aid would mean there is a breach or a risk of breach of the individual's human rights, and subject to means and merits tests.

The unprecedented rise in small boat crossings has meant we have had no alternative but to temporarily use hotels to give children a roof over their heads whilst local authority accommodation is found. Ending the use of hotels for unaccompanied asylum-seeking children is an absolute priority and we will continue to work around the clock with councils to increase the number of care placements available.

The safety and wellbeing of those in our care is our primary concern. We have robust safeguarding procedures in place to ensure these young people are accommodated and supported as safely as possible whilst we seek urgent placements with a local authority. Those in hotels are supported by team leaders and support workers who are on site 24 hours a day. Further support is provided on site by teams of social workers and nurses. Children's movements in and out of hotels are monitored and recorded and they are accompanied by support workers when attending organised activities and social excursions off-site, or where specific vulnerabilities are identified.

However, we have no power to detain unaccompanied asylum-seeking children in these hotels and we know some do go missing. Many of those who have gone missing are subsequently traced and located.

Conclusions and recommendations

Additional hurdles

21. It usually takes months for family visas to be issued. The Home Office's own service standards for the processing of applications are too long and even so are not being met. Delays place families in great uncertainty and add to their predicament. (Paragraph 107
22. ***Service standards for the processing of family visa applications should return to 12 weeks. The Home Office should be required to ensure the prompt implementation of successful appeal decisions. The Home Office should routinely publish detailed statistics on its performance in meeting those standards. (Paragraph 108)***
23. ***The Home Office should exercise its discretion to lift or delay the requirement to submit biometrics when this would involve travelling in dangerous conditions or outside the applicant's country of residence. The Home Office should allow biometrics to be completed on arrival in the UK for a wider range of nationalities in crisis situations. (Paragraph 109)***

Government Response;

The service standard for family visa extension applications made in the UK is 8 weeks, and the service standard for family visa settlement applications made in the UK is 6 months.

As a result of the impacts of the crisis in Ukraine the service standard for overseas family applications was extended to 120 days. At the same time the Priority Visa service for overseas family applications was suspended.

The Priority Visa service was reinstated in full in February 2023 and the 120-day service standard is regularly reviewed in line with Home Office resource priorities and pressures.

We endeavour to implement all allowed appeals within the three-month timescales, however there are occasion outside of our control where this is not always possible.

Detailed statistics on the Home Office's performance are published quarterly as part of transparency data. The transparency data, which usually includes data relating to service standards can be found at https://www.gov.uk/government/collections/migration-transparency-data.

But please note that the service level agreement data has been temporarily withdrawn, therefore the last reports refer to Q3 2021. We aim to begin republishing the quarterly data as soon as possible.

Biometrics, in the form of a facial image and fingerprints, underpin the UK's immigration system to support identity assurance and suitability checks on foreign nationals who are subject to immigration control. We use biometrics to fix and confirm the identities of foreign nationals who apply to come or extend their stay in the UK. We also take biometrics from those applying to become British citizens, so that we know who they are and can link them to their immigration histories and assess their suitability.

We enroll the fingerprints of all applicants aged five years or older and who are physically capable. We check them against security and criminality databases which are available to the UK, to ensure multiple applications are not made using multiple identities, and to prevent leave being granted to those who pose a threat to public safety, our national security, or are likely to breach our laws.

Where an applicant considers they cannot travel to a Visa Application Centre (VAC) to enrol their biometrics, they can contact us to explain their circumstances. New guidance will be published in the near future setting out the unsafe journey policy. Where an applicant believes that travelling to a VAC would be unsafe, their request will be placed on hold pending the new guidance being published, however, should there be an urgent requirement to resolve their request this should be made clear in the request and consideration will be given as to the applicant's circumstances and whether there is an urgent need to travel to the UK. If the request is deemed to be urgent we will contact the applicants to explain available options prior to the guidance being published.

As we have seen in recent times, given exceptional circumstances we are able to exercise flexibility and discretion. Recent crises abroad such as the events that have occurred in Ukraine and Afghanistan are testament to how we have shown flexibility in allowing for the capture of biometrics to be delayed until arrival to the UK. But, for the reasons stated above, this must and will continue to be the exception.

Conclusions and recommendations

24. Communication by the Home Office can be very poor. The Home Office does not proactively provide updates, and applicants find it difficult to seek, let alone find, information of their own initiative. (Paragraph 117)
25. Poor communication adds to the uncertain, stressful, and precarious situation of families. It also affects cooperation between the Home Office and local authorities. (Paragraph 118)
26. The Home Office should adopt a new approach to communication. The Home Office should proactively update applicants, at least when its own service standards are not met. The Home Office should establish standards about its communication with applicants and routinely publish statistics on whether these standards are met. Applicants should be able to contact the Home Office free of charge. (Paragraph 119)

Government Response;

The Home Office is working on a notification service which will provide confirmation to customers at the point when all the information relating to the application has been received.

This information will include details of when they can expect to receive a decision on their application and has been designed to provide reassurance to the customer by confirming their application has been received and the latest date they can expect to receive a decision on their application. This additional notification is currently in test and expected to be in place later in 2023.

All applications are proactively monitored, and customers are notified prior to the end date of the service standard for their application of any reasons that will result in their application being concluded outside of service standard.

UKVI also updates on processing times for visa applications, including family applications and the detail can be found at: https://www.gov.uk/guidance/visa-decision-waiting-times-applications-outside-the-uk.

Conclusions and recommendations

27. Reaching settlement status is very expensive. It has a negative impact on families, who are unsure whether they will be able to afford settlement, may incur debt, and have less

disposable income. Fee waivers partly address this concern but entail their own challenges. (Paragraph 131)

28. ***Application fees should be reduced. Fees should not be so prohibitive as to interfere with people's right to respect for family life. Where total income exceeds actual costs to the Home Office, any excess should be invested to improve the quality of the service delivered to family visa applicants. (Paragraph 132)***

Government Response;

Fees charged by the Home Office are kept under review – however, there are no current plans to reduce fees on the route to settlement or for Indefinite Leave to Remain.

The Home Office has ensured that its immigration and nationality fees structure complies with international obligations and wider Government policy by providing fee waivers in a number of circumstances. This includes a waiver for those making Article 8 claims, based on Family and Private life, who are unable to afford the fee or where payment of the fee would leave them unable to meet the needs of a child who is dependent upon them.

Some routes, including Indefinite Leave to Remain, have fees set that are above the estimated cost of processing the application. Where a fee is set above the estimated unit cost, this is used to fund the wider migration and borders system and reduce the burden on the UK taxpayer. Where fees have increased in recent years, this is to move towards a user-pays model agreed as part of our 2015 and 2021 Spending Review settlements.

The Home Office keeps fees under review and seeks to identify opportunities to simplify the range of fees payable by customers, such as the removal of the £19.20 biometric enrolment fee payable in relation to entry clearance, leave to remain in the UK and applications for British citizenship, which were removed in March 2022.

Conclusions and recommendations

29. ***The "affordability test" carried out to confirm an applicant's eligibility for a fee waiver should be simplified. It should be possible to apply for a fee waiver when applying for indefinite leave to remain. (Paragraph 133)***

Government Response;

Fee waivers are available for certain specified human rights applications for entry clearance and leave to remain, as well as for applications for child citizenship registration.

Fee waivers can be granted where the applicant credibly demonstrates that they cannot afford the fee, or that paying the fee would result in the needs of a child not being met. The assessment may also include the financial circumstances of the applicant's sponsor or parent/legal guardian, depending on the type of application being made.

The affordability test is a relatively straightforward one. Decision makers consider whether an applicant has sufficient funds to pay the fee after meeting essential living needs such as housing and food. They are provided with detailed instructions to support this assessment. We are in the process of reviewing those instructions to simplify them and ensure they can be easily followed by decision makers.

The right to stay indefinitely in the UK is one of the most valuable entitlements of any product offered, and it is right that the fee for this product should be higher than most for migrants staying temporarily in the UK. A grant of indefinite leave to remain is not necessary to enable people to remain in the UK on the basis of their Article 8 or other ECHR rights, as these can be met through a grant of limited leave to remain. The provision of an affordability based

waiver for limited leave on family and private life routes allows an individual or family to remain here lawfully and to apply for settlement and pay the fee when the funds become available. As such, there are no plans to reduce or waive the fee for indefinite leave to remain

Conclusions and recommendations

30. Many families struggle to access good quality legal advice. This has adverse consequences for families, as well as for the Home Office and tribunals, who must process poorly presented applications. (Paragraph 143)
31. We note no progress with the simplification of the Immigration Rules that relate to family migration since the publication of the Law Commission report in 2020. (Paragraph 144)
32. ***The Home Office should support legal practices and charities to provide accessible, good quality legal advice at all levels. This involves supporting the training of OISC-registered legal advisers and ensuring that third-sector organisations receive more funding to provide effective immigration advice. (Paragraph 145)***

Government Response;

The Home Office supports the Office of the Immigration Services Commissioner (OISC), which has a statutory duty to promote good standards of immigration advice and to ensure advisers are fit and competent.

The OISC is currently undergoing a transformation programme; its revised structure with regionally based teams seeks to put the advice seeker at the centre of its activities which will help to improve standards of immigration advice. The Home Office is working closely with the OISC in delivering this.

The Home Office provided grants to organisations assisting those applying to the EU Settlement Scheme (EUSS), and an additional EUSS adviser scheme was established, and training given to those providing advice at OISC Level 1. This enabled the organisations to provide appropriate immigration advice to those who needed it, including those who were considered vulnerable.

Conclusions and recommendations

33. ***The Government and professional bodies should work together to promote wider awareness and crossover expertise between family and immigration law and encourage efforts to better signpost the expertise available. This could involve the development of a "family migration" specialism for immigration advisers accredited by the Office of the Immigration Services Commissioner. Caseworkers should also train in relevant family law. (Paragraph 146)***

    To be taken with

    59. The Government should encourage immigration lawyers and advisers to expand the provision of good-quality legal advice. This includes supporting charities providing OISC-approved legal advice and working with the OISC to curate a "family migration" stream of immigration advisers. (Paragraph 233)

Government Response;

The OISC is already structured in such a way as to provide for qualifications for those operating in specialisms; advisers at all three OISC levels can be authorised to provide advice on either immigration or asylum.

The OISC is well positioned to identify where a specific specialism would be beneficial and has done this in the past, for example a scheme to allow advisers to be accredited to provide advice only on simple EU Settlement Scheme applications. Extra funding is likely to be required to run such schemes. Whilst OISC is able to register additional specialisms, to require advisers to register under a specific specialism to provide advice for family migration may be more likely to restrict overall availability of advice than broaden it.

The Home Office and the OISC believe that the current structure is sufficient to cover the needs of advice seekers, given the wide range of family related migration routes. In respect of Home Office caseworker training, caseworkers receive training relevant to their decision making on immigration matters, including all relevant caselaw. The OISC Code of Standards requires regulated advisers to undergo continuous professional development and OISC officers work closely with advisers to encourage growth of their immigration practices. Advisers may work under agreed supervision plans to gain the necessary skills and knowledge to increase their level of accreditation and/or expand their authorised categories of work.

Conclusions and recommendations

34. Subject to usual eligibility criteria, legal aid should be available to those making a visa application involving a child or making a complex application for a family visa. Legal aid should also be available to those appealing against a decision on a family visa application. (Paragraph 147)

Government Response;

The scope of legal aid is set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and applicants must satisfy relevant means and merits criteria.

In 2019 the Ministry of Justice, in collaboration with the Home Office, amended the scope of legal aid via the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019 to include separated migrant children. This makes provision for separated migrant children to be eligible for legal aid for civil legal services in relation to their application or an application by another person, including family members and extended family members, for entry clearance, leave to enter or leave to remain in the UK granted either under the immigration rules or outside the rules based on exceptional circumstances or compassionate and compelling factors.

Legal aid is also available for asylum cases, for victims of domestic abuse and modern slavery, and for immigration cases where someone is challenging a detention decision. For all other immigration matters, funding may still be available under the Exceptional Case Funding scheme, where there is a breach or risk of a breach of ECHR or retained enforceable EU rights, subject to means and merits tests.

The societal impact of family migration policies

Conclusions and recommendations

35. Current policies fail in their objective of promoting social cohesion. They separate families and generate tensions between families and society. The evidence we received demonstrated that even when family members are allowed to live together, applicants

and sponsors can feel like second-class citizens and are reluctant or unable to take full part in British society before reaching settlement. (Paragraph 159)

36. Family migration has only a minor impact on public finances. Whether this impact is positive or negative is unclear but it is likely that the net fiscal impact of family migration is worsened by current policies. Allowing families to live together enables members of the family to work, or work more, and to be self-sustaining. (Paragraph 169)
37. More data should be collected and made available by Government departments to economists and academics to enable them to draw firmer conclusions on the fiscal effect of migration over generations, including of family migration. (Paragraph 170)
38. ***Respect for family life should be at the heart of family migration policies. While it is valuable to scrutinise the fiscal impact of family migration to inform public discussions, the importance of fiscal considerations should not be exaggerated. (Paragraph 171)***

Government Response;

Respect for family life is at the heart of the Government's family migration policies. Appendix FM to the Immigration Rules sets out all of the routes available to family members who wish to come to the UK specifically to join family who are British citizens, are settled in the UK or who have protection status here. In addition, the European Convention on Human Rights (ECHR) has been in domestic legislation since 1998 (the Human Right Act 1998) and Article 8 of the ECHR - respect for family and private life- has been embedded into the Immigration Rules and is given full consideration by decision makers based on the individual circumstances of each application.

However, as we set out above, family life must not be established here at the taxpayer's expense and family migrants must be able to integrate if they are to play a full part in British life. This is why the family Immigration Rules contain certain financial requirements and it is right and fair that these are met by all applicants who wish to make their life in the UK.

The minimum income requirement was set, following advice from the independent Migration Advisory Committee, at £18,600 for sponsoring a partner, rising to £22,400 for also sponsoring a non-settled child and an additional £2,400 for each further such child. This reflects the level of income at which a British family or a family settled in the UK generally ceases to be able to access income-related benefits.

The minimum income requirement can be met in a number of ways in addition to or instead of income from employment or self-employment. For example, income from the couple's investments, property rental or pension may also be taken into account, together with their cash savings.

Conclusions and recommendations

39. One consequence of family migration policies is that people living in the UK, including British citizens, feel they have no choice but to leave the country. (Paragraph 180)
40. Where the Home Secretary argued that visitor visas are a reliable alternative to emigrating, we found that visitor visa applications are often declined on suspicion that the applicant would overstay. (Paragraph 181)
41. ***Family visitor visa applications should be granted unless there are compelling reasons for rejection, based on the specific circumstances of an individual case. To that effect, a rebuttable presumption should be introduced in favour of applications for a visa to visit close family members. Visas allowing multiple entries over an extended period of time should be issued more frequently to***

parents and grandparents, who should be allowed to stay longer than six months at a time. (Paragraph 182)

42. The Home Office should reintroduce the right of appeal against a negative decision on a family visitor visa application. (Paragraph 183 and 225)

Government Response;

We do not recognise the comments made in paragraph 181.

In the year ending December 2022, more than 78% of all global visitor visa applicants were granted a visa.

When considering any visitor visa application, it is the intentions and circumstances of the customer that are of paramount importance. The Entry Clearance Officer (ECO) will use the information provided in the application to determine if the requirements of the Immigration Rules have been met which may include an assessment of whether they are satisfied if the customer will return. However, that does not mean they are suspicions they will overstay, only that the information provided with the application fails to satisfy the ECO on this occasion. Customers are of course free to re-apply with additional information for the ECO to consider.

UK visit visas exist to facilitate temporary stays to the UK. A wide range of activities are already permitted under the visitor rules, including coming to visit family members already resident here. Under the system, individuals can apply for visit visas lasting 6 months, 2 years, 5 years or 10 years, and the applicant is free to choose which length they apply for. Most visit visas issued already permit multiple entries for the period which they are valid. The maximum permitted duration a general visitor may remain in the UK is six months and there are no plans to extend this duration, as this would undermine the temporary nature of the standard visit visa.

In order to be granted a visa as a visitor, an applicant must satisfy the decision maker on the balance of probabilities that they meet all the requirements of the immigration rules. This includes demonstrating that the applicant will leave the UK at the end of their visit, that they will not seek to live in the UK through frequent or successive visits, and that they are genuinely seeking entry for an activity that is permitted.

As such, it is important, in order to maintain the integrity of the visits system, that all applicants are considered in the same way, and that the onus should remain on the applicant to demonstrate how they meet the rules.

Any compelling or compassionate circumstances associated with an application are factored into the decision that is made. Should family members wish to stay in the UK in excess of six months they would not be considered to be visiting and should contemplate applying under an applicable migration route.

The immigration appeal system was significantly reformed by the Immigration Act 2014 and appeal rights under section 82 of the Nationality, Immigration and Asylum Act 2002 are now limited to decisions which affect a person's fundamental rights (for example a decision to refuse a human rights or protection claim).

Where a refusal of a visit visa engages human rights there is a right of appeal, but the majority of such refusals do not raise human rights issues. Previously many visit visa appeals were used to submit new evidence which should be done by making a new application. Removing the right of appeal has allowed Tribunal resources to be focused on

cases which by their nature affect fundamental rights. There are no plans to reintroduce a right of appeal against refusal of a visit visa.

Where someone applies for a visit visa and is refused, it is open to them to make a new application in which they can address any reasons given in the refusal and provide any new evidence. There is also the ability to judicially review a refusal decision or to use the complaints procedure by which applicants can raise concerns about the service provided to them.

Conclusions and recommendations

43. An overlooked consequence of family migration policies is the impact on the labour market. Confronted with the impossibility of living in the UK together with their families, especially with dependent relatives, some professionals decide to leave the country. We are particularly concerned by the evidence we received about the impact of family migration policies on staffing in the NHS. (Paragraph 190)

Government Response;

The Government launched the Health & Care visa in August 2020 making it easier, cheaper, and quicker for health workers to come to the UK to work compared to other immigration routes. Visa applicants, and their dependent partner and children pay a lower fee, are subject to quicker processing time and also have a dedicated UKVI team that assists them with the application process. In addition, visa holders, and their dependent partner and children are exempt from paying the Immigration Health Surcharge.

In the most recent published statistics, covering the year ending December 2022, over half (76,938) of all main applicant visas granted on the Skilled Worker route were for Health and Care visa applications. The number of visas issued for the Health and Care visa has grown in almost every quarter since it was first introduced. In the year ending December 2022, 51% of the visas granted on the Health and Care visa route were to dependants. These figures show that the current Immigration system is not barrier to the majority of health and care professionals coming to the UK.

Conclusions and recommendations

44. An overlooked consequence of family migration policies is the greater burden they place on the social services of local authorities. Local authorities are struggling to meet demand for social services from children separated from their families by the Immigration Rules and from households confronted with destitution because of the no Recourse to Public Funds condition. (Paragraph 201)

Government Response;

The final Local Government Finance Settlement for 2023/24 makes available up to £59.7 billion for local government in England, an increase in Core Spending Power of up to £5.1 billion or 9.4% in cash terms on 2022/23. The majority of the funding provided through the settlement is un-ringfenced in recognition of local authorities being best placed to understand local priorities

It is for local authorities to determine what support they can lawfully provide to individuals with restricted eligibility based upon an individual assessment of an individual's status, circumstances, and support needs. When carrying out this assessment, local authorities will wish to consider their discretionary powers and statutory duties.

The Home Office provides a range of services to support local authorities to understand and discharge their duties in line with their legal obligations, including through NRPF Connect, Local Partnership Managers and On-site Immigration Officials.

Those with permission under the Family or Private Life routes, permission outside the rules on the basis of their Article 8 of the European Convention on Human Rights, or the Hong Kong British National (Overseas) route to apply for free to have the No Recourse to Public Funds (NRPF) condition lifted by making a 'change of conditions' application. An individual can apply to have their NRPF condition lifted if they are destitute or at risk of imminent destitution, if there are reasons relating to the welfare of a relevant child, or where there are other exceptional financial circumstances.

Conclusions and recommendations

45. Local authorities are confused by the complexity of family migration policies. They struggle to navigate the varied entitlements of beneficiaries to their support, depending on their immigration status. The amount of funding they receive from the Home Office is linked to the immigration status of their clients and the application of the no Recourse to Public Funds condition adds to their workload. Local authorities cannot plan for future demand. (Paragraph 202)
46. Where children would be affected, more flexibility should be introduced in the rules that underpin the application of the No Recourse to Public Funds condition. (Paragraph 203)

Government Response;

It is a well-established principle that migrants coming to the UK should be able to maintain and support themselves and their families, including any children, without posing a burden on the welfare system. Successive governments have taken the view that access to benefits and other publicly funded services should reflect the strength of a migrant's connections to the UK and, in the main, only become available when they have become settled here with indefinite leave to remain.

However, exceptions are made in some instances to ensure that those who are vulnerable receive support. Those with permission under the family or private life routes, or outside the rules on the basis of their Article 8 ECHR rights and those who have been granted leave on the Hong Kong British National (Overseas) visa route can apply, for free, to have their No Recourse to Public Funds (NRPF) condition lifted. The condition will be lifted where the applicant is destitute or at imminent risk of destitution, there are reasons relating to the welfare of a child which outweigh the considerations for imposing the condition or there are exceptional financial circumstances.

The rules and guidance around permitting recourse to public funds where a child's welfare is being affected by the NRPF condition are flexible and instruct decision makers to consider the specific circumstances of each family. If an NRPF condition would not be in the best interests of any relevant child, decision makers go onto consider whether that adverse effect is sufficient to outweigh any other considerations for imposing the condition. The best interests of the child are treated as a primary (but not the only) consideration.

Conclusions and recommendations

47. The Home Office should provide more funding to local authorities for them to provide support services to immigrant families in need of their support. The Home

Office should also simplify and harmonise the rules that apply to the provision of these services, assisting planning for the long term. (Paragraph 204)

Government Response;

Public funds are defined in paragraph 6 of the Immigration Rules, and section 115 of the Immigration and Asylum Act 1999. They include most welfare benefits, including Universal Credit, as well as housing support. They do not include access to NHS treatment or contribution-based benefits such as contributory employment and support allowance (C-ESA).

As noted in our response above, the Home Office provides a range of services to support local authorities to understand and discharge their duties in line with their legal obligations, including through NRPF Connect, Local Partnership Managers and On-site Immigration Officials.

Also, as mentioned above, local authorities receive funding through the Local Government Finance Settlement. This is largely unringfenced and can prioritise spending to address local priorities, including support to immigrant families.

Conclusions and recommendations

48. Family migration policies create a considerable demand on Home Office services. The number of applications to renew a temporary visa far exceeds the number anticipated in 2012. (Paragraph 212)

49. The Home Office should reduce the demand on its services by amending the requirement that family visas are regularly renewed. The Home Office should also increase its capability to supply these services to reduce delays. (Paragraph 213)

Government Response;

The minimum probationary period before a migrant can apply for settlement is five years, with a requirement for an application for further leave to remain at the mid-point of the five-year route.

Grants of leave for 30 months ensure applicants continue to meet the requirements of the family Rules as they progress towards settlement. This is part of the overall package of requirements designed to prevent burdens on the UK taxpayer, promote integration and tackle abuse, and thereby ensure that family migration to the UK is on a properly sustainable basis that it is fair to migrants and the wider community.

Granting leave for 30 months at a time strikes the right balance between minimising administrative burdens on applicants and the Home Office whilst ensuring that the family relationships on which leave is based continue to subsist.

Overarching recommendations

Conclusions and recommendations

50. By reuniting families, the Home Office can boost fiscal contributions, retain essential skilled workers, and prevent families from falling destitute. (Paragraph 218)

51. Family migration policies should be revisited to ensure that they are sufficiently protective of family life. The Home Office should ensure safe and legal routes for family reunion. The primary concern of family migration policies should be to allow families to live together. British citizens, permanent residents, and refugees should not normally have to choose between home, safety, and family. (Paragraph 219)

Government Response;

As detailed above, the protection of family life is at the heart of the Government's family migration policy. Appendix FM to the Immigration Rules sets out all of the routes available to family members who wish to come to the UK specifically to join family who are British citizens, are settled in the UK or who have protection status here. In addition, the European Convention on Human Rights (ECHR) has been in domestic legislation since 1998 (the Human Right Act 1998) and Article 8 of the ECHR - respect for family and private life - has been embedded into the Immigration Rules and is given full consideration by decision makers based on the individual circumstances of each application.

The UK Government recognises that families can become fragmented because of the nature of conflict and persecution and the speed and manner in which those seeking asylum are often forced to flee their country of origin. Our family reunion policy provides a safe and legal route for families to be reunited. This allows immediate family members (partner and children under 18, and over 18 in exceptional circumstances) of those granted protection in the UK to join them here, if they formed part of a family unit before the sponsor left their country to seek protection.

Extending family reunion without careful thought would significantly increase the number of people who could qualify and place further pressure on Local Authorities which are already strained.

Conclusions and recommendations

52. By simplifying the Immigration Rules, the Home Office can avoid creating unnecessary demand on its own services and reduce the likelihood families miss reunification opportunities to which they are entitled. (Paragraph 222)
53. We are supportive of the simplification of the Immigration Rules. We encourage the Government to accelerate the implementation of the Law Commission report on the subject and to actively involve Parliament in the process. (Paragraph 223)
54. The Home Office should simplify the application of the Immigration Rules. This involves making evidential requirements more flexible and less burdensome. Wherever possible, applicants should be given a variety of ways to demonstrate that they meet a requirement and the evidential requirements should be more accommodating of minor errors. (Paragraph 224)

Government Response;

We have a dedicated team tasked with responding to the recommendations made by the Law Commission in their report, published after a public consultation. We have made good progress on implementing recommendations, not only by simplifying and bringing consistency to the language, drafting and structure of the Rules themselves, but by working across policy and delivery teams to identify opportunities to clarify our policy and processes.

The key principles we apply are suitability for the user, comprehensiveness, accuracy, accessibility, consistency, durability. This will help users, including families, better navigate the immigration system and make the right application at the right time, and help decision makers to apply the Rules consistently and expeditiously.

Simplification of the Rules is an iterative process. Since autumn 2020 every major Statement of Changes to the rules has included simplification of some routes and we have introduced new, cross cutting rules to ensure consistency, for example, how to meet the English Language requirements or evidence of finances. We have not yet simplified the family routes, but applying the simplification principles to these routes will, we hope, deliver real benefits to families. Our aim is to consolidate the simplified Rules in early 2024.

We have also adopted advice provided by the Secondary Legislation Scrutiny Committee in their 33rd Report that we should deliver simplified Rules changes incrementally and in smaller packages, to allow for proper scrutiny by Parliament. We welcome any feedback from the JHA, and all Parliamentarians, on the simplified rules.

We have accepted all of the Law Commission's recommendations in whole or in part. Some Law Commission recommendations will be particularly helpful to those on the family routes.

Recommendation 3 -'We recommend that the Secretary of State considers the introduction of a less prescriptive approach to evidential requirements, in the form of non-exhaustive lists, in areas of the Immigration Rules which he or she considers appropriate'.

Recommendation 4 – 'We recommend that in those instances where prescription is reduced, lists of evidential requirements should specify evidence which will be accepted, together with a category or categories of less specifically defined evidence which the decision-maker would consider with a view to deciding whether the underlying requirement of the Immigration Rules is satisfied'.

In implementing these recommendations our aim is to make it clearer where a requirement must be met by specified evidence. Where we can provide more flexibility on the evidence we have explained this in guidance. For example, the rules on Relationship with a Partner, which are cross-cutting, are supported by guidance on the range of evidence that may be available to prove the relationship. We continue to explore the scope for moving from prescription to more discretion on the type of evidence that is accepted to show a requirement is met.

Conclusions and recommendations

55. The Home Office should reintroduce a right of appeal against a negative decision on a family visa application, including on grounds other than human rights claims. (Paragraph 225)

Taken with response to paragraph 42.

56. The Home Office should simplify the journey to settlement of family migrants. Routes to settlement should be capped to five years so that only one repeat application is required before an application for settlement. (Paragraph 226)

Government Response;

The route to settlement under the family Immigration Rules, where all of the requirements of the route can be met, leads to settlement in five years. However, where it is the case that not all of the requirements of the route can be met but the rights of the applicant or their family under the ECHR would be breached, then the rules allow that person to remain in the UK on a route to settlement but where that will take 10 years. It is right that, where an applicant cannot meet the requirements of their chosen route, they should not benefit by achieving settlement in five years. Settlement is not an automatic right. This reflects our obligations under the ECHR.

57. The Home Office should find means to reduce delays in the consideration of applications, tackle issues of communication with applicants, and reduce the proportion of erroneous decisions on visa applications. One means would be reducing the complexity of applications and allowing for more flexibility. By doing so, the Home Office

can reduce the impact on affected families and prevent a range of detrimental societal impacts. (Paragraph 231)

58. The Government should make the process easier for applicants to handle, for instance by phrasing requirements in a way that can be easily understood by offering clearer and more accessible guidance on the Gov.uk website. The Home Office should also proactively communicate on the status of individual applications to preclude unnecessary correspondence. (Paragraph 232)

Government Response;

The response to point 21 updates on service standards and the responses to points 24-26 updates on communications to applicants on waiting times.

The Home Office provides comprehensive training to all staff. Quality assurance work continually undertaken and analysed to identify any issues with the decision-making process.

Work is underway to consolidate and simplify the Immigration Rules and caseworker and customer guidance. The first tranche of updates were introduced on 20 June 2022 alongside the recently simplified Private Life rules.

All of the Immigration Rules are kept under review, including the family Rules, as well as guidance. This ensures it is clear, comprehensive and accessible. The Immigration Rules and the guidance used by staff within the Home Office is available through the Gov.UK website.

Conclusions and recommendations

59. The Government should encourage immigration lawyers and advisers to expand the provision of good-quality legal advice. This includes supporting charities providing OISC-approved legal advice and working with the OISC to curate a "family migration" stream of immigration advisers. (Paragraph 233)

Government Response;

Taken with response to Paragraph 33.

60. The Home Office is systematically failing in its role to implement family migration policies. This harms families and undermines social cohesion. (Paragraph 234)

61. *The Government should significantly increase funding to improve the standards of the services the Home Office delivers to families. In the first place, the Home Office should recruit and train more caseworkers to decide on family visa applications appropriately and in good time. (Paragraph 235*)

Government Response;

The Home Office has to balance resource against priorities and demands. The response to the humanitarian crisis causes by the invasion of Ukraine meant that the Home Office had to quickly divert staff from other areas, including family casework, to help those individuals fleeing the conflict.

Additional resource was surged in, including from other government departments, to allow staff to return to their normal functions. Resource returned to the family route during the latter part of 2022 and service delivery improved, including the speed of decisions and the restoration of the Priority Visa service. The current 120-day service standard is being kept under review in line with Home Office demands.