

Written evidence submitted by the Cayman Islands Government (OTE0016)

The Government of the Cayman Islands welcomes the opportunity to respond to the Foreign Affairs Committee's Sub-Committee on the Overseas Territories' call for written evidence on how the UK Government supports the education of students from the Overseas Territories both in the UK and in their respective territories.

A. INTRODUCTION

1. The Cayman Islands and the UK share a “*deep bond of affection and respect*”, founded on self-determination, mutual responsibility, and democracy.¹ In recognition of that history and relationship, in 2002, the UK Parliament extended British citizenship to British Overseas Territory Citizens. As a result, the vast majority of British Overseas Territory Citizens in the Cayman Islands are also British citizens, entitled to full rights of abode in the UK. On 14 December 2023, the Government of the United Kingdom and the Governments of the British Overseas Territories reaffirmed their deep, historic, and enduring partnership through the signing of a Joint Declaration. Under the banner “*a modern partnership for a stronger British family*” the Joint Declaration reaffirms that “*each UK Government Department is responsible for supporting the British Overseas Territories as needed, within its areas of competence and expertise*”.
2. The Secretary of State for Education has made regulations, approved by the negative resolution procedure in Parliament, which entitle students from the Cayman Islands (and other Overseas Territories) to “*home fee*” status, as long as they meet certain residency requirements and have a right of abode in the UK (which, as above, most will). It has since 2007 been the settled will of the UK Government, approved in Parliament, that such students should have access to home fees. This is one of the ways in which the UK Government discharges its obligation under Article 73 of the United Nations Charter to promote the Overseas Territories' political, economic, social, and educational advancement.
3. However, as explained in detail in this submission, UK higher education providers are too often failing faithfully to apply the law and grant to students from the Cayman Islands the “*home fee*” status to which they are entitled. The law in this area is confusing, and with no guidance to help providers apply it properly, the result is that unappealable decisions of university administrative staff, often based on erroneous understandings of the law, are depriving students from the Cayman Islands of their entitlement to home fees, granted to them by Parliament and the relevant secondary legislation.

B. ACCESS TO HOME FEES: THE LAW

4. The fees which English² higher education providers may charge are regulated by the Government. There are two basic fee levels: “*home fees*” and international fees. Home fees are

¹ *Partnership for Progress and Prosperity: Britain and the Overseas Territories* (Cmd 4262), March 1999.

Available here: <https://www.ukotcf.org.uk/wp-content/uploads/2020/05/WhitePaper99.pdf>

² There are similar, but not identical, rules in Wales, Scotland and Northern Ireland.

subject to limits set out in legislation, above which providers cannot charge. International fees are not subject to such limits. The effect of this is that international fees are usually greatly in excess of home fees. The difference between them can mean the difference between a student being able to attend university, and not.

5. The individuals who are entitled to home fees are specified in the Schedule to the Education (Fees and Awards) (England) Regulations 2007/779. Paragraph 9C of that Schedule provides that home fees are available to a person (subject to exceptions which are irrelevant for the purposes of students from the Cayman Islands) in England where:
 - a. They are either (a) settled in the UK, or (b) the family member of someone who is settled in the UK or would be if they were ordinarily resident there.
 - b. The course in question is in the UK.
 - c. For part of the three years preceding the first day of the first academic year of the course, they were ordinarily resident in the specified British overseas territories,
 - d. For all of the three years preceding the first day of the first academic year of the course, they were ordinarily resident in the UK, Islands, or overseas territories.
6. “*Settled in the UK*” has a particular meaning.³ It requires that the person in question be ordinarily resident in the UK, without any restriction on the period for which they may remain. Whether a person is settled in the UK for the purposes of paragraph 9C is assessed either (a) on the course start date if the student is in the first year of their course; or (b) on the first day of the academic year for any other year of their course. “*First day of the academic year*” has a specific legal meaning, and refers, for courses starting between on or after 1st August and on or before 31st December, to 1st September.
7. The definition of “*ordinarily resident*” has been the subject of judicial consideration.⁴ A person who moves to the UK to attend university there will usually be ordinarily resident there (subject to any special circumstances). A person who does so would in all likelihood become ordinarily resident on arrival in the UK.⁵ For the purposes of paragraph 9C, periods of ordinary residence “*wholly or mainly for the purpose of receiving full time education*” do not count towards the residency requirement.
8. The practical upshot of this is that a student who grew up in and lived in the Cayman Islands for the three years prior to starting higher education, and moved to England to attend university, will be entitled to home fees so long as they move to the UK before the course start date and there is no restriction on the period for which they may remain – in other words, if they have a right of abode or indefinite leave to remain.
9. As a result of the British Overseas Territories Act 2002, any person who immediately before 21 May 2002 was a British overseas or dependent territories citizen became a British citizen. Further, pursuant to s. 1(1) British Nationality Act 1981, a person born in the Cayman Islands to a British citizen or person settled in the Cayman Islands, after 21 May 2002, is also a British

³ S. 33(2A) of the Immigration Act 1971.

⁴ *R v Barnet Borough Council ex parte Shah* [1983] 2 A.C. 309.

⁵ See page 7 of “*Nationality policy: assessing ordinary residence*” (October 2017), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655489/Nationality-policy-assessing-ordinary-residence-v2.0EXT.pdf

citizen. The only people with British Overseas Territories Citizenship from the Cayman Islands who are not British citizens are those who have renounced their citizenship; were born stateless in the Cayman Islands and have not applied to register as a citizen; or who have acquired BOTC status by naturalisation or registration on or after 21 May 2002.

10. A British citizen has the right of abode in the UK without let or hindrance, pursuant to Immigration Act 1971 s. 2(1)(a). This is a fundamental right which their citizenship grants them. It does not depend on holding a particular passport, or any exercise of administrative discretion. When Parliament granted citizenship to British Overseas Territories Citizens, it extended this right to them. They are also, as a result, very often entitled to home fees.

C. ACCESS TO HOME FEES: IN PRACTICE

11. It was the policy intention of the UK Government to extend home fee entitlement to students from the Cayman Islands who are British. This is a right to which they are entitled. However, the complexity of the law⁶ and the lack of guidance available means that some students are not, in practice, able to access home fees.
12. The Cayman Islands Government Office in the UK devotes considerable resources and effort directly on behalf of students to support their interactions with higher education institutions in the UK. There is a distinct lack of support or guidance available in the UK for students from the Cayman Islands, or the Cayman Islands Government Office on their behalf, to press their legitimate claims for home fees. As a result, despite significant efforts made by the Cayman Islands Government Office in the UK, outcomes are mixed – sometimes providers accept that eligible students can qualify for home fees; but sometimes they do not.
13. Where students from the Cayman Islands qualify for home fees and where UK universities challenge their eligibility, the impact on those students is significant – for those who are successful, the process is frustrating, time-consuming and costly. For those who are denied their legal right to home fees, it is highly disruptive, emotionally exhausting and, ultimately, life-changing.
14. Moreover, in a relatively small community like the Cayman Islands, these incidents serve to badly damage the standing and reputation of the British Government – undermining the great efforts of the Governor of the Cayman Islands and the representatives of the Cayman Islands Government to foster a close and special relationship.
15. In its experience of dealing with these issues, the Cayman Islands Government Office in the UK considers the following to be the key obstacles for students from the Cayman Islands receiving their entitlement to home fees:

⁶ The Regulations appear to the Cayman Islands Government Office in the UK to fall some way below the standards of good legislative drafting in the Office of the Parliamentary Counsel Drafting Guidance: <https://assets.publishing.service.gov.uk/media/660407d091a320001a82b06b/2024.03.19.Drafting-guidance.pdf>

- a. Decisions are made by legally unqualified administrative staff, who are required to apply complex legislation, and against whose decisions there is no obvious route of appeal.
 - b. Whether a student is “*settled*” in the UK will often come down to whether they have the right of abode. As set out above, this is true for most students from the Cayman Islands, but they face difficulties convincing higher education providers of this unless they hold a British passport. Whether someone is a British citizen depends on their status in May 2002, or the circumstances of their birth, each of which the student may struggle to prove. A judgment about this potentially tricky question of nationality law is then required to be made by administrative workers in the higher education provider.
 - c. Where students from the Cayman Islands travel to the UK on British Overseas Territories Citizen passports, those passports are endorsed with student visas. Where the person in question (as is likely) is also a British citizen by virtue of the British Overseas Territories Act 2002 or the British Nationality Act 1981, that visa is strictly unnecessary; but students are required to apply for them in order to avoid the difficulties of proof set out above in their dealing with the Home Office. However, higher education providers may then take the student visa as evidence that the student is not settled in the UK.
 - d. The residency requirements are confusingly expressed in the legislation, and many higher education providers do not understand them. They sometimes fail to appreciate that three years residence in the Cayman Islands is sufficient to meet the requirement.
16. Some of these issues are structural and arise from the unique circumstances under which persons from the Cayman Islands were granted British citizenship by Parliament. Further, some of them could only be fixed by amending the relevant regulations.
 17. However, in the experience of the Cayman Islands Government Office in the UK, the problems are more practical than legal. In particular, decisions are being taken in bulk by individuals who lack legal qualifications and against whose decisions there is no appeal; in respect of a group of individuals which is relatively small and presents with unusual circumstances (i.e., students from the overseas territories). This is a recipe for mistakes. In that context, the Cayman Islands Government Representative to the UK has requested, through the FCDO, guidance from the Department for Education which can be passed on to students so they can cite the guidance directly in their interactions with higher education providers. However, to date no such guidance has been issued.

D. CONCLUSION

18. The ability for students from the Cayman Islands to study in the UK on the same terms as English, Welsh, Scottish and Northern Ireland counterparts is an invaluable part of being a member of the British family.
19. Part of the heritage the Cayman Islands share with the UK is respect for the rule of law. Students from the Cayman Islands – for the most part, British citizens – are entitled to the consistent and equal application of the regulations governing entitlement to home fees. The Cayman Islands Government Office is very concerned that some students are being deprived of their legal rights by the confusing nature of the regulations and avoidable errors made by admissions offices.
20. The Cayman Islands Government continues to urge the relevant UK Government departments to issue guidance providing greater clarity to provider staff. It would be delighted to work with those departments on any such guidance.
21. The Cayman Islands Government expresses its gratitude to the Sub-Committee, and is at the Sub-Committee's disposal should it require any further information or evidence.

CAYMAN ISLANDS GOVERNMENT UK OFFICE

20 May 2024

May 2024