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Tigere: challenge to student loan eligibility criteria

In the case of *Tigere*, the Supreme Court held that it was unlawful to apply a blanket rule requiring individuals to have settled status (permanent residence in the UK) before they could access student loans to study at university and that the Government had to develop more tailored eligibility criteria. As a result of the case, the Government will need to issue new regulations on eligibility for student support. In the meantime, the Department for Business, Innovation and Skills has issued an interim policy statement for students applying for university this year. This information sheet explains the background to the legal challenge and the current situation for those students assisted by the judgment.

The challenge in *Tigere*

Ms Tigere was a 20 year-old Zambian national who had lived in the UK since she was six years old. After completing her primary and secondary education in England, she was offered a place at university and needed a student loan to take up her place. She discovered, however, that she was not eligible for a student loan because of her immigration status. As a child, Ms Tigere had been unaware of her immigration status but her mother had overstayed her leave in the UK. The Home Office notified the family in 2010 that they were liable for removal but granted temporary admission before subsequently granting discretionary leave to remain in 2012.

The regulations on student loans in England set out the eligibility requirements for applicants for student loans. There are specific provisions for those with refugee status or humanitarian protection and for EEA nationals and their family members. In other cases, settled status (British citizenship or indefinite leave to remain) and 'ordinary residence' in the UK for a period of three years is required in order to be eligible for a student loan. Ms Tigere would only become entitled to apply for indefinite leave to remain in 2018 and was not eligible for a student loan in the meantime.

Ms Tigere brought a case against the Department of Business, Innovation and Skills, the Government department responsible for student loans, on the basis that she had been denied access to education on a discriminatory basis, in breach of her human rights. The case reached the Supreme Court which gave its judgment on 29 July 2015: [R \(Tigere\) v Secretary of State for Business Innovation and Skills \[2015\] UKSC 57](#).

The findings of the Supreme Court in *Tigere*

The Supreme Court held that the blanket rule requiring an applicant to have settled status to be eligible for a student loan unlawfully discriminated against Ms Tigere and others in her situation when considering their right to access education. The requirement of settled status was not justified in Ms Tigere's case. She had lived in the UK for many years and

would not in practice be removed from the country unless she committed a serious crime. She was as likely to complete her education, contribute to the economy and repay her loan as someone who was settled.

The court also considered the requirement of three years 'ordinary residence'. It found that this meant lawful residence and that the three-year period required was reasonable. The court considered that this should apply for children even though they have no control over the decisions of their parents. This would mean that it would be necessary to have had leave to enter or remain, and not just temporary admission, for a period of three years before qualifying for a student loan. However the specific situation where an individual had been granted temporary admission on entry to the UK and had never been in breach of immigration laws was not considered by the Court and so those granted temporary admission in these circumstances may wish to obtain specialist advice.

The Supreme Court declared that Ms Tigere should be entitled to a student loan. The Court did not define how the student support regulations should be interpreted for other students. Instead the Court stated that the Government had to draft more tailored criteria for student loans which complied with human rights law.

Interim Policy Statement

The Government will need to issue new regulations on eligibility for student support. In the meantime, the Department for Business, Innovation and Skills has issued an interim policy statement on how it will handle cases following the Supreme Court ruling in *Tigere*. This statement is available at: <http://www.slc.co.uk/media/latest-news/policy-statement-interim-policy-for-handling-cases-following-the-supreme-court-ruling-in-the-case-of-tigere.aspx>.

The Department states that it will consider individual applications for a student loan against the following criteria:

- those under 18 years of age who have lived in the UK for at least seven years; or
- those aged 18-25 years who have spent at least half their life in the UK;
- are 'ordinarily resident' in England; and
- has been ordinarily resident in the UK throughout the three year period preceding the first day of the first academic year of the course.

The Department also states that it reserves the right to change these criteria when it brings in its amended Regulations during the next academic year.

What this means for those applying to study this year

Students may apply for student loans if they meet the above criteria. Students who are eligible for student finance should be charged home fees rather than international student fees by the university. Though the criteria may change in the finalised regulations, it may be possible to challenge any withdrawal of funding from students supported under the interim policy. Different regulations for student finance apply in Wales, Scotland and Northern Ireland and UKCISA has a helpful guide to these (see below).

Other useful information resources

Just for Kids Law: <http://www.justforkidslaw.org/category/news-events/campaign-news>
This organisation intervened in the case of *Tigere* and continues to do follow-up work on the issue. Updates are placed here: <http://www.justforkidslaw.org/our-goals/let-us-learn>

UK Council for International Student Affairs (UKCISA): <http://www.ukcisa.org.uk/>
UKCISA guide to student finance here: <http://www.ukcisa.org.uk/International-Students/Fees--finance/Government-Student-Support/>