

## CONSULTATION RESPONSE – 18/10/19

### British Future Citizenship Inquiry

#### Background

ILPA is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official enquiries.

#### Detailed responses

##### **1. What should citizenship policy aim to do in the UK?**

Citizenship policy should encourage and enable those who have chosen to make the UK their home to participate more fully in society. It should provide the security of belonging for those who require it. But it should not put pressure on permanent residents to become citizens where that would prejudice them in their home state (e.g. where the home state is intolerant of multiple nationality).

##### **2. What eligibility criteria should applicants fulfil before becoming British citizens?**

Are the current eligibility criteria for British citizenship set at the right level? Or should there be fewer or more requirements that applicants should fulfil before becoming British citizens?

The Home Secretary is obliged by the British Nationality Act 1981 to assess whether a person is of good character. The Home Secretary has a published policy on how this will be done.<sup>1</sup> However, in the past decade this power was dramatically extended to take into account immigration issues (including mere overstaying) in the past ten years. Parliament only ever intended for a five or three year reckonable period for immigration offences and this is set out clearly in the 1981 Act under the respective sections<sup>2</sup> and schedules<sup>3</sup> for naturalisation. Parliament debated this and set it out in law, but through the additional broad evaluative nature of the good character assessment, the Home Secretary at the time was able to go further than Parliament's provision in respect of criminal offences and impose a more stringent standard where good character falls to be assessed. This has caused great difficulties for applicants who may have overstayed their visas (e.g. student visas) in the late 2000s back when overstaying was less problematic. This retrospective stigmatisation of overstaying has led to many naturalisation refusals.

#### Are the eligibility criteria for vulnerable groups resident in the UK fair and reasonable?

We do not consider that the eligibility criteria for vulnerable groups are fair and reasonable. Many recognised refugees have been affected by the good character requirement changes. Many asylum seekers are refused first time around, for a multitude of reasons, often lack of representation. They then succeed months or years later with a fresh claim. All the time spent without leave previously will count against them when it comes to citizenship. The UK is a signatory to the 1951 Convention and has a duty under Article 34 of the Convention to facilitate naturalisation. Currently the UK is not fulfilling those obligations. See: <https://www.freemovement.org.uk/refugees-illegal-entry-good-character-citizenship/>

#### Are those with residual categories of British citizenship treated fairly?

---

<sup>1</sup> <https://www.gov.uk/government/publications/good-character-nationality-policy-guidance>

<sup>2</sup> Section 46 British Nationality Act 1981

<sup>3</sup> Schedule 1, 1(2)(d) British Nationality Act 1981

There is scope for Parliament to open up easy access to British citizenship for all those who were discriminated against in the colonial era. For example British Overseas citizens, who lost their right of abode through the Commonwealth Immigrants Acts of 1962 and 1968 and the Immigration Act 1971, sought to be able to recover it. Further, British Nationals (Overseas) (from Hong Kong) have a nationality status which is of no practical use beyond a right to a passport. It should be open to them to “upgrade” to full British Citizenship. Access to British citizenship for such persons and other British nationals similarly disadvantaged should be by registration by entitlement nor naturalisation.

### **3. What changes should be made to the Life in the UK test and English language requirements?**

The Life in the UK test and the way in which people can show their knowledge of the UK should be reviewed. We urge that this revision and amendment should not be done solely by the Home Office civil servants but it should include wide participation from those affected. A panel similar to that chaired by Sir Bernard Crick in 2003 could usefully be set up.<sup>4</sup> Such a panel would consider and report on what further information should be added in, and what should be deleted, as well as how people can most effectively show their knowledge.

Children who have graduated from secondary school in the UK with A-levels / Scottish Highers in English are required to pay a £150 fee and sit a “Secure English Language Test”. If a young adult can prove graduation from an English-speaking school in the UK then they should be exempt from this requirement.

### **4. Does the current application process act as a barrier to those who would otherwise be eligible for British citizenship?**

What barriers do eligible applicants face which prevent or hinder their application?

---

<sup>4</sup> The new and the old: the report of the Life in the UK Advisory Group, Home Office Social Policy Unit, September 2003, <https://sofn.org.uk/london2008/articles/The%20New%20and%20the%20Old.pdf> or at [http://lilac.europole.org/uk/material/life\\_in\\_the\\_uk.pdf](http://lilac.europole.org/uk/material/life_in_the_uk.pdf)

There needs to be more flexibility in the Life in the UK and English language requirements, which currently act as a complete barrier to citizenship for some people. One example given is that of a woman born in the Congo. She was one of six children. The four boys were sent to school, whereas she and her sister had to stay at home and act as childcare for the boys. She is a lovely lady and very bright but she is illiterate. She has never learned letters. She speaks four languages but has now sat the Life in the UK test seven times and still has not been able to pass. She is never going to be able to apply for indefinite leave to remain (which is necessary to get to citizenship). She is really struggling, and it is not for want of trying, but as an illiterate person who never learnt to read and write in her mother tongue it is almost impossible for her to learn letters in English. This means that she will have to keep reapplying for two and a half years of limited leave to remain (at £2.5k each time, plus legal fees). Currently, exemption from the requirement is only available on strict medical grounds or for those over 65 years of age.

Another example given is that of a domestic servant in a private household for about eight years. She is Moroccan and also illiterate. Her lawyer believes that she has learning difficulties and dyslexia but it's impossible to test her for those in English which is not her mother tongue. She is never going to be able to apply for indefinite leave to remain and is therefore blocked from obtaining citizenship despite having been eligible on all other fronts for the last three years. There needs to be leeway for illiterate people, who already struggle enough with exclusion from society.

A further barrier is the fact that naturalisation applications are out of scope for legal aid. As can be seen from this response, these applications can be complex, and those who are financially eligible should be provided with access to free legal advice.

### How much is it reasonable to charge applicants for citizenship and settlement?

The three main grounds for grants of British citizenship are those fulfilling the residence requirements, those who have British spouses or civil partners, and children being registered as citizens.<sup>5</sup> The current fee structure and lack of the ability to have the fees reduced or waived for those who are unable to pay

---

<sup>5</sup> <https://migrationobservatory.ox.ac.uk/resources/briefings/naturalisation-as-a-british-citizen-concepts-and-trends/>

is a massive barrier to British citizenship for many. It is difficult to see how excluding people, who are otherwise eligible, from citizenship on the basis of their financial situation is in line with British values.

The fee for naturalisation in France is €55 (approximately £48).<sup>6</sup> In Singapore it is SING \$100 (approximately £58).<sup>7</sup> Germany charges €255 for an adult to naturalise, and €51 per child naturalising with their parents. It is possible to apply for the fee to be waived or reduced.<sup>8</sup>

Australia charges AUD\$285<sup>9</sup> for naturalisation (approximately £150), there is no cost for a child under 16 who is applying with their parent. New Zealand charges \$470.20 (approximately £235) for an applicant aged 16 or over, and \$235.10 (approximately £118) for a child aged 15 and under.<sup>10</sup>

Canada charges CAD\$530 (approximately £320) processing fee for a naturalisation application, and CAD\$100 (approximately £60) for the “Right of Citizenship” fee (refunded if application is refused, analogous with the UK’s ceremony fee).<sup>11</sup> For those aged under 18, they pay a processing fee of CAD\$100 only.

In the United States, the naturalisation application fee is USD\$640 (approximately £509) and biometric fee is \$85 (approximately £68). A fee waiver<sup>12</sup> or reduced fee<sup>13</sup> is available.

As can be seen, the UK is vastly out of step with other countries when it comes to the financial cost of acquiring citizenship. An application for naturalisation as a British Citizen will cost the applicant £1,250

---

<sup>6</sup> <https://www.prefecturedepolice.interieur.gouv.fr/Demarches/Particulier/Ressortissants-etranagers/Ressortissants-etranagers/La-naturalisation-ou-la-reintegration-dans-la-nationalite-francaise-procedure-par-decret>

<sup>7</sup> [https://www.ica.gov.sg/PR/citizenship/PR\\_citizenship\\_becomeasc](https://www.ica.gov.sg/PR/citizenship/PR_citizenship_becomeasc)

<sup>8</sup> [https://www.bmi.bund.de/EN/topics/migration/naturalization/naturalization-node.html;jsessionid=648A6FE01BF2C454AD1EE38C942A326D.1\\_cid373](https://www.bmi.bund.de/EN/topics/migration/naturalization/naturalization-node.html;jsessionid=648A6FE01BF2C454AD1EE38C942A326D.1_cid373)

<sup>9</sup> <https://immi.homeaffairs.gov.au/citizenship/become-a-citizen/permanent-resident>

<sup>10</sup> <https://www.govt.nz/browse/passports-citizenship-and-identity/nz-citizenship/how-to-apply-for-nz-citizenship/apply-for-nz-citizenship/>

<sup>11</sup> <http://www.cic.gc.ca/english/information/fees/fees.asp#citizenship>

<sup>12</sup> <https://www.uscis.gov/i-912>

<sup>13</sup> <https://www.uscis.gov/i-942>

plus £80 for the citizenship ceremony. The cost to the Home Office is £372.<sup>1415</sup> Removing the profit element of the fee would bring the cost broadly in line with the rest of the world, although still towards the top end of what is charged elsewhere.

We strongly believe that the cost of naturalisation should be dramatically reduced, and fee waivers should be made available for those who are otherwise eligible for citizenship but are prevented from applying solely due to their financial situation.

Registration of children as British citizens is distinct to naturalisation, however our position remains the same, namely that the fees should be reduced to the unit cost and/or a fee waiver introduced. The fee waiver should be automatically granted for children in care as well as care leavers (who would be applying for naturalisation rather than registration).

#### Is there scope for simplifying the citizenship application process?

The citizenship rules in legislation no longer align with immigration policy and this discrepancy should be resolved. For example, spouses used to be granted a two-year visa, followed by a grant of indefinite leave to remain which they would hold for a year and could then apply for citizenship, all within that three-year period. Now a spouse takes five years to get to indefinite leave, leading to confusion by people believing they can jump straight to citizenship at year three (further to section 6(2) and paragraph 3 of Schedule 1 to the British Nationality Act 1981). The spouse family reunion rules should be returned to providing a two-year route to indefinite leave, so that it dovetails with the s 6(2) of the 1981 Act three-year route to naturalisation. The three-years route should also be made available to unmarried partners.

#### Do applicants have access to sufficient advice to enable them to submit applications?

---

<sup>14</sup> <https://www.gov.uk/government/publications/visa-fees-transparency-data>

<sup>15</sup> <https://www.gov.uk/government/publications/visa-regulations-revised-table>

One example given is that of a client who recently applied for naturalisation instead of indefinite leave to remain. She is intelligent but still managed to make her way through the online naturalisation application and paid the fee only to get a refusal saying she should have applied for indefinite leave to remain and that as a result of making the incorrect application her leave to remain had expired and so she must leave the country. This should not be happening, and with online applications the technology should be used appropriately and to ensure that situations like this do not occur. For example, if there was an initial question at the start of the application process asking “do you currently have indefinite leave to remain?”, with examples of what that looks like. Then the form should ask the applicant to confirm that they are sure that they have indefinite leave to remain and only let them proceed with the rest of the application once they have confirmed this. It is currently far too easy for those that do not meet criteria to apply regardless. For example see here: <https://www.freemovement.org.uk/what-happens-if-you-mistakenly-apply-for-british-citizenship-instead-of-indefinite-leave-to-remain/>

## **5. How can the acquisition of citizenship become a positive and meaningful experience?**

We recommend that successful naturalisation applicants are given a British passport. This is what many of them think that they are applying for, and they should be given both the Certificate of Naturalisation and a passport after the ceremony.

If people are eligible and wish to become British citizens, then the government should be encouraging this. People should not be prevented from naturalising as a result of their financial situation. The current fees are far too high and actively prevent people from naturalising/registering as British citizens who are otherwise entitled to do so. If applicants are suffering through financial stress in order to acquire citizenship, then this certainly impacts on their experience of the process. Making the process genuinely accessible to all those who wish to naturalise, by dealing with the fees issue, will greatly assist with the process becoming a positive and meaningful experience.

## **6. What changes to citizenship policy should be prioritised?**

We believe that the most important issue is that of fees. This can and should be prioritised and resolved quickly.

The good character assessment gives the government to set a demanding standard that seems at odds with the indications of the time frames (specified elsewhere in the 1981 Act) to be taken into account when assessing whether a criminal offence has occurred or whether the residence requirement is satisfied. Currently the government policy on good character is 53 pages long and there is clearly scope for this to be simplified and reduced, as well as to ensure it only looks back over shorter periods of time.