



Home Office

# Fee waiver: Human Rights-based and other specified applications

Version 3.0

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# About this guidance

This guidance tells you how to consider applications for a fee waiver from those who are going on to make a specified human rights application and where to require payment of the fee before deciding the application would be incompatible with a person's rights under the European Convention on Human Rights (ECHR). The fee waiver policy also applies to applications from victims of trafficking who seek to extend their leave to remain in certain circumstances.

Separate guidance is available for fee waiver applications from those applying under the [Domestic Violence provisions of the Immigration Rules](#).

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email Family Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance, then you can email the Guidance Rules and Forms team.

## Clearance and publication

Below is information on when this version of the guidance was cleared:

- version **3.0**
- published for Home Office staff on **4 January 2019**

## Changes from last version of this guidance

The immigration application process is undergoing a transition to digital applications. This affects fee waiver requests in the following way:

### From 4 January 2019

From 4 January 2019, fee waiver requests are to be made using the digital (online) request form and submitting the request online. The relevant application for leave to remain form can also be accessed online and completed at the same time. This online form can then be exited and stored until the outcome of the fee waiver request. When the outcome of the fee waiver request has been received, this online leave to remain form can then be retrieved and the application submitted.

It is important to note that the fee waiver request is not an application for leave to remain and therefore to know how this request affects any current leave to remain that is held and the leave to remain application.

Requests for a fee waiver made by those who have current Leave to Remain, and whose leave expires whilst their fee waiver request is being considered, will be allowed 10 days from the actual date of their fee waiver decision to submit an application for Leave to Remain or Further Leave to Remain. After this, their leave will be treated as expired.

Requests for a fee waiver made by those without current Leave to Remain mean that the applicant will not be able to benefit from the 10 days period allowed above.

Online applicants granted a fee waiver will also receive an electronic pass to use when resuming their application allowing them to proceed without paying fee. Online applicants without a fee waiver will have to submit the relevant fee in order to resume with Leave or Further Leave application.

## Other changes from last version of this guidance

Decision makers are now required to take into account the whole of the amount to be paid by an applicant when a fee waiver request is made. The whole of the amount means the immigration application fee, and the Immigration Health Surcharge (IHS) combined. Where an applicant can pay the whole of the immigration fee but none, or only part of the IHS, the immigration fee will be required, and the waiver will be applied to the IHS. If the applicant is unable to pay the fee or the IHS we will waive both.

The stages of the decision are now set out in order to make it clear that the decision on the request for a fee waiver takes into account whether the applicant can afford the amount required at the time of the application, and whether this is consistent with the applicant's wider circumstances.

Examples of what is meant by essential living needs are provided, in line with those provided elsewhere in guidance. These are not prescriptive, but neither should there be significant departures from them.

The expression "partial fee waiver" is explained to make clear that it refers to the ability to have a fee waiver applied to individual members of a family applying at the same time. It does not mean that in respect of any one individual applicant part of the fee can be waived and part of the fee paid.

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# Introduction

## Applicants who are eligible

This guidance explains which applicants are eligible for a fee waiver and the circumstances in which they will qualify for a fee waiver. Applicants who are eligible are those making certain specified human rights applications where to require payment of the fee before deciding the application would be incompatible with a person's rights under the European Convention on Human Rights (ECHR).

In addition, the fee waiver policy also applies to applications from victims of trafficking who seek to extend their leave to remain in certain circumstances.

The courts have considered fee waivers in an immigration context in two important judgments: [Omar, R \(on the application of\) v Secretary of State for the Home Department \[2012\] EWHC 3448 \(Admin\)](#) and [Carter, R \(on the application of\) v Secretary of State for the Home Department \[2014\] EWHC 2603 \(Admin\)](#). This guidance has taken account of both judgments.

This guidance applies to the following types of application:

- applications for leave to remain under the **5-year partner route** from applicants who are not required to meet the minimum income threshold because their sponsor is in receipt of one or more specified benefits and who instead must demonstrate that their sponsor can provide **adequate maintenance**
- applications for leave to remain under the **5-year parent route**
- applications for leave to remain under the **10-year partner, parent or private life route**, where the applicant claims that refusal of that application for leave to remain would breach their rights (or the rights of other specified persons) under ECHR Article 8 (the right to respect for private and family life)
- applications for leave to remain on the basis of **other ECHR rights**
- applications for further leave to remain from applicants granted **discretionary leave (DL) following refusal of asylum or humanitarian protection**, where the applicant claims that refusal to grant further leave to remain would breach their ECHR rights
- applications for further **DL from victims of trafficking or slavery** who have had a positive conclusive grounds decision from a competent authority of the national referral mechanism (NRM), have already accrued 30 months' DL and are seeking to extend it for reasons related to trafficking or slavery

in all the above, parents do not have to have requested a fee waiver in order for their children to be eligible to apply for a fee waiver

## Circumstances to be considered

In assessing the fee waiver application the caseworker must have regard to the duty under [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to safeguard

and promote the welfare of any affected child, and therefore to the best interests of any such child as a primary consideration.

When applying for a fee waiver the applicant will be asked to provide **details of their financial circumstances**. This will mainly be in the form of statements covering the 6 months period prior to the date of application for all bank or building society accounts they hold, and a full breakdown of their monthly income and expenditure at the time of application.

Checks may be undertaken with agencies such as HM Revenue & Customs, the Department for Work and Pensions and Equifax to verify information provided by the applicant with regard to their income and finances (see Document Verification guidance).

Applicants who fail to disclose their financial circumstances in full, or who provide false information in their fee waiver request, may have current or future applications for leave to enter or remain refused because of their conduct (see General grounds for refusal guidance). They may also be referred for enforcement action, resulting in possible arrest and removal.

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# Immigration applications for which a fee waiver may be requested

## 5-year partner and 5-year parent route (ECHR Article 8 rights)

Under the European Convention of Human Rights (ECHR) Article 8 rights, applicants for leave to remain as a **partner** on the 5-year route to settlement whose sponsor is in receipt of one or more of the benefits specified at paragraph E-LTRP.3.3. of [Appendix FM](#) to the Immigration Rules are not required to meet the minimum income threshold. Instead, they are required to demonstrate that their sponsor can maintain themselves, the applicant and any dependants adequately in the UK without recourse to public funds. Such applicants are eligible to request a fee waiver.

Applicants for leave to remain as a **parent** on the 5-year route to settlement are not required to meet the minimum income threshold and are required to demonstrate that they are able to maintain themselves and any dependants adequately in the UK without recourse to public funds. Applicants on this route are eligible to request a fee waiver.

Applicants should complete the online application form, indicating that they are requesting a fee waiver, complete the [Request for Fee Waiver form](#), and enclose documentary evidence of their financial circumstances and details of all public benefits that they are claiming.

## 10-year partner, parent or private life route (ECHR Article 8 rights)

This fee waiver policy applies to applications for leave to remain under the **10-year partner, parent or private life route** where failure to waive the fee before considering the application would be a breach of the ECHR because the applicant would be unable to establish their right to remain in the UK.

## Extension of leave to remain where applicant was refused asylum or humanitarian protection and granted DL

Applicants who have been **refused asylum or humanitarian protection but granted discretionary leave (DL)**, and who seek to extend their leave, can request a fee waiver where they claim that refusal to grant further leave would breach their rights under the ECHR.

Applicants who have been granted DL and who consider that they require international protection (asylum or humanitarian protection) should not seek to raise the protection claim in a DL extension application. Instead, they should follow the Further submissions policy.



Applicants who have been refused protection (asylum or humanitarian protection) but granted restricted leave (RL) are not charged a fee if they apply to extend their RL. Therefore, the fee waiver policy does not apply to this type of application.

## Extension of DL for victims of trafficking or slavery

Applicants who have received a positive conclusive grounds decision from a competent authority of the national referral mechanism (NRM) and who were granted DL because of their compelling personal circumstances, to pursue a claim for compensation against their traffickers, or to assist with police enquiries, can request a fee waiver even though they are not seeking to extend their leave to remain on the basis of their ECHR rights. The circumstances for this include where they have already accrued 30 months' DL and are seeking to extend it for reasons related to trafficking or slavery as set out in the Competent Authority Guidance.

See Victims of modern slavery: Competent Authority guidance for details of the NRM and the circumstances in which victims can be granted DL.

## Family units and 'partial' fee waivers

If family members are applying together, there is scope for one or more family members who are dependants to be granted a fee waiver. This can be done by an applicant completing a request form for the individual dependent family members for whom a fee waiver is requested, or by the main applicant stating that **they can pay the fee for their application (and possibly for some dependants) but are unable to pay the fee for all of their dependants**. In these circumstances, the main applicant will be asked to specify which dependants are applying for a fee waiver and which are not. However, it is not possible in respect of any one individual applicant for part of the fee to be waived and part of the fee paid.

**Applicants should complete the online [Request for Fee Waiver Appendix 1 form](#) and submit documentary evidence of the financial circumstances of the household as detailed in the online form.** This could be evidence for the main applicant, their partner (if any) and any other adult with whom the main applicant lives and from whom they receive financial support, as well as the financial circumstances of all dependants and details of all public benefits that they are claiming.

## Applications for further leave to remain where previous fee waived

When an applicant who qualified for a fee waiver for the application for their previous grant of leave applies for further leave to remain, and again requests a fee waiver, their eligibility for a fee waiver must be reassessed. They must continue to qualify for a fee waiver in order for the fee to be waived, but they can generally be expected to do so if they can evidence that their underlying financial circumstances have not changed.

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# Applications for which a fee waiver cannot be requested

## Applications on non-human rights grounds

If an application has been submitted with Appendix 1, but the application is not on the basis of any of the [specified applications](#), a fee waiver must not be considered. In these circumstances the applicant should be told that their application is not eligible for a fee waiver and that they must pay the specified fee in order to have their application considered (see Applications for leave to remain: validation, variation and withdrawal).

## Applications for the 5-year partner route that require the minimum income threshold to be met

There is no fee waiver available for applicants for leave to remain under the 5-year partner route whose sponsor is not in receipt of one or more of the benefits specified at paragraph E-LTRP.3.3. of [Appendix FM](#) to the Immigration Rules. Such an applicant must meet the minimum income threshold and so they are not eligible for a fee waiver.

## Applications for indefinite leave to remain (ILR)

Applications for ILR are not covered by the fee waiver policy. ILR applications need to be accompanied by the correct fee in order to be considered.

The fee waiver policy makes provision for those applicants who would otherwise be unable to establish their right to remain in the UK on the basis of the European Convention on Human Rights (ECHR) Article 8 or other ECHR rights through grants of limited leave allow applicants to exercise their ECHR rights. Applicants who establish an ECHR right to remain in the UK may continue to apply for and be granted successive periods of limited leave to remain, qualifying for a fee waiver in respect of each application if they meet the terms of this policy.

However, applicants who make an application for limited leave to remain may request a longer period of limited leave than would normally be granted, or ILR, and where full reasons are provided for why this is appropriate in their case, this will be considered. Guidance on when a longer period of limited leave, or ILR, might be appropriate is available in the Immigration Directorate Instruction Family Migration: Appendix FM Section 1.0b Family life (as a partner or parent) and private life: 10-year routes.

There is also further guidance in the Asylum Policy Instruction on Discretionary leave (DL).

Applicants granted DL on the basis of being a victim of trafficking or slavery are not on a route to ILR.

## Other ECHR rights

Applications for leave to remain based on **ECHR Article 3**, whether as part of a claim for protection or on the basis of a medical condition, are non-charged applications so the fee waiver policy does not apply.

Applications for leave to remain based on **other (non-Article 3) ECHR rights** will be subject to the fee waiver policy where failure to waive the fee before considering the application would be a breach of the ECHR because the applicant would be unable to establish their right to remain in the UK. Where an application makes reference to a number of ECHR rights including Article 3, the application will be non-chargeable only where the article 3 claim is a genuine basis for claim. This does not mean the Article 3 claim must be one that will succeed but it must have a realistic prospect of success (see Human rights claims on medical grounds).

**Applicants will not be granted a fee waiver on the basis of ECHR rights unless the underlying human rights claim on which they rely constitutes a substantive basis of their application.** This will not be the case where, for example, an ECHR Article is mentioned in passing as part of an application which is primarily made on another basis. The courts have made plain that the 'strength and force' of the underlying human rights claim is relevant when deciding whether a fee waiver might be appropriate. So, for example, if an application is made for leave principally on the basis of UK ancestry, and the applicant mentions Articles 12 (right to marry) and 14 (non-discrimination) in passing as part of that application, they will not qualify for a fee waiver. The relevant fee must be paid in order for the UK ancestry application to be accepted as a valid application.

A claim by an individual that removal would breach their human rights must be particularised in order to be accepted as a human rights claim. A basic statement made by an applicant that removal, or a refusal to grant them leave, would breach their human rights does not constitute a human rights claim. Caseworkers must assess whether or not a human rights claim has been made on a case-by-case basis.

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# Criteria for qualifying for a fee waiver

Fee waivers are only available under certain specified routes which are those [set out above](#). In order to receive a fee waiver, an applicant (including a dependant who is seeking a fee waiver) must qualify on the basis of one of the three definitions below.

## The applicant has demonstrated, by way of evidence, that they are destitute

The definition of destitution is: they do not have **adequate accommodation or any means of obtaining** it (whether or not their other essential living needs are met) they have adequate accommodation or the means of obtaining it but **cannot meet their other essential living needs**.

## The applicant has demonstrated, by way of evidence, that they would be rendered destitute by payment of the fee

This could be because whilst they have adequate accommodation and can meet their other essential living needs, it is clear from the evidence submitted that payment of the fee would leave the applicant with insufficient funds to pay for accommodation and essential living needs.

This will require consideration of income after essential living needs have been provided for. Essential living needs are housing, utilities, and other essential items. A comprehensive description of essential living needs and the costs associated with them is contained in the annual review of cash allowances paid to asylum seekers. This review of essential living needs and the cash required as a weekly allowance or income to meet those needs is based on an established and widely accepted approach developed in 2014 using data compiled by the Office of National Statistics.

The general approach is to identify all needs that are essential and which are not covered by other arrangements and assess the amount of money the average person needs to meet each of those needs. After accommodation and utilities have been taken into account, these needs include food, clothing, toiletries, non-prescription medication and household cleaning items. Provision is also made to cover the costs of travel and communication to enable the supported persons to maintain interpersonal relationships and access a reasonable level of social, cultural and religious life.

A broad breakdown of these essential living needs and the weekly cost associated with them, and which should be used as a guide, is to be found in Table 2 on page 7 of the [2017 review report](#) (which was published in January 2018).

These essential living needs and costs are a guide, and requests stating that without a fee waiver the claimant and dependants would be rendered destitute, needs to be assessed on the basis of all the information provided by the claimant and any exceptional circumstances that are raised.

**In these cases, there is also a need to consider whether, if receiving accommodation and essential living needs support from family or friends, they are able to borrow** the required amount for their immigration application also (but only if receiving accommodation this way).

**Additionally, in these cases there is a need to consider whether the applicant's financial circumstances are likely to change** – for instance, for those with the relevant leave, because of an offer of employment - within a reasonable period (and it would be reasonable in all the circumstances to expect the applicant to delay their application for this length of time).

**Where the applicant provided evidence that, although none of the destitution criteria apply, there are exceptional circumstances in their case that justify the grant of a fee waiver**

See [Assessing whether there are exceptional circumstances](#)

While the definition of destitution is the same between qualifying for asylum support and qualifying for a fee waiver policy, each is assessed separately, is subject to different guidance for caseworkers, and provision of one does not automatically lead to the other.

The decision considers what can be afforded at the time of the request, but must reflect all the financial circumstances based on the information sought and provided

The decision whether or not to grant a fee waiver will rely on two sets of considerations.

The first consideration is whether the applicant can afford the amount required at the time of application. If the applicant cannot, then the second consideration is whether requiring the amount would mean the applicant living in such a way as to lead to destitution.

**There is no requirement that an applicant should live in such a way as to be at risk of destitution.**

If, after considering the information sought and provided, it is clear to the decision maker that the required amount for the immigration application cannot be met other than by the applicant making changes to accommodation and essential living needs that would lead to destitution, then a fee waiver may be granted.

The fee waiver request may be refused if the applicant has not provided sufficient evidence of income, outgoings, and overall financial circumstances.

It can also be refused if it is reasonable to conclude that the applicant has intentionally disposed of funds, for instance, by voluntarily giving or loaning funds to a third party.

It can also be refused if the applicant has been purchasing items that are well outside of what is defined as essential living needs or has been spending extravagantly and thereby not demonstrating they are endeavouring to ensure that they have sufficient cash in hand to pay a fee approved by Parliament.

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# Assessing and taking individual circumstances into account

**The fee waiver request must be assessed on the basis of the information provided by the applicant in the relevant form and by the accompanying documentary evidence.**

The assessment itself is against the circumstance of destitution, or its likelihood if required to pay the fee, as set out in the qualifying section above. If the applicant does not complete every section of the relevant application form, their application for a fee waiver should not be rejected on that basis alone. In every case where an applicant makes an application for a fee waiver, the caseworker should assess the information provided to see whether what has been provided is sufficient for the decision to be made. See [Income and Assets](#) section for what it is reasonable to have to provide.

**It is the responsibility of the applicant to fully evidence their claimed financial circumstances, or to provide a credible explanation of why such evidence is not available.** Caseworkers should not normally need to make additional enquiries to try to establish whether an applicant qualifies for a fee waiver. The applicant may be requested to provide a missing document (or part of one) to which the fee waiver application refers where the caseworker anticipates that its provision will lead to a grant of a fee waiver. Caseworkers should otherwise base the decision on a fee waiver on the information and evidence provided and any verification checks. If insufficient information is provided the request may be refused at that point.

**The applicant will need to establish any physical or mental disability (or that of a dependent family member) by means of independent documentary evidence, such as a letter from a hospital consultant.** If the applicant (or a dependent family member) has a physical or mental disability, this does not itself determine the outcome of the application, other than insofar as it affects the applicant's financial circumstances and ability to pay the fee. Where the caseworker believes that the issue of disability may be material to the decision on the fee waiver request and there is insufficient information in this respect on which to base their decision, they may invite the applicant to submit further information or evidence.

If there is evidence that the applicant has special needs and may need additional assistance to present their request for a fee waiver clearly, the caseworker can signpost them to other agencies who may be able to assist, such as [Citizens Advice](#).

**Any individual circumstances raised should be considered.** These may relate to age, disability, pregnancy and maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex or sexual orientation of the applicant, gender reassignment, or the same issues relating to any dependent family member. Individual circumstances can also include caring or childcare responsibilities.



The significance of considering such individual circumstances is that they have the potential to impact on the applicant's resources and therefore the consideration of whether the applicant is destitute or would be rendered destitute by payment of the fee, or whether there are exceptional circumstances relating to their financial circumstances and ability to pay the fee such that the fee waiver should be granted.

## Assessing fee waiver for dependants in the same household

**Where a dependant or dependants are requesting a fee waiver in their own right, but still living with their parents or other family members, then the assessment of whether or not they qualify for a fee waiver should be based on the financial circumstances of the household.**

This includes those of the main applicant, their partner, and any other adult with whom the main applicant lives and from whom they receive financial support, along with the financial circumstances of all the dependants, including themselves.

## Timeframe for assessing the request

No service standards apply to the assessment of whether the applicant qualifies for a fee waiver, but **caseworkers must make reasonable efforts to decide such requests promptly**, especially those involving a child or an applicant who is street homeless, disabled or otherwise in **vulnerable circumstances**. Where the applicant qualifies for a fee waiver and their application is passed to a caseworking team for substantive consideration, normal service standards will apply to the consideration of the application.

## Considering documentary evidence

The assessment of whether the applicant qualifies for a fee waiver will be made on the basis of their own individual circumstances and those of any dependent family members. **The onus is on the applicant to demonstrate that they qualify for a fee waiver.** The applicant must provide relevant documentation to evidence their fee waiver application, including detailed evidence as to their financial circumstances.

For example, caseworkers should normally expect to see information and evidence relating to the applicant's income, their accommodation, the type and adequacy of this, and the amount of their rent/ mortgage or of their contribution towards this, and their outgoings in terms of spending on things like food, utility bills. This information should be supported by independent evidence, such as their pay slips, bank statements, tenancy agreement, utility bills. The nature of the evidence provided will vary depending on the individual circumstances of the applicant, but the caseworker should expect to see evidence appropriate to the circumstances that are being claimed.

If the applicant is being supported by family or friends, a local authority or a registered charity, the caseworker should expect to see corroborating documentary

evidence confirming provision of support and detailing the nature and amount of the support provided. In all cases evidence must be up-to-date. Documents dating back more than a few months will be useful in establishing how the person's finances have changed over time but should be given reduced weight in establishing whether the applicant meets the fee waiver policy at the point the decision is made.

Where the applicant states that relevant documentary evidence cannot be provided, for example where an applicant is street homeless, the caseworker will need to be satisfied that the person's circumstances are as they claim, by making an assessment of their credibility. The applicant should be able to provide information as to how their financial position has changed over time, and may still be able to provide some evidence, depending on the nature of their circumstances, such as bank statements, or an eviction notice, or written testimonies from people previously or currently providing them with support. If the caseworker believes that the applicant may qualify for a fee waiver in circumstances where all requested documentary evidence has not been provided, the application should be referred to a senior caseworker for decision.

## Applicants in receipt of asylum support

Applicants are granted asylum support under the [Immigration and Asylum Act 1999](#) if they are destitute. However, once they are in receipt of this support, their accommodation and other essential living needs are met and so they are no longer destitute.

Failed asylum seekers may make a human rights claim by means of further submissions in person at the Further Submissions Unit in Liverpool. This does not require payment of a fee.

Alternatively, an applicant in receipt of asylum support may make a non-protection based human rights claim. Such an applicant may request a fee waiver, but will have to demonstrate, by way of evidence that they would be rendered destitute by payment of the fee (which is likely in most cases, as they would be destitute but for the provision of asylum support). Otherwise they will have to demonstrate that there are exceptional circumstances relating to their financial circumstances and ability to pay such that the fee should be waived. They will not be able to rely solely on the fact that they are in receipt of asylum support if there is evidence that they have additional assets or income.

## Applicants in receipt of local authority support

Where an applicant is receiving support from a local authority, for example under [section 17 of the Children Act 1989](#), the local authority will have conducted their own assessment of the applicant's needs before making a decision to grant support and those needs will generally involve or include destitution. **Such a person may apply for a fee waiver**, even though they are not destitute because the local authority is providing for their accommodation and other essential living needs. If it then transpires, by way of evidence (particularly on the basis of evidence from the local authority), that they would be destitute but for the local authority's support they

should be granted a fee waiver, on the basis that they would be rendered destitute by payment of the fee.

The applicant will not be able to rely solely on the fact that they are in receipt of local authority support if there is evidence that they have additional assets or income or that that support is being provided for social care reasons which do not include preventing destitution.

Caseworkers should consider the information and evidence that the applicant has provided in making their assessment of whether the applicant qualifies for a fee waiver. If there is some evidence that local authority support may be being provided, but insufficient detail to make a decision, the caseworker should contact the local authority to request more detail.

## Applicants in receipt of support from a registered charity

Applicants who are being supported by a registered charity will need to provide evidence of their financial position and accommodation arrangements. They should be able to provide documentary evidence from the registered charity explaining the nature and amount of the support being provided and why the applicant is being provided with support.

Caseworkers should consider the information and evidence that the applicant has provided in making their assessment of whether the applicant qualifies for a fee waiver. If there is some evidence that support from a registered charity may be being provided, but insufficient detail to make a decision, the caseworker should contact the charity to request more detail.

## Other factors to be taken in to account

**An applicant claiming to be destitute will need to provide evidence that they are destitute.** In all cases, the onus is on the applicant to provide evidence that they are destitute by providing the information requested in the application form, and any documentary evidence of their financial circumstances.

**In considering whether an applicant qualifies for a fee waiver on the basis of destitution, the caseworker should have in mind that:**

- those who already have limited leave to remain will normally be entitled to work in the UK. There should normally be evidence of working, or seeking employment, or reasons why this is not possible
- where the applicant is applying for leave under the 10-year partner route, their partner will be a British citizen or settled in the UK and will have access to work and to any public funds for which they qualify. It is therefore unlikely that the applicant will be destitute. In these circumstances the applicant should provide an explanation of why their partner's income is insufficient to be able to support them
- where the applicant is applying for the private life route, they will generally have lived in the UK for a significant period. To show that they are currently destitute

the applicant will have to explain how they have previously supported themselves in the UK and why their previous means of support are no longer available to them

- if a person has been without any formal or obvious means of support (such as income from employment or local authority support) for a prolonged period, it may be reasonable for the caseworker to assume that the person has had, and may continue to have, access to an alternative form of support (for example, income from overseas or from a relative or friend), unless the applicant provides evidence that this is not the case or that their circumstances have changed and that they are now without any means of support
- the applicant will need to provide relevant evidence of their income and expenditure so that their disposable income can be calculated. Caseworkers will need to use their judgement in assessing the applicant's evidence of income and expenditure to determine whether this goes beyond essential living needs and can only be regarded as extravagant in relation to their circumstances and obligations, including fee payments

## Reasonable period for saving from disposable income

An applicant would normally be expected to make their application for leave to remain close to the expiry date of their current basis of lawful stay and could reasonably be expected to save towards that from their disposable income. An assessment may sometimes have to be made as to whether an applicant could have done so but has not.

In such a case, a fee waiver may still be granted so that the applicant can proceed to having a leave to remain application considered, providing the applicant has not behaved with blatant disregard for the public purse in leaving him or herself without the means to meet foreseeable expenditure. If they have, then a fee waiver may be refused, and the applicant advised accordingly.

## Intentional disposal of funds

Caseworkers should also consider whether the applicant has intentionally disposed of funds. This could include circumstances where the applicant or their dependants are:

- providing support or loans to others without any detail as to how these are being applied
- voluntarily giving funds away to a third party
- paying debts before they are required to do so, or paying more in response to a debt than is required
- buying a personal possession that is clearly not essential to their living needs or spending extravagantly

For instance, if an applicant was in possession of sufficient funds for their support when they applied for a visa to come to the UK, but at a subsequent LTR stage presents themselves as destitute, claiming to have used all their funds and to have

not been able to replenish them, then some further account is likely to be needed as to why this has happened.

Similarly, those applicants with significant fluctuations in income should be expected to account for this, and also to provide an account of how payments for regular outgoings are maintained despite these fluctuations.

Applicants who intentionally deprive themselves of capital in order to avoid paying an application fee should normally be refused a fee waiver on the basis that they may be able to recover their funds (see [Assets](#)).

## Assessing whether there are exceptional circumstances

**Although a fee waiver will not normally be granted where evidence of destitution is not provided, or where an applicant cannot show that they would be rendered destitute by paying the fee, there may be exceptional circumstances affecting the applicant's expenditure which mean that a fee waiver should be granted.** Exceptional circumstances at this point relates only to the applicant's financial circumstances and their ability to pay the application fee.

For instance, if the applicant is not destitute and would not be rendered destitute by paying the fee but cannot afford to pay it because, in relation to their income, they incur significant additional expenditure to provide for a child's well-being needs. This does not mean discretionary items, but it does mean substantial items such as travel to special needs facilities, or expenses linked to responding to illness, or long term health conditions or disability. A decision on whether there are exceptional circumstances should be made on a case-by-case basis, taking into account the applicant's individual circumstances and those of any dependent family member and all the information and evidence the applicant provides in support of their fee waiver request.

**It is for the applicant to provide evidence that there is something exceptional about their financial circumstances and ability to pay that warrant granting the fee waiver request,** even though they are not destitute or likely to be rendered destitute by payment. If it is obvious that the applicant is dealing with exceptional financial circumstances along the lines described, but insufficient detail has been provided, the decision maker should ask for detailed verification. If the decision maker considers a fee waiver may be appropriate on the basis of exceptional circumstances, the application should be referred to a senior caseworker for a decision.

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# Assessing income and assets

## **The fee waiver request form asks for details of household income and assets.**

This therefore includes income and assets belonging to the applicant's spouse or partner, (as well as any other adult with whom the applicant lives and from whom they receive financial support) and to their children and any other dependants. This is because a certain amount of sharing of resources or benefitting from others' resources can be expected where several individuals combine to form one household.

The fee waiver request form **only requires provision of financial information relating to parents where the applicant is living with parents and receiving support from them.** These situations will need to be considered sensitively, and on their merits, bearing in mind that someone may be receiving board and lodging from parents (and therefore not technically destitute) but still be unable to pay the fee. Still others will be living with and receiving support from parents and families whose circumstances are such that provision of further support to pay the fee will be reasonable.

The following must be taken into account:

- income:
  - from employment or self-employment
  - from non-employment sources
  - of the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support) or parents from employment or other sources
  - from welfare benefits or tax credits received by the applicant or their spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support) or parents
  - from other family or friends
- assets:
  - cash
  - money held in bank and building society accounts (including non-UK based accounts), including accounts belonging to the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support), parents or children
  - investments, including any investments belonging to the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support), parents or children
  - land or property
  - goods held for the purpose of a trade or other business

The following items need not be declared but it is expected that expenditure on them will be reflected in the financial statements provided:

- cars or other vehicles



- other personal possessions, such as mobile phones, computers

## Employment and self-employment income

Applicants must provide full details of any employment, including how much and how often they are paid. They should include evidence such as pay slips, tax returns, details of their own business if they are self-employed.

## Illegal working

If a person discloses in their fee waiver application that they are, or have been, receiving income through working, but they do not have permission to work, their earnings and any cash or savings derived from this work will still be an asset when assessing eligibility for a fee waiver. The applicant should be informed that they may be committing a criminal offence and should stop working immediately.

## Welfare benefits and tax credits

If an applicant (for example on account of their previous National Insurance contributions) or their spouse or partner (or any other adult with whom the applicant lives and from whom they receive financial support) or parents is in receipt of welfare benefits, child benefit or tax credits, this support should be taken into consideration as income when assessing eligibility for a fee waiver.

## Support from family or friends

Support provided to the applicant or a dependent family member by family or friends must be considered in assessing their income and outgoings. Such support could be financial or in terms of providing accommodation or meeting other essential living needs, such as providing food or paying bills.

If this support is of a limited duration or is about to end, the applicant must provide a full explanation of why this is so, along with relevant documentary evidence. An example of the sort of documentary evidence which could be provided might include a signed statement from the person who has been providing them with support or accommodation explaining why they are no longer able to do so.

Documentary evidence of that person's financial situation showing the support provided, such as regular payments to the applicant's bank account, and demonstrating that the person's financial circumstances have changed such that they cannot continue to support or accommodate the applicant should also be provided.

## Assessing joint income and assets with a spouse or partner or child and parent

Where an applicant has a spouse or partner, their joint income and assets should be taken into account. Where the applicant is a child, the joint income of the applicant and their parents should be taken into account.

### Assets

#### **Assets can be in the UK or overseas.**

If an applicant or a dependent family member has assets, particularly recently acquired assets, this may indicate the [intentional disposal of funds](#). Applicants in this position may be able to raise funds by selling the asset. Caseworkers will need to consider on a case-by-case basis whether it is reasonable, on the basis that an asset has been recently acquired or is not being used, or of any other value to the applicant, for it to be an item that counts against the grant of a fee waiver.

The value of an asset must be the value that applies at the time the decision is taken on the application for a fee waiver. If the asset has been valued in another currency, the caseworker should use the website: [Oanda](#) to convert the currency to pounds sterling using the current exchange rate.

If an asset can be sold to release funds, the 'current market value' is the price a willing buyer would pay for that asset.

The value of an asset may be reduced as a result of the expense incurred in selling it, such as a fee payable in respect of the sale of shares. However, expenses of sale will vary and should be assessed on a case-by-case basis.

The value of an asset may be reduced because a third party has a right to the released funds, either in their entirety or in part, for example where a mortgaged property is sold. The caseworker should reduce the current market or surrender value of the asset accordingly.

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# Granting the fee waiver request

**Decision makers are now required to take into account the whole of the amount to be paid by an applicant when a fee waiver request is made. The whole of the amount means the immigration application fee, and the Immigration Health Surcharge combined.**

Where an applicant can pay the whole of the immigration fee but none, or only part of the Immigration Health Surcharge, the immigration fee will be required, and the exemption will be applied to the Immigration Health Surcharge. If the applicant is unable to pay the fee or the IHS both are to be waived.

If an applicant is granted a fee waiver they will be issued with a Unique Reference Number to be used when applying for LTR online. This application must be submitted within 10 working days of the date of the decision and they must then make an SSC appointment within 17 working days. Failure to do this could result in the URN no longer being valid and a new fee waiver application may be required.

The applicant will now need to carry out the following: apply for LTR within 10 days of the fee waiver decision and make a Service and Support Centre (SSC) appointment within 29 days.

## Travel assistance

Applicants who have been granted a fee waiver and who fit any of the following criteria may be eligible to apply for travel assistance to attend their closest SSC:

- in receipt of asylum support or Local Authority support
- Domestic Violence customers
- a responsible adult attending an appointment with a child in social care
- anyone where paying for travel would render them destitute
- where travel is over 3 miles

This is because the number of SSCs is low in relation to the centres of population that are covered and compared with the number of locations available for similar services. Applicants may be requested to provide evidence of their inability to pay for their own and their dependants travel to and from the SSC.

**The travel cost request must be assessed on the basis of the information provided by the applicant.** The assessment itself is against the circumstance of destitution, or its likelihood if required to pay the travel costs, as set out in the qualifying section above. In every case where an applicant makes a request for travel assistance, the caseworker should assess the information provided to see whether they qualify.

Payment of reasonable travel costs should only be made where the individual is on low or zero income and has no significant savings. In other words, it should only go to those genuinely in need. The distance to be travelled should be greater than that

which might normally be involved in travelling to a health appointment, or similar appointment. Accurate record keeping of the amounts paid out is essential and should be regularly assessed to ensure it remains within current spending authorities.

**It is the responsibility of the applicant to fully evidence their claimed financial circumstances.** Caseworkers should not normally make additional enquiries to try to establish whether an applicant qualifies for travel cost.

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# Refusing the fee waiver request

If the caseworker is not satisfied the applicant qualifies for a fee waiver then:

- if the applicant made their **request for a fee waiver in time** (for example they had valid leave on the date their application was submitted), they should normally be advised that they do not qualify for a fee waiver and that they should submit the additional evidence requested that demonstrates they qualify for a fee waiver. They must, within 10 working days submit additional evidence that demonstrates they qualify for a fee waiver
- if additional evidence is provided within that period that demonstrates the applicant qualifies for a fee waiver the applicant is issued with a fee waiver token that enables them to apply for a free immigration application. The applicant has 10 working days to make an LTR application to retain 3C leave
- if the applicant provides further evidence within 10 working days but this does not demonstrate that they qualify for a fee waiver, the application should be rejected as invalid. If no further evidence is provided within 10 working days, the application should be rejected as invalid. The applicant has 10 working days to make a paid LTR application to retain 3C leave. If a paid application is not made within 10 working days, the applicants 3C leave will expire
- if the applicant had **no valid leave at the date of application**, they should normally be advised that they do not qualify for a fee waiver. In order to have their immigration application considered, the applicant would need to apply with the specified fee or make a new application for a fee waiver

## Part payment rejections

A fee waiver request will be decided in relation to the whole of the fee for the individual making the request. Thus, it is possible within a family application for some individual requests to be granted and others not. But it is not possible in respect of any one individual applicant for part of the fee to be waived.

## Requests for reconsideration

**A fee waiver decision is not subject to a reconsideration request as it is not an immigration decision.** A decision will be made on the basis of the information set out in their application and any supplementary information about their circumstances which they provide in support of their application. It is open for an applicant to make a further request for a fee waiver.

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