



# A re-inspection of the Home Office's application of the good character requirement in the case of young persons who apply for registration as British citizens

August 2018 - January 2019

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Borders and Immigration



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# Contents

Foreword	2
1. Purpose and Scope	3
2. Methodology	4
3. Summary of conclusions	5
4. Recommendations	8
5. Background	9
6. Progress against original recommendations	13
7. Stakeholder concerns	17
8. Review of Home Office performance	20
9. Wrongful refusal of British passport renewal applications from children of nationals from the 'A8 countries'	27
Annex A – Role and remit of the Independent Chief Inspector	28
Annex B – ICIBI's Expectations	30
Acknowledgements	32

# Foreword

My original inspection report looking at the Home Office's application of the good character requirement in the case of young persons who apply for registration as British citizens was published in July 2017. It made two recommendations, both of which related to published guidance. Both were accepted by the Home Office, who committed to publishing updated guidance by the end of December 2017.

This re-inspection began in August 2018, at which time the good character guidance had not been updated. New 'Nationality: good character requirement' guidance was finally published on 14 January 2019.

This report provides a chronology of the Home Office's progress towards implementing the original recommendations, together with its explanations for the delays, and an initial read-out on the new guidance. Since the latter appears, in large part, simply to restate the previous policy, albeit with more explicit references to its application to children and young persons, it is hard to see why it should have taken the Home Office so much longer than it had originally thought to publish it.

Moreover, the new guidance fails to address the question of caseworker discretion as I recommended, except in the most general terms, although the process change in September 2018 that requires decisions to refuse on good character grounds to be authorised by a 'senior caseworker' should go some way towards this.

As well as the guidance, this re-inspection also looked at its application and the report examines the 28 cases between 13 July 2017 and 30 August 2018 where a child applicant was refused on good character grounds. In each instance, the applicant's criminal history was the basis for the refusal and, according to Home Office records, in the majority of these the offence was one that most people would regard as serious, although most resulted in a caution rather than a criminal conviction.

However, in general the standard of the record keeping was not commensurate with either the complexity of the cases or the significance of these decisions, and it was telling that the Home Office was unable without carrying out a case by case review to provide examples of applications made since 13 July 2017 where considerations of the child's 'best interests' had outweighed the good character considerations set out in the guidance and resulted in the application being granted.

This re-inspection report makes two new recommendations, one relating to the close monitoring of the effects of the new guidance, and the other relating to better record keeping of all of the factors that have been considered in reaching a decision.

The report was sent to the Home Secretary on 31 January 2019.

**D J Bolt**

**Independent Chief Inspector of Borders and Immigration**



# 1. Purpose and Scope

- 1.1 'A short inspection of the Home Office's application of the good character requirement in the case of young persons who apply for registration as British citizens' was published on 13 July 2017. The inspection focused on whether the guidance available to Home Office caseworkers and applicants was appropriate and on how it was being interpreted and applied.
- 1.2 The inspection made two recommendations. Both were accepted "in full" and the Home Office undertook to publish updated guidance "by the end of December [2017]".
- 1.3 This re-inspection examined:
  - the progress made towards the implementation of each recommendation
  - the impact on applicants of the delayed implementation
  - Home Office internal and external communications regarding the registration process
- 1.4 This re-inspection also looked at the quality of Refusal Notices, about which stakeholders had expressed concerns, and examined decision making and record keeping in the case of refused applications.
- 1.5 The original inspection was not resourced to look at the costs of applying to register an entitlement. However, in parallel with this re-inspection, ICIBI examined the policies and practices of the Home Office Borders, Immigration and Citizenship System (BICS) relating to charging for services and fee setting. The inspection report, which was sent to the Home Secretary on 24 January 2019, includes an examination of the fees for registration as a British citizen, set in the context of other immigration and nationality fees and the overall BICS approach to charging.
- 1.6 In August 2018, as this re-inspection was being scoped, there were media reports about the Home Office having wrongly refused applications to renew their British passports from children of nationals from the 'A8 countries'.<sup>1</sup> The Home Office was reported to have set up a "support function" to support those affected, where appropriate, to register as a British citizen, with the Home Office covering the £1,012 fee. The re-inspection therefore included this in its scope.

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<sup>1</sup> This refers to countries that joined the European Union in 2008: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia.

## 2. Methodology

- 2.1 In August 2018, ICIBI formally notified the Home Office of the re-inspection and requested:
- an account of the actions taken to implement the two recommendations, with an explanation of why guidance had yet to be updated and the timescale for completing any outstanding actions and publishing revised guidance
  - a list of all applications from children and young persons to register as a British Citizen received between 13 July 2017 and 30 August 2018, including the date decided (if applicable) and outcome, plus the reason(s) for refusal in the case of refused applications – inspectors subsequently examined Home Office records for those applications refused on ‘good character’ grounds
- 2.2 Inspectors also asked the Home Office:
- what record it had kept of applications where the recommended changes would have affected the decision, and what assessment it had made of the impact of the delayed implementation, including any proposals to reassess applications and provide remedies for those affected
  - what actions UK Visas and Immigration had taken to encourage children or young persons it understood were entitled to apply for registration to do so before they reached 18, and how its approach complied with the Home Office’s statutory responsibilities in relation to safeguarding and to making the ‘best interests’ of the child a primary consideration
  - in relation to children of nationals of the A8 countries whose UK child passport renewal was refused, what work had been done to assess the scope of the problem, communicate with those affected, and resolve the issue
- 2.3 On 13 September 2018, a call for evidence was posted on the ICIBI website<sup>2</sup> inviting submissions from applicants, guardians, representatives and others with relevant knowledge, expertise or first-hand experience of the Home Office’s application of the ‘good character’ requirement in the case of children and young persons.
- 2.4 During September 2018, inspectors interviewed stakeholders from the Project for the Registration of Children as British Citizens (PRCBC), Amnesty International (UK), and the Immigration Law Practitioners’ Association (ILPA), and held focus groups with relevant Home Office caseworkers, decision makers and senior managers in November 2018.

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<sup>2</sup> <https://www.gov.uk/government/news/call-for-evidence-a-re-inspection-of-the-home-offices-application-of-the-good-character-requirement>  
The call for evidence closed on 4 October 2018.

## 3. Summary of conclusions

- 3.1 In July 2017, the Home Office accepted the two recommendations contained in the report: ‘A short inspection of the Home Office’s application of the good character requirement in the case of young persons who apply for registration as British citizens’. In its written response to both recommendations it stated: “Updated guidance will be published by the end of December [2017].”
- 3.2 On 14 July 2017, the Home Office published version 1.0 of new guidance entitled ‘Registration as British citizen: children’, sub-titled ‘(Formerly Chapters 8, 9 and 10)’.<sup>3</sup> This new guidance was set out much more clearly than the chapters it replaced, making it easier to navigate, and with more clarifications. In addition, it included guidance on section 55<sup>4</sup> and ‘best interests’ considerations, and on “compelling circumstances ... where the normal expectations for registration are not met but there are exceptional circumstances which mean that it is appropriate to register a child.”
- 3.3 The new guidance referred to the requirement that applicants must be of good character, but the hyperlinks took the caseworker to the 2015 good character guidance that was the subject of the original inspection, and which had not been amended. This was still the case in version 4.0 of the new guidance, published on 12 November 2018.
- 3.4 In November 2018, the Home Office told the re-inspection team that: “Guidance on Good Character has been reviewed and updated. The review proved to be complex. The revised policy and guidance is awaiting sign-off.” It explained that it had undertaken a wider review of the good character policy as a whole, not just in relation to children, and this had involved consultation across the department. It also stated that revised policy proposals had had to be scrutinised in light of the Windrush scandal and further amended to comply with a court ruling.
- 3.5 Since summer 2018, the proposed policy had been subject to a number of revisions at the request of ministers. Inspectors were told “we are now close to publication. The revised policy guidance should be published by the end of the year.” This was not achieved. However, new guidance was published on 14 January 2019.
- 3.6 According to Home Office records,<sup>5</sup> between 13 July 2017 and 30 August 2018, it received 20,068 applications from 10 to 17-year olds to register their entitlement to British citizenship. Of these, 28 were refused on good character grounds, all of them on the basis of the applicant’s criminal history. Of the 28 applicants, 16 had received a caution, nine had received a criminal conviction, and three had received a caution and a criminal conviction.

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3 This referred to Nationality Directorate Staff Instructions (now archived): Chapter 8: Registration by entitlement of persons born in the United Kingdom on or after 1 January 1983. Chapter 9: Registration of minors at discretion. Chapter 10: Reg by entitlement of minors born outside the UK/the qualifying territories to British citizens by descent.

4 Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary to make arrangements for ensuring that the functions in relation to immigration, asylum, nationality and customs “are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom <https://www.legislation.gov.uk/ukpga/2009/11/section/55>

5 This refers to records held on the Case Information Database (CID), the Home Office’s in-country caseworking and operational database. It is used throughout the Home Office to record details of individuals encountered in the UK by the immigration and nationality system.

- 3.7 An examination of the “Magic Minute”<sup>6</sup> for each of the 28 applicants found that, under “Vulnerable Persons”, 19 were annotated “no concerns identified”, five had free text notes of concerns and recommended a referral,<sup>7</sup> three noted concerns about the “lead” applicant (one of the parents), and one stated “Please refer to Person Notes”.<sup>8</sup>
- 3.8 Only one of the 28 CID case records contained any reference to section 55, while one other referred to the child’s best interests. Similarly, only one of the 28 Refusal Notices referenced section 55. In none of these instances was there any indication from the record of the particular factors that had been considered in relation to safeguarding and best interests. The Nationality Casework unit was meanwhile unable to identify to inspectors any examples of applications where considerations of the child’s best interests had outweighed the good character considerations set out in the guidance and had resulted in the application being granted.
- 3.9 Poor and inconsistent record keeping extended to the way that authorisation of the refusal was recorded in the 28 cases. This included two cases where name of the person who had authorised the refusal was not recorded anywhere on the case record. Given the significance to the applicant of a refusal, and the relatively small number of cases, it is reasonable to expect much greater care and attention, as well as some overall understanding of where best interests and good character considerations have been in the balance.
- 3.10 Following formal notification by the inspectorate of the planned re-inspection, the Home Office made some changes to its processes.
- 3.11 On 19 September 2018, Nationality Casework issued a ‘Process Instruction Notice’ (PIN16 2018) instructing all caseworkers that with immediate effect any decision to refuse a registration application on good character grounds would need to be authorised by a Senior Executive Officer (SEO) Technical Specialist (formerly known as a Deputy Chief Caseworker). On 16 October 2018, UKVI issued an instruction to staff to make reference to section 55 considerations in Refusal Notices, and on 7 November 2018 it produced an updated “Magic Minute” sheet which explicitly required section 55 considerations to be recorded.
- 3.12 As these changes post-dated the period from which the case records examined for this re-inspection were drawn, inspectors were unable to assess what impact they have had. The involvement of an SEO Technical Specialist in the authorisation of refusals should bring both greater consistency and ability to apply discretion. However, the changes to Refusal Notices and the “Magic Minute” appeared to focus on form rather than substance, and no new training was provided to caseworkers regarding what factors they should be considering in respect of section 55 and best interests and how these should be weighed against any good character considerations.
- 3.13 Unsurprisingly, since there had been no obvious movement on the part of the Home Office, key stakeholders expressed the same concerns they had at the time of the original inspection: broadly, the “exorbitant” and “prohibitively high” fee charged by the Home Office for making an application, the non-availability of legal aid for challenges to refusals, and the lack of detail in Refusal Notices. The re-inspection confirmed the last of these, while the first is addressed separately in ICIBI’s parallel inspection of the policies and practices of the Home Office Borders, Immigration and Citizenship System (BICS) relating to charging and fees.

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6 An aide memoire and summary of the application details including fees, personal circumstances and precis of associated evidence populated and generated from an Excel spreadsheet template.

7 This would typically be a referral to Social Services.

8 “Person Notes” is a screen on the Case Information Database (CID) system.

- 3.14 Legal aid falls outside the ICIBI's remit. But, it is reasonable to expect that the Home Office's policies are easy to understand and use, that its processes are simple to follow and transparent, and that its decisions and actions are 'right first time', and therefore that applicants do not have to rely on legal representatives to navigate the system or argue their case. As well as publishing the revised policy and guidance in relation to good character, the Home Office should therefore look to ensure it is able to demonstrate that applications are being dealt with consistently and fairly.
- 3.15 Additional considerations apply in the case of children, and the involvement of an adult who is competent to safeguard the child's best interests is desirable, if not essential. Whether this needs to be a legal representative will depend on the applicant's particular circumstances and what stage they are at in the process, but if required this is likely to be beyond the private means of most children applying to register for British citizenship, particularly on top of the registration fee, and while not responsible for legal aid the Home Office should be sensitive to this when reflecting on the fitness of its policy, guidance and practice.

## 4. Recommendations

### **The Home Office should:**

- 4.1 Monitor closely (pending a further inspection in 2019-20) how the 'Nationality: good character requirement' (Version 1) issued on 14 January 2019 has been received, understood and applied by decision makers and what practical effect it has on good character considerations in the case of young persons.
- 4.2 Ensure that its records in the case of child applicants refused registration on 'good character' grounds contain a full and accurate account of the considerations that have been given to the Home Secretary's Section 55 obligations and that the child's 'best interests' have been thoroughly explored, including the child's "voice", and are clearly articulated along with any 'compelling circumstances', and ensure that the Refusal Notice contains all of these details.

# 5. Background

## The ‘good character’ requirement

- 5.1 As noted in the original inspection, the British Nationality Act 1981 (‘the Act’) states that an application for registration (or naturalisation in the case of applicants over the age of 18) as a British citizen “must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.”
- 5.2 The Act defines an “adult or young person” as “a person who has attained the age of 10 years at the time when the application is made”. This aligns with the age of criminal responsibility in England, Wales and Northern Ireland.

## Home Office guidance

### Guidance published prior to 14 January 2019

- 5.3 The Act does not define “good character” and provides no statutory guidance regarding how this should be interpreted or applied. However, Home Office guidance<sup>9</sup> states: “To be of good character a person should show respect for the rights and freedoms of the United Kingdom, observe its laws and fulfil their rights and duties as a resident of the United Kingdom.”
- 5.4 Further guidance<sup>10</sup> available on GOV.UK provides more detail about what decision makers should consider when determining whether a person is “of good character”:

“The decision maker will not normally consider a person to be of good character if there is information to suggest (any of the following):

- a. They have not respected and/or are not prepared to abide by the law. For example, they have been convicted of a crime or there are reasonable grounds to suspect (i.e. it is more likely than not) they have been involved in crime.
- b. They have been involved in or associated with war crimes, crimes against humanity or genocide, terrorism or other actions that are considered not to be conducive to the public good.
- c. Their financial affairs were not in appropriate order. For example, they have failed to pay taxes for which they were liable.
- d. Their activities were notorious and cast serious doubt on their standing in the local community.
- e. They had been deliberately dishonest or deceptive in their dealings with the UK Government.

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<sup>9</sup> ‘GUIDE MN1 Registration as a British citizen – A guide about the registration of children under 18’, dated January 2017.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583385/MN1\\_Guide\\_January\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583385/MN1_Guide_January_2017.pdf)

<sup>10</sup> <https://www.gov.uk/government/publications/good-character-nationality-policy-guidance>

- f. They have assisted in the evasion of immigration control.
- g. They have previously been deprived of citizenship.

This is a non-exhaustive list.

If the person does not clearly fall into one of the categories outlined above but there are doubts about their character, the decision maker may still refuse the application. They may also request an interview in order to make an overall assessment.”

5.5 From this list of categories, the original inspection noted that the two areas likely to be of most relevance to applications for registration from young persons were criminal convictions and immigration-related issues (a. and f.).

5.6 The Home Office guidance contains the following advice:

“If the child has a conviction within the relevant sentence based threshold they are unlikely to be registered and the fee would not be refunded. Similarly if the child has been charged with a criminal offence and are awaiting trial or sentencing, you are advised not to make any application for the child’s registration until the outcome is known. If the child is convicted, you should then consult the table below.”

Sentence	Impact
4 years’ or more imprisonment	Application will normally be refused, regardless of when the conviction occurred.
Between 12 months’ and 4 years’ imprisonment	Application will normally be refused unless 15 years have passed since the end of the sentence.
Up to 12 months’ imprisonment	Application will normally be refused unless 10 years have passed since the end of the sentence.
A non-custodial offence or other out of court disposal that is recorded on a person’s criminal record.	Application will normally be refused if the conviction occurred in the last 3 years.

### New guidance - 14 January 2019

5.7 On 14 January 2019, the Home Office published ‘Nationality: good character requirement’ (Version 1) “for Home Office staff”. As the new guidance had only just been published when this report was being finalised it was not possible for inspectors to test how it had been received by decision makers or what practical effect it had had on good character considerations in the case of young persons. The inspectorate will want to revisit this at an appropriate point and has recommended in this report that the Home Office monitors this closely in the interim.

5.8 The new guidance instructs Home Office staff that it “must be used for all new applications for citizenship made on or after 14 January 2019” and that “The guidance applies to applications for registration and naturalisation from those who are aged 10 or over at the time the application is made.”



- 5.9 The new guidance repeats, largely unchanged, the list of categories of information decision makers should consider when determining whether a person is “of good character”, although with new headings: ‘Criminality’, ‘International crimes, terrorism and other non-conductive activity’, ‘Financial soundness’, ‘Notoriety’, ‘Deception and dishonesty’, ‘Immigration-related matters’ and ‘Deprivation’. Each of these has its own expanded section, setting out in more detail what decision makers need to consider.
- 5.10 The short initial summaries for ‘Deception and dishonesty’ and for ‘Immigration-related matters’ have been expanded and are more obviously aligned with ‘compliant environment’ thinking. The former now refers to making “false claims in order to obtain benefits” and the latter reads “If they have breached immigration laws, for example by overstaying, working in breach of conditions or assisting in the evasion of immigration control.”
- 5.11 Under ‘Criminality’, the sentence-based thresholds remain unchanged.
- 5.12 Under ‘Changes from last version of this guidance’ the new guidance lists “New section[s] on application of the good character requirement to minors”. Two sections deal specifically with minors: ‘The best interests of the child’ and ‘Application of the requirement to young persons’.
- 5.13 Under ‘The best interests of the child’ the guidance refers to legal requirements to safeguard and promote the welfare of children in the UK and to make the child’s best interests a primary consideration in nationality decisions affecting them. Decision makers are instructed to “carefully consider all information and evidence [concerning best interests] provided in the application” and demonstrate they have done so in the decision letter.
- 5.14 The section ends:
- “Decision makers must carefully assess the quality of any evidence provided. Original, documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child’s best interests.”
- 5.15 In March 2018, ICIBI published ‘An inspection of how the Home Office considers the ‘best interests’ of unaccompanied asylum-seeking children (August – December 2017)’. The report identified that the Home Office had a considerable amount of work to do to ensure that the child’s best interests were properly considered throughout the asylum process. This included improving the way it communicated with children and their representatives and ensuring that the child is given a “voice” throughout.
- 5.16 The latter point applies equally to nationality registration, and the Home Office should look to clarify for decision makers whether it intends “unsubstantiated assertions” to extend to a child’s expressed wishes and, if so, how it ensures that the child’s “voice” is heard.
- 5.17 Under ‘Application of the requirement to young persons’, the new guidance instructs decision makers that they “must take account of any mitigation relevant to the child’s particular circumstances”. It continues:
- “Where a child has been convicted of a criminal offence, sentencing guidelines require that any custodial or non-custodial sentence is adjusted to take into account the child’s age and particular circumstances and any mitigating factors such as their ability to understand the consequences of their actions. Therefore although the criminal sentence thresholds for refusal and non-custodial sentencing guidelines for adults will normally apply to a child

who has been convicted of a criminal offence, the lesser sentence handed down to them will mean they are automatically less likely to meet the higher thresholds.”

- 5.18 Decision makers “may exercise discretion where a child’s criminality would result in a lifetime refusal of any citizenship application” and weigh “the amount of time passed since the crime ... against any evidence of rehabilitation.”
- 5.19 In practice, therefore, the guidance in relation to the good character test for young persons convicted of a crime has not changed.
- 5.20 There is a further reference to age in the new guidance, which from the context is intended to apply to adult applications but which could be seen as relevant to how decision makers consider the good character of a young person. This relates to an applicant’s age at the date of a conviction for which a non-custodial sentence was imposed and states: “Isolated youthful indiscretions will not generally indicate a person is of bad character if that individual has clearly been of good character since that time.” However, it appears that the notion of excusable “youthful indiscretions” is trumped by the sentence-based threshold for a non-custodial offence, which will “normally be refused if the conviction occurred in the last 3 years”.
- 5.21 The new guidance refers to ‘Cautions, warning and reprimands’ and explains the introduction in 2013 of ‘Youth cautions’ as “an alternative to prosecution for young offenders (aged 10 to 17) in certain circumstances”. It concludes: “Even where a person does not have a caution, warning or reprimand within the last 3 years, an application may still be refused if the person has received multiple disposals of this kind that show a pattern of offending.”
- 5.22 By inference, a single instance of a police caution should not normally result in a refusal on good character grounds. However, according to Home Office records, there were two examples of this amongst the cases identified as having been refused on these grounds between 13 July 2017 and 30 August 2018, suggesting the need for greater clarity about how decision makers should regard cautions.<sup>11</sup>

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<sup>11</sup> At the factual accuracy stage, the Home Office challenged this point, stating that: “Whilst the good character guidance does allow for discretion over a single non-custodial offence, it goes on to state this is where the offence took place more than 12 months before the application was submitted and there are strong factors which suggest the person is of good character. The new guidance has also added that the following example - the applicant has one single conviction but has lived in the UK all their life or since a very young age and the conviction was many years ago.” It also stated: “We have reviewed the decisions and we are satisfied they were correct and in accordance with the published guidance in place at the time.”

# 6. Progress against original recommendations

## Recommendations and Home Office responses

- 6.1 The original inspection made two recommendations. These are set out below, together with the Home Office responses, which were also published in July 2017.

### **Recommendation 1**

The Home Office should review current guidance in relation to applications for registration as British citizens from young persons (those aged 10 to 17 years) and ensure that it accurately reflects the Home Secretary's policy intention, in particular in not differentiating between young persons and adults when assessing criminal convictions and immigration offences and breaches of controls in relation to the good character requirement.

### **Home Office response – "Accepted"**

The Home Office accepts the Independent Chief Inspector's recommendation. The Home Office is reviewing and updating guidance to ensure it accurately reflects the application of the good character requirement to persons aged 10 to 17 applying for registration as a British citizen. Ministerial agreement will be sought on the approach to be taken including in respect of any differentiation between young persons and adults when assessing the requirement to be of good character. Updated guidance will be published by the end of December.

### **Recommendation 2**

The Home Office should produce guidance about the good character requirement in the case of young persons (those aged 10 to 17 years) applying for registration as British citizens that makes explicit the scope for caseworkers to exercise discretion, and ensures compliance with the Home Office's statutory responsibilities in relation to safeguarding and to making the best interests of the child a primary consideration.

### **Home Office response – "Accepted"**

The Home Office accepts the Independent Chief Inspector's recommendation. The Home Office will update guidance relating to the registration of children to ensure it sets out the circumstances when it is appropriate to exercise discretion in the application of the good character requirement.

We will also at the same time ensure that updated guidance reflects the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children in the UK. Updated guidance will be published by the end of December.

## Progress

### Periodic reports to ICIBI

- 6.2 In November 2017, the Home Office provided ICIBI with a spreadsheet listing recommendations relating to UK Visas and Immigration (UKVI) that remained “Open”. The two recommendations from the 2017 good character report were not included. In April 2018, it provided a further update on all ICIBI recommendations, in which the responsible (Acting) Senior Civil Servant had noted on 30 October 2017 against the two recommendations that:

“OCTOBER 2017: The current guidance has been reviewed and updated to reflect the Home Secs policy intention. Closed” [Recommendation 1]

“OCTOBER 2017: Guidance has been produced. Closed” [Recommendation 2]

- 6.3 A further update was provided in October 2018. The above entries remained unchanged.

### Amendments to published guidance after 13 July 2017

- 6.4 On 14 July 2017, the Home Office “published for Home Office staff” version 1.0 of new guidance entitled ‘Registration as British citizen: children’, and sub-titled ‘(Formerly Chapters 8, 9 and 10)’.
- 6.5 This new guidance was set out much more clearly than the chapters it replaced, making it easier to navigate, and with more clarifications. In addition, it included guidance on section 55 and best interests considerations. Here, it stated that:

“Arguments for why the child requires British citizenship need to be weighed against the wider requirements to ensure a fair, consistent and coherent immigration and citizenship policy. Including the requirements for the vast majority of migrants to complete a qualifying period of limited leave before being eligible for settlement and have to have settlement before applying for citizenship.”

- 6.6 Under ‘Compelling circumstances’, the new guidance stated:

“There may be circumstances where the normal expectations for registration are not met but there are exceptional circumstances which mean that it is appropriate to register a child. You must be satisfied that there are compelling circumstances which mean that registration is in the child’s best interest before you register a child under section 3(1) of the British Nationality Act 1981.

You must therefore consider any representations made as part of an application and consider whether these are sufficient to mean that discretion should be exercised in their favour.”

- 6.7 The new guidance contained 10 references to the requirement to consider good character. The hyperlinks took the reader to the 2015 guidance on good character that was the focus of the original inspection, which was geared to the naturalisation of adults at discretion. The new guidance reinforced the lack of distinction between adult and child applicants under the heading ‘Character’ where it stated:

“In considering applications you must take into account the standards of character required for the grant of citizenship to an adult at the Secretary of State’s discretion.”

- 6.8 Since 14 July 2017, there have been three revisions of the new guidance, the most recent of which (4.0) was “published for Home Office staff” on 12 November 2018. The entries for section 55 and best interests, compelling circumstances, and good character are exactly as set out in version 1.0, with the hyperlinks for the latter still connecting to the 2015 guidance.
- 6.9 The new guidance was first published on GOV.UK on 27 July 2017. Subsequent versions have also been published on GOV.UK. Version 4.0 was published on 12 November 2018. The text is the same as the internal Home Office version, but the hyperlinks to good character guidance have been removed.

### Progress on ‘good character’ guidance

- 6.10 The Home Office was formally notified of the ICIBI’s intention to re-inspect the good character guidance on 30 August 2018. By this date, there had been no public statements by the Home Office to explain why the December 2017 date for updating this guidance had been missed or to set a new date.
- 6.11 UKVI responded to ICIBI’s request for an explanation of the delay in publishing updated guidance by stating:

“Guidance on Good Character has been reviewed and updated. The review proved to be complex. The revised policy and guidance is awaiting sign-off.”

- 6.12 UKVI was unable to say when the revised policy and guidance would be published, but it would be “as soon as it has been authorised”. It explained the sign off process:

“Evaluation of the good character requirement for children has formed part of a wider review of the good character policy as a whole. Our intention has been to provide clearer guidance to caseworkers on a number of factors relevant to the consideration of the requirement, not solely in relation to children. The review also provided an opportunity to ensure that the policy was aligned with other work and priorities across the department and reflected the views of current Ministers. Given the guidance covers a broad range of issues and required input from operational colleagues, the review has taken some time to complete.

The revised policy will be agreed by Ministers. The intention remains to publish revised guidance as soon as possible after Ministers have agreed changes to the policy. SCS<sup>12</sup> clearance will be sought before the guidance is published.”

- 6.13 ICIBI reverted to Migrant Criminality Policy, part of BICS, for further clarification about the nature of the complexities and why the process of reviewing and revising the policy and guidance was taking so long. They responded:

“Review of the good character guidance has been a complex piece of work. Since the recommendations in the previous report were accepted, we have been working to clarify the policy in a number of areas such as immigration offending, association with extremism, and financial debt, as well as its application to children. This has involved consultation in 2017 across the department with operational and financial colleagues as well as other policy areas.

Any guidance which follows major policy changes cannot be published until Ministers have approved those changes. It must also be examined by lawyers to ensure it is legally defensible in court.

Our revised policy proposals were put to Ministers early in 2018, but consideration was affected by Windrush, which generated significant parliamentary and media interest, and caused us to scrutinise the policy even more closely to ensure Windrush cases were not adversely affected by the changes we proposed to make. In the interim, the guidance was updated on 24 April 2018, in order to comply with a court ruling.<sup>13</sup> The Joint Committee for Human Rights also took an interest in the policy as part of their scrutiny of the British Nationality Act (Remedial) Order and raised issues in addition to those presented by Windrush cases, which meant further consideration of adjustments to the policy.

A fresh set of proposals was then put to the new Home Secretary during the summer recess. Since then, we have made a number of revisions at the request of Ministers, and we are now close to publication. The revised policy guidance should be published by the end of the year.”

### Other actions

- 6.14 Inspectors asked the Home Office what record it had kept of applications where the recommended and accepted changes would have affected the decision, and what assessment it had made of the impact of the delayed implementation, including any proposals to reassess applications and provide remedies for those affected.
- 6.15 Responding in September 2018, the Home Office reported that it had reviewed “all cases refused on character grounds” (according to CID records) and that “the review identified that all refusals were proportionate and in line with policy.” However, it planned to carry out a further “more detailed review” to confirm that all decisions to refuse on grounds of good character had correctly applied section 55 considerations (see Chapter 8).
- 6.16 The first review identified three cases where the child may have no clear basis of stay in the UK. The Home Office stated that in these cases:
- “Although not required in the current guidance ... we will contact the families or guardian to advise on regularising the children’s current status. We will ensure that proactive action where a child has no valid leave to remain in the UK is included in guidance going forward. This is in line with the move to be more supportive and proactive when dealing with customers across UKVI and we believe is in the best interest of these children.”
- 6.17 Inspectors also asked what actions UKVI had taken to encourage children or young persons it understands are entitled to apply for registration to do so before they reach 18, and how its approach complies with the Home Office’s statutory responsibilities in relation to safeguarding and to making the best interests of the child a primary consideration.
- 6.18 In response, the Home Office listed the actions it had taken:
- “Our Gov.uk website provides clear guidance.
  - Various elements of guidance on the Registration of minors as British citizens has been consolidated into a single document to make that more accessible.
  - Registration is not the only solution to regularise immigration status of children; some will already benefit from the provisions for European nationals exercising Treaty Rights. There is also the option to obtain limited or Indefinite Leave to Remain within the Immigration Rules.”

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<sup>13</sup> A closed case heard by the Special Immigration Appeals Commission (SIAC).

# 7. Stakeholder concerns

## Introduction

- 7.1 While the re-inspection focused on the actions taken by the Home Office to implement the recommendations from the original inspection report, the re-inspection team also looked for an update on stakeholder concerns.

## Interviews

- 7.2 Inspectors interviewed two of the stakeholder organisations that had contributed to the original inspection: The Project for the Registration of Children as British Citizens (PRCBC) and the Immigration Law Practitioners' Association (ILPA). A representative from Amnesty International (UK) was also interviewed with PRCBC, the two organisations having worked together to produce a briefing paper for a Westminster Hall debate on registration fees that was held on 4 September 2018.<sup>14</sup>
- 7.3 These stakeholders raised a number of concerns with Home Office policy and practice in relation to the registration of children as British citizens.<sup>15</sup> Their concerns fell into three broad categories:
- the fee for making an application
  - the non-availability of legal aid for challenges to refusals
  - the lack of detail in Refusal Notices

## Fees

- 7.4 With effect from 6 April 2018, the Home Office has charged a child £1,012 to make an application to register their entitlement to British citizenship. The Home Office has declared that the average cost incurred for processing an application is £372. The “surplus”<sup>16</sup> takes account of the “benefits that the Secretary of State thinks are likely to accrue ...” to successful applicants, and forms part of the wider government objective expressed at the time of the 2015 Comprehensive Spending Review that the Border, Immigration and Citizenship System (BICS) should become self-funding by 2019-20.
- 7.5 The entire fee is non-refundable once the Home Office has begun to process the application.
- 7.6 Stakeholders told inspectors that the registration fee was “exorbitant” and “prohibitively high” and had the effect of deterring many children who were eligible to register from applying. This view was echoed by scores of respondents to the ‘call for evidence’ for the ICIBI inspection of charging and fees and by Parliamentarians from both Houses.

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<sup>14</sup> The debate was moved by Stuart C MacDonald, MP.

<sup>15</sup> [https://prcbc.files.wordpress.com/2018/03/fees\\_briefing\\_revised\\_march\\_2018-final.pdf](https://prcbc.files.wordpress.com/2018/03/fees_briefing_revised_march_2018-final.pdf)

<sup>16</sup> The term used by the Home Office to describe the element of a fee that exceeds its administration costs.



7.7 In response, the Home Office has pointed to the fact that British citizenship is not “necessary to enable individuals to live, study and work in the UK, and to be eligible for benefit of service”, for example, in order to rent a property, to open a bank account, or to take advantage of free NHS care. Referring to children in care, the minister<sup>17</sup> stated that they “can qualify” for “Indefinite Leave to Remain, and are exempted from paying the fee”, and that Local Authorities “may also pay their citizenship fee, where appropriate”. Meanwhile, those “not in care who meet the destitution criteria receive Limited Leave to Remain free of charge”.

7.8 However, stakeholders argue that citizenship and leave to remain are materially different.

“Leave to remain is no substitute for citizenship. Such leave is granted on fulfilment of certain eligibility criteria, most of which are set out in immigration rules. It is not necessarily available to these children. PRCBC is aware of several children entitled to British citizenship, whom the Home Office have refused leave to remain and given directions for them to be removed from the UK. But more fundamentally, where a child has the right to citizenship it is not for the Home Office to say that something else will do instead, especially when that alternative provides much less in terms of the child’s future, security and sense of identity and belonging. This is not what Parliament intended when passing the 1981 Act.”<sup>18</sup>

7.9 Stakeholders also challenge the notion that registration constitutes a benefit, since it is a statutory entitlement, and therefore the “surplus” element of the fee is unjustified. Also, they contend that it is wrong to categorise children born in the UK as migrants and unfair to ask them to pay for the immigration and nationality system.

### Legal aid

7.10 Legal aid is not available for assistance with initial applications<sup>19</sup> and for reviews of refused applications and is restricted to Judicial Review applications where permission to apply has been granted. Stakeholders told inspectors that this acted as a serious disincentive to legal professionals to assist applicants in preparing the best possible case for registration.

### Unclear Refusal Notices

7.11 Stakeholders were concerned about the lack of detail in Refusal Notices about how the decision has been reached, particularly about what consideration had been given to the individual circumstances and best interests of the child. They said that this had a knock-on effect to any request for a review<sup>20</sup> or a possible application for Judicial Review as the child and their representative were left unsure what she or he needed to address when challenging the refusal decision or submitting further evidence.

### Call for evidence

7.12 ICIBI posted a ‘call for evidence’ for the re-inspection on its website on 13 September 2018. The Runnymede Trust responded raising concerns that the good character requirement had a disproportionate effect on black and ethnic minority children, including those in care.

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<sup>17</sup> Baroness Manzoor, Home Office Minister, to the House of Lords on 12 June 2018.

<sup>18</sup> [https://prcbc.files.wordpress.com/2018/11/briefing\\_westminster\\_debate\\_children-citizenship-fee.pdf](https://prcbc.files.wordpress.com/2018/11/briefing_westminster_debate_children-citizenship-fee.pdf)

<sup>19</sup> Amnesty International (UK) described the registration process as “complex” for child applicants, their parents, foster parents or social services.

<sup>20</sup> Where an application has been refused, the applicant may apply to have the decision reviewed. This is known as a “nationality review”, the cost of which increased from £321 to £372 in April 2018.



7.13 Although Home Office case records for registration applications do not record ethnicity they do record nationality, and inspectors therefore looked at the nationalities of those applicant refused on good character grounds between 13 July 2017 and 30 September 2018 – see Chapter 8.

## 8. Review of Home Office performance

### Evidence

- 8.1 Inspectors asked the Home Office for a list of all applications from children (under the age of 18) seeking to register as a British citizen received between 13 July 2017 and 30 August 2018, including the date the application was decided, the outcome, and the reason(s) where the application was refused.
- 8.2 Inspectors also visited Nationality Casework,<sup>21</sup> the unit responsible for considering these applications, and held seven focus groups, six of which comprised Administrative Officer (AO) and Executive Officer (EO) grade caseworkers (20 AOs and nine EOs in total) and one of which comprised five Higher Executive Officer (HEO) senior caseworkers.

### Applications and decisions<sup>22</sup>

- 8.3 Home Office data for 2015, 2016 and 2017 showed a decline in applications for registration for British citizenship by applicants under the age of 18, with an increase in the grant rate in 2017 (but against a fall in the number of cases decided in the year) – see Figure 1.

**Figure 1: Applications for registration for British citizenship 2015-2017 from all applicants under the age of 18**

	2015	2016	2017
<b>Applications</b>	36,247	32,908	31,786
<b>Granted</b>	28,685 (95.7%)	36,625 (95.7%)	28,237 (97.5%)
<b>Refused</b>	1,298	1,629	719

- 8.4 The good character requirement is applied to applicants aged between 10 and 17, who have made up just over a third all of the applications received in 2015, 2016 and 2017 – see Figure 2.

**Figure 2: Applications for registration for British citizenship 2015-2017 from applicants aged 10-17**

	2015	2016	2017
<b>Applications</b>	13,033	12,275	12,773
<b>Granted</b>	10,129 (91.8%)	13,091 (91.6%)	11,030 (95.6%)
<b>Refused</b>	900	1,205	510

<sup>21</sup> Part of the citizenship workstream within UKVI.

<sup>22</sup> Some decisions may apply to applications received in a previous year.

- 8.5 As shown by Figures 1 and 2, the grant rate for applicants aged 10 or over has been consistently lower than that for children under 10 years old, with the former making up 69%, 74%, and 71% of all refusals in the 2015, 2016 and 2017 respectively.

### Refusals on good character grounds

- 8.6 According to Home Office records, only a small percentage of refusals have been made on good character grounds in each year – see Figure 3.

**Figure 3: Refusals of applications for registration for British citizenship 2015-2017 on good character grounds**

	2015	2016	2017
<b>Refusals</b>	20	33	18
<b>% of all decisions</b>	0.18%	0.23%	0.16%
<b>% of refusals</b>	2.22%	2.74%	3.53%

### Deterrent effect

- 8.7 While these numbers are low, there is no reliable way of estimating how many 10 to 17-year olds who are eligible to apply to register for British citizenship have been deterred from doing so because they believe, or have been advised, that their application would be refused on good character grounds.
- 8.8 Home Office guidance<sup>23</sup> leaves potential applicants in little doubt what to expect: “If the child has a conviction within the relevant sentence based threshold they are unlikely to be registered and the fee would not be refunded.” Some of those eligible to apply may not have done so to avoid the disappointment of a refusal, and from fear of provoking removal action as a consequence, but it is reasonable to assume that the risk of losing the entire fee will have been the deciding factor in many cases.

### The decision-making process

- 8.9 Up to September 2018, the application, the supporting evidence, the Home Office record of the applicant’s immigration history, and the results of criminal and national security background checks, were reviewed by a UKVI AO or EO caseworker. The caseworker was responsible for recording all of this information onto an Excel spreadsheet, referred to as the “Magic Minute”, and copying and pasting it into CID.
- 8.10 Based on this information, an AO caseworker would propose to an EO colleague that the application should be granted, refused or deferred. The latter would need to authorise the decision. An EO caseworker could ‘self-authorise’.
- 8.11 On 19 September 2018, Nationality Casework issued a ‘Process Instruction Notice’ (PIN16 2018) instructing all caseworkers that with immediate effect any decision to refuse a registration application on good character grounds would need to be authorised by a Senior Executive Officer (SEO) Technical Specialist (formerly known as a Deputy Chief Caseworker).

<sup>23</sup> GUIDE MN1 Registration as a British citizen – see FN 5.

## Applications and decisions since the original inspection report

8.12 Inspectors reviewed and analysed all applications refused on good character grounds since the publication of the original inspection report on 13 July 2017 up to 30 August 2018.<sup>24</sup> See Figure 4.

**Figure 4: Applications for registration for British citizenship received from children and young persons aged 10-17 between 13 July 2017 and 30 August 2018**

Total received	20,068
Rejected <sup>25</sup>	274
Decision pending	3,140
Other <sup>26</sup>	1
Granted	15,962
Refused (total)	691
<b>Refused on good character grounds</b>	<b>28</b>

### 'Good character' refusals

8.13 All 28 refusals on good character grounds were refused on the basis of the applicant's criminal history. Of these:

- 16 applicants had received a caution
- 9 applicants had received a criminal conviction
- 3 applicants had received a caution and a criminal conviction

### Breakdown by offence

8.14 The criminal behaviour in the 28 refusal cases is not easily summarised, in part because of the inconsistent way it is recorded and also because in a number of instances Home Office records list more than one offence. While in the majority of cases the offence is one that most people would regard as serious, for example 'Actual Bodily Harm', 'Threatening with a blade', 'Robbery', some are arguably less so, such as 'Shoplifting' and 'Possession of a Class B drug (Cannabis)'.

8.15 Meanwhile, in two cases the applicant was refused as a result of receiving a police caution, but no details were recorded about the reason for the caution.

### Breakdown by nationality, age and gender

8.16 Inspectors looked at the nationality (as recorded by the Home Office), age and gender of the 28 refused applicants. There was a wide spread of nationalities. Meanwhile, the breakdown by age and gender showed a clear pattern – older children (16 and 17 years of age) and predominantly male.

<sup>24</sup> Based on Home Office outcomes recorded as at 5 September 2018.

<sup>25</sup> Recorded as: 127 already accepted as British, 146 invalid applications, and one invalid fee.

<sup>26</sup> Applicant died.

**Figure 5: Breakdown of 28 refusals by nationality of applicant**

Country	Number of refusals
Nigeria	4
Somalia	4
Jamaica	3
Poland	2
Refugee - Article 1 of the 1951 Convention	2
Zimbabwe	2
Afghanistan	1
Bangladesh	1
Cameroon	1
India	1
Mauritius	1
Nepal	1
Netherlands	1
Philippines	1
Portugal	1
Ukraine	1
United States of America	1

**Figure 6: Breakdown of 28 refusals by age of applicant**

Age	Number of refusals
13	1
14	2
15	1
16	9
17	15

**Figure 7: Breakdown of 28 refusals by gender of applicant**

Gender	Number of refusals
Male	23
Female	5

## Vulnerability considerations

- 8.17 The “Magic Minute” has a section headed ‘Vulnerable Persons’. This asks the caseworker/ decision maker two questions:
- Is there any available information that raises potential issues about the vulnerability of any adult connected with the case? (including family members)
  - Is there any available information that raises potential issues about the vulnerability of any minor connected with the case? (including family members)
- 8.18 If the answer to either of these is “yes”, the caseworker is expected, as a minimum, to note the issues raised and discuss with a manager whether the individual should be referred to Social Services.
- 8.19 In each of the focus groups, staff told inspectors that every applicant had a “contemporaneous” (no older than 90 days) Police National Computer (PNC) check and standard security checks. They were confident that if any of these checks indicated a potential vulnerability it would be recorded in the CID ‘Person Notes’ or the “Magic Minute”. In addition, they were alert to other possible indicators of vulnerability, for example unusual bruising visible in photographs submitted as supporting evidence and were clear about referring cases to the competent authority, usually Social Services.
- 8.20 Inspectors examined the ‘Vulnerable Persons’ section of the “Magic Minute” for the 28 good character refusals:
- 19 were annotated “No concerns identified”
  - 5 had free text notes of concerns and recommending a referral
  - 3 noted concerns about the “lead” applicant (one of the parents)
  - 1 stated “Please refer to [CID] Person Notes”
- 8.21 From these records, inspectors were content that vulnerabilities were being identified, noted and addressed as a matter of routine.

## Section 55 and ‘best interests’ considerations

- 8.22 Inspectors searched the 28 case records for references to the consideration of the section 55 duty to “safeguard and promote the welfare of children who are in the UK”. This was referred to in only one case, in the CID ‘Person Notes’, where it stated:
- “All due consideration has been given to the applicants circumstances and the secretary of states obligations under section 55 - however the applicants convictions and persistent offending do not suggest that a decision to refuse would be disproportionate in this case (sic).”
- 8.23 Inspectors also searched for references to the best interests of the child.<sup>27</sup> There was one reference only, in the CID ‘Case Notes’, which stated:

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<sup>27</sup> Derived from Article 3 of the UN Convention on the Rights of the Child: “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

“unable to establish perm res for minor, social services request to look at best interest of the minor.” and “Although discretion can be applied and we look to the child’s best interest, applicant has a number of unspent convictions ranging from \*\*/\*\*/\*\* - \*\*/\*\*/\*\*<sup>28</sup> (please see person notes).”

8.24 The ‘Case Notes’ in this (second) case also stated:

“However, each case must be considered on its (sic) individual merits and there may be exceptional circumstances to justify registration in a particular case.....”

8.25 Only one of the 28 Refusal Notices contained any reference to section 55. This did not explain how in this instance the applicant’s best interests had been determined and assessed, but simply provided a generic statement of the Home Office’s duties and approach:

“Section 55 requires consideration of the best interests of a child in any decision that has an impact on that child. The decision must demonstrate that the child’s best interests have been considered as a primary, but not necessarily the only, consideration. Other relevant considerations include the need to ensure a fair, consistent and coherent immigration policy.

In considering your application, Section 55 was given due consideration alongside our current staff instructions. While the best interests of any child are always considered this is not to the extent that current policy and legislation is disregarded.”

8.26 At the end of October 2018, inspectors invited Nationality Casework to provide examples of applications made on or after 13 July 2017 where considerations of the child’s ‘best interests’ had outweighed the good character considerations set out in the guidance and had resulted in the application being granted. Nationality Casework responded that:

“this is not possible in view of the large volume of cases and the very small volume of refusals – we could not identify these good character interventions without a case by case analysis.”

8.27 On 16 October 2018, UKVI issued an instruction to staff to make reference to section 55 considerations in Refusal Notices, and on 7 November it produced an updated “Magic Minute” sheet which explicitly required section 55 considerations to be recorded.

8.28 Inspectors asked what additional training had been provided to caseworkers to ensure that they understood and complied with these amendments to Refusal Notices and the “Magic Minute”.

8.29 In the case of the “Magic Minute”, the changes had been discussed at team meetings and staff had received instructions via email. Inspectors reviewed the instructions. They focused on the mechanics of using the form. Staff were expected to rely on the ‘Section 55’ training they received when they joined Nationality Casework to know what should be considered. For some, it was several years since they had received this training.

8.30 In the case of the revised Refusal Notice templates, inspectors found no evidence of new training about how to draft the ‘Section 55’ considerations. From discussions with caseworkers, there was no clear, consistent sense of what factors to note and in what detail in order to demonstrate that the best interests of the child had been properly considered.

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<sup>28</sup> Conviction dates have been deliberately removed for the purposes of this report.

### Authorisation of refusals

- 8.31 Inspectors noted that the way authorisation of the refusal was recorded in the 28 good character cases was inconsistent. The CID 'Case Details' screen has functionality to be used to record the outcome of an application, the name of the caseworker proposing the decision, and the name of the person authorising it.
- 8.32 In all 28 cases, only the caseworker's name was recorded on the 'Case Details' screen. In 26 of these cases, the name of the authoriser could be found or inferred by searching through the various CID 'Notes' screens.
- 8.33 Nationality Casework was asked to identify the authoriser in the two remaining cases but was unable to do so. In one, failure to record the authoriser was put down to "human error", while in the other Nationality Casework stated that the AO caseworker proposing the refusal had been on temporary promotion to EO and had authorised their own proposal. At the time, EOs were able to "self-authorise".
- 8.34 Caseworkers and managers were asked why the data field for 'Authoriser' on the 'Case Details' screen was not being used. Inspectors were told that there had never been a requirement within Nationality Casework for this field to be used and the authoriser would be identifiable from other "Notes" screens.



## 9. Wrongful refusal of British passport renewal applications from children of nationals from the ‘A8 countries’

- 9.1 In September 2018, inspectors asked the Home Office for details of wrongful refusals of British passport renewal applications from children of nationals from the ‘A8 countries’.
- 9.2 The BBC website had run a news story on this on 22 August 2018, which had been picked up by some national newspapers. The media reporting referred to a “support function” that had been set up by the Home Office to support those affected, where appropriate, to register as a British citizen, with the Home Office covering the £1,012 fee.
- 9.3 Inspectors were informed that as at 21 September 2018 Her Majesty’s Passport Office (HMPO) had identified 181 renewal applications from children of A8 nationals which had been withdrawn or failed. HMPO expected to have reassessed all 181 cases by 30 September 2018.
- 9.4 Having completed the reassessment, the affected customers would be contacted and advised and encouraged to proceed with discretionary registration via UKVI “as this is in the best interests of the parents and children affected.” As at the end of December 2018, HMPO had determined that 151 of the 181 cases identified in September 2018 should be contacted. HMPO had successfully contacted 128. It had received 86 application forms and had issued 74 passports. Nine customers had declined discretionary registration and a free passport. HMPO awaited responses from the remaining 33.
- 9.5 HMPO was meanwhile scrutinising around 3,000 cases where a passport withdrawal or failure had referenced discretionary registration or was a first-time child application in order to determine if any reassessments were necessary. Between 1 September 2016 and 31 August 2018, UKVI had received 1,108 applications for registration from individuals referred by HMPO under this scheme.
- 9.6 Inspectors were told that HMPO staff had been instructed to direct potential refusals on these grounds to a central team that was working with UKVI to resolve any issues or customer concerns and help expedite the registration process, and that:

“HMPO and UKVI are also further strengthening joint working to ensure discretionary citizenship registration and passport applications are processed together to improve customer experience. All relevant operational guidance is being updated to ensure compliance expectations are met.”

# Annex A – Role and remit of the Independent Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on his behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to him in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which he is committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

# Annex B – ICIBI’s Expectations

**Background and explanatory documents are easy to understand and use** (e.g. Statements of Intent (both ministerial and managerial), Impact Assessments, Legislation, Policies, Guidance, Instructions, Strategies, Business Plans, intranet and GOV.UK pages, posters, leaflets etc.)

- They are written in plain, unambiguous English (with foreign language versions available, where appropriate)
- They are kept up to date
- They are readily accessible to anyone who needs to rely on them (with online signposting and links, wherever possible)

**Processes are simple to follow and transparent**

- They are IT-enabled and include input formatting to prevent users from making data entry errors
- Mandatory requirements, including the nature and extent of evidence required to support applications and claims, are clearly defined
- The potential for blockages and delays is designed out, wherever possible
- They are resourced to meet time and quality standards (including legal requirements, Service Level Agreements, published targets)

**Anyone exercising an immigration, asylum, nationality or customs function on behalf of the Home Secretary is fully competent**

- Individuals understand their role, responsibilities, accountabilities and powers
- Everyone receives the training they need for their current role and for their professional development, plus regular feedback on their performance
- Individuals and teams have the tools, support and leadership they need to perform efficiently, effectively and lawfully
- Everyone is making full use of their powers and capabilities, including to prevent, detect, investigate and, where appropriate, prosecute offences
- The workplace culture ensures that individuals feel able to raise concerns and issues without fear of the consequences

**Decisions and actions are ‘right first time’**

- They are demonstrably evidence-based or, where appropriate, intelligence-led
- They are made in accordance with relevant legislation and guidance
- They are reasonable (in light of the available evidence) and consistent

- They are recorded and communicated accurately, in the required format and detail, and can be readily retrieved (with due regard to data protection requirements)

#### **Errors are identified, acknowledged and promptly ‘put right’**

- Safeguards, management oversight, and quality assurance measures are in place, are tested and are seen to be effective
- Complaints are handled efficiently, effectively and consistently
- Lessons are learned and shared, including from administrative reviews and litigation
- There is a commitment to continuous improvement, including by the prompt implementation of recommendations from reviews, inspections and audits

#### **Each immigration, asylum, nationality or customs function has a Home Office (BICS) ‘owner’**

- The BICS ‘owner’ is accountable for
  - implementation of relevant policies and processes
  - performance (informed by routine collection and analysis of Management Information (MI) and data, and monitoring of agreed targets/deliverables/budgets)
  - resourcing (including workforce planning and capability development, including knowledge and information management)
  - managing risks (including maintaining a Risk Register)
  - communications, collaborations and deconfliction within the Home Office, with other government departments and agencies, and other affected bodies
  - effective monitoring and management of relevant contracted out services
  - stakeholder engagement (including customers, applicants, claimants and their representatives)

# Acknowledgements

The inspection team is grateful to the Home Office for their assistance with this inspection, and appreciates the contributions from all the staff members who took part in providing evidence and participating in interviews and focus groups. The team would also like to thank all the stakeholders who contributed.

## **Inspection Team**

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Inspector: **Chris Thompson**



