



An inspection of the policies and practices of the Home Office's Borders, Immigration and Citizenship Systems relating to charging and fees

June 2018 – January 2019

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Independent Chief Inspector of
Borders and Immigration

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Foreword

While I have some first-hand knowledge and experience of organisational resource planning and budgeting, both in the public and private sectors, my inspectors and I are not trained accountants, economists or statisticians.

Of course, neither are the vast majority of ‘customers’ of the services offered by the Home Office’s Borders, Immigration and Citizenship System (BICS).

What these customers expect is transparency (that they know what they are eligible or entitled to receive), fairness (that what is offered is lawful, reasonable, consistent and coherent), and reliability (that they get what has been promised, on time and correct). Where they have had to pay a fee for a particular service they will also expect ‘value for money’, albeit this will be to a degree subjective.

Therefore, in approaching this inspection and report, while I have tried to cover the technical aspects of the Home Office’s charging strategy and fee setting to the extent that this is essential to an understanding of the current position, my focus has been on how effectively the Home Office has explained its overall approach, the reasons for particular fee levels and annual increases, how the fees link to service delivery and standards, and how the Home Office has responded to what its customers and stakeholders have had to say.

I have also looked to reflect other ‘voices’. My public ‘call for evidence’ for this inspection produced a far greater response than for any previous inspection. A number of people were clearly distressed by the effect the fees had had on them or their family or friends. It is not within my remit to take up individual cases, but I have attempted to summarise the main themes and arguments from the many hundreds of responses I received and, in doing so, I hope I have done justice to everyone who contributed.

One of the concerns raised was that the fee for EU settlement might prevent some people, particularly larger, less well-off families, from accessing their EU rights. Since the report was drafted and sent to the Home Office for factual accuracy checking, the Home Secretary has announced that the Home Office will no longer charge a fee for registration. However, I have not altered the body of the report, which still reflects the original concerns as expressed to me, not least as it raises questions about the continued justification for previous refusals to consider fee reductions or exemptions, for example for child registrations for citizenship, on grounds that it would reduce the amount of funding that the Home Office has available to fund the immigration system.

Equally relevant, in responding to my draft report, the Home Office has pointed out that its financial position has developed since 2015 and it has “reigned back on self-funding, moving from an objective for self-funding by 2019-20 to an ambition to increase the extent to which BICS is funded by those who use its services.”

This may seem like verbal gymnastics to some, so to avoid any doubts about what it means I have recommended that the Home Office clarifies its current position regarding when, or if, the BICS intends to become “self-funding”, including what this means in figures and what elements of the BICS “operation”, and any related activities, are included and excluded from the calculations. As it recognised in its response to my draft, the Home Office will need to do this as part of the 2019 Comprehensive Spending Review in any event, but I would suggest that given how much has rested on the self-funding argument over recent years some clarity is needed before the 2019-20 fees are published.

I have made 12 recommendations in total, most of which concern providing more and better information to explain how the fees have been calculated. However, they also focus on the effects of the fees on vulnerable individuals, including children, and the need for the Home Office to demonstrate that it has fully considered these effects in determining fee levels, annual increases, the availability of waivers, and refunds.

Quite correctly, the Home Office has pointed out that it is general Government policy that Policy Equality Statements produced by officials for ministers are not normally published and that it has followed HMG policy and guidance in relation to Impact Assessments. However, if it is serious about providing good customer service, it must recognise that its current lack of transparency is at best unhelpful.

This report was sent to the Home Secretary on 24 January 2019.

1. Purpose and scope

- 1.1 This inspection examined the policies and practices of the Home Office's Borders, Immigration and Citizenship System (BICS) relating to charging for immigration and nationality applications, claims, services and processes (described collectively in the Immigration Act 2014 as "functions").¹
- 1.2 The inspection examined:
 - the rationale and authority for particular charges ("fees")
 - the amounts charged ("fees levels")
 - whether the functions were being provided efficiently and effectively, including meeting agreed service standards where they existed
 - the means of redress where individuals were dissatisfied with the service they had received
 - the relationship between standard and premium rate charged-for functions (and free to use ones where these existed), including how they were resourced and managed.
- 1.3 It also examined the application of fee waivers based on Article 8 human rights claims.
- 1.4 In addition to reviewing relevant legislation and supporting documents, statements by ministers, Parliamentary debates, Home Office information, data and guidance, and interviewing managers and staff from across BICS and other relevant Home Office units, the inspection also sought to capture the customer perspective.
- 1.5 This was done principally through a 'call for evidence' posted on the Inspectorate website, supported by open source research, and by interviewing a range of stakeholders. Although the call for evidence received a large and wide-ranging response, it is not suggested that the results are representative of all viewpoints or that it captured every issue.
- 1.6 While they represent significant income streams, the inspection did not examine the civil penalties schemes operated by Border Force and Immigration Enforcement, since these are fines imposed for breaches of particular regulations rather than services and products offered to BICS customers. The ICIBI's current three-year Inspection Plan includes an inspection of 'Sanctions and Penalties' in 2019-20, which will look at their completeness, consistency of application and deterrent effect.

¹ Fees and charges in relation to passports and civil registration are covered by Part 8 of the Immigration Act 2016.

2. Methodology

2.1 Inspectors:

- requested from the Home Office a list of all chargeable products and services falling under its Borders, Immigration and Citizenship System (BICS)²
- between 9 and 13 July 2018, made familiarisation visits to Home Office units in Glasgow, Liverpool, Sheffield, London and Croydon, for briefings on the range of BICS chargeable products and services
- reviewed Home Office documentary evidence, including relevant legislation, impact assessments, policies, fees and charging guidance, and financial data
- reviewed other relevant open source information, including records of Parliamentary debates about immigration and nationality fees
- called for, and examined, 100 case files containing fee waiver requests decided between 1 April 2017 and 31 March 2018
- made a call for evidence (open between 18 June to 16 July 2018) via the ICIBI website, and reviewed and analysed the almost 600 written responses
- in July 2018, interviewed a range of stakeholders, including legal representatives and immigration advisors, and third sector organisations who provide support for migrants
- between 10 and 18 September 2018, visited Home Office application and caseworking centres in Sheffield, London, Croydon and Southport
- interviewed and held focus groups with Home Office managers and staff, from Senior Civil Servant to Administrative Officer.

² BICS comprises UK Visas and Immigration, Border Force, Immigration Enforcement, HM Passport Office (including the General Register Office for England and Wales), and BICS Policy and Strategy.

3. Summary of conclusions

- 3.1 The Home Office's Borders, Immigration and Citizenship System (BICS) is a £2+ billion "operation".³ Inevitably, the planning and management of its funding, including its income streams, is complex and 'technical', involving methodologies, assumptions and modelling that require expertise and experience to understand fully and apply.
- 3.2 At the same time, the Home Office is not entirely free to act as it might wish when looking at charging for its functions. It has to operate within the framework agreed with Parliament and set out in primary legislation,⁴ and the financial limits and rules set by HM Treasury, and has to accommodate the objectives of other government departments and ministers alongside its own. It also needs the support of Parliament for any changes requiring secondary legislation, such as the annual revision of its fees.
- 3.3 Given the degree of external scrutiny, the inspection did not set out to look for errors in the Home Office's fees levels and application of charges. However, in 2018 the Home Office itself recognised that it had been mischarging fees for the replacement of Biometric Residence Permits (BRPs) and commissioned a review by the Government Internal Audit Agency (GIAA).
- 3.4 The GIAA report, which was completed in September 2018, found that there was "a clear framework in place to design, approve and submit the annual fee changes to Parliament", with "an adequate process in place for the modelling of fees [and for the] approval of the levels of income required according to the business requirements ... and a fees spreadsheet that is produced annually, 'The Income & Nationality Charges' and updated as required."
- 3.5 GIAA concluded that the key cause of the error was "the lack of end-to-end oversight of the application of legislation into operational policy, processes and supporting systems." All of GIAA's recommendations were accepted. A number focused on corporate governance and a range of management actions were identified. The timing of this inspection meant that it was not possible to judge whether these had been implemented effectively or were on track.
- 3.6 Since the Home Office worked closely with HM Treasury (HMT) on the 2015 Spending Review (SR) and HMT approval is required for all fees proposals, the inspection has assumed that HMT has been satisfied that the Home Office's approach to calculating the cost of its services and setting fees is consistent with HMT guidance.⁵ This guidance states as a basic principle that departments must approach charging with "honesty about the policy objectives and rigorous transparency in the public interest."
- 3.7 While the detailed processes relating to charging and fees setting are complex and technical, the commitment to achieving a fully self-funded immigration system was clearly stated in the joint HM Treasury and Home Office press release that followed the 2015 SR.⁶ This has been regularly repeated by ministers and appears to have been largely accepted as an appropriate overall aim by members of both Houses.

³ At the factual accuracy stage, the Home Office indicated that it preferred the term "operation" to "business".

⁴ The Immigration Acts 2014 and 2016 for most BICS charges.

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money_MPM_2018.pdf

⁶ <https://www.gov.uk/government/news/home-offices-settlement-at-the-spending-review-2015>

- 3.8 As to honesty and rigorous transparency, the published BICS strategy for achieving self-funding included efficiency savings, through technology and automation, but stated that it planned that the bulk of the income would come from immigration and nationality fees.⁷ Here, the government’s policy objectives were that “targeted” increases would ensure that “those who benefit directly from our immigration system (migrants, employers and educational institutions) contribute towards its costs, reducing the contribution of the taxpayer; that the fees system is simplified where possible, aligning fees where entitlements are similar; that fees are set fairly, at a level that reflects the real value of a successful application to those who use the service.”⁸
- 3.9 However, the inspection found that beyond these broad propositions about costs and benefits, the Home Office had made little effort to articulate in terms that non-experts (including most customers) would readily understand how its processes resulted in specific fee levels or annual increases.
- 3.10 The Impact Assessments (IAs) and explanatory notes published with the relevant legislation have been prepared in line with HM Treasury’s formal (‘Green Book’) requirements. Although the IAs have described the methodologies, assumptions and models used, and set out various reckonings, they have stopped short of explaining the precise calculations behind individual fees and provided scant information about costs. Since 2016, the IAs have largely repeated the same arguments with the same supporting material.
- 3.11 The IAs have not assessed the non-financial, non-economic impacts of the fees and proposed annual changes, for example how the wellbeing of vulnerable groups, families or children may be impacted, or the potential consequences for social integration. The Home Office told inspectors that this was not the purpose of the IAs, and that consideration of these impacts forms part of the Policy Equality Statement development, the outcome of which, in line with agreed Government policy, is not routinely published, but is reviewed by Ministers before decisions are taken. Inspectors did not have sight of any Policy Equality Statements.
- 3.12 In 2016, the Home Office set out its intention to increase its fees for “growth routes” (which it identified as visit, work and study visa applications) by 2% each year for 4 years, equivalent to a compound increase of 8% by 2019-20, while for most “non-growth routes” (“settlement, nationality and other/family leave to remain”) the increase would be higher and be front-loaded: 25/18/0/0%, equivalent to a 47.5% compound increase over the 4 years.⁹ Broadly, the Home Office has stuck to this, but with some adjustments¹⁰ and rescheduling, for example bringing forward the 2% increase planned for 2019-20 to produce a 4% increase in 2018-19 to meet an identified funding shortfall.
- 3.13 The Immigration Act 2014 (“the 2014 Act”) provides the primary legislative basis for the border, immigration and nationality charging regime (passports and civil registrations are covered by the Immigration Act 2016) and a differential approach to growth and non-growth routes. This enabled the Home Secretary to set fees that are below, at or above the cost of exercising a particular function, taking into account “the costs of exercising any other function in connection with immigration or nationality”, “the benefits that are likely to accrue [to the successful applicant]” and “the promotion of economic growth”. In the case of passport fees, the 2016 Act permits cross-subsidy and the inclusion of other related costs, in addition to the cost of processing an application.

7 See HM Treasury’s ‘Spending review and autumn statement 2015’.

8 From the Impact Assessment for the Immigration and Nationality (Fees) Order 2015.

http://www.legislation.gov.uk/ukia/2015/63/pdfs/ukia_20150063_en.pdf

9 Figures taken from evidence provided by the Home Office.

10 In January 2018, the Home Office noted that: “For 2016-17 and 2017-18, we have largely rolled out the agreed plan, with the exception of some changes within non-growth routes in 2017-18, where we increased some fees beyond the planned 18% (some to 23.5%) in order to reduce the nationality fees increase from 18% to 4%”.

- 3.14 Prior to the 2014 Act coming into force, in early 2014, the Home Office published the results of a consultation exercise on charging and fees. The Home Office wrote: “It is right that in cases where an application fee is refunded because an application is incomplete or withdrawn, the Home Office should be allowed to recover the costs of handling and processing the application up to that point.” The costs referred to in this instance were the £25 fee where an application had progressed to biometric enrolment. It also wrote that: “we will ensure that any fee introduced is set at a level that is fair and reasonable. We will consider the requirement to allow applicants a reasonable length of time to correct mistakes”.
- 3.15 It should follow that where the fee is set above cost because it includes the “benefits that are likely to accrue” if the application is successful, as with nationality and settlement fees, the ‘surplus’ should be refunded where the application is refused. However, this is not the case and, in addition to the size of the fee, the risk of losing it all is likely to act as a serious deterrent to some of those who might wish to apply. Similarly, in this as in previous inspections, there was little evidence of decisions being paused while applicants were offered the opportunity to correct mistakes. The norm was ‘refuse and advise to reapply’.
- 3.16 The 2014 Act also enabled BICS to develop a range of optional premium services, available on payment of a supplementary fee. Inspectors looked at how charging policies and fees, in particular premium service fees, affected operational areas. This included interviews with managers and staff from UKVI, Border Force, Immigration Enforcement, and HM Passport Office. The findings are detailed in the report but, in summary, managers and staff were clear that premium payments bought speed and convenience. They did not affect the decision makers’ consideration of the evidence provided in support of the application or entry clearance. This is as it should be.
- 3.17 The Immigration and Nationality (Fees) Order 2016 introduced “maximum amounts that can be charged for broad categories of immigration and nationality functions for the next four years”. At the time, the government declared that these were “ceilings” and “not targets that the Home Office will seek to charge by the end of the four-year period.” The majority of the fees charged by BICS with effect from 6 April 2018 were still well below the maxima agreed in 2016, although the fee for a short-term visit visa (in volume terms the largest route) was £93 against the maximum of £95.
- 3.18 One of the purposes of setting maxima in 2016 was to be able thereafter to use Statutory Instruments (secondary legislation) to speed up the “relatively slow process” of having to set fee proposals out annually and have them “agreed, cleared and debated in Parliament before being put in place” and “allow new or amended fees to be introduced more quickly” in response to changes in government policy or customer demand, without intending “to reduce the level of parliamentary scrutiny of any new fees or policies”.¹¹
- 3.19 Whatever the intention, since 2016 the annual process of taking the Immigration and Nationality (Fees) Orders through the “positive resolution” procedure, the Committees of both Houses of Parliament has produced challenges to particular elements of the government’s proposals but little outright opposition and has been comfortably managed by Home Office ministers.
- 3.20 The (Fees) Regulations, which set out the proposed fees levels for the next year, are subject to a “negative” resolution procedure, meaning that they become law as soon as they are signed by the relevant government minister and remain intact unless a motion (known as a “prayer”) to reject them is agreed by either House within 40 sitting days from their introduction.

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/256443/Fees_and_charging_immigration_and_visas.pdf

- 3.21 In May 2018, the House of Lords debated a ‘Motion of Regret’ regarding the fee for a child wishing to register their entitlement to British citizenship. The motion called on the government to withdraw the proposed 2018 fee increase until it had published a best interests impact assessment of the fee level and established an independent review of the registration fee for children. The debate lasted much longer than any of the Committee sessions looking at the (Fees) Orders and more members spoke, with none opposing. Nonetheless, the motion was voted down, and the 2018 increase stands.¹²
- 3.22 The child citizenship registration fee attracted a great deal of adverse comment from those responding to the inspectorate’s call for evidence, including challenges not just to its level, but to its legitimacy. There was also significant criticism that there was no fee waiver option. More generally, respondents expressed considerable concern about the impact of fees levels on families and financially-disadvantaged individuals and questioned the limits on eligibility to request a fee waiver as well as the fitness of the destitution test.
- 3.23 While inspectors found examples in the sample of 100 fee waivers examined where the application of the destitution test did not appear to be in line with guidance, in most cases the guidance had been followed. But, fee waiver decisions were taking too long, regardless of there not being a service standard. Meanwhile, having increased staffing levels, including through some temporary attachments, the overall numbers working on waivers reduced again towards the end of 2018, putting any gains in terms of timescales (they had reduced since 2017) at risk.
- 3.24 The overall conclusion from this inspection is that while the Home Office has successfully managed to move closer towards its aim of a self-funded immigration system by 2019-20, it has not paid enough attention to explaining individual fees and increases to its customers, particularly those seeking settlement and nationality, leaving it open to accusations that its approach is not truly transparent or fair, that its services are not reliable, and that its fees do not represent ‘value for money’.
- 3.25 With the exception of HM Passport Office, which since the passport “chaos” of summer 2014 has turned itself into the highest scoring public service organisation for customer satisfaction, BICS has some distance to go to demonstrate that it is genuinely customer focused. While service improvements and greater choice are undoubtedly part of the answer it is at least as important for BICS to ensure and to show that its fees are entirely appropriate and not just what it requires to balance its books.

¹² At the factual accuracy stage, the Home Office pointed out that the Motion of Regret fell outside the 40 sitting days “window”, and as such even if passed it would not have led to an annulment of the Regulations.

4. Recommendations

The Home Office should:

1. Run a new (wider than in 2013) public consultation on charging for Borders, Immigration and Citizenship System (BICS) functions, to be completed and published in time to inform the 2019 Comprehensive Spending Review.
2. Clarify the department's current position on when, or if, the Borders, Immigration and Citizenship System intends to become "self-funding", including what this means in figures and what elements of the BICS "operation", and any related activities, are included and excluded from the calculations.
3. Ensure that BICS income targets do not fall disproportionately on UK Visas and Immigration to meet, requiring Border Force and Immigration Enforcement to bring their unit costs up to date for 2019-20 and to produce a cost-benefit analysis of each optional paid-for service including a clear statement in each case of what the 'customer' is entitled to expect from the 'free' standard alternative.
4. Provide a breakdown of how the unit cost (the cost to the Home Office of administration or processing) element of each fee has been calculated, ensuring that this information is readily accessible (on GOV.UK) alongside the list of current fees.
5. Provide a breakdown of how the "benefits likely to accrue" to a successful applicant have been calculated for each fee, and in the case of refused nationality or settlement applications (except on grounds of fraud) refund this element of the fee and retain only the unit cost (administration) element.
6. Ensure that for each nationality and immigration fee there is a clear statement of the level of service the 'customer' can expect in return for payment, including when they will receive a response and/or decision, effective communication about the application and the decision, and the means to complain and seek redress where the level of service falls short of the expected standards.
7. Either make public any Policy Equality Statements produced for ministers or publish separate statements that show clearly what has been considered when proposing fees levels/ increases in terms of equality and diversity, in particular the social and welfare impacts on children, families and vulnerable persons.
8. Either identify existing reviews, information and data that is more recent and more clearly relevant to the elasticity and other assumptions that form part of the annual Impact Assessment, including international benchmarks for charging and fees levels, or commission new research.
9. Review the routes to settlement, including assessing the negative effects on individuals and families of requiring repeated applications for leave prior to considering settlement, the option of tapering the fee for second and subsequent applications for leave where the applicant's circumstances have not changed, and setting shorter timescales for decisions to grant or refuse applications.

10. Carry out a full review of the fee waiver process, including consideration of:
 - a. extending eligibility for fee waivers, including (but not limited to) all child Leave to Remain and nationality applications
 - b. lowering the burden of proof for destitution and inability to pay, making a presumption in favour of individuals and families in receipt of public funds, means-tested benefits or asylum support
 - c. the time taken to make a decision (setting and sticking to a Service Level), ensuring that this function is adequately resourced
 - d. quality assurance.
11. Complete a full Post Implementation Review of the Front End Services Programme to report no later than the end of 2019, to include consideration of the impact on vulnerable applicants.
12. Identify a mechanism by which General Register Office (GRO) can revise the fees set in 2010 at “cost recovery” so that they catch up and keep pace with GRO’s unit costs.

5. Background

The legal basis for charging for immigration and nationality functions

Immigration Act 2014

- 5.1 At the time of this inspection, the Home Secretary's powers to charge fees "in respect of the exercise of functions in connection with immigration or nationality" derived primarily from sections 68-70 of the Immigration Act 2014 (the 2014 Act).¹³ The 2014 Act repealed similar provisions in the Immigration, Asylum and Nationality Act 2006, while introducing certain changes, some of them significant.
- 5.2 The explanatory notes published with the 2014 Act clarified that:

"The term "functions" includes, but is not limited to, the specified functions listed in section 51 of the 2006 Act (applications, claims, services and processes). Use of the term simplifies the legislation, ensuring that there is no longer a need to decide which category a particular activity falls into. Functions can be delivered overseas, at the border or within the UK. They can be delivered by the Secretary of State, her officers, agents, commercial partners or any person acting on her behalf."

Fees Orders and Fees Regulations

- 5.3 The 2014 Act did not change the Parliamentary process regarding the requirement for 2 Statutory Instruments, (Fees Order and Fees Regulations), which "may be made only with the consent of the Treasury". However, it changed the way the Orders and Regulations were used. Prior to the 2014 Act, fees set at above cost required debate ("affirmative resolution") and were set out in a Fees Order, and fees set at or below cost did not ("negative resolution") and were set out in Fees Regulations. In the 2014 Act, the Fees Order specifies the categories of service and sets a maximum fee for each category, with all specific fee levels set in the Regulations.
- 5.4 Since the 2014 Act, Fees Orders have been used to specify the way fees will be set (which is either as a fixed amount; calculated using an hourly rate; as a combination of the 2; or by way of "another factor") and the maximum amount that may be charged in respect of the fixed element of the fee (it may also specify a minimum level of fixed fee for particular functions). Where fees are set by reference to an hourly rate or other factor, the Fees Order must specify how this is to be calculated and a maximum rate or other factor (it may also specify a minimum rate or other factor for particular fees).

¹³ Some powers derive from other legislation, and the 2014 Act states that:
"Section 68 is without prejudice to—
(a) section 1 of the Consular Fees Act 1980 (fees for consular acts etc);
(b) section 102 of the Finance (No. 2) Act 1987 (government fees and charges), or
(c) any other power to charge a fee."

5.5 Meanwhile, Fees Regulations are used to set out the fees for all chargeable functions, along with details of associated policies, including exceptions, reductions and waivers. The Explanatory Notes to the 2014 Act stated:

“Where the fee is set as a fixed amount, this amount will be set out in regulations (most immigration and visa fees are set in this way). Where the fee is to be calculated by reference to an hourly rate or other factor, or where it comprises more than one element, the amounts and rates will be set out in regulations.”

5.6 At the time of the inspection, the Immigration and Nationality (Fees) (Amendment) Order 2018 and the Immigration and Nationality (Fees) Regulations 2018 were in force.

Fees levels

5.7 Section 68(8) of the 2014 Act required that the fee set “must not exceed the maximum specified for that amount, or rate or other factor” or be less than the minimum, where one is specified. Subject to these limits, it “may be intended to exceed, or result in a fee which exceeds, the costs of exercising the function.” This power to charge a fee for a particular function that creates a profit (the Home Office uses the term “surplus”) was referred to in the Explanatory Notes as “consistent with existing powers in the 2004 and 2006 Acts”.¹⁴

5.8 Section 68(9) listed the matters that the Home Secretary may take into account when setting the amount of a fee. These were limited to:

- the costs of exercising the function
- benefits that the Secretary of State thinks are likely to accrue to any person in connection with the exercise of the function
- the costs of exercising any other function in connection with immigration or nationality
- the promotion of economic growth
- fees charged by or on behalf of governments of other countries in respect of comparable functions
- any international agreement

5.9 The first 2 of these matters were carried forward from the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

5.10 Referring to “the costs of exercising any other function in connection with immigration or nationality” the Explanatory Notes to the 2014 Act stated that “individual fees may be set at a level that reflects the cost of operating the immigration system, by applying cross-subsidy powers to the full range of functions rather than, as at present, being limited to specific chargeable functions.” This (together with new charging powers for passports included in the 2016 Act) provided the underpinning to a self-funding approach to the Borders, Immigration and Citizenship System.

¹⁴ The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 empowered the Home Secretary “with the consent of the Treasury” to “(a) exceed the administrative costs of determining the application or undertaking the process, and (b) reflect benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, to whom the application relates or by or for whom the process is undertaken, if the application is successful or the process is completed.” The Immigration, Asylum and Nationality Act 2006 empowered the Home Secretary “by order provide for a fee to be charged by him ... in respect of (a) the provision on request of a service (whether or not under an enactment) in connection with immigration or nationality, (b) a process (whether or not under an enactment) in connection with immigration or nationality, (c) the provision on request of advice in connection with immigration or nationality, or (d) the provision on request of information in connection with immigration or nationality.” And “(a) shall specify the amount of the fee, (b) may provide for exceptions, (c) may confer a discretion to reduce, waive or refund all or part of a fee, (d) may make provision about the consequences of failure to pay a fee, (e) may make provision about enforcement, and (f) may make provision about the time or period of time at or during which a fee may or must be paid.” These powers were exercised following the laying of the Immigration and Nationality (Fees) Regulations 2007.

5.11 The 2014 Act introduced the last 3 matters. The Explanatory Notes focused particularly on “the promotion of economic growth”:

“For example, application fees may be set at a level to attract tourists or economically valuable migrants to the UK. Premium service fees may be set at a level to ensure that premium services may be made available to commercially important people, and those the UK considers will support international trade and economic growth.”

How the fees levels are set

Calculating costs

5.12 HM Treasury (HMT) guidance document ‘Managing public money’¹⁵ sets out the approach that government departments are expected to take when calculating the cost of providing a service and setting fees. The guidance makes the general point that:

“Certain public goods and services are financed by charges rather than from general taxation. This can be a rational way to allocate resources because it signals to consumers that public services have real economic costs.”

5.13 It goes on to say that: “The standard approach is to set charges to recover full costs ... This approach is simply intended to make sure that government neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise. It requires honesty about policy objectives and rigorous transparency in the public interest.” The guidance acknowledges that in some instances it will be appropriate to set charges at above or below full costs, but this requires both ministerial and Treasury approval.

5.14 The HMT guidance lists the elements that need to be considered when calculating full costs. These include:

- total employment costs of those providing the service, including training
- accommodation
- utilities
- office equipment, including IT systems
- overheads, for example (shares of) payroll, audit, top management costs, legal services, etc.
- compliance and monitoring.

5.15 Meanwhile, the guidance specifies that the following must not be included:

- the cost of policy work (other than policy on the executive delivery of the service)
- the costs of enforcement, unless there are explicit statutory powers to include such costs in fees.

Assessing benefits

5.16 The 2014 Act referred to “benefits that the Secretary of State thinks are likely to accrue to any person in connection with the exercise of the function”. The nature of these benefits and how their value is to be calculated was not explained, either in the Act itself or in the Explanatory Notes.

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money_MPM_2018.pdf

5.17 The Home Office’s Impact Assessment for the Immigration and Nationality (Fees) Order 2015 was similarly non-specific:

“The government’s policy objectives on charging for immigration are:

- That those who use and benefit directly from our immigration system (migrants, employers and educational institutions) contribute towards its costs, reducing the contribution of the taxpayer;
- That the fees system is simplified where possible, aligning fees where entitlements are similar;
- That fees are set fairly, at a level that reflects the real value of a successful application to those who use the service.”

Costs of exercising other immigration or nationality functions

5.18 In November 2015, HM Treasury published the ‘Spending review and autumn statement 2015’. This set out the departmental settlements for each business year up to and including 2019-20.¹⁶ In the Home Office’s case, the settlement was flat in cash terms from 2017-18 onwards, representing a “cumulative real growth” of minus £4.8 billion.¹⁷

5.19 The notes accompanying the Home Office figures stated that the settlement included:

“resource savings of 5% by 2019-20 through a fully self-funded borders and immigration system and total reductions of 30% in the department’s administration budget compared to 2015-16”

5.20 Under the heading ‘Efficiency and reform’, there was further detail about the Border, Immigration and Citizenship System (BICS) ‘funding gap’ and how this would be closed:

“Around £600 million of overall BICS costs are currently funded by the Exchequer (in addition to customs and asylum support costs). By investing in streamlined and automated processes, saving time for immigration officials and border officers, this funding requirement will be more than halved. For example, the government will invest over £250 million to enable passports and visas to be processed online. The remainder will be funded through targeted visa fee increases, which will remove the burden on the UK taxpayer while ensuring the UK remains a competitive place for work, travel and study internationally. At the same time, new investments such as £130 million more for automated passport E-gates, watch-list and intelligence technology, will tighten security while keeping queuing times to a minimum. Spending on maritime security will be protected, maintaining the UK’s strong defences against dangerous goods.”¹⁸

5.21 Figure 1 reflects HM Treasury’s settlement letter to the Home Office, which specified the income-related conditions applied to each of the BICS operational directorates, which stated:

16 For a few departments, not including the Home Office, the settlement went up to 2020-21.

17 This refers to the “resource” budget only and excluded “Over £460 million of the overseas aid budget” which “will be used by 2019-20 to resettle up to 20,000 of the most vulnerable Syrian refugees, covering the full first year costs to ease the burden on local communities,” plus “a further £130 million” to be provided to local authorities by 2019-20 “to contribute to the costs of supporting refugees beyond their first year in the UK.” The 2017 Autumn Statement revised the Home Office “resource” budget for the period 2016-17 to 2019-20. The figure for 2016-17 remained 10.6 billion pounds, but this increased to 10.7 billion pounds in 2018-19 and 2019-20.

18 The Home Office’s “capital” budget throughout the period 2015-16 to 2020-21 was set at 0.4/0.5/0.5/0.4/0.4/0.4 billion pounds. In the 2017 Autumn Statement the capital budget for period 2016-17 to 2020-21 was revised to 0.6/0.5/0.5/0.4 billion pounds.

“By 2019-20, the Borders, Immigration and Citizenship system (excluding customs and asylum functions) is planned to be fully funded through income.”

Figure 1: Income targets for BICS operational directorates

	2016-17	2017-18	2018-19
	£ million	£ million	£ million
UK Visas and Immigration	1,189	1,331	1,367
HM Passport Office	502	486	467
Border Force	27	32	46
Immigration Enforcement	32	35	38
Total	1,750	1,884	1,918

Promoting economic growth – cross-government consultations

- 5.22 A number of government departments have an interest in ensuring that the fees charged by the Home Office support their own departmental objectives, including in relation to the promotion of economic growth. A Cross-Whitehall Fees Committee is responsible for considering Home Office proposals for changes to immigration and nationality fees and ensuring that they are in line with broader government objectives.
- 5.23 Membership of the Fees Committee includes senior officials from the Home Office, Business Energy Industrial Strategy, Cabinet Office, Digital Culture Media and Sport, Department for Education, Foreign and Commonwealth Office, Department of Health and Social Care, Ministry of Justice, Department for Transport, HM Treasury, Department for Work and Pensions, Ministry for Housing, Communities and Local Government, and Department for Exiting the European Union.
- 5.24 In addition, the Migration Advisory Committee (MAC) advises the government on migration issues, including the impacts of immigration, the limits on immigration under the points-based system, and skills shortages within occupations. MAC is an independent, non-statutory, non-departmental body, established in 2007. At the time of the inspection, it comprised a chair and 5 other independent economists, plus a representative from the Home Office’s Migration Policy Unit (MPU).¹⁹
- 5.25 At ministerial level, Home Office proposals to change the immigration and nationality charging framework and fees require the approval of the Social Reform (Home Affairs) Sub-Committee of the Cabinet.²⁰
- 5.26 As part of the Spending Review 2015 outcome, a framework was agreed across government for fee increases for 2016-17 to 2019-20. The Home Office recorded the agreement in the following terms:
- “2/2/2/2% fee increases for growth routes (i.e. visit, work and study applications) which equates to a compound increase of 8% over the SR period.

¹⁹ Part of BICS Policy and Strategy Group.

²⁰ For membership see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751551/CabinetCommitteesAndImplementationTaskforces.pdf

- 25/18/0/0% fee increases for most non-growth routes (e.g. settlement, nationality and other/family leave to remain) and premium services (compound 47.5% over the SR period).
- Unit cost fees (much lower in volume and value) to increase in line with updated unit costs or by 5% p.a. (whichever is greater, subject to legal/policy constraints)."

5.27 In January 2018, the Home Office noted that:

“For 2016-17 and 2017-18, we have largely rolled out the agreed plan, with the exception of some changes within non-growth routes in 2017-18, where we increased some fees beyond the planned 18% (some to 23.5%) in order to reduce the nationality fees increase from 18% to 4%.”

5.28 It also noted that “due to Home Office budget pressures” there was “a requirement to deliver £50 million additional income in 2018-19 from visa and immigration fees, plus some extra headroom in 2019-20.” To achieve this, it proposed to increase most fees in April 2018 by 4%, with the Priority Visa service for general Entry Clearance fee increasing by 15%.

5.29 This proposal was approved at official level by the Cross-Whitehall Fees Committee on condition that the extra 2% on growth routes was treated as bringing forward the previously approved 2% increase for 2019-20, with no further increase for these routes in 2019. It was then put in writing to the Social Reform (Home Affairs) Sub-Committee for its approval. The changes came into force on 6 April 2018.

Home Office responsibilities

BICS Directorates

5.30 BICS Policy and Strategy Group (BICS PSG) is responsible for developing and maintaining the policies and strategies that underpin the BICS system. Sitting within BICS PSG, the MPU is responsible for advising the Home Secretary on which policies and rules will create a system that controls immigration in the UK’s economic and national interest. Its work covers 3 broad areas: economic migration, student migration, and citizenship and passport policy, and its key aim is to reduce the volume of immigration, while still attracting the brightest and best migrants to the UK.

5.31 Implementation of these policies and strategies is the responsibility of the BICS operational directorates: UK Visas and Immigration, Border Force, Immigration Enforcement, HM Passport Office. The Second Permanent Secretary together with the BICS Directors General form the BICS Board, which has oversight of the financial planning of the system as one of its responsibilities.²¹

Fees and Income Planning Team

5.32 At the time of the inspection, the Home Office Fees and Income Planning (FIP) Team sat outside BICS but it has since been placed under BICS Strategy.²² It is responsible for interpreting HM Treasury (HMT) fees and charges policy, developing business cases for fees proposals, and agreeing fees changes with HMT, which involves:

²¹ At the factual accuracy stage, the Home Office informed inspectors that: “The BICS board did not exist in 2015. It was the Home Office Executive Management Committee, (now ExCo), that provided whole-Home Office oversight. It was chaired by the first Perm Sec and approved all SR proposals, including fees and the self-funding objective. 2017 increases were agreed with the Second Permanent Secretary, in her capacity as Accounting Officer for BICS. 2018 increases were agreed by BICS board, chaired by the former second Perm Sec. All proposals would have been discussed at internal fees board meetings – charging programme board (CPG), which brings together representatives from across the BICS system, and beyond (e.g. HO Legal Advisers).”

²² The Fees and Income Planning Team was part of the Financial Planning Unit, in turn part of Home Office Finance and Estates which comes under Capabilities and Resources.

- development of the Home Office’s income strategy to support the aim of a self-funding BICS
- the end-to-end process (income planning, charging policy, draft legislation) for UKVI fees, but not for specific waivers or exemptions
- supporting the development of Border Force, Immigration Enforcement and HM Passport Office income plans
- calculating unit costs to support fees proposals
- producing the Impact Assessment to support the Fees Regulations, in collaboration with Migration and Border Analysis economists in Home Office Analysis and Insight.

Charging Programme Board

5.33 The Charging Programme Board (CPB) is chaired by the head of FIP and is attended by the Finance Business Partners for each of the BICS directorates, plus Home Office economists and lawyers. The CPB’s Terms of Reference state that it should ensure fees and charging work is aligned with business priorities and delivery plans and correctly reflects policy intentions, and that any new policy to be introduced into the Fees Order or Fees Regulations has received ministerial approval in good time. It should also consider proposed policy changes or other factors that may affect fees and ensure policy areas own and have checked their exceptions and waivers. From this, the CPB should consider charging strategy options and agree recommendations to be put to the relevant Home Office Boards, ministers and other departments, while identifying and managing risks to the charging programme and individual business priorities.

Internal Audit Report

5.34 In September 2018, the Government Internal Audit Agency (GIAA) produced a report, commissioned by Home Office Finance, on ‘Replacement Biometric Resident Permits (BRPs) – Fees & Charges’. This followed the discovery that some individuals had been incorrectly charged for replacement BRPs. The GIAA review looked specifically at how the error had occurred and what controls were in place to prevent a recurrence.

5.35 GIAA’s findings in relation to ‘Governance’ are relevant to this inspection. GIAA found that:

- [there were] adequate governance structures in place for high level oversight of operational fees but weaknesses in structures supporting regular decision-making
- [there was] a lack of regular, formal meetings between BICS PSG, Finance and operational areas with respect to joint working arrangements and/or changes to policy or practices
- informal discussions [took place] between the commands but [there was] nothing in place to formalise and record comments to provide an audit trail of agreement and actions.

5.36 In relation to ‘Policies, Processes & Systems’, GIAA found that:

“The FIP team receive appropriate advice from Home Office Legal Advisors (HOLA) and the Economists. There is also an adequate process in place for the modelling of fees, as evidenced through the FIP team’s presentations to the Charging Programme Board for their approval of the levels of income required according to the business requirements.”

5.37 The GIAA report made a number of recommendations, including that:

“Meetings between BICS PSG, Operational Areas and Finance should be formalised with agreed terms of reference and a record of agreed actions, maintained and monitored.”

- 5.38 GIAA categorised this recommendation as [of] “High Importance”. The Home Office accepted the recommendation and commented that it had “re-established the policy delivery board whose terms of reference are to oversee all implementation of policy change with policy ops and enablers (DDAT,²³ Finance, HOLA, Comms).” It reported that the first meeting of the Policy Delivery Board had taken place on 1 August 2018, and it had met again on 6 September.

Immigration and Nationality (Fees) Regulations 2018

Impact Assessment

- 5.39 The Home Office produced its Impact Assessment (IA) for the Immigration and Nationality (Fees) Regulations 2018 (the ‘2018 IA’) on 21 February 2018. It was signed off by the Immigration Minister on 15 March 2018. The “policy objectives and intended effects” were exactly as expressed in the IA that accompanied the Immigration and Nationality (Fees) Order 2015.

- 5.40 The 2018 IA set out 2 Options:

“Option 0 – Do nothing: no changes are introduced and visa fees remain at the 2017/18 level.

Option 1 – Visa fees for 2018/19 are set as proposed under the central scenario

Option 1 is the Government’s preferred option²⁴ as it is expected to enable the Home Office to achieve a balanced budget for financial year 2018/19 and achieves the Home Office objectives for the visa and immigration system.”

- 5.41 Under “Options considered”, the effect of Option 1 was described as:

- “• An increase of 4% on most routes (work, study, visit, nationality, settlement and other leave to remain).
- A rise of 15% on the expedited visa service for general entry clearance.”

- 5.42 The 2018 IA followed the format of previous (Fees) Regulations IAs, including those produced prior to the 2015 Spending Review.²⁵ HM Treasury’s ‘Green Book - Central Government Guidance on Appraisal and Evaluation’²⁶ states that the purpose of IAs is “to support the appraisal of new primary or secondary legislation” and set out the required approach. It stipulates that an IA should include “the rationale for government intervention, the policy objectives and intended effects, and the costs, benefits and risks of a range of options” and “should be developed in accordance with Green Book methodology”.

- 5.43 The 2018 IA presented the “key monetised costs” (lost tax due to fewer migrants entering the UK, lower Home Office revenue from a reduction in application volumes, lower tuition fee income, lower revenue from the Immigration Health Surcharge) and “key monetised benefits” (increased Home Office revenue from applicants who continue to apply and reduced processing

²³ Digital, Data and Technology, a Home Office Directorate, not part of BICS.

²⁴ **BOLD** as in original.

²⁵ The ‘regulatory impact assessment’ template for use by government departments, available on GOV.UK, is produced by the Department for Business, Energy & Industrial Strategy and was last updated in November 2017. <https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies>

²⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf

costs, savings from lower public services provision, increased employment for native workers) of proposed fees changes. It gave 'high' and 'low' figures for the costs and benefits of the proposed option, with a mid-point "Best Estimate" of a Net Benefit of £159.2 million over a 5-year appraisal period.

- 5.44 In terms of "non-monetised benefits", the IA stated that lower immigration "may result in some wider benefits (improved social cohesion, reduced congestion in housing and transport)." However, these impacts were "expected to be small". Meanwhile, ensuring that those who use and benefit from the immigration system meet its costs "will help increase public confidence in immigration control and the immigration system."
- 5.45 The 2018 IA drew on Home Office internal estimates of visa applications volumes for 2018-19, and made various planning assumptions, which included assumptions about 'price elasticity' (the responsiveness of demand for a product after a change in the product's price), the 'fiscal impact of migration' (the costs of public services²⁷ accessible by migrants and the contributions migrants make in terms of direct and indirect taxes²⁸), and 'displacement' (where "employment opportunities in the UK that could be filled by UK natives (UK born or UK nationals) are instead filled by migrants (foreign born or foreign nationals).").
- 5.46 It acknowledged that there was a lack of robust data to underpin some of its assumptions, for example expenditure by migrants. For its elasticity assumptions it drew on empirical studies, some dating back to the 1960s and mostly from North America, noting that the Home Office's internal research had "not found any evidence of a statistically significant relationship between changes in visa fees and the volume of applications for visa products."
- 5.47 In setting out in tabular form the estimated reductions in visa applications and grants, it concluded that "the proposed changes in visa fees are expected to have very small impacts ... largely because the price of a visa is a small proportion of the expected income from coming or remaining to [sic] the UK for workers, or the cost of travel for visitors and the cost of education for students."
- 5.48 For nationality applications it assumed that "those deterred from applying for nationality do not yield a loss to the Exchequer. This is because nationality products are optional and deterred applicants are still eligible for leave to remain in the UK, even if they do not apply. Deterred applicants are therefore assumed to continue to contribute to the Exchequer."
- 5.49 In its "Strategic overview", the 2018 IA restated the Government's objective for the immigration system to achieve self-funding by the end of 2019-20 "where the costs of front-line Border, Immigration and Citizenship operations are to be recovered through fees paid by those who use the system." It also stated that:

"the Government aims to limit fee increases on the most economically beneficially sensitive routes in order to continue to attract those migrants and visitors who add significant value to the UK economy. Some fees are set above the cost of delivery, to reflect the value of the product or the wider costs of the immigration system. Some fees are set at above the cost of delivery to reflect the associated benefits and entitlements, and the related income contributes towards wider Immigration System costs. Some fees are also set at below cost where a lower fee supports wider government objectives (e.g. a lower

27 This uses data from HM Treasury's 'Public Expenditure Statistical Analysis' which breaks public sector expenditure down into: General public services, Defence, Public order and safety, Economic affairs, Environment protection, Housing and community amenities, Health, Recreation, culture and religion, Education, Social protection, EU transactions.

28 This includes income tax, National Insurance, council tax, indirect tax such as VAT.

short-term visit visa fee maintains international competitiveness and supports tourism). Some fees are charged at cost to reflect the cost of delivery (or unit cost). Optional, premium services, charged above cost, are offered to meet customer demands and to limit fee increases in other areas.

Significant efficiency savings are being made within the immigration system, to ensure that the Home Office continues to deliver a value for money service. It is appropriate that any remaining shortfall should be met by those who use and benefit from the service.”

- 5.50 Under the heading “Groups affected”, the IA referred to “all migrants wishing to come to or remain in the UK”. It stated that “while the fees paid by UK businesses (such as sponsorship costs) are not expected to increase, the [recommended] option may indirectly affect UK businesses if migrant workers are deterred from entering or remaining in the UK. However the UK’s visa offer remains internationally competitive.” The IA presented no evidence to support this claim.
- 5.51 Under “Consultation”, the IA referenced the 2013 “targeted consultation on charging principles in support of the framework set out in the Immigration Act 2014”.²⁹ The response to this consultation was published in January 2014. Alongside a summary of the comments received from respondents, the Home Office made a number of statements setting out the government’s thinking, which the 2018 IA implied had not changed:

“We announced in 2012 our intention to simplify the fee structure by eventually aligning fees for main applicants and dependants ... We believe that it is right for family members to pay the same as main applicants when the benefits of a successful application are the same.

... The Home Office is given strict income targets ... [we] remain convinced that in order to raise the funding required to maintain our immigration system, we are unable to make large reductions to fee levels. We are delivering significant savings and believe it is fair that those who use and benefit from our services should contribute to the cost of running the immigration system.

... We remain committed to maintaining the UK as an attractive destination for work, study and for business, tourism and cultural visits. We recognise that migrants make a valuable contribution to the wider British economy, and we continually monitor our fees to ensure that they remain competitive with similar endorsement types offered in other countries.

... We consider that it is important for customers to be offered a wide range of premium services so that they are able to choose the level of service that is most suitable for their requirements. ... Additional income from premium services also helps to reduce the scale of fee increases otherwise required for standard services.

... It is right that in cases where an application fee is refunded because an application is incomplete or withdrawn, the Home Office should be allowed to recover the costs of handling and processing the application up to that point. ... we will ensure that any fee introduced is set at a level that is fair and reasonable. We will consider the requirement to allow applicants a reasonable length of time to correct mistakes ...

... Apart from a small number of limited exceptions, our fees apply to all applicants. We

²⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276026/ImmigrationFeesChargingResponse.pdf

believe that it is fairer to charge a consistent fee based on the benefits conferred by route, rather than a differential fee determined by the characteristics of the individual making the application. Whilst there are external factors that may affect the affordability of fees for individuals in different circumstances, we do not feel it is practicable to introduce further concessions at this time. There are a number of concessions and fee exemptions already in place, for example children in the care of a Local Authority, and for victims of domestic violence.”

5.52 Also under “Consultation”, the 2018 IA alluded to the Cross-Whitehall Fees Committee:

“Fee proposals are assessed in the context of broader government objectives by officials from all relevant government departments. ... The proposals contained in this impact assessment (IA) have been agreed in principle with other government departments.”

5.53 Under the heading “Monitoring and review”, the 2018 IA stated: “The Home Office will closely monitor the impact of fees for the applications and services contained in these regulations”, and link this to the annual review of fees and charges, the monitoring of application trends, and the impact on the UK economy. The IA did not explain precisely how this would be done, but from the context the impacts referred to here were essentially financial. It was silent on the social and welfare impacts on particular applicants.³⁰

5.54 Meanwhile, under “Wider impacts” the 2018 IA referenced the 2012 MAC ‘Analysis on the Impact of Migration’. In its report, the MAC had noted that “many impacts of migration can only be estimated rather than accurately measured and some potentially important impacts cannot be quantified at all”. The MAC report continued: “In the case of migration policy it is not always self-evident whether it is the welfare of UK citizens, UK-born current UK residents, current and future UK residents, or some measure of global welfare that the Government wishes to be maximised.”

5.55 The 2018 IA did not look to clarify this but listed some of the key factors the MAC had recommended should be considered when appraising migration policies:

- “‘Dynamic effects’ on the UK labour market and economy
- Impacts on employment and employability of UK workers
- The net public finance and public service impact of migrants
- Congestion impacts of migration, including impacts on transport networks and the housing market”

5.56 The 2018 IA had “made an attempt to quantify impacts on public finance and public service; and on employment of UK workers”. These were covered in 2 detailed and largely technical Annexes, the first providing an analysis of the “fiscal impacts” created by migrants coming to live in the UK by reference to “the costs per head for different types of public services accessible by non-UK nationals who come and live in the UK” (“fiscal spend”) and “the contributions to tax revenue, such as income tax, National Insurance, council tax, indirect tax etc.” (“fiscal revenue”).

5.57 The second Annex, entitled ‘Displacement Assumptions’, looked at employment. It referred to the work of the MAC, and the work done by the Home Office and the Department for Business, Innovation and Skills, but noted that the assumptions used in the 2018 IA “reflect the current Home Office position, but do not represent a cross-Government consensus.” It did not elaborate further on this point.

³⁰ At the factual accuracy stage, the Home Office stated that: “The social and welfare impacts on particular applicants is not a matter for an Impact Assessment”.

5.58 The 2018 IA did not explain precisely how the data derived from these 2 analyses played into its setting of individual fees levels, or draw out how it related to the “benefits that the Secretary of State thinks are likely to accrue to any person in connection with the exercise of the function”.

Explanatory Memorandum

5.59 When the Immigration and Nationality (Fees) Regulations 2018 were laid before Parliament they were accompanied by an ‘Explanatory Memorandum’. Much of this echoed the 2018 IA, but under “What is being done and why” it offered further insight into the Home Office’s thinking in relation to setting certain fees above cost recovery.

5.60 The Memorandum explained:

“this either reflects the value of the entitlements conferred by a successful application, or represents a contribution to the wider costs of performing other immigration functions, or both. The available entitlements may, depending on the type of application, include:

- unrestricted access to the labour market;
- the ability to bring dependants to the UK who also have unrestricted access to the UK labour market;
- unrestricted access to state education for their dependants;
- the ability, or an option, at a later date, to apply for settlement in the UK.”

5.61 It also stated “the Home Office does not make a profit from fees charged above the estimated cost to process the application. Any income generated above the estimated unit cost is used to contribute to the wider operation of the immigration system.” Meanwhile, the unit cost was described as “the estimated average full cost to the Home Office of providing each service”, and the Memorandum noted that the Home Office would “publish indicative unit costs” for 2018-19 to enable “applicants and the general public to see which fees are set over, or under cost, and by how much”.

Supplementary charges

5.62 Some visa applications require the applicant to pay a supplementary charge at the same time as the visa application fee. While the income derived from these charges does not go towards the Home Office’s costs in running the immigration system, from the applicant’s perspective these are inevitably regarded as part of the cost of obtaining a visa.

Immigration Health Surcharge

5.63 The Immigration Health Surcharge was introduced in April 2015. It is an annual charge paid by people from outside the EEA who are seeking to live in the UK for 6 months or more to work, study or join family. In February 2018, the government announced that it planned to increase the annual surcharge from £200 to £400 (£150 to £300 for students).

5.64 In 2017, the Public Accounts Committee noted that the biggest contribution to the increase in the amount recovered by the Department of Health and NHS per annum from overseas patients had come from the Immigration Health Surcharge. For 2017-18, the amount collected was £240,483,228.

Immigration Skills Charge

5.65 The Immigration Skills Charge was introduced in April 2017. The Impact Assessment for the 2016 Immigration Bill (later Act) referred to:

“a power to enable the Secretary of State to make regulations levying a charge on employers of non-EEA migrants, the proceeds of which will fund skills development in the UK.

The Bill provides for an Immigration Skills Charge, intended to help address current and projected skills needs in the UK economy and contribute to reducing net migration. By making it more expensive than at present for employers to recruit skilled workers from outside the European Economic Area (EEA), the intention is to encourage employers to change their approach, so that where possible they recruit and train up UK-resident workers. The Migration Advisory Committee has been asked to advise on the scope and impact of the charge and the Government will be consulting on its collection and expenditure.”

6. Parliamentary scrutiny of Immigration and Nationality (Fees) Orders and Regulations 2016 - 2018

Introduction

- 6.1 Prior to coming into force, Statutory Instruments (SI) are subject to either a “positive” or “negative” resolution procedure. The positive procedure requires the SI to be agreed by the relevant Committees of both Houses of Parliament. Under the negative procedure, the SI becomes law as soon as it is signed by the relevant government Minister and remains legally intact unless a motion (known as a “prayer”) to reject it is agreed by either House within 40 sitting days from its introduction.³¹
- 6.2 Immigration and Nationality (Fees) Orders are subject to a positive procedure, while (Fees) Regulations are subject to a negative procedure.
- 6.3 Parliamentary scrutiny of the (Fees) Orders and Regulations 2016, 2017 and 2018 produced a number of important explanatory statements from the government, and challenges and points from members of both Houses.³²

(Fees) Order 2016 - Commons

- 6.4 The Immigration Minister presented the Draft Immigration and Nationality (Fees) Order 2016 to the House of Commons First Delegated Legislation Committee on 2 February 2016. In introducing the (Fees) Order, the Minister told the Committee that:

“The Order sets out the maximum amounts that can be charged for broad categories of immigration and nationality functions for the next four years, which is the expected life of this Order. Maximum fee amounts are ceilings, limiting the amount that may be charged in subsequent fee regulations; they therefore set out that broad framework. ...

... I want to make clear that the maximum amounts are not targets that the Home Office will seek to charge by the end of the four-year period. Rather, these maximums will allow the Home Office to be responsive over the next four years to the needs of customers, the Department and the taxpayer, and to meet the Government’s objective, as announced at the [2015] Spending Review, of a border and immigration system that is fully funded by those who use it by 2019-20.

... we propose to apply incremental increases to most immigration and nationality categories. To support economic growth, we intend to make relatively small fee increases for applications related to work, study and visit; these will increase by 2% next year. ...

... A number of visa and immigration fees will continue to be set at or below the estimated processing cost. The highest proposed increases to fees in 2016-17 are for optional

³¹ The annual fee increases are also agreed with the Social Reform (Home Affairs) Sub-Committee [of the Cabinet].

³² The quotations throughout this chapter are taken from Hansard.

services that offer an enhanced level of convenience and for routes that provide the most benefits and entitlements; for example, requests for bespoke application services and applications for indefinite leave to remain.”³³

6.5 In the debate that followed, Keir Starmer MP (Labour) indicated:

“from the outset that we will not be opposing this order and we support the broad aim of making the border, immigration and citizenship system self-financing. It is right that the service is sustainably funded rather than being funded by the taxpayer.”

6.6 However, he raised some issues, including the need to strike “the right balance” when setting fee increases for visa applicants “coming here to do skilled work” which were “being frozen or increased by 2%” and “those seeking British nationality or long-term residence, with many of those costs increasing [in 2016-17] by up to 25%”.³⁴

6.7 Scottish Nationalist Party (SNP) members of the Committee meanwhile indicated their intention to oppose the Order because of “the 25% increase across the board for family fees”. They also raised the issue of refunds where the Home Office had made an error when refusing a visa application, and questioned whether the system needed to be “completely self-financing”, since this seemed not to take proper account of the benefits to the British taxpayer from immigration, or of the fact that the costs of the system “would be substantially reduced if the Home Office addressed its considerable inefficiencies”.

6.8 The SNP drew attention to a briefing from the Immigration Law Practitioners’ Association (ILPA) that:

“highlights the fact that there is no correlation with the ability to pay, and that study and business-centred immigration is favoured over child and family issues. The Minister has said that he has given reasons, but we have grave concerns that the fee increase will be a disincentive to families, particularly those already here trying to register a child.”³⁵

6.9 Keir Starmer MP also referenced the ILPA briefing with respect to the fee of £936 to register a child as a British citizen, saying he “was struck by the fact that there is no provision for those who do not have the means to pay”.

6.10 Responding to members’ comments, the Immigration Minister stated that:

“certainly over the last couple of years ... the distinction that has been drawn is between [the routes we judge to be focused on contributing to our economic growth] and certain other categories, where we judge there to be significant benefits that attach to the rights that are applied. ... we are looking to larger fee increases for what we consider to be the non-growth routes by up to 25%, which includes nationality and settlement fees. We believe these fees reflect the considerable benefits and entitlements available to successful applicants. ...

... It is certainly not intended that there will be a specific nationality waiver and we will never require a fee when that would be incompatible with rights under the European Convention on Human Rights. Clearly, there are costs to the immigration system in

33 Rt. Hon. James Brokenshire MP (Conservative).

34 Rt Hon. Sir Keir Starmer MP (Labour) also raised the introduction of premium-rate phone lines for visa applicants, and for general enquiries about immigration status.

35 Joanna Cherry MP (Scottish Nationalist Party).

processing and assessing such claims and in the ability to assert rights, so it is right that we have a system that can recover those costs. I will certainly reflect on what [Keir Starmer MP] has said and see whether there is anything further I wish to add once I have reread his comments. It is all about that relative balance.”

- 6.11 In line with figures from the HM Treasury 2015 Spending Review settlement letter, the Minister told the Committee that the proposed 2016-17 fees would “take us to around three-quarters self-funding for the costs of the borders, immigration and citizenship system, around £600 million of which is currently funded by the Exchequer.” And, he also stated that the Home Office would continue to drive down costs through efficiencies.
- 6.12 He concluded by noting that there was “no clear evidence” that an increase in the fees would lead to a reduction in visa applications, or “clear read-across in terms of what the economists would argue about price elasticity of demand being linked to the overall price of a visa”, and that “in many cases, the number of applications has gone up, notwithstanding those fee increases.” However, “should there be a reduction, the amount of fees charged would cover the financial implication of that.”
- 6.13 The Committee divided: Ayes 9, Noes 2, and the question “That the Committee has considered the draft Immigration and Nationality (Fees) Order 2016” was “Resolved”.

(Fees) Order 2016 - Lords

- 6.14 A motion to consider the (Fees) Order 2016 was put to the House of Lords Grand Committee on 10 February 2016. Lord Bates, Home Office Minister of State, repeated the Immigration Minister’s lines regarding the maxima not being targets, the system becoming fully funded by 2019-20, and the setting of fees to support economic growth.
- 6.15 In the debate that followed, only 2 members of the Committee spoke – Lord Paddick (Liberal Democrat) and Lord Rosser (Labour). The latter asked whether the fees would be related to an applicant’s ability to pay and, if not, how the Home Office would meet its section 55 obligations,³⁶ which, it was argued, would be an issue if an adult applies for settlement but does not apply for a child or children at the same time because they cannot afford the fee.
- 6.16 Lord Rosser also described the maximum fees as “uneven” and, like Lord Paddick, queried if they were set “as a means to encourage or deter would-be applicants from particular groups or categories from making applications”. And, he expressed concern both about the incremental increases and about whether more premium services would mean “a second-class service for everyone else”.
- 6.17 In response, Lord Bates stated:

“there is a difference of approach when we are looking at students, for example, whom we want to encourage to come here to bona fide universities. We want to maintain their costs at a competitive level to encourage them to come, as with people coming on visitor visas. However, some of the other charges involve cases where there is less obvious benefit across the whole of the UK and more benefit to the individual concerned. We are saying that in those circumstances the additional fees will go towards keeping the costs down over the four-year period.”

36 Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary to have regard to the need to safeguard and promote the welfare of children who are in the UK in carrying out any function in relation to immigration, asylum or nationality.

6.18 He refuted the idea that premium services would lead to a poorer standard of service for everyone else, stressing that they were optional and improved customer choice, and he also refuted that fees were being used to deter applications, repeating the Immigration Minister’s point that “There is no evidence of a relationship between changes in fees and the volume of applications for various visa products.”

6.19 Lord Bates outlined the Home Office’s overall funding plans:

“Through making savings and improving efficiencies, we expect to reduce the Exchequer funding requirement by over half by 2019-20—that is, from £600 million down to £300 million. We expect to increase income from fees by circa £100 million in 2016-17. That will mean that the borders, immigration and citizenship income will be circa £1.8 billion in 2016. We estimate that we will need an additional circa £250 million of income from fees by 2019-20 to meet our self-funding objective.”

6.20 He did not directly address the question about section 55 duties, stating that it was right that the system sought to cover the costs of processing and assessing claims and the assertion of certain rights, but that the Home Office would never require a fee that was incompatible with ECHR:

“and indeed there are many fee exemptions. Specific exemptions from application fees are provided to several groups with limited means for applications made within the UK — for example, asylum applications, children who receive local authority support, stateless people and victims of domestic violence.”

6.21 The motion was agreed.

(Fees) Order 2017 – Commons

6.22 On 27 February 2017, the Immigration Minister³⁷ brought the Draft Immigration and Nationality (Fees) (Amendment) Order 2017 before the First Delegated Legislation Committee.

6.23 The Minister explained that the 2017 Draft Order would make “minor technical changes” to the 2016 Order “which remains in place and which continues to set out the overall framework and maximum amounts that can be charged for immigration and nationality functions, as agreed by Parliament last year”. The changes included extending the provisions of the 2016 Order to the Channel Islands and the Isle of Man.

6.24 The Minister told the Committee that the 2017 Draft Order would:

“ensure that the scope of the charges set under the 2014 Act for above-basic Border Force officer services, such as attendance at premium airport lounges or port-owned fast-track services, is broadened to meet future demands, for example to cover above-basic services provided at sea. ...

[and] permit a charge to be set for providing information, in addition to the current services, which involve providing advice, training and assistance.

It will not affect the Home Office’s basic status checking services, for example those provided to employers or landlords in the United Kingdom, which will continue to be provided free of charge; the in-country service, for example calls to employers’ or landlords’ helplines or the nationality helpline, which will continue to be charged at

37 Rt Hon. Robert Goodwill MP (Conservative).

local rates; or the availability of information for sponsors and educators. The services provided in this category, in respect of which the draft order makes provision, relate to the international service only.”³⁸

6.25 The 2017 Order also sought to change the way in which fees for some information and advice were structured, adding scope for a fixed fee to accommodate new services (webchat and email) likely to be offered by overseas contact centres in future. It also updated the description of an electronic visa waiver³⁹ so that it accurately matched the process and policy intent set out in the Immigration Rules.

6.26 Responding, Carolyn Harris MP (Labour) commented:

“Although we recognise the need for fees, we must also acknowledge that anecdotal evidence has shown that we are losing students and tourists, particularly to other European countries. Those groups would contribute massively to our economy and it must be argued that their loss is owing to the level of fees and the complexity of the visa system. Nevertheless, we will not oppose the Order today.”

6.27 Hansard does not record any further contributions, and notes that the Committee agreed to the motion that it had considered the draft. The Committee session lasted 6 minutes.

(Fees) Order 2017 - Lords

6.28 A motion to consider the (Fees) Order 2017 was put before the House of Lords on 11 January 2017 by Baroness Vere of Norbiton (Conservative), who used almost exactly the same language as the Immigration Minister to introduce the Order.

6.29 Only Lord Rosser (Labour) spoke in response. He sought (and received) confirmation that his understanding of the extension of certain provisions of the 2016 Order to the Channel Islands and Isle of Man was correct, but otherwise had “no questions or queries to raise on the [2017] Order”, and the motion was agreed.

Fees Order 2018 - Commons

6.30 On 5 February 2018, the Immigration Minister⁴⁰ presented the Draft Immigration and Nationality (Fees) (Amendment) Order 2018 to the House of Commons Seventh Delegated Legislation Committee.

6.31 The Minister prefaced her remarks with the explanation that:

“The purpose of the draft order is to make a relatively small number of changes to the [2016 and 2017 (Fees) Orders] The changes are needed to ensure that the charging framework set out in secondary legislation for immigration and nationality fees remains current and supports plans for the next financial year.”^{41 42}

38 The Minister also pointed out that customers using these international services would still be able to access more detailed information than that relating to the basic operation of the service online, free of charge on GOV.UK.

39 Enabling visitors from Oman, Kuwait, the UAE and Qatar to travel to the UK without a visa.

40 Rt. Hon. Caroline Nokes MP (Conservative).

41 The Minister informed the Committee of an error in the Draft Order regarding the circumstances in which a fee may be set for the provision of biometric identity documents. The intention was to permit a fee to be charged when a person fails to collect their biometric residence permit within the required time limit. However, the Immigration (Biometric Registration) Regulations 2008 do not require an application in such circumstances.

42 The changes were also intended to clarify entry clearance powers in relation to Guernsey, Jersey and the Isle of Man, including powers to charge fees when offering premium services; to delete obsolete provisions for which there was no fee set in the Regulations; to charge at an hourly rate for a premium fee when delivering an optional service to enrol biometrics at a place of convenience to service users, reflecting plans to modernise services offered; to update the power to charge for services offered on behalf of certain Commonwealth and British overseas territories, where such services may not be offered within consular premises.

6.32 The Minister confirmed that the government's intention remained "to move to a position where the fees charged cover the costs of providing the border, immigration and citizenship service."

6.33 Responding, Afzal Khan MP (Labour) stated: "We are not opposed to these measures. However, we do have some concerns and questions ...". Referring to "the super premium service proposals", Mr Khan said that "the cost to individuals and families has become extortionate" and asked about "the justification for privatisation", continuing:

"At the moment, people are finding out that even when they pay for premium service, their applications are severely delayed and decision making is poor. We do not want to see a private company being brought in and charging more but offering a worse service than that being offered at present. What has the Minister done to ensure that that will not happen?"

6.34 Mr Khan referred to the increased number of immigration-related complaints against the Home Office investigated by the Parliamentary and Health Service Ombudsman and the percentage upheld. He argued that: "In order to compete internationally for talent, students and tourists, who all contribute massively to our economy, we need urgently to reform the efficiency and effectiveness of the Home Office".

6.35 Finally, Mr Khan regretted that "applicants are now having to pay for a private profit as well as the cost of processing their application" and asked what the Minister expected the profit margin to be and whether the Home Office had started finding contractors and negotiating with them.

6.36 Alison Thewliss MP (SNP) said she echoed many of Mr Khan's points, and that the SNP had "concerns about the costs and the effectiveness of the immigration system." She described 2 constituency cases involving spousal visa applications, where she questioned whether the standard of service provided justified the premium fees paid. Describing the service as "very expensive", she said:

"I question whether the expense meets the cost of processing those visas. It would be good to get more information from the Government about exactly how much it costs to provide such a service."

6.37 She expressed concern that there was no mention in the documentation about "the equality impact, including on women, who have lower earnings and may be in the UK waiting for a spouse to come over. They will have even fewer means at their disposal." Mrs Thewliss argued that:

"the Home Office just wants to gouge people further for money for immigration. That seems to be a pattern, judging by what comes through my office. ... a further example of such gouging is charging £6.25 for a webchat facility or email. It would be good to know exactly the reason for that, and for the £2.50-a-minute phone cost. Will those costs be fixed or capped, or will there be continued rises? My point is that immigration is a very expensive business. The super premium service has not provided anything like super premium responses to the people who come to my office. They come to me chasing answers, which they have not been able to get despite paying considerable sums of money to go through the immigration process."

6.38 The Immigration Minister provided some details:

"The service described as super premium - mobile biometric testing - is currently used by something in the region of 500 applicants a year ... and the service is used ... largely by

VIPs - visiting royalty or, often, footballers, and people who are time-poor but well able to pay the current fee of £10,500. ...

... the fee has not yet been set [for the hourly charge]. It will be a maximum of £2,600 an hour. In the vast majority of cases, we fully expect the process to be significantly quicker than the four hours it would take to get to the current cost of £10,500, which is the set standard fee regardless of how long the work takes. ...

... 98.9% of non-settlement visas are decided within three weeks and 85.5% of all settlement visas, including spousal visas, are processed within 12 weeks.”

- 6.39 Mrs Thewliss questioned the time the Home Office took to deal with complex cases, and Mr Khan asked what criteria it used to decide whether a case was complex. The Minister responded that: “where issues are complicated and visa applications are not straightforward, it is absolutely right that full rigour is applied to inspecting and determining them.” She concluded:

“This amendment to the 2016 Order mainly seeks to maintain and clarify the charging framework under which immigration and nationality fees are set. We aim to set out the actual fee levels for 2018-19 in Regulations using the negative procedure in March. The passage of the Draft Order will not, other than for the premium fee, amend or increase the maximum amounts that can be charged for border, immigration or citizenship applications.

Prior to making any changes to individual fee levels in regulations using the negative procedure, we invite appropriate scrutiny of our proposals, ensuring that they are reviewed and approved by a number of other Government Departments and that an impact assessment is produced before they are presented to Parliament. I believe that those steps will ensure that the Government balance our policy that users should pay with consideration of the impact of fees on businesses, education institutions and economic growth.

As I have said, the maximum amount set for the new power is £2,600 per hour. The procurement process for the partner with which we will eventually work is currently under way. We will, of course, announce that partner in due course. As such, I commend the draft order to the Committee.”

- 6.40 The question “That the Committee has considered the Draft Immigration and Nationality (Fees) (Amendment) Order 2018” was agreed. The Committee meeting lasted 18 minutes.

Fees Order 2018 - Lords

- 6.41 A motion to consider the (Fees) Order 2018 was put to the House of Lords Grand Committee on 27 February 2018 by Baroness Williams of Trafford. Her introduction to the Order followed the same lines as the Immigration Minister.
- 6.42 Only 2 members of the Committee responded, one of whom was again Lord Paddick (Liberal Democrat). On this occasion he stated:

“We have a fundamental objection to the approach that the Government are taking to move to a position where fees are charged to cover the costs of providing the border, immigration and citizenship services. The security of the UK border is one of the most important mechanisms by which the Government keep us safe and we should not expect

those who want to do the right thing and apply for leave to remain and, eventually, citizenship, some of whom come to this country as destitute refugees, to be forced to fund what is fundamentally the duty of the Executive.”

6.43 He asked a question about the fee for the super premium capture of biometric data, and its outsourcing to a commercial provider, and ended by saying:

“We support these regulations as far as they go and we look forward to the main event, when the actual fee levels for 2018 are set out in the forthcoming regulations next month. I give the Minister notice that those regulations are likely to be a completely different ball game.”

6.44 Lord Hunt of Kings Heath (Labour) also raised the super premium capture of biometric data and the profit margin for the commercial provider, complaining that the Explanatory Memorandum “begs more questions than it answers on those details”.

6.45 Baroness Williams explained that the hourly rate (£2,600) quoted in the Order was the maximum not the actual fee and explained how it had been “modelled”. She also stated that the commercial provider “will be required to demonstrate a clear and transparent method of calculation of the service cost” and “undertake open book accounting to allow visibility of costs and charges for services provided to customers”.

6.46 In response to Lord Paddick, she said:

“As regards the organisations working with vulnerable people suggesting that the destitution assessment applied to those who make applications on the basis of private and family life is too stringent, our policy states that a fee waiver will be granted to applicants who demonstrate with evidence that they are destitute. That may well bring in the point that the noble Lord, Lord Paddick, made. The onus is on the applicant to demonstrate by way of evidence, which I am sure that a refugee or asylum seeker could, that they meet the terms of the fee waiver policy. It is open to such individuals to re-apply for a fee waiver on the evidence that supports their request.”

6.47 The motion was agreed without further debate.

(Fees) Regulations 2016, 2017 and 2018

6.48 The Immigration and Nationality (Fees) Regulations are laid before Parliament each year. The key dates for the 2016, 2017 and 2018 Regulations are at Figure 2.

Figure 2: Immigration and Nationality (Fees) Regulations 2016, 2017 and 2018 Key dates

	Laid before Parliament	Came into force
2016	26 February 2016	18 March 2016 ⁴³
2017	3 April 2017	6 April 2017 ⁴⁴
2018	16 March 2018	6 April 2018 ⁴⁵

43 Except for fees relating to entry clearance to enter the Isle of Man, which came into force on 6 April 2016.

44 The fee in relation to email assistance from the international contact service (£5.48 per query) came into force on 1 June 2017.

45 An Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018 was laid before Parliament on 20 July 2018 and came into force on 28 August 2018. This enabled the Home Office to begin the ‘Private Beta Phase 1’ of the EU settlement scheme.

- 6.49 In common with most Statutory Instruments, the (Fees) Regulations are subject to a negative resolution procedure, meaning that the SI is laid before Parliament before it comes into force, and may be revoked if either House passes a resolution annulling it within 40 days. Any member of either House can put down a motion that an instrument should be annulled. At the time of the inspection, it was almost 20 years since any SI had been annulled by either House.

(Fees) Regulations 2018 - Motion of Regret

- 6.50 On 12 June 2018, the House of Lords considered a motion from Baroness Lister of Burtersett (Labour):

“That this House regrets that the Immigration and Nationality (Fees) Regulations 2018 include a £39 increase in the fee for registering children entitled to British citizenship, given that only £372 of the proposed £1,012 fee is attributable to administrative costs; and calls on Her Majesty’s Government to withdraw the fee increase until they have (1) published a children’s best interests impact assessment of the fee level, and (2) established an independent review of fees for registering children as British citizens, in the light of the report of the Select Committee on Citizenship and Civic Engagement (HL Paper 118) (SI 2018/330).”⁴⁶

- 6.51 In introducing the motion, Baroness Lister drew attention to the fact that “many” children born in the UK or having lived here for most of their lives have not exercised their right to register for British citizenship “because of the exorbitant registration fee levied”. She went on to say that the Home Office had never carried out an impact assessment for the effect of the fee level on children’s best interests and referred to the recommendations from the Select Committee on Citizenship and Civic Engagement concerning situations where the fee might be waived or not applied, noting that the Committee could “see no ground for the Home Office charging more than the costs they incur”. She also referenced the work of the Project for the Registration of Children as British Citizens and Amnesty in highlighting these issues.

- 6.52 Baroness Lister described the Government’s position as revolving around 2 arguments: that the level of the fee is justified by the commitment to the Borders, Immigration and Citizenship System becoming self-funding; and that citizenship is not necessary in order for a person to exercise his or her rights in the UK. She sought to challenge both, arguing that “registration of a pre-existing entitlement” did not “constitute a benefit”, and that British citizenship allowed a child to apply for a British passport and gave “them the opportunity to participate more fully in the life of their local community as they grow up, while preventing “serious negatives”:

“without proof of citizenship young people can find it impossible to enter higher education because they are treated as overseas students, with higher fees, and they are unable to access student financial support. They could even end up being denied access to healthcare, housing or a job as, undocumented, they become victims of a hostile/compliant environment policy. Most seriously, they risk removal, particularly once they are over 18.”

- 6.53 Baroness Lister also drew attention to an Early Day Motion tabled on 14 May 2018 by Stuart McDonald MP (SNP):

“That this House believes that tens of thousands of children born and living in the UK and entitled to register as British citizens under the British Nationality Act 1981 are nevertheless undocumented and therefore unable to access public services, social security, private

⁴⁶ ‘The Ties that Bind: Citizenship and Civic Engagement in the 21st Century’.
<https://publications.parliament.uk/pa/ld201719/ldselect/ldcizen/118/118.pdf>

rented accommodation, the labour market and many other benefits of citizenship; further believes that some will simply be unaware of the requirement to register and many others will not have the means to afford the fee of over £1,000 charged by the Home Office; notes that the estimated cost of processing such applications is only £372; believes that no child should be prevented from taking up their entitlement to British citizenship simply because of cost; calls for the fee for applications to be reduced to no higher than the cost of processing, for exemptions for children in local authority care, and for fee waivers for children who cannot afford to pay any fee at all; and further calls for steps to be taken to raise awareness of the need to register the right of these children to British nationality.”⁴⁷

6.54 She also quoted the Home Secretary’s comment to the Home Affairs Committee on 15 May 2018 that the fee was “a huge amount of money to ask children to pay for citizenship” and that taking a fresh look at fees is right at some point and “something I will get around to”, although Baroness Lister noted that “to “get around” to something suggests a distinct lack of urgency”.⁴⁸

6.55 The Motion of Regret was debated for over an hour and a half. 11 members spoke in support, while another sought to explain the history and rationale for the fees. A number of points were made:

- since it was introduced, in 1983, the fee had increased from £35 to £1,012
- the ability to charge “over-cost” fees was brought in in 2004 by the Labour Government and applied from 2007 onwards
- the size of the fee was precisely the reason why some non-registration occurred
- the fee is “completely out of line with other countries” ... “nearly six times what it costs in Ireland, 20 times the amount it costs for a child to be registered as a citizen in Germany, and 21 times what it costs in France”
- the immigration system had become too complex and Ministers’ discretion was “somewhat limited”, but should be exercised “in favour of child applicants” in cases of particular poverty or suffering
- the Government’s attitude to fees and charges was “confusing” and inconsistent
- adult naturalisation and children’s registration had been “conflated”, which was “not what the law intended”
- the issue was “not entitlement but the registration of that entitlement”.

6.56 Parallels were drawn with the Windrush generation:

”without British citizenship, these children face the same issues as the Windrush generation ... being refused access to healthcare, employment, education, social assistance and housing; being held in detention centres; and potentially being removed and excluded from the country altogether”.

47 The EDM received 72 signatures.

48 The Home Secretary gave oral evidence to the Home Affairs Committee investigation into ‘Windrush Children’. In answer to a question from Tim Loughton MP about fees for children, including for registration for citizenship, the Home Secretary said: “Money is important. We do have to fund the Home Office, but also we have to get the right balance as well. Your point, as Mr Loughton has made-and I am listening-is that £1,000, any figure around that number, is a large amount of money. It is a huge amount of money to ask children to pay for citizenship. I understand the issue. Fees have been going up for a number of years. I think it is right at some point to take a fresh look at fees and it is something that I will get around to. It has not been my priority right here and now, apart from the Windrush generation.”

- 6.57 It was also argued that citizenship was “about belonging, not just to your close family but to your community, your society and your state” and “to feel proud of that, to feel welcome and fully participative.” It was noted that the Government [Lord Bates] had acknowledged the importance of children in the care of local authorities having their status regularised and registered, and one speaker later asked for “the removal of the entire fee in the case of children in local authority care”.
- 6.58 Reference was made to the Mayor of London’s strategy for social integration, and the Mayor was quoted as saying “if a young person has the right to be a British citizen, then government should remove obstacles to them becoming one”. And, the Minister, Baroness Manzoor, was asked to “say how this policy fits with the Government’s strategy to prevent the alienation of young people”.
- 6.59 Responding, Baroness Manzoor sought to set the fee for the registration of children as UK citizens in the context of the wider system of immigration fees and policies. She stated that the Government strongly encouraged “children and young people who regard this country as their home ... to make appropriate applications to make their stay here lawful.” However, she described it as “only right that immigration fees should contribute to funding an effective and secure immigration system to support the prosperity and security of the UK” that this had been “endorsed by Parliament through the enactment of the Immigration Act 2014”.
- 6.60 The Minister told the House that:
- “To reset fees for child registration so that they cover just the costs associated with processing an individual application ... would reduce fees to below the level that they were in 2007 and reduce the amount of funding that the Home Office has available to fund the immigration system by about £25 million to £30 million per annum.”
- 6.61 Meanwhile, not providing fee waivers for citizenship reflected:
- “the fact that, while citizenship provides extra benefits such as the right to vote in elections and the ability to receive consular assistance while abroad, becoming a citizen is not necessary to enable individuals to live, study and work in the UK, and to be eligible for benefit of services appropriate to being a child or a young adult.”
- 6.62 Baroness Manzoor denied that there was any comparison with the Windrush generation, and refuted that the Government was “making a profit from children in care”, stating that such children “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”, while those “not in care who meet the destitution criteria receive Limited Leave to Remain free of charge”.
- 6.63 Ending the debate, Baroness Lister suggested that the Minister had drawn the short straw in being asked “to justify the unjustifiable”, and had confused members by repeatedly referring to immigration when the registration of children as UK citizens was not about immigration, but about a legal right, which was why the comparison with the Windrush generation had been made.
- 6.64 Having failed to get “a clear and firm commitment that the Home Office will look at this issue now before further injustice is done”, Baroness Lister called for a division on her Motion of Regret. The Contents were 102, Not Contents 130, and the Motion was therefore “disagreed”.

7. Consultations

Home Office ‘targeted consultation’ on charging 2013

- 7.1 On 11 November 2013, the Home Office published a consultation paper on charging for immigration and visa services. The consultation, which ran until 3 December 2013, looked at “various options for ensuring those who benefit directly from the immigration system and enhanced border services contribute appropriately to their costs in the future.” It did not include details of proposed fee levels.
- 7.2 The consultation document asked 19 questions. These were grouped under: “Simplifying our fee structure”, “Fee Levels”, “Legislation” (focusing on the setting of maxima with any fee changes set out in Regulations to achieve a faster Parliamentary process), “Premium and optional services”, “Border Force” (focusing on the provision or facilitation of enhanced services at the border), “Commercial partnerships” (asking about charging for advice and support provided to partners), “Refunds and administration fees” (asking about charging for the processing of withdrawn or rejected applications), and “Wider impacts” (on “community relations, small and/or medium sized businesses, and particular groups”, the latter with tick boxes for “race”, “gender”, “age”, “disability”, “belief” or “sexual orientation”).
- 7.3 The Home Office published the response to the consultation in January 2014. It had received 78 responses, 29 of which were from the education sector, 19 from the travel/tourism sector, 11 from immigration advisers or law practitioners, 8 from business or retail, and 6 from individuals. The remainder were recorded as “miscellaneous” or “duplicate”. Only 12 respondents answered all of the questions.
- 7.4 Under “Conclusions”, the Home Office described the importance of maintaining or improving service standards across immigration and visa services, and the perception that changes to fees and immigration rules were detrimental to the Government’s aim of attracting the ‘brightest and best’ to work and study in the UK as “key concerns of all respondents”. It noted that:
- the majority of respondents were in favour of simplifying the fee structure and maintaining clarity and consistency when setting fees
 - respondents were generally in favour of reducing fees for areas they were involved in, for example student and Tier 4 sponsorship fees
 - respondents were in favour of making fee legislation more responsive to change, but concerned that fees should not change too frequently
 - respondents were in favour of expanding the availability and range of premium services, but not to the detriment of the standard service
 - views on Border Force providing enhanced services at the border were mixed, again expressing concern that general service standards should be maintained or improved at the same time

- views were also mixed about charging for providing advice and support to commercial partners, favouring charging for ensuring that standards and compliance were maintained where third parties were making a profit
- respondents were in favour of a reasonable administration charge for rejected or withdrawn applications, provided applicants were given the opportunity to correct any mistakes, and that the fee covered costs only
- in terms of the “wider impacts” there were key concerns about the disproportionate effect of fee increases on applicants on lower incomes, and of increases and high-costing premium services on small businesses and education providers

7.5 The Home Office had not carried out any formal public consultation since 2013 and was still referencing the 2013 consultation exercise in its 2018 Impact Assessment.

ICIBI ‘call for evidence’

7.6 The inspectorate posted a ‘call for evidence’ on its website on 18 June 2018. This announced that work had begun on an inspection of the Home Office’s charging for services in respect of its asylum, immigration, nationality and customs functions, which would look at:

- the rationale and authority for particular charges
- the amounts charged
- whether the services in question were being provided efficiently and effectively, including meeting agreed service levels where they exist
- the means of redress where individuals were dissatisfied with the service they have received
- the relationship between charged-for and free services where both existed, including how they were resourced and managed.

7.7 The call sought written evidence from anyone with first-hand knowledge or experience of Home Office charging for services. The closing date was 16 July 2018, although due to the level of interest the call generated some evidence was accepted after that date.

Response

7.8 The inspectorate received 596 submissions, significantly more than for any previous inspection. The majority (562) came from individuals or families who had made an application to the Home Office for a visa, for nationality, or for a UK passport; a number were from legal practitioners or immigration advisors, giving their views and reporting their clients’ experiences of the charges and standards of service; while others were from stakeholder organisations representing particular groups or categories of applicant.

7.9 Since they dealt with people’s personal experiences, the submissions from individuals mostly focused on a specific service, while those from stakeholders generally covered a wider range of issues. Roughly half of the submissions referred to leave to remain applications, a quarter referred to visa applications of various types, and almost one in 6 referred to nationality applications.

7.10 A majority (445) of the respondents, including 90 who reported that they were in paid employment,⁴⁹ referred to fees being too high. In three-quarters (330) of these cases, this was in

⁴⁹ In total, 107 respondents referred to their employment status.

reference to the 'standard' service. However, 112 respondents complained about the cost of a premium service application, and 3 about the cost of a super-premium application.

- 7.11 Many of the respondents stated that the fees were "unaffordable", and almost a quarter (140) reported that they had caused the applicant or their family to fall into debt to pay them. Amongst the submissions there were many personal stories of hardship and suffering caused directly or indirectly by the fees and the Home Office's handling of all types of applications.
- 7.12 A significant minority (138) of submissions mentioned that the response times set out in published service standards were too long or were not met. Of these, 80 referred to 'in-country' applications, while 41 referred to 'out-of-country' visa applications. The remainder were non-specific.

Stakeholder submissions

- 7.13 Some common themes emerged from the submissions received from stakeholder organisations:
- faced with having to pay thousands of pounds to renew their leave to remain, typically every 30 months, some families who are trying to regularise their stay in the UK are "constantly in debt to friends, family, mosque or church members, and in the worst cases loan sharks". Many are "reliant on charity for their everyday needs". Some are homeless, "staying with friends, sleeping in churches or on night buses", some are forced into "exploitative situations". Uncertainty over their long-term status hampers their access to services, including to employment as some employers are reluctant to offer permanent contracts to employees with time-limited leave. In short, they are unable to lead "a normal life", and this can adversely affect their mental and physical wellbeing, creating feelings of anxiety, humiliation, isolation and inferiority
 - the effect of the fees on children was a cause of particular concern, with some parents facing the dilemma of whether to include their children on their application or "let the children's leave lapse for a few years as they simply cannot afford to pay the fees for the whole family".⁵⁰ The effect was that young people were being blocked "from participating in the economic, social and political life of the UK". These concerns were especially acute in relation to children eligible to register for British citizenship, where the high cost of registration⁵¹ "can lead to children who were born and brought up here living in destitution, outside mainstream support systems, unable to pursue higher education or realise their full potential" and "constitutes a barrier to settlement for children with demonstrable legal rights to remain in the UK"⁵²
 - routes to regularisation were described as "overly complicated, bureaucratic, expensive and not-child-friendly, often requiring costly and time-consuming repeat applications". The Immigration Rules were "complex", but many people, often with low levels of literacy and without English as a first language, were unable to find the money on top of the fees to pay for legal advice, with the risk that they made incorrect or incomplete applications which were refused and the fees lost, with no refunds
 - the complexity extended to fee waiver applications which, it was argued, required specialist immigration advice to complete. The fee waiver system came in for severe criticism, especially the destitution test, which was described as "not fit for purpose" and the burden of proof "unreasonable". Stakeholders highlighted the difficulty of providing evidence of

50 A number of stakeholders referred to a paper published in 2012 by Oxford University that estimated that there were 120,000 undocumented children in the UK, 65,000 of whom had been born in the UK. <https://www.compas.ox.ac.uk/2012/no-way-out-no-way-in/>
51 £1,012 wef April 2018.

52 According to the freemovement blog: "As 33,000 children successfully registered in 2017-18, that year the department raked in £19 million over and above the costs incurred. From 2012-13 to 2017-18, the total was £94.24 million." However, between 2012-13 and 2017-18 the number of children successfully registering had fallen and "Cost is an obvious deterrent".
<https://www.freemovement.org.uk/home-office-makes-almost-100-million-from-children-registering-as-british-citizens/>

homelessness (which took no account of the “challenging ... often volatile” living situations of applicants), of lack of disposable income (where applicants in receipt of asylum or local authority support set at a level to cover only their essential needs were assessed as not destitute or likely to be made destitute by payment of the fee), and of an inability to borrow and repay the money required for the fee within “a reasonable period” (which implied that it was “reasonable” for applicants to incur thousands of pounds of debt)

- the length of time it took to receive a fee waiver decision was also criticised. However, the strongest criticism was reserved for the fact that fee waivers were not available for children seeking to register their entitlement to British citizenship, with one stakeholder asserting that by failing to provide a mechanism for this the Home Secretary “fails in his duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK.” A similar point was made about the length and conditions (specifically ‘No recourse to Public Funds’ (NRPF)) applied to leave granted to young parents of children born in the UK, or to children themselves, which did not demonstrate that the “best interests” of the child had been made “a primary consideration”
- the Home Office’s approach was described as “inconsistent” in that it recognised vulnerable people in some circumstances (and applied a fee waiver) but not in others. As an example of this, one stakeholder cited the fact that an EU national child in care is able to register under the EU settlement scheme for free where a non-EU child in care who is entitled to apply for British citizenship must pay £1,012 to register their entitlement
- the Home Office was accused of “shifting costs” to local authorities, who found they had to support people who had been granted leave but with NRPF. It was reported that, in 2017-18, 50 local authorities spent a total of £43.5 million on such support.⁵³ High immigration fees and the difficulty of satisfying the fee waiver test were described as “contributory factors to people experiencing longer periods of dependency on social services’ support while their immigration situation is resolved”.⁵⁴ In the case of children receiving support under Section 17 of the Children’s Act 1989,⁵⁵ the fee exemption was removed in October 2016 and this became “a direct cost that falls to councils to meet”, since acquiring citizenship for a separated migrant child is judged to be in the child’s best interests and Department for Education statutory guidance⁵⁶ places the responsibility on Social Services to fund this, while the Local Government Ombudsman has found councils at fault if they have failed to do so⁵⁷⁵⁸
- it was argued that the Immigration Health Surcharge (IHS) was, in reality, part of the “core cost of the visa application” since “the application will be treated as invalid if the IHS is not paid”, that the level of the IHS “bore no relation to the costs of using the NHS”, that those in employment were paying twice since they already paid income tax and national insurance, and that it was unclear that the money was going where it was intended. The latter point was made even more strongly about the Immigration Skills Charge, where it was questioned whether the monies collected were being directed to support the skills development in the sectors that were being charged

53 Data taken from the NRPF Network Annual Report 2017-18, reporting on 47 local authorities in England and 3 in Scotland.

<http://www.nrpfnetwork.org.uk/Documents/NRPF-connect-annual-report-2017-18.pdf>

54 According to NRPF, the average length of time in receipt of local authority support was 2.5 years.

55 <https://www.legislation.gov.uk/ukpga/1989/41/section/17>

56 Care of unaccompanied migrant children and child victims of Modern Slavery, November 2017.

<https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>

57 <https://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/15-015-327>

58 Prior to 2017, according to Home Office guidance, children in receipt of local authority support were not considered destitute for the purposes of a fee waiver. Since August 2017, the guidance has referred to “where the applicant can demonstrate, by way of evidence, that they would be destitute but for the local authority’s support ... they should be granted a fee waiver”, but stakeholders have reported that children are still routinely required to provide information about the value of items they may own and could sell, such as a television or DVD player, and believe the Home Office fails to understand the “gulf” between destitution and the ability to find enough money to pay the fees.

- other “hidden” costs were also highlighted, some of which were “not technically the responsibility of the Home Office” – Biometric enrolment, English Language Tests, Life in the UK Tests, Citizenship ceremonies, together with the costs of travel to make applications in person, and legal cost and court fees (where it was claimed the Home Office was slow to reimburse or pay compensation when it was found to be at fault). The non-availability of legal aid for immigration cases (since 2013) was also heavily criticised.⁵⁹ A number of stakeholders also criticised the Minimum Income Requirement for foreign spouses, blaming it for family separations
- more generally, there was considerable dissatisfaction with Home Office service standards, both in terms of decision quality, which was described as “inconsistent”, and timeliness. Overall, stakeholders saw “no evidence that the increase in fees has led to an improvement in the quality of Home Office decision-making” and letters issued to applicants were often “unclear and equivocal”. Meanwhile, the delays left people “in limbo, uncertain and fearful for their future” and caused problems where the Home Office retained original documents for months, leaving applicants, for example those seeking a replacement Biometric Residence Permit (BRP), “unable to demonstrate their rights”. For those who can afford it, some applicants felt they needed to pay for a premium service because of “the perceived incompetence of Home Office staff in misreading or misunderstanding their own guidance, or in exploiting minor data errors to reject applications out of hand”
- it was argued that UK fees were higher than fees elsewhere. The Netherlands and Germany were cited as examples of countries where fees were “lower across-the-board”, while other countries discounted or waived fees for dependants, “for instance, Norway does not charge fees for immigration applications for children under 18 years of age”. Fees for registering for citizenship are “at least ten times higher than many of our European counterparts”,⁶⁰ in Belgium the fee is 80 Euros, in France 55 Euros, and in Germany 51 Euros
- since the government first made the case that “those who benefit directly from the immigration system should contribute appropriately” there have been significant changes that have had the effect of increasing fees and reducing benefits. For example, grants of leave are for shorter periods and the route to settlement is longer – previously it may have taken 6 years and involved 2 applications (or in some cases 2 years and one application) whereas it now took 10 years and required 4 applications, with much greater use of NRP conditions
- the cost-benefit model used by the Home Office is “unclear”. The movement between unit costs and fees is inconsistent and [some of] the latter are above inflation. There is “no sliding scale” for fees according to the length of visas. The benefit to wider society from having a functioning immigration and border control system is ignored and the fees imply that the benefits of regularising immigration status are felt only by the individuals making applications
- as a signatory to the UN 1951 Refugee Convention and the UN 1954 Convention relating to the Status of Stateless Persons the UK is required to “make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings” in such cases. While right, waiving fees for asylum and statelessness applications does not fulfil the obligation to facilitate naturalisation. Meanwhile, requiring applicants to submit separate Article 8⁶¹ and statelessness applications is both “unfair and inefficient”

59 On 12 July 2018, the Parliamentary Under Secretary of State for Justice announced (Written Statement HCWS853) that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 would be amended “to bring immigration matters for unaccompanied and separated children into the scope of legal aid”. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-12/HCWS853/>

60 Mayor of London – see ‘Passports not Profits’ https://www.citizensuk.org/passports_not_profits

61 Article 8 of the European Convention on Human Rights relates to the right to respect for private and family life.

7.14 A number of submissions were from stakeholders representing particular sectors, including universities, the clergy, and the military, each of whom made arguments specific to themselves but with broader relevance:

- UK universities are dependent on academics,⁶² researchers and students from overseas, and the scale of immigration fees relative to academic salaries and unreliable immigration processes are making the UK a less attractive destination for them. The loss of international talent, and diversity, is damaging to the UK's reputation for academic and scientific excellence.
- Many Entry Clearance Officers lack the “religious literacy” to make informed decisions about visa applications from Ministers of Religion. For example, many Catholic parishes and minority communities were without a clergy as there is a shortage of Catholic priests in the UK, yet many Catholic priests were being refused visas and sponsoring dioceses were having to appeal decisions and pay for new Certificates of Sponsorship.⁶³
- Because they are unable to apply for Indefinite Leave to Remain (ILR) while still serving, foreign and Commonwealth service personnel⁶⁴ are adversely affected by the fact that the fee is rising annually. Meanwhile, spouses and children in the UK often become overstayers because they are unable to afford the ILR fees.⁶⁵

Stakeholder recommendations

7.15 Stakeholders made numerous recommendations. Again, there were some common themes, with some overlapping ideas and some variations:

- Remove the profit element from immigration and nationality fees
 - Set all fees at the actual cost of each process
 - Set fees for children's applications at the actual cost
 - Look for global and European benchmarks when setting fee levels
 - Reduce the Immigration Health Surcharge, and introduce exemptions where migrants are already paying income tax and national insurance
 - Match fee increases to inflation.
- Amend and extend the fee waiver system
 - Lower the burden of proof for destitution and inability to pay – ensuring that people in receipt of means-tested benefits or asylum support are exempted from fees
 - Make a presumption in favour of waiving the fee for families in receipt of public funds, with discounts for siblings in larger families
 - Provide for a full fee waiver for all child LTR and nationality applications
 - Set (and stick to) a clear timescale for fee waiver decisions.

62 According to one stakeholder, 29% of academic staff in British universities are not British, while 47% of research-only staff (typically postdoctoral researchers) are from overseas.

63 One stakeholder pointed out that the majority of EU citizens in the UK are Catholic and the registration fee for settled status is likely to present a significant barrier for some people, particularly larger families on low incomes, already unable to afford food and household bills.

64 According to one stakeholder, foreign and Commonwealth service personnel make up approximately 8% of the British Army.

65 Service personnel have “exempt” status while serving, but this does not extend to family members. Armed forces families are exempt from the Immigration Health Surcharge, but gaps and errors with the online application form have meant they have had to make upfront payments and claim refunds or have been prevented from entering the UK, and have led to grants of leave being made under the wrong Appendix to the Immigration Rules, again incurring additional costs and necessitating corrections and refunds.

- Shorten the routes to settlement
 - Require fewer applications
 - Reduce (taper) the fee for repeat applications where the applicant’s basic circumstances have not changed.
- Reduce the time taken to reach a decision on an application (and improve decision quality)
 - Set a clear timescale for decisions to grant or refuse family and spousal visas to avoid long periods of uncertainty and distress.
- Before making any changes to fees
 - Produce a child’s rights impact assessment covering the impact on children and families subject to immigration control (including a review, consultation on and redefinition of what constitutes a child’s “essential living needs”)
 - Produce equality and diversity impact assessments covering the impacts on applicants with dependants
 - Commission research into safeguarding and exploitation issues arising from families trying to find sufficient funds to pay immigration fees.
- Remove financial barriers to justice
 - Reimburse legal and court costs where the Home Office is found to be at fault
 - Reinstate legal aid for individuals making an application based on their Article 8 rights
 - Compensate applicants who have suffered serious consequences (loss of job or home) from a delayed or wrong decision
 - Simplify application processes, provide clear guidance to applicants and ensure that decision letters are specific
 - Ensure that no-one is “prevented from accessing their EU rights due to a fee barrier”.

Other views

- 7.16 A stakeholder, who dealt mostly with Tier 2 (ICT) cases for multinational corporations, questioned whether fees in relation to sponsors wishing to recruit employees outside the UK were set too low, since it appeared that the Home Office was under-resourced to operate at speed, with clarity and consistency, and without making errors. In their opinion, the sponsorship fee should be set significantly higher and should also be paid annually.⁶⁶ Meanwhile, the service standard of 18 weeks for a Sponsor Change of Circumstances (CoS) was “absurd” for a simple process and in no way matched how modern businesses operated. It effectively forced Sponsors to pay for the Priority Service with its 5-day service standard.
- 7.17 The same stakeholder believed that it would be possible to charge higher fees for “earlier and more convenient” premium service appointments (in addition to those already available out-of-hours) for senior individuals who travel frequently, since they would be willing to pay for the convenience of a same-day decision on a visa extension and the return of their passport. There was also the potential for a fee-paid service for an assessment of an application in advance of

⁶⁶ With effect from April 2018, the fee was £536 and was valid for 4 years.

a decision, for example where a Sponsor was looking to transfer a migrant worker from one UK subsidiary to another under TUPE. If Sponsors knew an application was likely to be refused they could plan accordingly.

- 7.18 Another stakeholder, who dealt with highly-paid and high-wealth individuals, was more complimentary about the services provided by the Home Office. They acknowledged that some fees were high, but this was not a concern for the applicants with whom they routinely dealt. Compared with some other countries, they considered the UK's application processes were relatively swift with predictable outcomes.

8. UK Visas and Immigration

UKVI's Responsibilities and Priorities

8.1 GOV.UK lists UKVI's responsibilities as:

- “to run the UK’s visa service, managing around 3 million applications a year from overseas nationals who wish to come to the UK to visit, study or work
- to consider applications for British citizenship from overseas nationals who wish to settle here permanently
- to run the UK’s asylum service offering protection to those eligible under the 1951 Geneva Convention
- to decide applications from employers and educational establishments who want to join the register of sponsors
- to manage appeals from unsuccessful applicants”

8.2 Under “priorities”, it states: “We contribute to achieving the Home Office’s priorities of securing our borders and reducing immigration, cutting crime and protecting our citizens from terrorism.”

8.3 Meanwhile, UKVI has published a “Customer Charter”⁶⁷ which states: “We aim to be a customer-focused organisation, offering high-quality service, making it clear what you can expect from us and what your responsibilities are in return.” While it might be inferred from this statement, the Charter makes no reference to providing value for money.

2018 Fees

What the fee buys

8.4 The fees levels set out in the Immigration and Nationality (Fees) Regulations 2018 took effect on 6 April 2018. The fee is the amount charged for the application to be assessed and processed by a UKVI caseworker, regardless of the Home Office’s decision whether to grant or refuse the application.

Visa applications volumes

8.5 The Impact Assessment (IA) accompanying the 2018 (Fees) Regulations included estimates of the predicted volumes of each broad category of ‘in country’ and ‘out of country’ visa application for 2018-19. The estimates, which total 3,989,000, were based on “Home Office internal planning assumptions”, which were not explained – see Figure 3.

⁶⁷ First published on GOV.UK in 2014 and updated in September 2018.

Figure 3: Estimated visa applications volumes for 2018-19

Visa Type	Estimated volume of applications 2018-19
Out of Country	
Visit	2,768,000
Settlement	2,000
Other	3,000
Tier 1 Points Based System (PBS)	5,000
Tier 2 PBS	76,000
Tier 4 PBS	241,000
Tier 5 PBS	44,000
In Country	
Settlement	217,000
Other	74,000
Tier 1 PBS	3,000
Tier 2 PBS	26,000
Tier 4 PBS	45,000
Tier 5 PBS	2,000
Family Extension	122,000
Sponsor	361,000

Demand – price elasticity

- 8.6 The 2018 IA made a number of planning assumptions in relation to price elasticity as it applied to the demand for particular types of visa. Reflecting the fact that “internal research has not found any evidence of a statistically significant relationship between changes in visa fees and the volume of applications for visa products”, the assumptions were either that there would be ‘no change’ in demand, for example for PBS Tier 1 visas, or that the fees increases proposed for 2018-19 could result in a relatively small drop in demand, most notably in visit and PBS Tier 4 visa applications.
- 8.7 Despite being higher than originally planned (the Home Office had intended a 2% increase in 2018) the new fee was still £37 below the unit cost. The IA noted that the UK’s greater economic interests were served by encouraging visitors as they would spend money in the UK. It stated that “the Government aims to limit fee increases on the most economically beneficially sensitive routes in order to continue to attract those migrants and visitors who add significant value to the UK economy.”
- 8.8 Nonetheless, because the Home Office had set itself the target of the immigration system becoming self-funding, any below cost ‘offers’ would need to be balanced elsewhere within the system, either through higher than unit cost fees for other application types or through cost-saving efficiencies, or both. As a minimum, below cost visit visas reduced the Home Office’s scope for fees reductions on other routes.

Demand – “international competitiveness”

- 8.9 According to the IA, in setting some fees at below cost the Home Office was seeking to maintain “international competitiveness”.
- 8.10 Direct international comparisons are difficult as the visa and other products offered by different countries are not identical and the value of each is largely unquantifiable, as is the extent to which applicants are likely to choose between the UK and other destinations according to the cost of a visa. With these caveats, Figure 4 provides a broad comparison of 2018 fees for an adult 10-year first-time passport, a short-term visitor visa, and a nationality application.

Figure 4: Comparison of fees for passports, visitor visas and nationality applications: UK, Schengen, Australia, Canada and USA

Passport	Visitor visa	Nationality
UK £75.50 online or £85 postal application	From April 2018, the fee for a UK visit visa permitting entry to the UK for up to 6 months has been £93. The fee for biometric registration at an overseas Visa Application Centre, where charged, has been £55.	From April 2018, the fee for an application for British naturalisation has been £1,250. The fee for an application from a child to register for British citizenship has been £1,012. The processing cost for each was £372.
Schengen France 86 euros; Ireland 75 euros; Germany 60 euros (valid 6 years)	The fee for a Tourist Schengen Visa permitting entry to the Schengen Area for a maximum of 90 days within a 6-month period is 60 euros (35 euros for children aged 6-11). A visa for more than 90 days is 99 euros. Visitors are also required to provide documentary proof that they hold travel health insurance with a minimum coverage of 30,000 euros.	An application for naturalisation varies from country to country. For example, in France the fee is 55 euros; in Ireland 950 euros for an adult and 200 euros for a minor, plus a 175 euros application fee; in Germany it is 255 euros for an adult and 51 euros for children under 16.
Australia \$AUS 282	A Tourist stream visa applied for from outside Australia is “from” \$AUS 140. Entry may be granted for up to 12 months but is generally for 3 months. The visa may be single or multiple entry.	An application for Australian citizenship under “general eligibility” terms is \$AUS 285. Children (under 16) applying with a parent are free.
Canada \$CAN 160	A multiple-entry visitor visa permitting entry to Canada for up to 6 months and valid for up to 10 years is \$CAN 100 per person or \$CAN 500 for a family (5 or more). In addition, citizens of certain countries have to provide their biometrics when they apply, the fee for which is \$CAN 85 per person or \$CAN 170 for a family (2 or more).	A Canadian citizenship application is \$CAN 630 for an adult (\$CAN 530 processing fee and \$CAN 100 right of citizenship fee). The fee for a minor (under 18) is \$CAN 100) all of which is shown as the processing fee.

USA \$US 140 plus \$US 35 'acceptance fee'	The fee for a visitor visa permitting entry to the USA for up to 6 months is \$US 160. Validity periods vary between 1 month and 10 years according to nationality (based on reciprocity), and visas may allow 1, 2 or multiple entries. A "visa issuance fee" may also apply where one is charged to US citizens visiting that country.	Filing an application for naturalization is \$US 725, comprising a \$US 640 citizenship application fee and US\$85 for a background check (also known as the biometric fee).
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Unit costs

- 8.11 The Explanatory Memorandum that accompanied the 2018 (Fees) Regulations noted that the Home Office would "publish indicative unit costs" for 2018-19 to enable "applicants and the general public to see which fees are set over, or under cost, and by how much". These were duly published and are shown at Figures 6 and 7.
- 8.12 Separately, as part of the Migration Transparency Data,⁶⁸ UKVI has published data about visa volumes and costs which has included an overall average "cost per migration decision" – see Figure 5. This showed that the total cost of processing applications reduced by c. £31 million from 2016-17 to 2017-18 while the number of decisions made remained broadly constant (plus 6,579), with the result that the average cost per decision reduced by £6. Nonetheless, the fees were increased in 2017-18, in most cases by 2%.

Figure 5: Cost per decision for all migration applications (in country and overseas) 2016-17 and 2017-18

Year	Number of decisions ⁶⁹	Cost	Cost per migration decision
2016-17	3,967,102	£643,480,000 ⁷⁰	£162
2017-18	3,973,681	£612,768,818	£154

Out of country visa applications

List of fees

- 8.13 Figure 6 shows the fees in 2016-17, 2017-18 and 2018-19 for different types of visa applied for from overseas, the percentage change from 2017-18 to 2018-19, the Home Office's estimate of the cost of processing the application, and the 'surplus' (the difference between the 2018-19 fee and the estimated processing cost).

⁶⁸ <https://www.gov.uk/government/publications/in-country-migration-data-august-2017>
<https://www.gov.uk/government/publications/in-country-migration-data-november-2018>

⁶⁹ The volumes here appear to have informed the total estimated volume of applications for 2018-19 – see Figure 3.

⁷⁰ The explanatory notes accompanying the 2018 data explained that: "Costs associated with decisions for all migration applications have been estimated using a full cost allocation model in which unit costs are calculated according to standard accountancy practices. Figures have been rounded to the nearest 1,000 ... All figures quoted are management information which have been subject to internal quality checks. Expenditure for 2016/17 includes volumes and costs for Complex Casework, Immigration Checking and Enquiry Service and Travel Documents." The notes do not make clear whether the latter also applies to 2017-18 volumes and costs.

Figure 6: Out of country visa products attracting a fee	a	b	c	d	e	f	g
Visit visa - short	95	87	89	93	4.5%	130	-37
Visit visa - long 2-year	400	330	337	350	3.9%	130	220
Visit visa - long 5-year	1,000	600	612	636	3.9%	130	506
Visit visa - long 10-year	2,000	752	767	798	4.0%	130	668
Settlement - Family route	3,250	1,195	1,464	1,523	4.0%	388	1,135
Settlement - Dependant Relative	3,250	2,676	3,250	3,250	0.0%	388	2,862
Settlement - Refugee Dependant Relative	2,000	472	423	388	-8.3%	388	0
Settlement - Certificate of Entitlement	550	472	423	388	-8.3%	388	0
Other Visa	2,000	405	496	516	4.0%	155	361
Transit Visa (Airside)	75	32	34	35	2.9%	95	-60
Transit Visa (Landside)	75	59	62	64	3.2%	95	-31
Vignette Transfer Fee	550	189	169	154	-8.9%	155	-1
Replacement Biometric Residence Permit (BRP) Overseas	2,000	189	169	155	-8.3%	155	0
Tier 1 (Entrepreneur) standard – Applicant/Dependant	2,000	963	982	1,021	4.0%	185	836
Tier 1 (Investor) standard – Applicant/Dependant	2,000	1,530	1,561	1,623	4.0%	185	1,438
Tier 1 (Exceptional Talent) - Postal – Applicant/Dependant	2,000	574	585	608	3.9%	185	423
Tier 1 (Graduate Entrepreneur) – Applicant/Dependant	2,000	342	349	363	4.0%	185	178
Tier 1 (General) - Dependant	2,000	963	982	1,021	4.0%	185	836
Tier 2 (General work) Intra-Company Transfer (ICT) Long-Term Staff, Sport & Minister of Religion – Applicant/Dependant	1,500	575	587	610	3.9%	128	482
Tier 2 (General work) ICT Short-Term Staff, Graduate Trainee or Skills Transfer – Applicant/Dependant	1,500	454	463	482	4.1%	128	354
Tier 2 (General work) ICT over 3 years EC – Long-term staff Applicant/Dependant	1,500	1,151	1,174	1,220	3.9%	128	1,092

Tier 2 (Shortage Occupations) Up to 3 years EC – Applicant/ Dependant	1,500	437	446	464	4.0%	128	336
Tier 2 (Shortage Occupations) Over 3 years EC – Applicant/ Dependant	1,500	873	892	928	4.0%	128	800
Tier 4 (Student) Applicant/ Dependant	480	328	335	348	3.9%	154	194
Tier 4 (Student) Short-Term <12 Months Visa	200	170	179	186	3.9%	130	56
Tier 5 Temporary Work, Youth Mobility, Dependant	2,000	230	235	244	3.8%	116	128

Key:

“Applicant” refers to the main applicant

- a. Maximum amount set out in the 2016 Fee Order (£)
- b. Fee 2016-17 (£)
- c. Fee 2017-18 (£)
- d. Fee 2018-19 (£)
- e. Percentage change from 2017-18 to 2018-19 (%)
- f. Estimated unit cost 2018-19 (£)
- g. Surplus (or shortfall) (c. minus e.) 2018-19 (£)

Customer service

- 8.14 Overseas, for the majority of non-settlement applications the published service standard for a decision is 15 working days, while for settlement applications it is 60 working days. In-country applications have a different set of standards, determined by application type. These service standards apply where “your application is straightforward (for example, we can make a decision on it without asking you for more information)” and “processing times start when we receive your application and end when we send our decision to you.”⁷¹
- 8.15 Inspectors were unable to find any explanation of how these service standards related to the actual processing time for the different types of application. As a customer, it would be reasonable to assume that the unit costs quoted by the Home Office for each type of application, described variously as “averages” and “indicative”, take account of the relative effort required, as well as of the grades of the staff involved and the complexity of the process, and therefore that the Home Office was signalling that the processing of a settlement application cost it on average 3 times what it cost it to process a visit visa.
- 8.16 However, it is less clear why the unit cost of different types of visit visa or settlement visa should be the same, particularly where they are from related applicants applying together, unless

⁷¹ GOV.UK explains that “90% of non-settlement applications [will receive a decision] within 3 weeks, 98% within 6 weeks and 100% within 12 weeks of the application date (where 1 week is 5 working days)” and “95% of settlement applications within 12 weeks of the application date and 100% within 24 weeks of the application date (where 1 week is 5 working days)”.

<https://www.gov.uk/government/organisations/uk-visas-and-immigration/about-our-services>

the Home Office does not have the ability (perhaps because it lacks the data) or the desire to produce more differentiated costs. Either way, this seems at odds with UKVI's professed customer focus.

Premium services

- 8.17 This customer focus is more evident in UKVI's promotion of premium services. For certain types of out of country visa it offers 'priority' and 'super priority' services.
- 8.18 Since 6 April 2018, the priority service has cost £573 for settlement applications and £212 for non-settlement applications. This is in addition to the standard application fee. The additional payment "put[s] your application at the front of the queue at every stage of the decision-making process", with the aim of providing a decision within 5 working days. Meanwhile, super priority costs £956 in addition to the standard fee and eligible customers will receive a visa decision "within 1 business day".⁷²
- 8.19 Applicants using a premium service are informed that their applications will be subject to the same degree of scrutiny as a standard application but are warned that a decision may not be able to be expedited if a person has an adverse immigration history, or their application necessitates further enquiries.
- 8.20 The VFS Global⁷³ website is explicit:
- "The cost of this service is in addition to your visa application fee and is non-refundable if the visa application is refused, or in exceptional cases, if it takes longer to process. Using the Priority Visa service does not guarantee that your application will be successful. All visa applicants must meet the requirements of the UK Immigration Rules."
- 8.21 Based on the 2018 IA, the Home Office's position on premium services fees appears to be that they are "offered to meet customer demands", they are "charged above cost ... to limit fee increases in other areas", and because they are "optional additional services" there is no requirement to provide a formal analysis of impact. Neither are the fees itemised, making it impossible for the customer to assess whether they represent value for money. Logically, however, they must be almost entirely profit, minus any difference between the unit cost and the standard fee for the application in question and the costs of any additional administration involved in identifying and prioritising premium applications.

UKVI's handling of priority and super priority applications

- 8.22 UKVI managers and caseworkers confirmed that the fact that an applicant had paid for a premium service did not affect their consideration of whether the applicant had evidenced they met the Immigration Rules, nor did it affect their decision whether to grant the visa.
- 8.23 Inspectors were also told that there was a 'Special Handling Team' within the Sheffield Decision Making Centre (DMC) that dealt with super priority applications, as well as expediting cases referred to it at a high level.⁷⁴ This team had a dedicated Entry Clearance Officer (ECO) decision maker, and a Higher Executive Office (HEO) to manage the workflow and ensure that all cases were dealt with in the required timeframe.

⁷² <https://www.vfsglobal.co.uk/us/en/premium-services/super-priority-visa>

⁷³ Overseas Visa Application Centres are operated on behalf of UKVI under commercial contracts by 2 providers, VFS Global and Teleperformance.

⁷⁴ For example, from an HM Ambassador in relation to a VIP visit.

- 8.24 Inspectors queried whether the allocation of a dedicated ECO to super priority and high-profile cases affected the processing of standard applications, but were told that “resources are flexed within the team and the wider business area” and caseworkers could be moved as necessary to ensure all applications were considered within their respective service standards. This suggested only a very loose connection between overall resources required to manage a particular visa type within the service standard timescales and the calculation of average costs.
- 8.25 During focus groups and interviews, UKVI staff and managers told inspectors they believed that visa applicants generally understood that the premium services charges were optional and paid for a faster decision. However, they also believed that most of those who chose to use a premium service were more affluent and expected their applications to be granted. This occasionally led to applicants not providing sufficient supplementary evidence with their applications, resulting in a refusal, which then produced a complaint. Staff told inspectors that where a priority application had been refused and a complaint had been received the applicant would receive the same response as a standard applicant, which would be that they should address the refusal reasons and reapply.

Real choice

- 8.26 Inspectors asked UKVI management whether some applicants might feel forced to apply for a premium service because the standard service was “inadequate”. Managers refuted this and said their performance data showed that the vast majority of applications were processed within the published service standards. They acknowledged that the numbers of applicants making use of premium services rose during peak periods but said that this was in proportion to overall applications. Managers were adamant that UKVI was not attempting to generate revenue by leaving applicants with no choice but to pay for a premium service.
- 8.27 As an indicator of the demand for premium services, inspectors sought to establish the proportion of ‘standard’ applications received compared to those received via a premium service. The data for in-country applications for premium service showed that these accounted for roughly 6% of the total number of applications received in 2017-18. Home Office was unable to provide data for out-of-country applications when this was originally requested but did so at the factual accuracy stage of the inspection process. This showed that just over 20% of these were priority applications and approximately 0.8% were super priority.

In-country visa applications

List of fees

- 8.28 Figure 7 shows the fee in 2016-17, 2017-18 and 2018-19 for different types of visa applied for from within the UK, the percentage change from 2017-18 to 2018-19, the Home Office’s estimate of the cost of processing the application, and the ‘surplus’ (the difference between the 2018-19 fee and the estimated processing cost).

Figure 7: In-country visa products attracting a fee	a	b	c	d	e	f	g
Naturalisation (British Citizenship) Single, Joint, Spouse	1,500	1,156	1,202	1,250	4.0%	372	878
Nationality (British Citizenship) Registration adult	1,500	1,041	1,083	1,126	4.0%	372	754
Nationality (British Citizenship) Registration child	1,500	936	973	1,012	4.0%	372	640
Renunciation of Nationality	400	272	321	372	15.9%	372	0
Nationality Reissued Certificate	250	198	234	250	6.8%	272	-22
Nationality Right of Abode	550	272	321	372	15.9%	372	0
Nationality Reconsiderations	400	272	321	372	15.9%	372	0
Status / non-acquisition letter (Nationality)	250	198	234	250	6.8%	272	-22
Nationality Correction to Certificate	250	198	234	250	6.8%	272	-22
Indefinite Leave to Remain (ILR) - Postal – Applicant/Dependant	3,250	1,875	2,297	2,389	4.0%	243	2,146
Leave to Remain (LTR) Non-Student Postal – Main/Dependant	3,250	811	993	1,033	4.0%	142	891
Visitor Extension – Applicant/Dependant	2,000	881	993	993	0.0%	142	851
Transfer of Conditions Postal – Applicant/Dependant	550	223	168	161	-4.2%	162	-1
No Time Limit Stamp Postal – Applicant/Dependant	550	308	237	229	-3.4%	228	1
Travel Documents Adult (CoT)	400	218	267	280	4.9%	416	-136
Travel Documents Adult (UN 1951) Convention Travel Document (CTD)	400	72	72	75	4.2%	312	-237
Travel Documents Child (CoT)	400	109	134	141	5.2%	208	-67
Travel Documents Child CTD	400	46	46	49	6.5%	156	-107
Replacement Biometric Residence Permit (BRP)	75	56	56	56	0.0%	56	0
Employment LTR outside Points Based System (PBS) Postal – Applicant/Dependant	2,000	881	993	1,033	4.0%	142	891
Tier 1 (Entrepreneur) standard – Applicant/Dependant	2,000	1,204	1,228	1,277	4.0%	126	1,151
Tier 1 (Investor) standard – Applicant/Dependant	2,000	1,530	1,561	1,623	4.0%	126	1,497

Tier 1 (Exceptional Talent) Postal – Applicant/Dependant	2,000	574	585	608	3.9%	126	482
Tier 1 (Graduate Entrepreneur) Postal – Applicant/Dependant	2,000	465	474	493	4.0%	126	367
Tier 2 (General work) Sport & Minister of Religion (In-UK) – Applicant/Dependant	1,500	664	677	704	4.0%	318	386
Tier 2 (General work) (In-UK) – Applicant/Dependant	1,500	664	677	704	4.0%	318	386
Tier 2 (General work) Intra-Company Transfer (ICT) (In-UK) – Applicant/Dependant	1,500	664	677	704	4.0%	318	386
Tier 2 (General work) ICT Short-term staff, Graduate Trainee or Skills Transfer standard – Applicant/Dependant	1,500	454	463	482	4.1%	318	164
Tier 2 (General work) ICT over 3 years LTR – Long-Term Staff – Applicant/Dependant	1,500	1,328	1,354	1,408	4.0%	318	1,090
Tier 2 (Shortage Occupations) Up to 3 years LTR – Applicant/Dependant	1,500	437	446	464	4.0%	318	146
Tier 2 (Shortage Occupations) Over 3 years LTR – Applicant/Dependant	1,500	873	892	928	4.0%	318	610
Tier 4 (Student) Postal - Applicant/Dependant	480	448	457	475	3.9%	252	223
Tier 5 (Temporary Worker) Postal - Applicant/Dependant	2,000	230	235	244	3.8%	318	-74
Tier 2 Large Sponsor Licence	2,000	1,476	1,476	1,476	0.0%	1,503	-27
Tier 2 Small Sponsor Licence	2,000	536	536	536	0.0%	1,503	-967
Tier 4 Sponsor Licence	2,000	536	536	536	0.0%	1,503	-967
Tier 5 Sponsor Licence	2,000	536	536	536	0.0%	1,503	-967
Multiple Tier Sponsor Licence	2,000	940	940	940	0.0%	1,503	-563
Basic Compliance Assessment (Highly Trusted Sponsor)	2,000	536	536	536	0.0%	1,503	-967
Sponsor Action Plan	2,000	1,476	1,476	1,476	0.0%	1,503	-27
Tier 2 Certificate of Sponsorship (COS)	300	199	199	199	0.0%	225	-26
Tier 5 COS	300	21	21	21	0.0%	26	-5
Tier 4 Certification of Acceptance for Study (CAS)	300	21	21	21	0.0%	26	-5
EEA1, 2, 3, 4	100	65	65	65	0.0%	217	-152

Key:

- a. Maximum amount set out in the 2016 Fee Order (£)
- b. Fee 2016-17 (£)
- c. Fee 2017-18 (£)
- d. Fee 2018-19 (£)
- e. Percentage change from 2017-18 to 2018-19 (%)
- f. Estimated unit cost 2018-19 (£)
- g. Surplus (or shortfall) (c. minus e.) 2018-19 (£)

Leave to Remain – price elasticity

- 8.29 A person who is in the UK and whose leave to remain is due to expire may be eligible to apply for an extension to their visa. In relation to price elasticity for Leave to Remain (LTR) applications, the 2018 IA noted that there was “no evidence” on which to base any assumptions.

Customer service

- 8.30 The standard route for an in-country leave to remain (LTR) application is for the applicant to post a completed application form to UKVI with the specified fee. For those applying to remain on a temporary basis, including spouses, workers, and students, UKVI aims to process applications within 8 weeks.
- 8.31 At the time of the inspection, UKVI also offered a premium postal service for some routes.⁷⁵ This aimed to provide a decision within 10 working days, at a cost of £477 per person in addition to the standard application fee. For certain categories of application UKVI also offered a premium application service at a cost £610 in addition to the standard application fee.^{76 77} As with the out of country premium services, inspectors were unable to find a detailed breakdown of how these fees were made up and therefore could not assess whether they represented value for money compared with the standard offer.
- 8.32 Until November 2018, applicants wishing to make use of the premium (non-postal) service were required to book an appointment to attend one of UKVI’s 8 Premium Service Centres (PSC)⁷⁸ and submit their application in person.
- 8.33 Inspectors spoke to PSC managers in July 2018. They told inspectors that when an applicant attended a PSC they were given a clear explanation of what the premium payment bought. They were made aware that it did not guarantee a same day decision. However, inspectors were told that most applications made through a PSC took less than 2 hours 30 minutes. Most applicants chose to wait onsite while their application was processed, so if there were any delays UKVI staff could speak to them and manage their expectations. The managers believed this reduced the number of complaints.

⁷⁵ <https://www.gov.uk/faster-reply-visa-application>

⁷⁶ <https://www.gov.uk/ukvi-premium-service-centres/eligibility>

⁷⁷ <https://www.gov.uk/government/publications/visa-regulations-revised-table/8-october-2018#optional-premium-services-in-the-uk>

⁷⁸ Premium Service Centres were located in; Belfast, Cardiff, Croydon, Glasgow, Liverpool, London, Sheffield and Solihull.

Refunds

- 8.34 The public call for evidence for this inspection identified delays in UKVI providing refunds to applicants where these were due. PSC managers told inspectors that “this had been a problem in the past” but PSCs had since been equipped with a point of sale terminal⁷⁹ which enabled them to make same day refunds where appropriate. PSC staff said that refunds were rare, and normally given only if there had been IT system issues, or if someone had arranged a premium appointment but their category of application meant they were not entitled to one.⁸⁰

UKVI ‘Transformation’

Visa Application Centres - overseas

- 8.35 In 2007, the Home Office began to restructure its global network of visa sections as part of a wider change programme, which saw the outsourcing of the application stage of the process to visa applications centres (VACs) run by commercial partners.
- 8.36 Home Office accounts showed that in 2017-18 it received £151,052,277 in income from its VACs’ contracts. Income for 2018-19 was forecast to rise to £187,312,280.
- 8.37 Since 2007, VACs have evolved as the commercial partners have looked to sell additional services, for example, access to a business class lounge, use of a photocopier, SMS updates informing the applicant how their application is progressing, or delivery of the issued visa to their home address by courier. These optional services and the costs vary by VAC and are offered at the discretion of the commercial partner, although the Home Office has to approve them.

Front End Services – UK

- 8.38 Prior to this inspection starting, UKVI had been looking to transform the customer-facing parts of its UK operation along similar lines to the overseas VAC model. UKVI’s Front End Services (FES) programme envisaged 60 ‘service points’ across the UK, where applicants could submit their applications and have their biometric information recorded.
- 8.39 The contract to provide the majority of these service points was awarded to Sopra Steria, a French company, in May 2018. Announcing the award of the contract, the Immigration Minister stated that the new FES system “will make the visa application process quicker and easier to access than ever before for people in the UK, through increasing the use of digital services”.⁸¹
- 8.40 Under the terms of the new contract, the Sopra Steria service points will charge an applicant a “user fee” on top of the application fee. Meanwhile, UKVI will operate a number of free to use service points, which inspectors were told would be located in areas that have historically had the highest concentrations of in-country applications.

79 An electronic chip and pin terminal which allowed immediate refunds. Previously, a third-party payment facilitation company processed the refund on the Home Office’s behalf.

80 ‘An unannounced inspection of the service provided by Solihull Premium Service Centre (March 2015)’, published in October 2015, identified that the online application process allowed applicants to make appointments before they were eligible to apply for ILR and that UKVI had been retaining the fee, while the guidance did not adequately highlight that premature applications would be treated in this way. The report recommended that the Home Office should “take action to ensure that a technical solution is found to prevent [premature ILR applications]”. The Home Office “partially accepted” the recommendation, stating that it would “consider carefully whether it is feasible and where costs allow to implement a technical solution”. By 2018, none had been found.

81 <https://www.gov.uk/government/news/sopra-steria-has-been-awarded-a-new-ukvi-contract>

- 8.41 Speaking to inspectors in September 2018, UKVI senior managers described the FES contract as a big step towards the Borders, Immigration and Citizenship System becoming self-funded. It was also expected to deliver improved customer service, for example it was envisaged that the service points would capture copies of documents presented in support of applications and share them digitally with decision makers, meaning that applicants will be able to retain the original documents.
- 8.42 A UKVI senior manager commented that applicants for LTR in the UK “have complex and varied needs and expectations and the current system limits their choices”. The “overall aim” of the FES programme was “not simply to gain income but also deliver a premium experience and respond to customer needs”.
- 8.43 Inspectors asked UKVI senior managers what consideration had been given to the impact on vulnerable individuals of the FES changes. At the time of the inspection, applicants were able to travel to Home Office-designated Post Offices to register their biometrics. Under FES this would no longer be possible and applicants will need to travel to one of the service points, in some cases adding time and costs, as well as making it more difficult for some applicants, such as those with restricted mobility.
- 8.44 Inspectors were told that this had been considered, and applicants accepted as destitute would have their transport costs met, while some applicants might qualify for a home visit from a mobile biometric registration service.

Front End Services roll-out

- 8.45 Originally, UKVI had planned to launch the new FES service points in October 2018. However, when inspectors interviewed UKVI PSC staff in September 2018 they were unsure whether the service would go live as planned. Several of those interviewed were unsure which existing PSC locations were being retained, and how the introduction of the new FES programme would impact their roles. Most agreed that “little information has filtered down” about FES, and that “it all seems to be being a bit rushed”.
- 8.46 As at September 2018, inspectors were unable to find much open source information about FES, and the Home Office appeared to have done little to publicise the move to the new FES access points, including their locations and the rationale for this change. A UKVI senior manager commented that both internal and external communications “could have been done differently and better”. Inspectors were told that the Home Office had prepared lots of material, but ministers had not approved its publication.
- 8.47 At the end of September 2018, inspectors were informed by UKVI senior managers that the October 2018 launch date for FES had been postponed and the launch would now likely be in January 2019, although no date had been confirmed. They explained that the delay was due to a “resequencing of some transition activity” and that “transformation entails a very complicated programme in terms of technology and logistics”.
- 8.48 On 2 November 2018, the Home Office announced via GOV.UK that “the way you make an application for settlement, citizenship or to stay in the UK for study or work will change for some applicants.” It explained that “Over the next few months” most paper application forms would be replaced with online application processes.

- 8.49 The announcement stated that “From 9 November 2018, new UKVCAS⁸² centres will begin to open” managed by Sopra Steria and “by early December 2018” there would be 57 UKVCAS centres open across the UK: “6 core service centres offering free appointments, 50 enhanced service centres offering charged appointments, and 1 premium lounge”. It set out how the new UKVCAS service would work in terms of online applications, payment of fees, biometric enrolment, and booking a UKVCAS appointment.
- 8.50 The announcement also stated that: “In January 2019, UKVI will start opening dedicated Service and Support Centres (SSCs)”,⁸³ listing those routes where applicants should continue to use the existing service until then and advising that: “During the transition period you can choose to use the existing service and enrol your biometric information at the Post Office or a Premium Service Centre if you’re applying for one of these routes. You’ll be told how to do this as part of your application and in your biometrics enrolment letter.” It also listed those routes where applicants would not be able to use the new service and will need to continue using the existing service after January 2019.
- 8.51 The GOV.UK page was updated on 13 November to include information about service standards, and again on 30 November to announce that UKVI’s PSCs had closed on 29 November. It set out the temporary arrangements (until January 2019) for online applications for leave based on family or private life, and stated that: “In the meantime, there are only a limited number of appointments available at PSCs. These appointments are intended for customers unable to access UKVCAS services during the transition period who may still require a 24-hour decision service.”
- 8.52 Inspectors did not review the Sopra Steria contract or UKVI’s financial planning assumptions in relation to FES. However, if the move to UKVCAS centres follows the pattern of the overseas VACS, UKVI might expect to see both a reduction in its own costs and a new income stream from Sopra Steria, which should be reflected in a reduced overall average cost per migration decision from 2019-20.

Fee waivers

Scope of waivers and exceptions

- 8.53 The Immigration Act 2014 empowered the Home Secretary, by means of the Immigration and Nationality (Fees) Regulations, to “provide for the reduction, waiver or refund of part or all of [any] fee”. The Immigration and Nationality (Fees) Regulations 2018 set out where fee waivers may be applied.
- 8.54 In the case of leave to enter the UK, under “General waiver”, the 2018 Regulations stated: “No fee is payable in respect of an application where the Secretary of State determines the fee should be waived”. This applied to applicants, Tier 1 and 2 dependants, and dependants of members of HM Forces seeking ILR. Waivers were also possible for applicants who hold or are candidates for an HM Government funded scholarship, are visiting the UK in connection with a Foreign and Commonwealth Office-funded international programme, or “as a matter of international courtesy”.
- 8.55 In the case of leave to remain in the UK, the 2018 Regulations listed the types of application where exceptions or waivers applied:

82 UK Visa and Citizenship Application Service.

83 In December 2018, inspectors were told that there would be 7 Service and Support Centres (SSCs): Belfast, Cardiff, Croydon, Glasgow, Liverpool, Sheffield and Solihull.

- article 3⁸⁴ or Refugee Convention applications⁸⁵
- applications for leave to remain under Destitution Domestic Violence Concession⁸⁶
- applications for leave to remain in the UK as a victim of domestic violence or abuse under paragraph 289A,⁸⁷ Appendix FM⁸⁸ or Appendix Armed Forces
- specified human rights applications where to require payment of the fee would be incompatible with the applicant’s Convention rights⁸⁹
- short term variation of leave to remain in the UK⁹⁰
- children being looked after by a local authority
- applications under the EC Association Agreement with Turkey⁹¹
- applications from a stateless person⁹²
- applications for variation of limited leave to enter or remain in the UK to allow recourse to public funds
- applications for discretionary leave by an individual with a positive conclusive grounds decision⁹³
- applications for leave as a domestic worker who is the victim of slavery or human trafficking
- applications by qualifying residents of Grenfell Tower and Grenfell Walk

8.56 Other waivers (or reductions) referred to in the 2018 Regulations related to the process of taking a record of a person’s biometric information; “fees for the provision of certain premium services in the UK, including the expedition of immigration or nationality applications”,⁹⁴ and for similar premium services provided overseas; equivalent fees in relation to the Isle of Man, Guernsey and Jersey; and, the fee payable for an administrative review request.

8.57 Schedule 8 of the 2018 Regulations, covering nationality, which included applications for naturalisation and for registration as a British citizen, made no reference to fee waivers. However, it did allow for the refund of “fees for the arrangement of a citizenship ceremony where an application is refused or the requirement to attend the ceremony is disapplied”.

‘Fee waivers: Human Rights-Based and other specified applications’

8.58 At the time of the inspection, Home Office guidance entitled ‘Fee waivers: Human Rights-Based and other specified applications’ was available on GOV.UK.⁹⁵ Version 2.0 was “Published for Home Office Staff on 30 August 2017” and published on GOV.UK on 5 January 2018. It therefore predated the laying of the 2018 (Fees) Regulations and the extension of waivers to Stateless persons and their families applying for ILR.

84 Article 3 of the ECHR stipulates: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

85 <https://www.unhcr.org/1951-refugee-convention.html>

86 <https://www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence>

87 Immigration Rules Paragraph 289A: Requirements for indefinite leave to remain in the UK as the victim of domestic violence.

88 Immigration Rules Appendix FM: family members.

89 Omar v Secretary of State for the Home Department [2012] EWHC 3448 determined that to require a fee in the case of an ECHR application, payable before the consideration of the right is begun, unreasonably interferes with that person’s rights and is therefore incompatible (i.e. unlawful).

90 Where an application is made on arrival at a port of entry to vary their leave for a period of up to 6 months.

91 Also known as ‘the Ankara Agreement’, this is a treaty signed in 1963 which provides for the framework for the co-operation between Turkey and the European Union (EU).

92 The Explanatory Memorandum accompanying the 2018 Regulations explained that the fee waiver permitted for limited leave to remain applications from stateless persons and their family members was being extended to fees for ILR applications and replacement biometric identity documents.

93 A positive conclusive grounds decision is the final stage of the decision-making process of the national referral mechanism (NRM). The NRM is the framework by which potential victims of human trafficking and modern slavery are identified and supported.

94 This includes the provision of an immigration officer (charged at £53.08 per hour per officer) to deliver any premium service relation to entry into or transit through the UK – see Chapter 9 ‘Border Force’.

95 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672083/fee-waiver-guidancev2_0.pdf

- 8.59 The guidance explains who can apply for a fee waiver, with sub-headings for:
- 5-year partner and 5-year parent route (ECHR Article 8 rights)
 - 10-year partner, parent or private life route (ECHR Article 8 rights)
 - other ECHR rights
 - extension of leave to remain where applicant was refused asylum or humanitarian protection and granted DL [Discretionary Leave]
 - extension of DL for victims of trafficking or slavery
 - family units
 - applications for further leave to remain where previous fee waived
- 8.60 The guidance also lists applicants who cannot apply for a fee waiver:
- applications on non-human rights grounds
 - applications for the 5-year partner route that require the minimum income threshold to be met
 - applications for indefinite leave to remain (ILR)

Applying for a fee waiver

- 8.61 To apply for a fee waiver, an applicant is required to complete a 25-page “Appendix 1: Request for Fee Waiver” form and “to demonstrate, by way of evidence” that they meet one of 3 listed criteria:
- that they are destitute
 - that they would be rendered destitute by payment of the fee
 - that there are exceptional circumstances in their case such that a fee waiver should be granted
- 8.62 Applicants are told that “You will need to provide documentary evidence with this fee waiver application to demonstrate your financial circumstances” and the financial circumstances of “a partner”, “family member” or “friend” “you live with .. who supports you financially” and “all your dependants”, noting that official documents must be on letter headed paper, with registered charity numbers where appropriate, and certified in the case of bank and building society documents.
- 8.63 The request form lists “some examples of relevant documents you may wish to include”:
- bank statements for the last 6 months
 - saving accounts statements for the last 6 months
 - tenancy agreements or mortgage documents
 - utility and other relevant bills no more than 3 months old
 - letter from employer confirming employment
 - pay slips for the last 6 months
 - P60 End of Year Certificate showing tax and National Insurance contributions

- P45 showing tax and NI contributions up to date of leaving work
- Letters from a registered charity or local authority letter confirming receipt of support from them
- Letters from friends or family detailing support provided by them and if and why this is stopping
- Letters confirming the applicant or spouse/partner is in receipt of public funds (the form contains a list of public funds that must be declared)
- “Other documents”

8.64 The form also requires the applicant to complete a table of monthly income and outgoings based on an average over the 6 months prior to the application, supporting all figures “with evidence/documentation”.

Assessing the fee waiver request – destitution and exceptional circumstances

8.65 The guidance states that the definition of destitution used to assess a fee waiver request is consistent with the provision of support to asylum seekers and their dependants under section 95 of the Immigration and Asylum Act 1999, which is either that the person does “not have adequate accommodation or any means of obtaining it” or does but “cannot meet their other essential living needs”.

8.66 Under ‘Assessing whether there are exceptional circumstances’, the guidance states that this relates “only to the applicant’s financial circumstances and their ability to pay the application fee”. It provides an example of an applicant who “is not destitute and would not be rendered destitute by paying the fee but cannot afford to pay because they need to spend the money on essential child welfare needs, because of their child’s illness or disability”.

Assessing the fee waiver request – what caseworkers should consider

8.67 The guidance emphasises that the request must be assessed “on the basis of the information provided and the accompanying evidence”, but caseworkers must be sensitive to any declared physical or mental disability that may be material to a decision and invite the applicant to provide further information or evidence if required. Caseworkers should also consider the individual circumstances of the applicant, including factors such as age, pregnancy and maternity that may be relevant to assessing destitution or exceptional circumstances.

8.68 Caseworkers are required to assess an applicant’s credibility where they state that they cannot provide relevant documentary evidence, for example because they are “street homeless”. It does not say how this should be done but suggests that applicants should be able to provide some information and documentary evidence about how this situation came about.

8.69 Where an applicant has intentionally disposed of funds, by giving them away to a third party, paying debts before they are required to do so or repaying more than required, buying non-essential personal possessions, or spending extravagantly, the expectation is that their application will be refused.

Applicants in receipt of third party support

- 8.70 The guidance covers applicants in receipt of 3 forms of support: asylum support under the Immigration and Asylum Act 1999; local authority support; and, support from a registered charity.
- 8.71 In the case of asylum support it states that “once [an applicant] is in receipt of this support, their accommodation and other essential needs are met and so they are no longer destitute”. It also notes that “Failed asylum seekers may make a human rights claim [that does not require a fee] by means of further submissions at the Further Submissions Unit in Liverpool”, and “an applicant in receipt of asylum support may make a (non-protection based) human rights claim” and apply for a fee waiver, which is likely to succeed as they will be able to evidence that they would be rendered destitute by payment of the fee.
- 8.72 The guidance on local authority support is similar in that applicants provided with accommodation and support for other essential living needs are not considered destitute, but should be granted a fee waiver on the basis that they would be rendered destitute by payment of the fee, except where they have additional assets or income and local authority support is being provided for social care reasons that do not include preventing destitution.
- 8.73 For those in receipt of support from a registered charity, the guidance is less clear about whether an applicant is likely to qualify for a fee waiver, reflecting the fact that the circumstances of such support will vary from case to case.

UKVI Fee Waivers Team

- 8.74 Completed fee waiver requests are assessed by the UKVI Fee Waivers Team. Inspectors visited the Fee Waivers Team in Sheffield in September 2018. At that time, it comprised 23.59 Full-time Equivalent (FTE) staff, the majority Assistant Officer grade caseworkers, responsible for the day-to-day waiver considerations; with 3 Executive Officers, responsible for quality assurance on a random sample of 2% of the decisions made; one HEO team leader who was also responsible for dealing with any safeguarding issues that had been escalated; and one Senior Executive Officer (SEO).
- 8.75 In addition, 2.94 FTEs assigned to work on ‘change of conditions’ cases were available to assist the Fee Waivers Team when their workload permitted, and 5 FTEs from Liverpool were temporarily attached to the Team. As at the beginning of December 2018, the temporary attachments had ceased and the core Team had reduced from 23.59 FTEs to 19.84 FTEs in post.
- 8.76 Caseworkers told inspectors that they typically considered 5 fee waiver applications a day. Requests were allocated for consideration in order of date of receipt, with the oldest dealt with first unless there was a specific reason for expediting a more recent request. Inspectors saw no evidence of a formal triage process, so it was unclear how the team would ensure that requests requiring an urgent decision were identified and prioritised.⁹⁶
- 8.77 Managers told inspectors that the team received approximately 12,000 fee waiver requests a year,⁹⁷ with the numbers increasing each year as the fees increased.

⁹⁶ At the factual accuracy stage of the inspection the Home Office commented “While there is no formal triage process there is a flag on CID which denotes LA supported and Caseworkers will prioritise. Urgent cases are also highlighted by SEOs, the complaints and correspondence team and these, when passed to the team, will be prioritised.”

⁹⁷ The actual figure for 2017-18 was 11,998.

Fee waiver outcomes

- 8.78 Where the request for a fee waiver is approved the application for leave to remain is passed by the Fee Waivers Team to the relevant UKVI caseworking unit for a decision. Where the request is rejected the applicant is advised that they will need to make a new application and pay the fee, or apply for a new fee waiver. If the applicant already holds valid leave they will be given 10 working days to submit additional evidence to demonstrate that they qualify for a fee waiver. If not, they will be informed that they can initiate a new fee waiver request.

Inconsistent fee waiver decisions

- 8.79 Inspectors examined a sample of 100 fee waiver requests that received a decision between 1 April 2017 and 31 March 2018 relating to an application for leave to remain. Of these, 52 were approved and 48 were rejected. This rate of acceptance was significantly higher than it had been historically. In response to a Freedom of Information request (Ref. 36769), the Home Office had reported that in the 5 months from April 2015 to September 2015, of 4,822 fee waiver requests to receive a decision, 4,300 were rejected.
- 8.80 Overall, inspectors found that the decisions in the 100 cases examined were in line with guidance. However, there were 15 instances where the guidance did not appear to have been followed or, if it had been, where the record was deficient.
- 8.81 According to the guidance, to meet the ‘rendered destitute by payment of the fee’ test an applicant who was in adequate accommodation and could meet their essential living needs would need to evidence that they had “no disposable income” and were “unable to borrow the required amount from family and friends”. The caseworker would need to be satisfied that the applicant could not save the required amount from their disposable income, or that their financial circumstances would be likely to change, over a “reasonable period”.
- 8.82 In Case Study 1 these tests did not appear to have been met, but the request for a fee waiver was nonetheless approved.

Case Study 1: Approved fee waiver request on ‘destitute by payment of the fee’ grounds, without supporting evidence

The request

In April 2017, a non-EEA adult male requested a fee waiver for a leave to remain application under his ‘other ECHR’ rights on the basis that he “would be destitute upon payment of the fee”.

The applicant was not considered to be disabled or otherwise vulnerable, and there were no “exceptional circumstances”.

Verification checks confirmed that the applicant was employed and that his average income over the previous 6 months was £2,824.35 per month and his average expenditure £3,040.00 per month. Based on these figures, it was concluded that the applicant would be unable to save the required amount to pay the fee.

A fee waiver was approved on the grounds that the applicant would be destitute upon payment of the fee.

Independent Chief Inspector's comments

The record does not show any actions taken by the caseworker to establish that the monthly outgoings of £3,040.00 were for "essential living needs" as required by the guidance. From the available evidence, some of this expenditure had been on a new car and furniture, suggesting some disposable income, which should have led to a request for further clarification of the applicant's financial circumstances before approving (or rejecting) the fee waiver request.

- 8.83 In contrast, in Case Study 2 the applicant had his request for a fee waiver rejected twice, despite appearing to meet the test for destitution.

Case Study 2: Rejected fee waiver requests despite evidence of destitution

The request

In October 2017, a non-EEA adult male applied for a fee waiver in relation to a leave to remain application as a 10-year partner on the basis that he was destitute.

Verification checks were completed with Equifax and these confirmed that the applicant had no bank statements. He had been residing with a friend and received £20 from another friend on a monthly basis.

The request was rejected on the basis that he did not meet the test for destitution, with the explanation that he had not supplied enough evidence to show he was not being supported by his friends. No further information was requested.

The applicant submitted a new request, this time providing letters from his friends. This request was also rejected, on the basis that the friends who wrote the letters did not include the friend he had been residing with. Again, no further information was requested.

Independent Chief Inspector's comments

The applicant appeared to meet the test for destitution based on the available evidence. It is hard to see what standard of proof was being applied here, and also to be confident that had the applicant supplied a letter from the friend he was residing with this would have been judged sufficient for the request to be approved.

Timeliness

- 8.84 Fee Waiver guidance makes it clear that there is no service standard for a decision on a fee waiver request. Instead, "caseworkers must make reasonable efforts to decide such applications promptly, especially those involving a child or an applicant who is street homeless, disabled or otherwise in vulnerable circumstances."
- 8.85 For the 100 cases examined by inspectors the average time from receipt of the fee waiver request to a decision to approve or reject the fee waiver application was 114 days. The longest took 265 days. Inspectors found 10 cases where a disability (mental or physical) or vulnerability had been identified by a caseworker. While in one case (a victim of human trafficking) the decision took 20 days (the shortest time taken in the 100 cases examined), and in another (a severely disabled person in receipt of local authority funding) it took 52 days, the remaining

8 cases ranged between 104 to 160 days. One of the 8, an applicant with a serious medical condition, had been identified as needing a decision to be expedited but it still took 154 days.

- 8.86 In September 2018, the Fee Waivers Team was dealing with requests that were on average 62 days old, and there were 2,000 requests in its 'work-in-progress' queue awaiting consideration. The team told inspectors that "this time last year" it had been taking on average 9 months to provide a decision. Meanwhile, management said that it was aiming to reduce the average decision time to 30 days and it believed that this was "achievable".⁹⁸

Difficulty of completing the fee waiver request form

- 8.87 Caseworkers from the Fee Waiver Team told inspectors that applicants appeared to find the fee waiver request form hard to complete. Some required help from legal representatives. Stakeholders confirmed this and said that immigration lawyers were spending more time working with applicants on fee waiver requests than on the leave application itself, as the list of evidence required to demonstrate eligibility was "enormous" and the burden of proof being demanded was "unreasonably high".
- 8.88 According to Fee Waiver Team, 50% of rejected requests were rejected due to the applicant not providing sufficient evidence. Around a third of all requests received were repeat requests. Senior management acknowledged that there was more work to be done with stakeholders to improve the understanding of what evidence the request form was seeking. But there was also a need not to make the form overly complicated and it was difficult for the Home Office to prescribe what constituted sufficient evidence as each case was different.

Nationality

Naturalisation as a British citizen

- 8.89 A person may be eligible to apply for British citizenship by naturalisation if they have lived in the UK for the last 5 years and have either held indefinite leave to remain for the last 12 months or, if from within the EEA, have had permanent residence status for the last 12 months.
- 8.90 A person may be eligible as a spouse or civil partner of a British citizen if they have lived in the UK for the last 3 years and have either indefinite leave to remain or, if from within the EEA, a permanent residence document.
- 8.91 With effect from 6 April 2018, the application fee for naturalisation was set at £1,250, an increase of 4% on the previous year's fee of £1,202. However, since 2013, the fee had increased by 57% (from £794). In the same period, the Home Office's published unit cost for processing these applications doubled (from £187 to £372, albeit the 2018 figure was a reduction on the 2017 figure of £386).

Registration as a British citizen

- 8.92 A person may be eligible for British citizenship by registration if they were born in the UK, depending on when they were born and their parents' circumstances.

⁹⁸ At the factual accuracy stage, the Home Office reported that the aim had been to achieve a 30-day decision time by January 2019 and that it had been achieved in December 2018.

- 8.93 If a person was born before 1 January 1983 and one of their parents was a British citizen or ‘settled’⁹⁹ in the UK, they qualify automatically as a British citizen. If they were born on or after 1 January 1983 they may be eligible for citizenship if they are under 18 and, since birth, one of their parents became a British Citizen or was granted leave to remain in the UK permanently.¹⁰⁰
- 8.94 Where neither parent was a British citizen or had been granted leave to remain in the UK permanently at the time of the child’s birth, the child:
- “shall be entitled, on an application for his registration as a British citizen made at any time after he has attained the age of ten years, to be registered as such a citizen if, as regards each of the first ten years of that person’s life, the number of days on which he was absent from the United Kingdom in that year does not exceed 90”.¹⁰¹
- 8.95 With effect from 6 April 2018, the application fee for registration was set at £1,126 for adults and £1,012 for children, an increase of 4% in each case on the previous year’s fees of £1,083 and £973. However, in 2013, the fee for both adults and children was £673,¹⁰² with a second or subsequent child charged at £505. The 2018 fees therefore represented an increase of 67% over 5 years for an adult and 50% for a first child. The Home Office’s published unit costs for processing these applications were the same as for naturalisation applications, £187 in 2013, £386 in 2017, and £372 in 2018.

Figure 8 ‘Surpluses’ from naturalisation and registration applications 2018-19

	Fee	Processing costs	Surplus
Adult naturalisation	£1,250	£372	£878 (70%)
Adult registration	£1,126	£372	£754 (67%)
Child registration	£1,012	£372	£640 (63%)

Right of Abode

- 8.96 Under Section 2 of the Immigration Act 1971 (as amended by Section 39 of the British Nationality Act 1981), all British citizens and certain Commonwealth citizens have the Right of Abode (RoA) in the UK. RoA means that a person is allowed to live and work in the UK without immigration restrictions. Once a person has resided continuously in the UK for 5 years with RoA they may apply for naturalisation.
- 8.97 GOV.UK states that: “You can prove you have right of abode if you have a UK passport describing you as a British citizen or British subject with right of abode. Otherwise you need to apply for a ‘certificate of entitlement’.”
- 8.98 The fee for issuing a RoA certificate of entitlement was set at £372 with effect from 6 April 2018 for applications made online or by post in the UK, and £388 for applications made outside the UK (online only). The 2018 in-country fee matched the Home Office’s published unit cost for processing an application (it had previously been set at below the unit cost, which in 2017 had been £386). The ‘new’ fee represented a 15.9% increase on the previous year’s fee of £321.

99 A parent can be considered as ‘settled’ in the UK if they have one of the following: indefinite leave to remain in the UK, indefinite leave to enter the UK, or a permanent residence document if they are an EU citizen.

100 Section 1(3) of the British Nationality Act 1981.

101 Section 1(4) of the British Nationality Act 1981.

102 For adults, this excludes a further £80 UK citizenship ceremony fee, which has not increased and is charged in addition to the £1,126.

Nationality fees rationale

- 8.99 When the fees maxima were set in 2016 the Home Office stated that they were intended to remain unchanged for the 4 years of 2015 Spending Review period but they were not targets it was aiming to reach by 2019-20. At Table 7, the Immigration and Nationality (Fees) Order 2016 set out the new maxima for nationality applications, processes or services. This was prefaced by:
- “10. (1) A fee is to be charged for attending to an application or request for a process or service of a type specified in table 7.
- (2) Table 7 specifies the maximum amount that may be charged in respect of each application or request, for a process or service.”
- 8.100 The maxima for naturalisation and for registration were both set at £1,500. In 2015, the former had been £925 and the latter £833. The accompanying Explanatory Memorandum gave no further detail about how the new maxima for nationality applications had been calculated but in relation to immigration and nationality fees as a whole stated that: “The maximum fee amount has been set according to the highest individual fee for an application within each category.” While the Impact Assessment for the 2016 (Fees) Order did not explain how the figure of £1,500 was arrived at, it referred to fees “based on processing costs, entitlements, and specific policy objectives to ensure the immigration system is adequately funded.”
- 8.101 The Home Office’s thinking regarding “nationality products” was summarised in the Impact Assessment for the Immigration and Nationality (Fees) Regulations 2018. It noted that: “nationality products are optional and deterred applicants are still eligible to for (sic) apply for leave to remain in the UK, even if they do not apply.” Consequently, deterred applicants were assumed to “continue to contribute to the Exchequer”. This was largely a repetition of what was contained in the 2016 IA.
- 8.102 Both IAs acknowledged that there was “no evidence” on which to base an elasticity assumption for nationality applications, but nonetheless assumed a “central scenario” effect of minus 0.5 (the same as for settlement and LTR). However, this was caveated with “the true elasticity for [nationality and settlement] applicants may be closer to zero ... due to a number of reasons; eligibility to these visa require investing a long time living in the UK; applying for settlement or nationality suggests an intention in remaining in the UK for the long term, and in addition, these visa allow for a lifetime of access to the UK labour market and the associated wages.”
- 8.103 None of the Fees Orders or Regulations produced since 2016, nor any of the published supporting documentation, considered the social or welfare impacts on individuals seeking to become naturalised or to register their entitlement to British citizenship.

Call for evidence responses and challenges to nationality fees

- 8.104 The call for evidence for this inspection produced 596 written responses. Of these, 88 (16.8%) related to nationality applications, of which 70 referred to the fees being too high and 30 to the applicant incurring debt in order to pay the fees. 19 of the responses raised an issue about failure to adhere to the 6-month service standard for a decision.
- 8.105 Separately, a number of stakeholders have challenged the Home Office’s right to charge a fee for nationality applications that is above the cost of processing the application, and to increase the fees in the same way as fees for visa applications made under the Immigration Act 1971.

- 8.106 During 2018, the legitimacy and scale of the fees charged to children applying to register as British citizens has been the subject of Parliamentary interest.¹⁰³ Critics have pointed to the “steep increase” in the fee over the past 9 years - from £460 in April 2009 to £1,012 in April 2018. A joint briefing produced by the Project for the Registration of Children as British Citizens (PRCBC) and Amnesty International UK described the current fee as “exorbitantly and prohibitively high”.¹⁰⁴
- 8.107 The fact that nationality applicants were not able to request a fee waiver or any other form of exemption or fee reduction was also criticised. PRCBC and Amnesty told inspectors that the absence of a fee waiver trapped destitute and disadvantaged individuals and families in repeated cycles of leave to remain applications, where they might succeed in having the fee waived. The effect was to prevent them from establishing a firm and permanent connection to the UK, despite the fact that they were legally entitled to British citizenship.
- 8.108 A number of stakeholders considered this to be a particular concern for child applicants, who were not always able to meet the eligibility criteria for leave to remain. If refused they became liable for removal from the UK, despite any entitlement to citizenship under the British Nationality Act 1981. Stakeholders questioned how the removal of a child who had established a life in the UK as a consequence of them not being able to afford the registration fee aligned with the Home Office’s duties under section 55 of the Borders, Citizenship and Immigration Act 2009.¹⁰⁵

103 It was raised in an ‘Early Day Motion’ entitled ‘Fees for Registering Children as British Citizens’, 14 May 2018 (<https://www.parliament.uk/edm/2017-19/1262>).

104 https://prcbc.files.wordpress.com/2018/03/fees_briefing_revised_march_2018-final.pdf

105 Section 55 of the Borders, Citizenship and Immigration Act 2009 states that the Secretary of State must make arrangements for ensuring that any function in relation to immigration, asylum or nationality is discharged with regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

9. Border Force

Border Force responsibilities and priorities

- 9.1 Border Force is a law enforcement command within the Home Office, responsible for securing the UK border by carrying out immigration and customs controls on people and goods entering the UK. Its priorities are to:
- “deter and prevent individuals and goods that would harm the national interest from entering the UK
 - facilitate the legitimate movement of individuals and trade to and from the UK
 - protect and collect customs revenues from trade crossing the border
 - provide excellent service to customers
 - provide demonstrable effectiveness, efficiency value for money”

Home Office approach to charging for Border Force services

- 9.2 In October 2013, the Home Office produced an Impact Assessment in relation to the ‘Fees and Charges proposals in [the] Immigration Bill 2013’ (later the Immigration Act 2014). The Home Office’s preferred option “to introduce a revised, flexible charging framework” included a sub-option, 2b “Over Cost Recovery of Border Force Fees”.
- 9.3 The IA explained that Border Force was “restricted to either charging: at - or below - cost for the provision of officers to support priority queuing and value added services provided by airlines.” It quoted the current unit cost at “£53.08 per Border Force Officer per hour”.¹⁰⁶ Under “Proposed policy”, the IA stated:
- “In order for Border Force charges to be consistent with the precedents set by other types of [premium service] fee the Home Office would like to be able to charge at above cost for delivery of these services. ... to reflect the value of the service provided and to generate income to improve standard services offered by Border Force ... However, the size and application of such a potential above cost charge has not been fully refined ... The Impact Assessment will be updated as the proposal is developed”.
- 9.4 Subsequent Impact Assessments for the annual Immigration and Nationality (Fees) Orders and Regulations have been silent on the specific question of “Over cost recovery for Border Force Fees”. However, Section 68(8) of Immigration Act 2014 included the provision that, subject to a specified maximum, any fee in relation to functions in connection with immigration or nationality “may be intended to exceed, or result in a fee which exceeds, the costs of exercising the function”, which would appear to give Border Force the power to set an above hourly rate “over cost recovery”.

¹⁰⁶ Prior to using the charging powers in the Immigration Act 2014, this rate was set under the provisions of the Immigration and Asylum Act 1999, which did not contain an explicit power to set fees at above-cost.

- 9.5 Meanwhile, the hourly rate of £53.08, raised from £27 in 2008, has remained unchanged. Inspectors were told this amount was in fact “slightly below cost for most of the time”, but that a decision had been taken by Border Force not to change the fee each year. This was to reduce the administrative burden, as the fee is set out in multiple agreements with port authorities, which would need to be re-negotiated, and also because the variances between any full cost assessment and £53.08 were relatively minor. However, in September 2018, inspectors were told by Border Force that the hourly rate was now “under review”.
- 9.6 Writing in 2015, Border Force informed aviation stakeholders that its hourly rate included “associated overheads such as uniform, equipment, management and training” and that the methodology had been agreed by HM Treasury. It provided a breakdown of the £53.08 hourly charge, which it stated was based on its 2013-14 fully audited accounts – see Figure 9.

Figure 9: 2015 Breakdown of Border Force hourly rate

Border Force average salary cost per hour	£30.55
Indirect costs, including training, uniforms and management	£10.42
Home Office corporate overheads including accommodation, IT, support and enablers	£13.00
Total hourly rate	£53.97
Adjustment: cost not passed on to customer	£0.89
Border Force hourly rate charged out	£53.08

- 9.7 When writing in 2015, Border Force had stated that it:

“makes little or no saving by clearing small numbers of premium passengers away from the main PCP.¹⁰⁷ In fact there is a risk that the main PCP is adversely affected by the provision of premium services. Moving resources around to provide optional premium services reduces overall efficiency, because officers deployed to this role cannot cover other duties. As you would expect this is reflected in the charging structure.”

- 9.8 In 2016 Border Force created an Industry Partnerships Team and in mid-2017 started work on premium services. One initiative to come from this was the creation of income generation “champions” in each Border Force region. The champions are operational Grade 7s or Senior Executive Officers, for whom this is an add-on task. Inspectors were told that the hope was to develop greater commercial awareness and identify and share good practice, but that this work was “still in its early stages”.

Chargeable services 2018

- 9.9 At the time of the inspection, Border Force offered a number of services for which it charged. In most cases, the service aimed to provide quicker passage through immigration controls. Some were available to individuals, others to carriers.

Registered Traveller service

- 9.10 The Registered Traveller service was introduced in 2015. According to GOV.UK, it “can help you get through the UK border faster” by enabling members to use UK and EU passport entry lanes

¹⁰⁷ Primary (Immigration) Control Point.

and, where these exist, ePassport gates (if your passport has a 'chip'). As at October 2018, it was in use at 16 UK airports and 3 Eurostar terminals (Brussels, Lille and Paris).

- 9.11 Eligibility is subject to certain conditions. You must: be 18 or older (children can be added to a parent's membership but must travel with a parent who is a member and neither may use the ePassport gates); have a UK visa or entry clearance; and have visited the UK (other than in transit to another destination) at least 4 times in the last 24 months. The service is limited to the holders of passports from listed countries. Again, as at October 2018, 40 countries or territories were listed.
- 9.12 Since 2015, the cost of initial registration has remained at £20 plus £50 for 12 months' membership. Should an application be unsuccessful (GOV.UK commits to a decision within 10 working days) there is a £50 refund. Annual renewal of membership costs £50, while it costs £20 if the member needs their passport details to be updated (because they have acquired a new passport). Updating personal details where an individual's visa or immigration status has changed is free of charge. Adding a child to your membership attracts "a £20 administration fee", plus a membership fee of "£2 a month" for the duration of the parent's membership.
- 9.13 From these costings, the GOV.UK content and successive Immigration and Nationality (Fees) Regulations it is unclear whether any part of the membership registration and annual fee was over cost, either at the time they were introduced or since.
- 9.14 Customers might reasonably expect the calculations to take account not just of the costs of administering the scheme and of processing its members on arrival (including investment in ePassport gates) but also of any savings in terms of the time Border Force officers would have otherwise had to have spent processing these passengers in the "normal" way. Inspectors saw no evidence that any such detailed analysis was done to inform the annual fee setting round.¹⁰⁸

Electronic Visa Waiver

- 9.15 The holders of passports from Kuwait, Oman, Qatar and the United Arab Emirates may apply for an electronic visa waiver (EVW) instead of a visa. An EVW lets the holder visit the UK for up to 6 months for tourism, business, study or medical treatment.
- 9.16 The EVW scheme was introduced in 2014. Since 2016, the fee has remained at £15 for a single entry. Applications and payments must be made online via GOV.UK, no earlier than 3 months before the date of travel and no later than 48 hours. Each person travelling must have their own EVW, including children, for whom the fee is the same as for adults.
- 9.17 Inspectors spoke to the team in Glasgow responsible for administering the EVW scheme. The team described EVW as "very popular". In a later interview, the Industry Partnership Team told inspectors that the fee level took into account "trade and diplomatic relations" with the countries concerned. Subsequently, the Home Office reported that the EVW fee was included in a "wider Director General commission" to review the Border Force charging model. As with the Registered Traveller scheme, customers might reasonably expect the fee to reflect any Border Force savings as well as costs, however these would be different as EVW holders may not use the ePassport gates.

¹⁰⁸ At factual accuracy, the Home Office commented: "There is nothing in Managing Public Money (MPM), or elsewhere, which requires savings elsewhere to be factored into any fee calculations. Neither does the 2014 Act require this. MPM and the 2014 Act's starting point is the cost of providing the service. As such, it is not reasonable to expect this, or see evidence to support this analysis in the fee-setting round."

FastTrack

- 9.18 GOV.UK contains a “Guide to faster travel through the UK border”, produced by Border Force.¹⁰⁹ This recommends ways in which travellers can “help us process you quickly and improve your experience at the UK border”.¹¹⁰ The advice includes “Pay to FastTrack passport control at UK airports”. This says “You can pay a small fee to ‘fast track’ passport control checks” through 6 listed airports and has links to their websites.
- 9.19 At the time of the inspection, the cost per person was £5 at Stansted, Manchester, Edinburgh, Birmingham, and East Midlands, and £7 at Gatwick. Payment is made to the airport operator, who sets the amount.
- 9.20 Border Force provides officers to manage the FastTrack controls at £53.08 per officer per hour.

General Aviation – Fixed-base operators

- 9.21 Fixed-base operators (FBOs) are commercial companies allowed to operate on airport grounds. They provide a range of support services, including services for private jet aircraft, customers and crew. In some cases, the FBO operates a VIP lounge within the general airport terminal, while in others it operates its own separate terminal. Larger international airports have 2 or more of this type of FBO.
- 9.22 One of the services these FBOs typically offer is immigration and customs checking in the VIP lounge or FBO terminal. The FBO pays Border Force to deploy an officer to the lounge or FBO terminal to carry out the required checks. The decision to deploy an officer when requested rests with local Border Force management, who have to take account of the circumstances at the airport at that time and ensure that Border Force can still meet its priorities. Border Force charges at the hourly rate per officer of £53.08.

Global Entry – “faster entry to the USA”

- 9.23 GOV.UK provides details of how to apply for Global Entry, which “gets you through border control faster at some airports in the USA”. The page links to the airports where this operates. The service provided via GOV.UK is a “UK background check”, available to British citizens only, which is required in order to apply to the US authorities for Global Entry membership.
- 9.24 The fee charged for the UK background check is £42, payable online. On passing this check, a further payment of \$US 100 has to be made to the US authorities for a US Customs check. GOV.UK states “You won’t get a refund for any of the fees, even if you fail the checks.”
- 9.25 If granted, Global Entry membership lasts 5 years. It means you “won’t need to speak to a Customs and Border Protection officer [in the USA]” and “can use the Global Entry lane with electronic check in.” However, members still require a visa or Electronic System for Travel Authorization (ESTA).
- 9.26 GOV.UK does not explain how the fee level for the UK background check has been calculated, nor is it clear whether the fees received are regarded as Border Force income.

¹⁰⁹ Last updated on 29 June 2018.

¹¹⁰ The advice includes a link to the Registered Traveller scheme, and an explanation that Registered Travellers can use the UK/EU and ePassport lanes and that “Border Force officers aim to clear the majority of UK and EEA nationals within 25 minutes and non-EU citizens within 45 minutes”.

Looking to the future

Learning from others

- 9.27 Inspectors were told that Border Force managers had visited major airports in Europe, Dubai and the USA, and had discussed the chargeable services on offer in an effort to identify further opportunities for charging in the UK.
- 9.28 Border Force management had also been looking at overseas models for funding the rising demand for border services due to the ever-increasing volumes of air traffic, including drawing a line under its staffing levels at a given date and looking to charge airport operators for any further growth or 'zero-basing' and charging for the total cost of the resources required.

Electronic Travel Authorisation

- 9.29 As an example of possible new chargeable services, inspectors were told that Border Force had been giving consideration to an Electronic Travel Authorisation (ETA) scheme.
- 9.30 This might be modelled on the USA ESTA, which is open to citizens or nationals of countries belonging to the US Visa Waiver Program (VWP).¹¹¹ The fee for an ESTA has remained at \$US 14 since it was introduced in 2010, of which \$US 4 goes to Customs and Border Protection. An ESTA is valid for 2 years and covers multiple entries.
- 9.31 It was made clear to inspectors that the thinking regarding an ETA was at an early stage, and in preparing for the UK's exit from the European Union Border Force had other more pressing priorities. Inspectors were also told that the introduction of an ETA would require primarily legislation.

Border Force cruise ship trial

- 9.32 Between September 2017 to November 2017, Border Force ran a 3-month trial aimed at finding a more efficient way of clearing cruise ship passengers arriving at UK ports. This involved deploying Border Force officers ("crossing officers") on cruise ships before they arrived at their first UK port.
- 9.33 The hoped-for benefit for the cruise ship operators was that passengers could be cleared for immigration purposes before docking, enabling them to disembark quickly. Meanwhile, Border Force would benefit by not having to deploy officers to remote ports. The expected growth of the cruise industry meant that this would become more important over time.
- 9.34 Inspectors were told that the trial was run on a "full cost recovery" basis, with Border Force recovering a total of £88k. Next steps were subject to ministerial agreement. Again, inspectors were told that the current focus was on EU exit, and that although existing legislation had been sufficient to run the trial new legislation may be necessary to roll this out more widely.

¹¹¹ As at October 2018, 38 countries, including the UK, belonged to the VWP.

10. Immigration Enforcement

Immigration Enforcement's responsibilities and objectives

- 10.1 Immigration Enforcement (IE) is responsible for “preventing abuse, tracking immigration offenders and increasing compliance with immigration law”, working with the police and other law enforcement partners, other government departments and local authorities, and with private sector organisations and individuals, such as employers and landlords.
- 10.2 IE's vision is “to reduce the size of the illegal population and the harm it causes”, to which end it has 3 core objectives: “to prevent migrants from entering the UK illegally and overstaying; to deal with threats associated with immigration offending; and to encourage and enforce the return of illegal migrants from the UK.”

Chargeable services

- 10.3 IE senior managers told inspectors that, notwithstanding its purpose and objectives, IE was signed up to the idea of chargeable services and to contributing where possible to the Home Office's aim that the border and immigration system should become self-funding by 2020.
- 10.4 At the time of the inspection, there were 3 services for which IE charged. Each of these offered a means by which “customers” could help themselves to comply with immigration legislation, and thereby reduce the risk of prosecution, penalties and fines. The Home Office told inspectors that it had no plans or proposals to introduce further chargeable IE services.
- 10.5 As at December 2018, none of these services were referenced on the GOV.UK IE home page or the IE “About our services”.

On Site Immigration Officials

- 10.6 Employers can pay IE to provide them with an On Site Immigration Official (OSIO). The services provided by an OSIO may include: conducting real-time immigration status checks on persons seeking local authority support and benefits, supporting local authority staff with interviews of such persons, inspecting immigration and nationality documentation presented by them, providing them with “an overview of their immigration status and voluntary return information if appropriate”, and delivery of immigration training.
- 10.7 OSIOs are provided on a cost recovery basis for the hours worked. There is no mechanism for waiving or varying the fee level, but customers can decide how many hours they wish to purchase. The 2018 fee for a Higher Executive Office is £58.20 per hour, and for an Executive Officer it is £52.80 per hour.¹¹² As at the beginning of September 2018, IE had 14 staff in post carrying out the role of OSIO.

¹¹² In September 2018, the advertised salary range for an Immigration Officer (EO) was £21,500 to £36,000, for a 36 to 40-hour week. In addition to salary costs, the Home Office recovers Employers' National Insurance and Superannuation contributions, plus a proportion of local management and central support costs, including HR and finance.

- 10.8 In October 2018, the Financial Times (FT) carried an article entitled “London Families intimidated by embedded immigration officials” in which it alleged that officers embedded in some London councils were deterring migrant families from seeking services and that this was “an extension to the Home Office’s “hostile environment” policy”.¹¹³
- 10.9 The FT article reported that the Home Office had responded to a Freedom of Information Act request to say that it had officers embedded in Bexley, Barking and Dagenham, Greenwich, Enfield, Lewisham, Croydon, Hackney and Harrow councils. It quoted a Home Office spokesperson as saying:
- “Immigration officials provide immigration status checks on a case-by-case basis at the request of local authorities. Local authorities use this information together with additional evidence and advice, including that from social workers, to make their decision on whether to grant access to support.”
- 10.10 Meanwhile, Bexley local authority was reported as stating:
- “It is recognised good practice for councils to have embedded immigration officers to help expedite NRPF¹¹⁴ applications and we have no plans to move away from this integrated working model that helps local authorities to reduce fraud and saves council taxpayer money.”

Training Services

- 10.11 IE offers training courses on ‘Immigration Awareness’, ‘Right to Work’ and ‘Document Fraud’ for employers. IE trainers provide classroom-based learning and interactive training sessions.
- 10.12 Since 27 June 2018, ‘Immigration Awareness’, ‘Right to Work’ courses have cost £377.95, and the ‘Document Fraud’ course has cost £477.95. The costs reflect the length of the courses - 90 minutes and 120 minutes respectively - and include a fixed amount - £300 and £400 respectively. This includes a fixed amount (£77.95) to cover the trainer’s travel costs, based on an average. Previously, actual travel costs were calculated and charged separately.
- 10.13 Inspectors were told that IE had decided not to provide this training free of charge as that might have put commercial providers of similar training out of business. Meanwhile, setting the course fees at cost recovery rather than over cost meant that IE’s courses remained competitive.
- 10.14 At the time of the inspection, UKVI Premium Sponsors were entitled to either one or 4 training courses a year, depending on the level of service they had bought with their sponsorship licence. From 6 April 2018, the annual fee for a Premium Sponsor licence, which offered “a full package of benefits” was £8k for an SME+ package or £25k for large organisations. The training is provided by Immigration Enforcement Checking and Advice Service (IECAS) trainers.

Telephone service, complaints process and dispute resolution

- 10.15 IECAS enables named individuals from a subscribing organisation, primarily local authorities and NHS Trusts, to check a person’s immigration status over the telephone. Signing up to IECAS is free, and calls are charged at 80p per minute.

¹¹³ <https://www.ft.com/content/00740e46-aa07-11e8-94bd-cba20d67390c>

¹¹⁴ No Recourse to Public Funds.

10.16 IECAS also has a complaints process and dispute resolution process should the local authority or NHS Trust be dissatisfied with the accuracy of a status check.

11. HM Passport Office

Management structure, responsibilities and priorities

- 11.1 In 2014 Her Majesty's Passport Office (HMPO) ceased to be an executive agency and became a division of the Home Office under direct ministerial control. Since 2016, it has been managed by the same Borders, Immigration and Citizenship System (BICS) Director General as UKVI.
- 11.2 HMPO has retained its distinct responsibilities. It is the sole issuer of UK passports – 6-7 million a year. However, according to the Home Office, the alignment with UKVI has made it easier to flex resources during peaks in demand in either area and thereby provide better customer service overall.
- 11.3 In 2008, the General Register Office (GRO) for England and Wales was incorporated into HMPO. GRO is responsible for civil registration services.¹¹⁵
- 11.4 Under "Priorities", HMPO states "We contribute to achieving the Home Office's priorities of securing our border and reducing immigration, cutting crime and protecting our citizens from terrorism".¹¹⁶

HMPO chargeable services

HMPO's "principles"

- 11.5 GOV.UK lists 5 HMPO "principles". 2, in particular,¹¹⁷ are relevant to its approach to charging for its services:
- customer service - we are proud of the service we provide to customers and will deliver a modern and affordable service that meets the needs of today's society
 - cost - we will provide value for fee-payers and reduce our burden on the taxpayer¹¹⁸
- 11.6 In relation to the second of these, when announcing the 2018 passport fees increases in January 2018, the Home Office referred explicitly to "shifting the burden for paying for [the cost of processing British passport holders as they travel in and out of the country] away from the taxpayer – millions of whom do not currently hold passports."

Passport fees

- 11.7 GOV.UK advises that "How much your passport costs depends on how you apply for it." The fees are higher if the application is made using a paper form from the Post Office than if it is

¹¹⁵ Births, stillbirths, adoptions, civil partnerships, marriages and deaths.

¹¹⁶ GOV.UK

¹¹⁷ HMPO's other 3 principles are:

- trusted and secure - we will maintain our high standards of integrity and reliability across all our products, services and the data we hold
- operational focus - we will create a more efficient and connected organisation with operational excellence at its core
- people - we value the contribution of all our people, treat them with respect and will support them through change

¹¹⁸ <https://www.gov.uk/government/news/home-office-proposes-changes-to-passport-application-fees>

made online. The Home Office has justified the higher postal charges, saying they reflect the “increased costs of processing postal applications compared to online applications”. Figure 10 shows the fees in operation since 27 March 2018.

Figure 10: UK passport fees from 27 March 2018		
Passport type	Apply online	Apply by paper form from the Post Office
Adult (16 and over) standard 34-page passport	£75.50	£85
Adult (16 and over) jumbo 50-page passport	£85.50	£95
Child (under 16) passport	£49	£58.50
Passport for people born on or before 2 September 1929	Free	Free

11.8 Since 1 May 2008, passport fees have covered the cost of administering a passport application, whether it is successful or not. Applicants must pay the full fee before the application is considered.

11.9 The Immigration Act 2016 empowered the Home Secretary to set passport fees above the cost of processing an application and to take into account “any other function of the Secretary of State in connection with United Kingdom passports or other UK travel documents”, and “any consular function”, including consular support to British nationals abroad.

11.10 In effect, this brought the approach to the setting of passport fees into line with S.68(9)(c) of the Immigration Act 2014, which had empowered the Home Secretary to take into account “the costs of exercising any other function in connection with immigration or nationality” when setting fees for visa and nationality applications.

11.11 The Home Office announcement of the 2018 fees increases did not explain in detail what “other function[s]” it had included when setting the fees levels, but did state:

“These reforms are part of plans by the Home Office to invest £100 million on border security and infrastructure next year.

This forms part of the ongoing work to modernise and further strengthen the security of the border.”

11.12 The Immigration Minister added:

“Our priority is to ensure that UK travellers have a secure, effective, and efficient service from the point of application to the time they pass through the UK border and it is only right that we should look at this whole process when setting our fees.

These proposals will ensure that those people who don’t travel abroad are not footing the bill for those who do.”

11.13 Again, no further detail was provided regarding what constituted the “whole process”, how much this was understood to cost, or what proportion of the total costs would be met by the

income from passport fees. However, speaking to the House of Lords Grand Committee on 15 March 2018 about the Passport (Fees) Regulations 2018, Home Office Minister Baroness Williams of Trafford stated:

“As to what proportion of money will go to the border, we expect that about 40% of the current full cost to the Home Office of UK passengers leaving and entering the UK will be funded by passport fees after these increases.”

Passport fee waivers

- 11.14 The Immigration Act 2016 also enabled the Secretary of State, via the Passport (Fees) Regulations, to “provide for the reduction, waiver or refund of part or all of a fee”. The Explanatory Memorandum accompanying the 2018 Regulations clarified that this would apply only in exceptional circumstances: “where there has been a crisis” defined in the Regulations as “an incident in which at least five British citizens have been killed or injured, or are in danger of being killed” and the applicant had been directly affected, or where “the UK Government has activated Exceptional Assistance Measures [for Victims of Terrorist Incidents] overseas”.

Customer service

- 11.15 In 2014, it was widely reported that HMPO was “in chaos”, with a backlog of hundreds of thousands of applications. A Home Affairs Committee report, published in September 2014, called for the Home Secretary to take HMPO back under her direct control. The Committee also stated that HMPO is “not an enterprise that aims to make a profit on behalf of HM Treasury”:

“It is a public body that provides services to UK citizens. ... Whilst it is right that applicants are asked to cover the cost of the passport, it is clear that the price is too high, which is resulting in repeated, large surpluses. ... We recommend that HM Passport Office set prices at a break-even point, (allowing for a reasonable margin of error), either by reducing prices, or by devoting surplus revenue to measures designed to raise service standards by investing in the product and training people who deliver it.”

- 11.16 Since being disbanded as an agency on 1 October 2014, HMPO has been the subject of numerous transformation projects, some of which were ongoing at the time of the inspection. By 2017, the Institute of Customer Service (ICS) ranked HMPO as the top performing public service organisation in its customer satisfaction index survey. HMPO achieved the same ranking in 2018.
- 11.17 HMPO was the only public sector organisation to appear in the top 50 highest performing organisations from all sectors, including high street retail chains, internet shopping platforms, and hotels. The ICS survey measures customer satisfaction against a number of criteria, including trust, loyalty, reputation, and handling of complaints. HMPO compared well against other public service organisations in each of these areas.

Customer choice

- 11.18 A key facet of the Home Office approach to HMPO has been to offer a range of services, so that its customers are able to choose what best meets their needs. In practice, this means giving customers the option of paying an additional fee in return for a faster service, with further options in relation to online or paper applications and size of passport.

11.19 In March 2018, the House of Lords Grand Committee asked whether the Government had looked at the possibility of “peak and trough pricing” to flatten out demand and staffing requirements. Baroness Williams replied that variable pricing had been considered but had concluded that the costs would outweigh the benefits.

Standard service

11.20 The costs quoted at Figure 10 apply to the “standard service”. This is a non-guaranteed, 3-week postal service, except for first time adult applicants and applications to extend a restricted validity passport (RV), which may take up to 6 weeks.

One-week fast track passport

11.21 HMPO offers an optional service to applicants who need a passport more quickly than via the standard service. The one-week fast track passport service involves a face-to-face appointment with HMPO, which aims to deliver a passport to the applicant’s home within one week of the appointment. It is available only for renewals of expired or about to expire adult or child passports, for changes to personal details, for replacements for lost, stolen or damaged passports, or for first applications for a child passport. The cost is £132, which includes the fee.

Paper premium passport

11.22 HMPO also offers a ‘paper premium service’. This also involves a face-to-face appointment with HMPO, which aims to provide a passport within 4 hours of the appointment. However, applicants are warned that the passport may not be provided until the next day if the appointment is in the afternoon. This service is available only for renewals or changes of name. The cost is £177, which includes the fee.

Online premium passport

11.23 The fastest service offered by HMPO is the ‘online premium passport’, where it aims to provide the passport at the face-to-face appointment, which can last up to 30 minutes. This service is available only for renewals of adult passports that have expired or are about to expire. The cost is the same as the paper premium passport service.

11.24 HMPO’s internal data for 2017-18 showed that approximately 7.5% of its customers had opted for one of its premium services.

General Register Office chargeable services

Funding gap

11.25 The GRO for England and Wales maintains the national archive of all births, marriages and deaths dating back to 1837.

11.26 The 2015 Spending Review identified an £8 million funding gap in GRO’s budget. Like the rest of BICS, GRO was challenged to reduce its costs through efficiencies. GRO staff told inspectors that their numbers had reduced year on year.

11.27 However, inspectors were also told that GRO was limited in how far it could introduce automation. GRO's statutory functions and charging powers derived from various pieces of primary and secondary legislation, some owned by the Home Office and some by other government departments, such as the Ministry of Justice. This patchwork of mostly dated legislation dictated that certain manual systems and some process must be retained.

Previous inspection

11.28 'An Inspection of the General Register Office for England and Wales, with particular emphasis on birth records (March – June 2016)' was published in October 2016. It made 4 recommendations, one of which was:

"Ensure that the General Register Office (GRO) has the necessary legislation to enable it to deliver its business in line with government policy for public services to be 'digital by default' and is resourced to complete the digitisation of its records."

11.29 The Home Office accepted this recommendation. Referring to work that was being done to explore opportunities for reform, including the digital "back capture" of births and deaths records, it stated:

"The need to update legislation, which is still largely reflective of 19th century society, is agreed. ... but competing priorities and demands on parliamentary time all have an impact on what is achievable. ... Subject to a suitable funding model being identified, it is proposed that the remaining records (about half of all records held) are also digitised. Capturing the remainder would be beneficial in terms of data sharing and countering fraud, but the wider business case for central investment has so far not been compelling. Alternative funding models and opportunities to digitise will continue to be explored."

Immigration Act 2016

11.30 Schedule 15 of the Immigration Act 2016 dealt with civil registration fees. This included an amendment to the Registration Service Act 1953 to empower the laying of Regulations covering fees payable to the Registrar General in respect of the provision of "copies or other records of any information held". The Regulations "may specify the amount of any fee payable" or "set out how such a fee is to be determined" and "may provide for the reduction, waiver or refund of part or all of a fee".

11.31 The Impact Assessment that accompanied the 2016 Immigration Bill had noted:

"There are a number of registration and certificate services currently provided free of charge by the General Register Office (GRO) and Local Registration Services (LRS). The Bill enables us to introduce a framework for fees to be charged for Registrar General legislative and administrative services provided by GRO and LRS, which are currently provided without charge to customers."

11.32 Meanwhile, the Explanatory Notes published with the Immigration Act 2016 stated:

"The Registrar General holds a wide range of records, both modern and historic, and the powers to set fees in respect of those records are complex, widespread and often archaic. [The amendment to section 19B of Registration Service Act 1953] enables the Minister to prescribe fees for the provision of copies or other records of any information held by

the Registrar General to ensure that the Registrar General is able to recover the costs of providing such services where no other fee is specified”

Current inspection

- 11.33 In September 2018, GRO senior management told the inspection team that, while changes had been made to stop “giving it all away” and find ways to recover some more of GRO’s operating costs, including creating some premium offerings and digital services, Home Office ministers and HM Treasury had accepted that its ability to increase its income was restricted. It had a small range of services that it made available to the public for a fee.
- 11.34 The GRO website sets out its fees for copies of birth, marriage or death “full certificates” and for “full” and “short” certificates of adoption. At the time of the inspection, the fee for all full and short certificates was the same whether or not the customer had supplied a GRO reference. However, the customer could choose a “standard service” (£9.25) or “priority service” (£23.40). The service standards for standard and priority services varied according to whether a (correct) GRO reference had been supplied.
- 11.35 The website also gave details of a “PDF Pilot” intended to “test the customer demand for providing records in a format other than a paper copy, via a Portable Document Format [PDF].” The pilot had begun in November 2016 and, at the time of the inspection, was in its third phase. Customers were able to purchase “copies of digitised historical births and death records for a fee of £6.00.” Referring to how it had arrived at the £6 fee, the website stated:
- “All our fees are set at levels to recover the costs of providing the service in line with Her Majesty’s Treasury guidance. The cost reflects the resources required to provide this service.”
- 11.36 GRO managers said they were encouraged to see demand for GRO’s services going up, particularly for family history records. However, they told inspectors that while fee levels had originally been set at “cost recovery” they had not been revised since 2010. The £9.25 and £23.40 fee levels for copies of certificates were set out in ‘The Registration of Births, Deaths and Marriages (Fees) Order 2010’, which came into force on 6 April 2010.
- 11.37 Managers believed that the only way to effect real change in the GRO’s ability to generate income was through new primary legislation, to allow GRO to set its own fee structures and transform its business. But, they recognised that GRO did not have the profile or size of other Home Office functions, and such new legislation was not a government priority.

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 has 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: Expectations of the Independent Chief Inspector



ICIBI's 'expectations' of asylum, immigration, nationality and customs functions

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 (Borders, Immigration and Citizenship System) '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)

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