



Home Office

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

Version 5.0

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# About this guidance

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

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

## Contacts

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

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

## Clearance and publication

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

- version **5.0**
- published for Home Office staff on 05 March 2021

## The application process for making a fee waiver request

The immigration application process is undergoing a transition to digital applications and since 4 January 2019 fee waiver requests must be submitted online using the digital (online) request form. The relevant application for leave to remain can also be accessed online and completed at the same time. This online form can be exited and stored until the outcome of the fee waiver request. When the outcome of the fee waiver request has been received, this online leave to remain form can be retrieved and submitted.

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

If an individual has legal leave or has submitted the fee waiver request before their leave has expired, they are not required to apply for Leave to Remain until after the outcome of their fee waiver application.

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

It is important to note that a fee waiver application is not an immigration decision, which means the outcome of a fee waiver application should not be taken as an indicator on the outcome of a subsequent immigration application. It is also not a barrier to removal.

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

## **From January 2019 the whole amount to be paid is considered**

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

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# Summary

This guidance explains which applicants are eligible for a fee waiver and the circumstances in which they will qualify for a fee waiver.

Fee waivers can be granted to those making a specified human rights application, where to require payment of the fee would be incompatible with a person's rights under the European Convention on Human Rights (ECHR). Victims of trafficking seeking to extend their leave in certain circumstances can also apply. **This does not apply to indefinite leave to remain applications.**

## Consideration

The sole consideration on whether someone is eligible for a fee waiver is an **affordability test** to assess whether the individual has credibly demonstrated that they **cannot afford the fee**. This applies when the applicant does not have sufficient funds at their disposal, after meeting their essential living needs, to pay the fee.

Fee waivers should be granted if the applicant has credibly demonstrated that they **meet the affordability test** or are **destitute or at imminent risk of destitution**.

The need to **safeguard and promote the welfare of a child in the UK** should be a primary consideration in deciding any claim. This means careful consideration needs to be given as to whether the applicant is unable to meet the essential further needs of a child and whether being required to pay the fee would deprive the child of having these needs met.

## Evidence

Evidential flexibility should only be applied to an application for a fee waiver in exceptional circumstances, where the caseworker is satisfied that there is clear and compelling evidence that the individual will not be able to afford the fee or if there is a compelling reason why the evidence cannot be provided.

Each case should still be considered on its own individual merits, **and the onus is on the applicant to demonstrate that they qualify for a fee waiver.**

The fee waiver can be rejected for a range of reasons, including if the applicant has:

- not provided reliable information about their circumstances.
- intentionally disposed of funds.
- been purchasing items within their income but outside of what is essential or spending excessively.
- Has sufficient savings to pay the fee and income in excess of their essential needs (whether being spent or not) which shows they can afford the fee.
- not taken reasonable steps to ensure they have sufficient funds to pay a foreseeable fee.

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

Evidence should be provided where a charity or local authority is providing support, particularly if it is claimed that such support cannot continue.

The whole of the amount to be paid by an applicant must be considered when a fee waiver request is made. This means the immigration application fee and the Immigration Health Surcharge combined.

This is a brief summary, please refer to the complete guidance below before deciding an application.

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# Applicants eligible for a fee waiver

Eligible applicants are those making certain specified human rights applications where to require payment of the fee before deciding the application would be incompatible with a person's rights under the European Convention on Human Rights (ECHR).

In addition, the fee waiver policy applies to applications from victims of trafficking who seek to extend their leave to remain in certain circumstances. Fee waivers can only be granted to in-country applications.

The courts have considered fee waivers in an immigration context in three important judgments: [Omar, R v Secretary of State for the Home Department \[2012\] EWHC 3448](#) and [Carter, R v Secretary of State for the Home Department \[2014\] EWHC 2603](#) and [Dzineku-Liggison & Ors, R \[2020\] UKUT 222 \(IAC\)](#). This guidance has taken account these judgments into account.

## **This guidance applies to the following types of application:**

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

**Applicants will only be granted a fee waiver on the basis of ECHR rights in cases where the underlying human rights claim on which they rely forms a substantive basis of their application.** This will not be the case where, for example, an ECHR Article is mentioned in passing as part of an application which is primarily made on another basis.

The courts have made plain that the 'strength and force' of the underlying human rights claim is relevant when deciding whether it is appropriate to grant a fee waiver. For example, if an application is made for leave principally on the basis of UK

ancestry, and the applicant mentions Articles 12 (right to marry) and 14 (non-discrimination) in passing as part of that application, they will not qualify for a fee waiver. The relevant fee must be paid for the UK ancestry application to be accepted as a valid application.

**If a fee waiver request is not made on the basis of any of the specified applications listed above or where the substantive basis for the claim is human rights, a fee waiver should not be considered.** In these circumstances the applicant should be told that their application is not eligible for a fee waiver and that they must pay the specified fee in order to have their application considered (see [Applications for leave to remain: validation, variation and withdrawal](#)).

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## Family units and ‘partial’ fee waivers

One or more family members who are dependants on an application can be granted a fee waiver. An applicant can complete a fee waiver request form for the relevant individual dependent family members, or by the main applicant stating that **they can pay the fee for their application (and possibly for some dependants) but are unable to pay the fee for all of their dependants**. In these circumstances, the main applicant will be asked to specify which dependants are applying for a fee waiver and which are not. **However, it is not possible for part of the immigration fee to be waived and part of the fee to be paid for individual applicants.**

**Applicants should complete the online form and submit documentary evidence of the financial circumstances of the household as detailed in the online form.**

This could be evidence for the main applicant, their partner (if any) and any other adult with whom the main applicant lives and from whom they receive financial support. Financial circumstances of all dependants and details of all public benefits that they are claiming should also be included.

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

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

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# Assessing a fee waiver

Applicants for a fee waiver must be seeking leave to remain in one of the specified human rights routes set out above and have a substantive basis for being considered for a grant of such leave.

A fee waiver must be granted if the applicant is assessed and found:

- [to credibly demonstrate they cannot afford the fee](#), or
- to be destitute, or
- at risk of imminent destitution, or
- their income is not sufficient to meet their child's particular and essential additional needs.

## Evidential flexibility

**Evidential flexibility is a principle which allows the decision maker to decide a case without requiring all the evidence or information set out on the application form.**

However, this is only likely to be applicable in exceptional circumstances. For example, if the additional missing evidence is unnecessary because the other evidence provided is clear and compelling, or if there is a compelling reason why the evidence cannot be provided, then evidential flexibility should be applied.

The onus is on the applicant to provide sufficient evidence to satisfy the decision maker that a fee waiver should be granted, but there will be some cases where providing evidence is more difficult than in others.

If you are satisfied that the applicant has provided clear and compelling evidence as to their circumstances and that, without a fee waiver, they will not be able to apply for leave to remain, then evidential flexibility can be applied. **If you are unsure, please refer to a senior caseworker before applying evidential flexibility.**

In exceptional circumstances, an application may not be rejected if an applicant does not complete every section of the relevant application form. Make an assessment based on the information provided to determine if it provides a clear and compelling basis for the decision to be made. It will normally be necessary to have all relevant bank statements to make a decision.

Each case should still be considered on its own individual merits in line with the current guidance. If further evidence is required, further enquiries may be made but it remains the responsibility of the applicant to sufficiently evidence their claimed financial circumstances, or to provide a credible explanation of why such evidence is not available.

If you believe the applicant may qualify for a fee waiver in circumstances where all requested documentary evidence has not been provided but remain unsure, please refer to a senior caseworker before applying evidential flexibility.

## The applicant cannot afford the fee

When assessing an application, consideration must be given to **whether the applicant has credibly demonstrated that they cannot afford the fee.**

An applicant is considered unable to pay the fee when they do not have sufficient funds at their disposal after meeting essential living needs such as housing and food. This applies independently of whether the applicant is destitute or at risk of destitution.

It is possible for an applicant to be provided with accommodation and essential living needs by others and be in a situation where they can credibly demonstrate they cannot afford the fee. This could include support from family and friends, a charity or NGO, or the local authority or through the Asylum Support Regulations.

You should carefully consider whether the individual has spent in excess of their essential living needs and whether they have any savings. This is to ensure that only those who genuinely cannot afford the fee or have not had the ability to save for the foreseeable fee qualify for a fee waiver.

Using the information provided, the application needs to be addressed in the following way:

- 1. Are you satisfied that the applicant is either destitute nor at risk of imminent destitution?**
- 2. Does the applicant pay for their accommodation?**
- 3. How are they meeting their essential living needs? (I.e. do they pay for them/are they donated? If so, from whom?).**
- 4. What sources of income do they have?**
- 5. Have they provided evidence of sources of income, including details of all bank accounts that they and their partner hold (if not, these details must be requested)?**
- 6. Does the applicant have sufficient surplus income, excluding accommodation and essential living needs, to afford the fee?**
- 7. Has the applicant made any non-essential and excessive purchases, such as money spent on holidays, gambling or other non-essential purchases?**
- 8. Is the information provided, even if not complete, sufficient to indicate that evidential flexibility, as described above, should be applied?**
- 9. Do they have sufficient savings to pay the fee?**

**This affordability test** seeks to assess the amount of income and savings available once accommodation and essential living needs for the applicant and any dependants have been met.

The total amount of resource available to the applicant must be considered, including any savings the individual may have. This should be applied to the total amount required by the applicant to pay for their application and the applications of any dependants.

## The applicant has demonstrated that they are destitute

The definition of destitution is:

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

If the individual is not being provided with accommodation and essential living needs by anyone, and cannot meet those themselves, then they are destitute as a matter of fact and meet the requirements of GEN.1.11.A of the immigration rules to be granted recourse to public funds.

## The applicant is at risk of imminent destitution

An applicant could be at risk of imminent destitution if, whilst they currently have adequate accommodation and can meet their other essential living needs, it is clear from the evidence submitted that:

- they will be destitute in the near future, or
- that their living conditions, whilst not amounting to destitution, are not sustainable, or
- that payment of the fee would leave the applicant with insufficient funds to pay for accommodation and essential living needs in the near future.

### Imminent destitution includes:

- anyone likely to become homeless within the next 3 months<sup>1</sup> from the date of application.
- anyone whose temporary accommodation, say on a friend's floor or in a spare room, is going to come to an end within 3 months of the date of application.
- anyone at risk of losing their accommodation in the next 3 months (which might include tenants with rent arrears notices etc).
- someone with no work and unlikely to be able to meet living costs for beyond 3 months.

Those with a **zero hours contract** and whose income is not guaranteed, should be assessed by considering the amount of regular income earned in the 3 months preceding the application.

**Surplus income is assessed as income after accommodation and essential living needs have been met.** This includes housing or accommodation and utilities, food, clothing, toiletries, non-prescription medication and household cleaning items.

Provision is also made to cover the costs of travel and communication to enable the supported persons to maintain interpersonal relationships and access a reasonable

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<sup>1</sup> "within 3 months from the date of application" is being used as a measure of the near future.

level of social, cultural and religious life. A broad breakdown of these essential living needs and the weekly cost associated with them can be found in [the latest report on review of cash allowance paid to asylum seekers](#).<sup>2</sup>

These essential living needs and costs are a guide and caseworkers should consider whether the costs explained by the applicant are reasonable. Applicants for a fee waiver are not expected to be purchasing these items at a cost significantly higher than what is quoted in the data, nor should they be spending excessively on items that are clearly not essential for their living needs.

## **The applicant's income is not sufficient to meet a child's particular and essential additional needs**

Although the needs of children may implicitly have been considered in earlier stages of the request for a fee waiver, this part addresses them directly.

The duty in [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to have regard to the need to safeguard and promote the welfare of a child in the UK means that consideration of the child's best interests, which can also be expressed as the child's well-being, must be a primary consideration, but not the only consideration, in carrying out immigration functions that affect them.

The following questions, in addition to the earlier questions, are relevant to assessing if the request should be granted because the applicant is faced with:

- meeting the further essential needs of a child or children, and is unable to do so on account of their low income, and/or
- being required to find the amount necessary for the fee would deprive the child of having these further needs met.

**It is also important to understand if the child is supported only by one parent or by both.**

Questions to consider when assessing an application in relation to children:

- 1. Does the applicant have children?**
- 2. Do the children live with both parents or with only one parent?**
- 3. Do both parents provide support or only one parent?**
- 4. Has the absent parent ever provided support?**

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<sup>2</sup> See also the letter from the Minister for Immigration Compliance and the Courts to Chief Executives of Local Authorities dated 8 June 2020 which sets out a new weekly rate from <https://static1.squarespace.com/static/5e79d8e733732027022479bb/t/5ee75fd7dd4fcc49482efd6a/1592221655440/08.06.20+Chief+Executives+letter-+asylum+support+rate+increase.pdf>

5. What impact will paying the fees have, given the parent's low income, on the ability of the child to enjoy or maintain full participation in school activities?
6. If it will have an impact, which are the activities in which the child cannot participate (private lessons and activities not provided by the school are not included unless part of a plan approved by the school)?
7. Does the child have further needs based on a protected characteristic, such as extra travel costs through participating, additionally to the parent, in a faith or other centre providing for children and young people, or does the child have needs based on making adjustments for a disability?

The purpose of this consideration is to assess whether a fee waiver rejection would have a disproportionate impact on the child's well-being or best interests.

The question is not whether a fee waiver would make more money available to a parent that may then be spent on a child. It is whether paying the fee would lead to the child experiencing a lower level of well-being than they currently enjoy, being deprived of something they currently enjoy, or not having access to a specific item or items of recognised benefit.

## Grounds for rejection of a fee waiver request

The fee waiver request may be rejected if the applicant has not provided reliable information about availability of accommodation, provision of essential living needs, income level and outgoings, and overall financial circumstances.

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

It may also be rejected if the applicant has been purchasing items that are within their income but outside of what is considered as essential living needs and the evidence is that they are not taking reasonable and proportionate steps, to ensure that they have sufficient cash in hand to pay a foreseeable fee.

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## Assessing information provided

Each case should still be considered on its own individual merits in line with the current guidance, but **the onus is on the applicant to credibly demonstrate that they qualify for a fee waiver.**

If further evidence is required, further enquiries may be made but it remains the responsibility of the applicant to sufficiently evidence their claimed financial

circumstances, or to provide a credible explanation of why such evidence is not available.

## Considering documentary evidence

The assessment of whether the applicant qualifies for a fee waiver will be made on their own individual circumstances and those of any dependent family members.

The applicant must provide sufficient relevant documentation to evidence their fee waiver application, including detailed evidence as to their financial circumstances.

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

If the applicant is being supported by family or friends, a local authority or a registered charity, **the caseworker should request to see corroborating documentary evidence confirming provision of support, particularly from charities and local authorities, which details the nature and amount of the support provided.** This can include an explanation as to why support will not be continuing. For friends and families this may be more difficult, so an assessment should be made on the credibility of the account provided by the applicant.

In all cases evidence must be up-to-date. Documents dating back more than a few months may be useful in establishing how the person's finances have changed over time, but those that confirm the applicant's current circumstances and finances will clearly have greater relevance.

If there is some evidence that support from a registered charity may be being provided, but there is insufficient detail to make a decision, the caseworker should contact the charity to request more detail.

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



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

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

## Timeframe for assessing the request

No specific service standards apply to the assessment of whether the applicant qualifies for a fee waiver. However, **caseworkers must make reasonable efforts to decide such requests promptly**, especially those involving a child or an applicant who is disabled or otherwise in **vulnerable circumstances**.

## Applicants in receipt of asylum support

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

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

Alternatively, an applicant in receipt of asylum support may make a non-protection based human rights claim. Such an applicant may request a fee waiver, but will have to demonstrate, by way of evidence that they meet the criteria above (which is likely in most cases, as they would be destitute but for the provision of asylum support). They will not be able to rely solely on the fact that they are in receipt of asylum support if there is evidence that they have additional assets or income.

## Applicants in receipt of local authority support

Where an applicant is receiving support from a local authority, for example under [section 17 of the Children Act 1989](#), the local authority will have conducted their own assessment of the applicant's needs before making a decision to grant support and those needs will generally involve or include destitution.

**Such a person may apply for a fee waiver**, even though they are being provided with accommodation and essential living needs by the local authority. If it then transpires, by way of evidence (particularly based on evidence from the local



authority), that they meet the criteria in this guidance, they should be granted a fee waiver.

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

If there is some evidence that local authority support may be being provided, but there is still insufficient detail to make a decision, the caseworker should contact the local authority to request more detail.

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# Assessing income and assets

The following must be taken into account:

- income:
  - from employment or self-employment.
  - from non-employment sources.
  - of the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support) or parents from employment or other sources.
  - from welfare benefits or tax credits received by the applicant or their spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support) or parents.
  - from other family or friends.
- assets:
  - cash.
  - money held in bank and building society accounts (including non-UK based accounts), including accounts belonging to the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support), parents or children.
  - investments, including any investments belonging to the applicant's spouse or partner (as well as any other adult with whom the applicant lives and from whom they receive financial support), parents or children.
  - land or property, particularly any property that is not their current secure accommodation.
  - goods held for the purpose of a trade or other business.

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

- cars or other vehicles.
- other personal possessions, such as mobile phones, computers.

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

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

## Intentional disposal of funds

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

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

For instance, if an applicant was in possession of sufficient funds for their support when they applied for a visa to come to the UK, but at a subsequent further leave to remain stage presents themselves as destitute, at imminent risk of destitution, or unable to afford the fee, claiming to have used all their funds and to have not been able to replenish them, then an explanation is needed as to why this has happened.

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

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

## Employment and self-employment income

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

## Illegal working

If a person discloses in their fee waiver application that they are, or have been, receiving income through working, but they do not have permission to work, their

earnings and any cash or savings derived from this work will still be an asset when assessing eligibility for a fee waiver. The applicant should be informed that they may be committing a criminal offence and should stop working immediately.

## Welfare benefits and tax credits

If an applicant, their spouse, partner, parents or any other adult with whom they live with and receive financial support from is in receipt of welfare benefits, child benefit or tax credits, then this support should be taken into consideration as income when assessing eligibility for a fee waiver.

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

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

## Assets

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

Applicants may be able to raise funds by selling the asset. Caseworkers will need to consider on a case-by-case basis whether it is reasonable, on the basis that an asset has been recently acquired or is not being used, or of any other value to the applicant, for it to be an item that counts against the grant of a fee waiver.

If a secondary applicant, dependent or family member has recently acquired an asset in their name this may indicate the intentional disposal of funds by the main applicant(s) and should be scrutinised.

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

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

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

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

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# Applications for which a fee waiver cannot be requested

As explained throughout the guidance, if a fee waiver has been requested for an application which is not on the basis of any of the specified applications, a fee waiver must not be considered.

Other applications for which a fee waiver cannot be requested include:

- applications for leave to remain based on **ECHR Article 3**, whether as part of a claim for protection or on the basis of a medical condition, are non-charged applications so the fee waiver policy does not apply.
- **children who are in local authority care** do not need to pay a fee for leave to remain and are therefore exempt.
- those who are being actively pursued for enforcement action are not required to make a charged application where human rights are raised and therefore do not need a fee waiver.

## Applications for indefinite leave to remain (ILR)

Applications for ILR are not covered by the fee waiver policy, as people do not need settlement to be able to remain in the UK on the basis of the European Convention on Human Rights (ECHR) Article 8 or other ECHR rights. Applicants who establish an ECHR right to remain in the UK may continue to apply for and be granted successive periods of limited leave to remain. They may qualify for a fee waiver in respect of each application if they meet the terms of this policy.

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

There is also further guidance in the Asylum Policy Instruction on [Discretionary leave \(DL\)](#). Applicants granted DL on the basis of being a victim of trafficking or slavery are not on a route to ILR.

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# Granting the fee waiver request

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

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

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

The applicant will now need to carry out the following: apply for LTR within 10 working days of the fee waiver decision and make an SSC appointment within 29 days.

## Travel assistance

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

- in receipt of asylum support or local authority support.
- customers who have experienced domestic abuse.
- a responsible adult attending an appointment with a child in social care.
- anyone where paying for travel would render them destitute.
- where travel is over 3 miles.

Applicants may be requested to provide evidence of their inability to pay for their own and their dependants travel to and from the SSC. The distance to be travelled should be greater than that which might normally be involved in travelling to a health appointment, or similar appointment.

**The travel cost request must be assessed on the basis of the information provided by the applicant and it is the responsibility of the applicant to fully evidence their claimed circumstances.** The assessment itself is against the criteria for a fee waiver as set out in the qualifying section above. In every case where an applicant makes a request for travel assistance, the caseworker should assess the information provided to see whether they qualify. Caseworkers should not normally make additional enquiries to try to establish whether an applicant qualifies for travel cost.

Payment of reasonable travel costs should only go to those genuinely in need. Accurate record keeping of the amounts paid out is essential and should be regularly assessed to ensure it remains within current spending authorities.

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# Rejecting the fee waiver request

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

## For in time applications

- if the applicant made their **request for a fee waiver in time** (for example they had valid leave on the date their application was submitted), they should normally be told of a decision that they do not qualify for a fee waiver. If any additional evidence is requested they should be told to submit that in order to demonstrate they can qualify for a fee waiver. They must, within 10 working days of the decision being dispatched, submit this additional evidence that demonstrates they qualify for a fee waiver.
- if additional evidence is provided within that period that demonstrates the applicant qualifies for a fee waiver, the applicant is issued with a fee waiver token that enables them to apply for a fee free immigration application. The applicant has 10 working days to make an LTR application and, where relevant, to benefit from [3C leave](#).
- if the applicant provides further evidence within 10 working days but this does not demonstrate that they qualify for a fee waiver or if they do not provide any further evidence within 10 working days, the application should be rejected as invalid. In either of these scenarios the applicant has 10 working days to make a paid LTR application and to benefit, where relevant, from any 3C leave. If a paid application is not made within 10 working days, and the applicant's leave has expired there can be no capacity to benefit from 3C leave.

## For applications that are not in time

- if the applicant had **no valid leave at the date of application**, they should normally be advised that they do not qualify for a fee waiver. In order to have their immigration application considered, the applicant would need to apply with the specified fee or make a new application for a fee waiver.

## Applicants who do not respond to requests for further evidence

If an applicant has provided minimal or no evidence in their application, and the information provided is not sufficient to make an informed decision, **their application can be rejected if after two requests to submit further information it still has not been provided**. In exceptional circumstances, where it is clear an applicant needs more time to submit evidence, it may be necessary to make an additional

request or to provide more time for the evidence to be provided. But this should only be in exceptional circumstances, such as victims of domestic abuse or if the applicant is homeless. **Applicants should be told in this correspondence that if they fail to provide additional information, their application will be rejected.**

## Part payment rejections

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

## Requests for reconsideration

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

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