Written evidence from the  
Project for the Registration of Children as British Citizens (CHR0011)

About us:

1. The Project for the Registration of Children as British Citizens (PRCBC) was founded in November 2012. It is the first and only organisation to focus directly on children and young adults and their right to British citizenship. PRCBC is hosted by Migrant Resource Centre (MRC). More information is available on the PRCBC website.¹

Introduction and background:

2. This submission concerns children’s access to British citizenship. The matters addressed here concern tens of thousands of children in the UK.² Many of these children not only do not have British citizenship, but do not have leave to enter or remain. This is despite many having been born in the UK, and others having come to the UK at a very early age.

3. The UK High Court has recognised that “nationality is a vital element of an individual’s fundamental identity, attracting the protection of Article 8 [the right to respect for private and family life]... [and with] intrinsic importance.”³ Nationality is a critical route to not only individual identity, but to full and secure access to civil and political rights within the national jurisdiction.

4. The British Nationality Act 1981 provides a right for children in specified circumstances to register as British citizens. Yet, there remain many children in the UK who are unable to access this right. The majority of those children with a right to British citizenship but unable to access it are children born in the UK. They are children born to parents, neither of whom at the time of the birth was a British citizen or had indefinite leave to remain. Their right arises because after being born in the UK, either they have lived here for the first 10 years of their lives⁴ or, during their childhood, one of their parents has become a British citizen or been granted indefinite leave to remain.⁵ Other children with this right but unable to access include children who are stateless.⁶

5. The consequences of this are potentially profound in that some of these children may lose this right on reaching majority; others may lose it in later life (whether as children or adults) if considered not to be of ‘good character’. Being unable to access or losing this right has consequences for the security of the child’s life in the UK – ranging from whether she or he is permitted to access specific opportunities (e.g. a student loan or home fees to access higher education; a British passport; right to vote)⁷ to whether she or he may be permitted to remain in the UK at all. Along with the latter comes an array of state powers and

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¹ https://prcbc.wordpress.com  
² http://www.compas.ox.ac.uk/media/PR-2012-Undocumented_Migrant_Children.pdf  
³ Williams v SSHD [2015] EWHC 1268 (Admin), paragraph 86  
⁴ section 1(4), British Nationality Act 1981  
⁵ section 1(3), British Nationality Act 1981  
⁶ paragraph 3, schedule 2, British Nationality Act 1981  
⁷ https://prcbc.wordpress.com/what-we-do/
additional disadvantages to which she or he may be subjected – including immigration
detention, removal and exclusion from the UK; and barriers to accessing health services,
accommodation, employment, a driving license and banking by reason of the panoply of
measures contained largely in the Immigration Acts 2014 and 2016 concerning what the
Prime Minister has called a ‘hostile environment’. Another consequence is not being able to
pass on British citizenship to her or his children.

6. The British Nationality Act 1981 also provides discretion for the Secretary of State to register
any child as a British citizen if she thinks fit to do so. Children unable to make an application
to be registered or refused registration include children who have been brought to the UK at
a very early age – including children only a few years, months or weeks old – and have
thereafter lived solely in the UK over several years.

7. There are several reasons many of these children – both those with a right to do so, and
those who may be registered by discretion – are unable to register as British citizens. These
include:

- **Lack of awareness:**

8. Many children, social services departments, the children’s parents or carers, and lawyers are
not aware that they do not have British citizenship, or that they are entitled to citizenship or
may apply for it by discretion. For many, this situation is revealed around the time the child
is approaching or has reached adulthood because at this time having citizenship may be
relevant to accessing opportunities e.g. to a student loan. For others, it is revealed at the
time of action by the Home Office to remove them from the UK, possibly following some
conviction or other interaction with the criminal justice system or prompted by Home Office
action against their parent.

- **Legal aid:**

9. The absence of legal aid for applications to register is a barrier to some, especially where
extensive effort is required to secure and present evidence to establish a child’s
uninterrupted residence in the UK over several years; or, in the case of an application for
exercise of discretion, to support other grounds for that to be exercised in the child’s favour.
Other circumstances in which the absence of legal aid may be particularly significant include
where expert evidence is required to establish the child does not have citizenship of another
country.

- **Evidential hurdles:**

10. Evidential hurdles are exacerbated by the absence of legal aid. However, the Home Office
approach in requiring evidence in itself is a significant barrier to many children. This most
particularly relates to establishing the child’s birth or arrival in the UK, continued length of
uninterrupted residence in the UK, and a parental relationship or the status of a parent (i.e.
satisfying the Home Office that the child is the child of a parent who has British citizenship or
indefinite leave to remain; or that the parent does indeed have such citizenship or leave).

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8 section 3(1), British Nationality Act 1981
This can be difficult for a child for reasons including that the parent is no longer in touch with the child, is no longer traceable or is unwilling to cooperate with the child’s application. This can, for example, occur where parents have separated, including following domestic abuse. The Home Office evidential demands are in some cases unnecessary, inappropriate and costly (e.g. DNA requests). Examples include refusing to accept alternative evidence including witness evidence to establish the relevant fact or refusing to confirm that fact from records the Home Office holds.9

Home Office fees:

11. The Home Office fee of £936 for the registration of the child’s citizenship, £664 of which is expressly identified by the Home Office as profit to that department,10 is prohibitively expensive. Some children, their parents or carers cannot afford this fee. Some local authorities with care of a child are unwilling to pay this fee. The Secretary of State has powers to provide for exemptions, waivers and refunds of fees.11 She has provided none of these things in relation to these registration applications. Profiting from these applications is unconscionable – many them seek no more of the Secretary of State than to formally record the entitlement the child already has by Act of Parliament.12

Good character

12. Children of 10 years or older (unless applying for registration on the grounds of their being stateless) are subject to a good character requirement.13 If the child is found not to be of good character this will preclude the child’s registration as a British citizen. This may inhibit the child’s development, reintegration or rehabilitation (Article 40, 1989 UN Convention on the Rights of the Child). Yet, the Home Office approach to assessment of good character in the case of a child differs in no way from its approach in relation to an adult. Hundreds of children have been refused on good character grounds, including without any conviction.

Conclusion:

13. The Home Office should be giving primary consideration to the best interests of the child (Article 3, 1989 UN Convention on the Rights of the Child) when developing and implementing policy concerning children’s access to British citizenship, just as in relation to its other functions that concern children. It should be ensuring that the child’s best interests are at the forefront of considering and deciding upon individual applications. It is not in children’s best interests that their entitlement or, in the case of those seeking registration by discretion, opportunity to register as a British citizen is precluded by a fee, by unnecessary and inappropriate evidential hurdles or by an approach to good character that fails to make

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9 In a different context, the chief inspector of borders and immigration has recently made similar criticisms of the Home Office conduct in dealing with applications for refugee family reunion. See http://icinspector.independent.gov.uk/wp-content/uploads/2016/09/An-inspection-of-family-reunion-applications-January-to-May-2016.pdf
10 http://www.legislation.gov.uk/uksi/2016/177/impacts/2016/33
11 section 68, Immigration Act 2014
12 See joint PRCBC and Amnesty UK briefing: https://prcbc.files.wordpress.com/2015/10/fees_briefing_2016.pdf
any distinction between the circumstances of children and the circumstances of adults. In respect of the latter, the approach also fails to give effect to the UK’s obligations under Article 40, 1989 UN Convention on the Rights of the Child concerning reintegration and rehabilitation.

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