



## **JOINT BRIEFING PRCBC AND AMNESTY UK, 17 JUNE 2025**

### **WHY LEGAL ADVICE, ASSISTANCE AND REPRESENTATION ON BRITISH CITIZENSHIP RIGHTS SHOULD BE BROUGHT BACK WITHIN SCOPE OF LEGAL AID:**

#### **Introduction:**

1. Legal advice, assistance and representation on British citizenship legal matters were removed from civil legal aid scope on 1 April 2013 by the commencement of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). As explained in this briefing:
  - 1.1. The removal of legal advice, assistance and representation on citizenship rights from civil legal aid scope was based on a fundamental misunderstanding of rights to British citizenship and the impact of that removal.
  - 1.2. Had these rights been properly understood, they would not have been removed from civil legal aid scope.
  - 1.3. Civil legal aid remains underpinned by the principles and purposes that motivated changes made by LASPO. It is, therefore, necessary for the Secretary of State for Justice to exercise her powers under section 9(2)(a) of LASPO to bring these matters back into scope for civil legal aid.
2. The above points are addressed in the following paragraphs, under the following subheadings:
  - 2.1. Rights to British citizenship
  - 2.2. LASPO and rights to British citizenship
  - 2.3. Principles and purposes intended to underpin civil legal aid
  - 2.4. Conclusion
3. Examples set out in the Annex to this briefing illustrate the conclusions reached.

#### **Rights to British citizenship:**

4. The British Nationality Act 1981 ("the BNA 1981") created British citizenship.<sup>1</sup>

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<sup>1</sup> [PRCBC's commentary on the origins of British citizenship](#), August 2018 provides further detail.

5. British citizenship is the nationality of the UK. In creating British citizenship, the BNA 1981 identified the people of the UK. Their right to the citizenship of their country was secured on the basis of their connection to the UK.<sup>2</sup> Every British person's citizenship derives from this Act.
6. As the BNA 1981 relates to British citizenship, its provisions are overwhelmingly concerned to ensure the connection of British people (of the UK) to their country. This is secured in statute by their having the right to their country's citizenship. Accordingly, British citizenship is acquired *by right* in various circumstances including:
  - i. at birth in the UK;
  - ii. at birth outside the UK;
  - iii. on adoption in the UK;
  - iv. on commencement of the Act;
  - v. by registration entitlement; and
  - vi. by registration at discretion.<sup>3</sup>
7. The complexity of these rights – the relevant law and related evidentiary hurdles – is substantial. That complexity is compounded by longstanding and widespread misunderstandings. PRCBC's booklet ([HERE](#)) concerning children's rights to British citizenship illustrates some of this complexity, while PRCBC's experience confirms it. This relates to circumstances in which people may be or become unable to substantiate the British citizenship with which they were born. It also relates to circumstances in which people, particularly during their childhood, may acquire rights to British citizenship that require registration – including in cases where those rights may be lost or be made inaccessible to them later in life.
8. For British people, the right to the citizenship of one's country is a fundamental right. The implications of exclusion from that citizenship are profound. These implications include the loss of the unfettered right to enter and stay in one's own country, participate in elections and other political activity,<sup>4</sup> and be generally free from immigration powers and exclusions that apply to non-citizens ("tangible reasons"). The implications also include a more intangible loss of identity, security and belonging that together constitute a serious alienation of someone from their community and their country, and in many cases from their British family too ("intangible reasons").<sup>5</sup>

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<sup>2</sup> See PRCBC's commentary *ibid*

<sup>3</sup> Further addressed in *Reasserting Rights to British Citizenship Through Registration*, IANL, Vol 34, No. 2, 2020, pp139ff

<sup>4</sup> General elections are restricted to lawful residents who are British citizens, Irish citizens or Commonwealth citizens. Other elections in the UK have distinct rules as to who is permitted to vote.

<sup>5</sup> As was, in significant part, powerfully recognised by the High Court in *R (PRCBC & Ors) v SSHD* [2019] EWHC 3536 (Admin).

9. Other provisions of the BNA 1981 relate to the security of British people's citizenship and the circumstances in which they may renounce their citizenship or have it stripped from them.<sup>6</sup>

### **LASPO and rights to British citizenship:**

10. The BNA 1981 also includes provisions for naturalisation – i.e., for the Home Secretary to be able to make an adult migrant, who has been permitted to settle in the UK, a British citizen.<sup>7</sup>
11. During the consultations that preceded LASPO and the parliamentary debates that led to its passing, there was no distinct consideration of rights to British citizenship separate to consideration of how an adult migrant may be naturalised as a British citizen if having first been permitted to settle in the UK.
12. It likely did not help that citizenship was then, as it remains, treated for legal aid purposes as if it is a matter of immigration law as opposed to a matter of British nationality law. This was plainly reflected in the Government's response to consultation, which put the matter as follows:

*"83. Legal aid is currently available for a variety of immigration issues, including those relating to citizenship, leave to enter or remain in the United Kingdom for visits, study or employment, and deportation.*

*"84. The consultation paper proposed that legal aid for immigration proceedings should be removed from the scope of legal aid, except where individuals are challenging detention under immigration powers, claims for asylum and appeals to the Special Immigration Appeals Commission."<sup>8</sup>*

13. As regards British citizenship relating to immigration, this is clearly a reference to naturalisation. Citizenship by right (whether at birth or by registration) is not an immigration matter. Even the matter of statelessness was misunderstood as if solely an immigration matter. There was therefore no recognition or consideration of the distinct matter of people, including some stateless people, identified under the British Nationality Act 1981 as of the UK and, therefore, with a right to this country's citizenship.<sup>9</sup> The Government's response to consultation put the matter as follows:

#### **"Statelessness**

*"95. This issue relates to someone who is stateless and who wishes to apply, for example, for citizenship or for a stateless person's travel*

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<sup>6</sup> Sections 12-13, 40-40B

<sup>7</sup> Section 6 & Schedule 1

<sup>8</sup> *Reform of Legal Aid in England and Wales: the Government Response*, June 2011, [Cm 8072](#), page 132

<sup>9</sup> Among the entitlements to be registered as a British citizen are paragraph 3 of Schedule 2 to the British Nationality Act 1981, which the Nationality and Borders Act 2022 has since amended and added paragraph 3A.

*document. Consultation responses suggested that legal aid should remain available due to the vulnerability of these individuals and because of the UK's obligations under the Convention on the Status of Stateless Persons 1954 and the Convention on the Reduction of Statelessness 1961.*

***“The Government response***

*“96. The Government considers that applications, such as that for a Stateless person's travel document, are straightforward. By making legal aid available to stateless persons on the same basis as other applicants for legal aid, the Government is fulfilling its international obligations. Civil legal aid in the UK is available to anyone who meets the criteria, irrespective of their immigration status.”<sup>10</sup>*

14. The matter was put even more starkly earlier in the Government response:

*“92. The Government considers that applications such as that for a stateless person's travel document are straightforward and do not generally require legal advice. The Conventions mentioned by respondents require no more than parity of treatment between stateless persons and nationals and legal aid in the UK is available to anyone who meets the criteria irrespective of their immigration status.”<sup>11</sup>*

15. The above considerations are clearly about either naturalisation or the availability of relevant travel documents to stateless persons who have come to the UK under immigration provisions. We do not detract from the importance of these matters when recognising their connection to immigration.

16. Recognition and respect for a British person's citizenship is a matter of right. It is a matter of British nationality law. Nonetheless, British nationality law is complex. For some British people, they must take steps to ensure their citizenship is recognised by addressing complex questions of law supported by evidence. As previously recognised, this is not a mere form filling exercise.<sup>12</sup> This includes:

- i. people born British citizens but who face complex evidential barriers to proving they met the relevant criteria in law (examples include where a violent or hostile father cannot be relied upon to substantiate the child's citizenship by providing evidence of his status or paternity); and
- ii. people entitled to citizenship who must formally have their citizenship registered on proof of the relevant facts and law.

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<sup>10</sup> *Reform of Legal Aid in England and Wales: the Government Response*, June 2011, [Cm 8072](#), page 135

<sup>11</sup> *Reform of Legal Aid in England and Wales: the Government Response*, June 2011, [Cm 8072](#), page 28

<sup>12</sup> The exclusion of simple form-filling remains, for example, in the *Guidance for reporting Controlled Work and Controlled Work matters*.

17. Given the absence in the Government response of distinct consideration of British people's citizenship rights, it is unsurprising that the Impact Assessment also gave no consideration to the impact on British people or their citizenship rights.<sup>13</sup> Similarly, the consideration of costs and benefits and of specific impacts, which accompanied the Government response, gave no such consideration.<sup>14</sup> There was equally nothing raised in the Government response to the Justice Committee.<sup>15</sup> The original consultation document had equally only understood and considered matters of British citizenship in terms of naturalisation and immigration.<sup>16</sup>

### **Principles and purposes intended to underpin civil legal aid:**

18. The introduction of LASPO to Parliament was accompanied by the following statements of principle made by the then Lord Chancellor and Secretary of State for Justice:

*"...access to justice for the protection of fundamental rights is vital for a democratic society – something on which I will not compromise."*<sup>17</sup>

*"I have already said that access to justice is fundamental, but the fact is that the taxpayer's money cannot be used to give access to justice to large numbers of people in large areas of law where the ordinary citizen would not contemplate litigating because the ordinary citizen on an ordinary income would not think that they could afford to embark on it. That is why we consulted very carefully. We concentrated on vulnerable people and on those areas that were of such importance that society as a whole would plainly feel that there was a need to finance people of limited means so that they could have access to justice."*<sup>18</sup>

19. Properly considered, it is entirely uncontentious that a British person in the UK could be expected to contemplate litigating to secure their recognition as a citizen of their own country.<sup>19</sup> Non-recognition as a citizen of one's own country is itself a profound vulnerability by causing a British person to be treated as

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<sup>13</sup> *Cumulative Legal Aid Reform Proposals*, [Impact Assessment IA No. MoJ090](#), 21 June 2011. The Impact Assessment that accompanied the original consultation document was equally deficient. It solely considered citizenship in terms of naturalisation, making reference to this within various matters of immigration: *Legal Aid Reform Scope Changes*, [Impact Assessment IA No. MoJ028](#), 15 November 2010.

<sup>14</sup> *Reform of Legal Aid in England and Wales: the Government Response*, [Annex A: Scope](#). Similarly, the Equalities Impact Assessments published with the original consultation document gave no consideration to British people's citizenship rights and the disparate racial impact that would arise from removing from scope the capacity of a British person to secure their citizenship: see *Legal Aid Reform Scope Changes*, [Equalities Impact Assessment \(EIA\)](#), undated and *Legal Aid Reform Cumulative Impact*, [Equalities Impact Assessment \(EIA\)](#), undated.

<sup>15</sup> *Government Response to Justice Committee's Third Report of Session 2010/2011: The Government's proposed reform of legal aid*, June 2011, [Cm 8111](#)

<sup>16</sup> *Proposals for the Reform of Legal Aid in England and Wales*, Consultation Paper CP12/10, November 2010, [Cm 7967](#), pages 68 & 185

<sup>17</sup> *Hansard HC*, Second Reading, 29 June 2011 : Col 986 *per* Rt Hon Kenneth Clarke

<sup>18</sup> *Hansard HC*, Second Reading, 29 June 2011 : Col 993 *per* Rt Hon Kenneth Clarke

fundamentally indistinct from a visitor to it – i.e. treated as someone who requires permission for their entry and presence, and whose entry and presence may be subject to a range of immigration conditions, exclusions and powers.<sup>20</sup> Moreover, the British people who need to take steps – including sometimes litigation – to secure their recognition as citizens of their own country are disproportionately from among groups sharing additional characteristics of vulnerability. PRCBC’s experience indicates this includes protected characteristics of age (particularly children), race (particularly colour), disability (particularly learning and mental health disability); and includes vulnerabilities or indicators of vulnerability such as economic deprivation, social marginalisation, single parentage, experiences of domestic violence and/or child neglect or abuse, and being taken into care or other social services’ intervention. The addition of legal aid for “separated children” in October 2019<sup>21</sup> assists looked after children. However, where social services’ intervention does not extend to their being looked after, this addition has no effect, and it also has no effect for young adults who remain in care up to their 25<sup>th</sup> birthday.

20. The principles stated to Parliament, if properly applied, would require that legal aid was available to ensure that all British people were able to secure their citizenship and its recognition. This is both because of how vital it is that a person should be recognised as a citizen of their own country – for tangible and intangible reasons – and because of the profound injustice done when some British people are unable to secure that recognition, including the exacerbation of other social inequalities.
21. The principles stated to Parliament may also be considered alongside the factors treated as requiring consideration in the original proposals. The original consultation document summarised these as follows:

*“4.12. ...In reaching our view about which types of issue and proceeding should continue to justify legal aid, we have taken into account the importance of the issue, the litigant’s ability to present their own case (including the venue before which the case is heard, the likely vulnerability of the litigant and the complexity of the law), the availability of alternative sources of funding and the availability of alternative routes to resolving the issue. We have also taken into account our domestic, European and international legal obligations.”<sup>22</sup>*

22. The Government response to the consultation affirmed these to be the relevant factors, reiterating the importance of the issue, the litigant’s ability to present their own case, the availability of alternative sources of funding, and the

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<sup>20</sup> These affect various day-to-day matters including the right to work, to healthcare, to study, to access public funds, to rent accommodation, to a bank account, to a driving licence, and to liberty.

<sup>21</sup> The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019, SI 2019/1396.

<sup>22</sup> *Proposals for the Reform of Legal Aid in England and Wales*, Consultation Paper CP12/10, November 2010, [Cm 7967](#), page 33



availability of other routes to resolution. It affirmed that no one factor was considered to be determinative.<sup>23</sup> Generally, it expressed the aim as being:

*“5. ...to refocus legal aid on those who needed it most, for the most serious cases in which legal advice and representation were justified.”<sup>24</sup>*

23. This expression of aim is generally reflected in the principles stated to Parliament when LASPO was introduced to it.

24. As regards the factors considered in the consultation:

24.1. The importance of British people’s citizenship and recognition of it runs through this short briefing. The complexity – legally and evidentially – of cases that require legal assistance is shown by the examples given as an Annex to this briefing.

24.2. The relative incapacity of people to litigate on their own is exacerbated by the age and other characteristics of the people disproportionately in need of taking steps to secure their citizenship and its recognition. This is compounded by complexity. The examples given in the Annex affirm this.

24.3. Moreover, there is no tribunal before which these matters can be litigated,<sup>25</sup> even assuming that such a venue would ameliorate the complexities of law and fact that arise.

24.4. Finally, there is no alternative to citizenship of one’s country. A person excluded in some way from their citizenship remains treated as a visitor to it, dependent on the goodwill of the Home Office for permission to live and remain here and to partake in ordinary social, economic and cultural activity. That activity includes working, studying, renting accommodation, receiving healthcare, receiving welfare support, and potentially even to move freely in one’s own country to engage in these and other social activity.<sup>26</sup>

25. PRCBC did not raise these matters in the 2010-2011 consultation because PRCBC had not yet been created. The failure of civil society and others to raise these matters is among the reasons that led to PRCBC being formed to raise awareness of rights to British citizenship and secure the citizenship of British people (particularly children and young people) whose rights were then and remain overlooked or misunderstood.

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<sup>23</sup> *Reform of Legal Aid in England and Wales: the Government Response*, June 2011, [Cm 8072](#), pages 11-12

<sup>24</sup> *Reform of Legal Aid in England and Wales: the Government Response*, June 2011, [Cm 8072](#), page 11

<sup>25</sup> We identify this solely because it was considered to be a significant factor in how some matters were treated in the consultation and legislative reform that followed: see e.g., *Reform of Legal Aid in England and Wales: the Government Response*, June 2011, [Cm 8072](#), page 133

<sup>26</sup> See fn17

## **Conclusion:**

26. As will be clear from the above, rights to British citizenship were overlooked in the consultation preceding LASPO and in how it was presented to Parliament. But for this oversight/misunderstanding, rights to British citizenship should not and would not have been removed from scope of legal aid, assuming the principles underpinning the refocus of civil legal aid by LASPO were followed.
27. We note this is not a matter of providing legal aid for what may in some cases be considered as simple form filling applications. Before LASPO, legal aid was not provided for such matters. However, complex matters – including passport applications by British people required to prove their British citizenship by addressing complex matters of law and fact (legal argument and evidence) – were provided for, subject to means, as a matter of generality. That should still be the case and LASPO should be amended accordingly.
28. We note that Exceptional Case Funding (ECF) – in respect of which there are separate concerns – is neither appropriate for nor intended for matters where legal aid scope is recognised to be generally needed. Otherwise, there would be no need for anything but ECF. As explained in this briefing, if properly considered, citizenship rights would and should never have been removed from scope. That does not alter the relevance of merits testing of matters within scope but recognises that these rights are of fundamental importance and, save for simple form filling applications, matters related to them generally concern significant issues of law and evidence, which cannot reasonably or adequately be addressed without expert legal advice, assistance and representation.
29. **In addition to the matters raised in this briefing, we would urge the LAA/MoJ to expressly reference ‘nationality’ alongside immigration and asylum to describe the current civil legal aid category in which this work sits – i.e., to identify the category as ‘immigration, asylum and nationality’.**

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