

**Call for Evidence**  
**The Justice and Home Affairs Committee**  
**Family Migration**  
**By Reunite Families UK**

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## Executive summary

The year 2022 marks ten years since the government announced the new family migration rules. Within those ten years there have been court challenges, incremental changes to the rules, but above all there were and still are many families being subjected to years of separation.

We welcome the Justice and Home Affairs Committee's call for evidence to further investigate the impact of the current family migration rules, not only on the economic well-being of the country but its human impact on many families who try to build their lives in the UK.

We are providing evidence as an organisation. Most of the evidence provided here are taken from our everyday work on the ground, supporting members who are going through the family visa process. Along with that we also provide evidence taken from our own research and research by external bodies that also corroborate our experience working on the ground. This call for evidence will cover the two follow-up questions we received after we provided oral evidence to the Justice and Home Affairs Committee in July and the other ten questions laid out by the committee. Below is a summary of our report:

- The family justice system and the immigration process are not working in tandem with each other. They operate under different values and requirements and with different views on what is the “best interest of the child” and how that operates. When not working together, it can trap the non-British parent in a cycle of chronic insecurity and cause distress to the child/children.
- In our everyday work we see numerous evidence of inconsistencies and mistakes in how guidance is applied by caseworkers. This ranges from blatant misinterpreting of guidance, missing documentary evidence, and failing to detail how exactly they reach the decision to refuse an application, particularly those on the “exceptional circumstances” route.
- We believe the definition of “family” and “relative” set out in the family migration policy needs revisiting, especially the route for adult dependent relatives.
- The MIR does not achieve what it was set out to do- to prevent a burden on the taxpayers and to facilitate integration. Instead, it turns people particularly women into single parents. It traps people in great financial difficulties that some turn to the benefit system. The MIR also creates power imbalance between partners and can perpetuate abusive relationships. It does not encourage integration, instead some couples “self-exile” out of the UK due to the MIR.
- There are many circumstances that could result in an extended (or indefinite) period of family separation. The current visa wait time means couple needs to be separated for at least 6 months as the application is being processed. The visa fee on top of the MIR is

extortionate leaving the idea of reunification simply out of reach. Even other temporary means of reunification, such as a visitor visa, has a high rate of being unsuccessful.

- It's important to note that stress experienced by the couples does not dissipate once the visa is granted. Some couples continue to face struggle that comes from having to continuously prove the MIR, the No Recourse to Public Funds condition that prevents their migrant partners from accessing any helps, etc.

## Introduction

Reunite Families UK [RFUK] is a lived experience Community Interest Company [CIC] working with and supporting families who are affected by the UK spouse visa rules. Our team's personal experience of the application process enables us to offer support, information and guidance to those navigating a complex immigration system.

We fill a gap in the sector by focusing specifically on UK spouse visas/Appendix FM and as such provide a key service to those who are beginning, or are on, this journey. We do this by offering a safe, non-judgmental online space where people can access help and advice on matters relating to the application process. We work with other migration and legal organisations and we also signpost individuals to non-migration organisations that deal with social issues that are being experienced as a direct result of the immigration system. Our mission is to help and support couples and families who are affected by the UK spouse visa rules; highlight the realities facing those bound by these rules; and promote a positive narrative around migrants in the UK.

On the 12<sup>th</sup> of July 2022, RFUK was invited to provide oral evidence to the Justice and Home Affairs Committee on the issues of family migration, specifically in relation to the well-being and best interest of the child. We received two follow-up questions after that. In this call for evidence we will address the two follow-up questions, along with the other ten questions.

## Follow-up questions from oral evidence

### **1. *Elaborating the discrepancies between the family justice system and the immigration process in how they approach children, and what they can learn from one another***

The family justice system and the family migration rules are not working in tandem with each other. They operate under different values and requirements, which affect all parties involved, especially the children. To illustrate this point, we want to present a scenario which came up in our everyday work. Wife Sally (British/sponsor) and husband Bob (non-British, on a spouse visa) have an amicable divorce. They have 2 children together. Sally and Bob got on very well and both came to a joint decision on Bob's financial responsibilities and parental support toward their two children. They came to this decision without any court intervention. When Bob's spousal visa is running out, he starts applying for parent of a British child route. The application is refused by the Home Office and Bob appeals. During the appeal process, the judge does not accept that Bob has a sustained relationship with his children since there is no official court-ordered financial standing order created to support his children. The judge also does not

accept the letter from Sally, explaining their financial arrangement. Without the official court order papers, the Home Office also questioned his intention in applying for his visa whether it is based on a genuine relationship with his children or because he just wants to stay in the UK. During the whole process, Bob's status became very uncertain. He was unable to work, thus unable to support himself and his children.

This case illustrates that the threshold for staying in the UK as a parent of a British child is very high and can be extremely difficult for people who may not have all the official documentations or who, due to strained relationship, are unable to gather necessary evidence for their case. There is no evidence showing how UKVI fully applies duty of care/best interest of the child. Their duty of care also differs greatly from the duty of care for children set out within UK Family Court. An example of this would be that within Family Court a qualified CAFCASS worker will speak to children and both parents to establish the best interest of the child/children as opposed to UKVI who use caseworkers with no experience of working with children or the laws that govern their wellbeing needs and protection.

The UKVI's view of duty of care/best interest of the child also does not seem compatible with the Children's Act 2004. Section 27 of the Children's Act imposes a duty of care onto local authorities, local housing services, and public health bodies to cooperate with each other to support children and families. However, there is no provision within this Act for cooperation from UKVI. By not working in tandem with the Family Court, UKVI is actually not taking safeguarding and welfare interests seriously and by removing someone's status whilst a Family Court case is pending, it could cause severe distress to both the parents and child/children. In practice, Family Court is extremely reluctant to grant a Child Arrangement Order to a parent who has no legal status within the UK likewise UKVI are refusing to grant legal status without a Child Arrangement Order. A further complication arises when the parent also needs permission from the court to use the Child Arrangement Order as part of their immigration application, as the other party/parent can object to this request. This is keeping both parent and child in a perpetual ever-decreasing circle of separation and financial hardship, which will have consequences on both mental well-being.

The family justice system is a long-protracted process and when throwing in immigration requirements with very high threshold in the mix, it becomes even more convoluted. Therefore, it is absolutely crucial for both UKVI and Family Court to work together applying both laws and legislation correctly to safeguard and promote the welfare of the child/children through both their courts.

**2. *Elaborating on the inconsistencies in how guidance is applied by caseworkers (any further information on this would be most welcome).***

Guidance for decision making for Home Office caseworkers are often written in very vague language, therefore leaving a lot of space for discretionary power on the side of the caseworkers. It should be noted that the UNHCR identified '*systemic problems... both in individual decisions and in the context in which caseworkers operate*' (UNHCR Quality Initiative Project, 2006):

*serious problems remain both in individual decisions and the context in which caseworkers operate. There is some evidence of a lack of understanding of key decision making concepts such as the shared duty to ascertain and evaluate all the relevant facts. A number of caseworkers apply the incorrect standard of proof and have unreasonable expectations as to the evidence the applicant can produce in support of his/her claim. Evidence that is produced is often not considered or not given the appropriate weight, or is rejected on weak grounds with the use of speculative or illogical arguments.*

This is problematic especially when caseworkers need to decide on “exceptional circumstances” applications and the “best interest of the child” requirements. Even though caseworkers are advised to consider the best interest of the child in their decision making, we have a number of members we’re working with who, in their decision letters, were told to conduct their family life through “skype”. We also assisted a member’s exceptional circumstances application which was refused on the ground that third party sponsor cannot be taken into account. On appeal it was ruled that this was a wrong application of the guidance on the part of the caseworker, the refusal was quickly overturned but this mistake has cost the member thousands of pounds and lengthy delay in reuniting with her husband.

We also observe a number of refusal letters written by UKVI, it is noticeable that there seems to be a standard paragraph stating that the caseworker has “considered exceptional circumstances” and, in such cases, the “best interest of a relevant child is a primary consideration”. These refusal letters also go on to state that “Based on the information provided, we have decided that there are no such exceptional circumstances in your case” but fail to detail how exactly the caseworker arrived at this conclusion. We believe the applicants deserve more than simply a standard paragraph on this matter.

In addition to incorrectly applying the guidance, we also encountered numerous cases of mishandling of documentary evidence provided by the applicants. A member of our group applied for his wife’s spouse visa in 2017 but got refused on the ground that certain important

financial documents were not provided even though both the member and his solicitor claimed they were. After filing for Subject Access Request (SAR), it was shown that the alleged missing documents were in the possession of the Home Office.

Although the caseworkers are advised to exercise sensitivity when making decision on applications with children involved we're also made aware of a member's case where her child's paternity is put into question and the reason for the refusal of the application. In this circumstance, the guidance states that the caseworker must invite the applicant to provide further evidence in form of a voluntary DNA test or other documentary evidence. There are conflicting accounts on whether the Home Office will request for a DNA test or provides that as a voluntary option. Often time, in practice when paternity is in question, a DNA test is the only answer; however, it can be difficult for some applicants since a DNA test can be very expensive and other documents such as a declaration of parentage by the Family Court or High Court can only be accessible by applicants already in the UK.

Below are our answers to the additional questions laid out by the committee. Some of the questions are linked together in our view, therefore we decide to pair some of them together.

## Design of family migration law

***1. How does immigration law define a “family” and a “relative”? How have these definitions evolved over time? Are they consistent across immigration pathways? Do they reflect contemporary societal understandings of “family” and “relative”, in the UK and overseas?***

When the new family migration rules were announced in 2012, the route for adult dependent relatives, such as parents, grandparents, uncles and aunts was severely restricted. Therefore, the definition of family is very much restricted to a nuclear family, with just spouse and child(ren). Such view of family is not in line with other cultural understanding of family, for example, as held by the South Asian communities. This narrowed definition of family has prevented so many people from bringing their loved ones to the UK which can be extremely difficult for people living in other culture where it is the children's obligation to take care of their elderly parents. Some people had to make life changing decision by leaving their families in UK to look after their elderly parents in their home countries. This can be very disruptive to one's life. In addition, putting elderly parents in a care home is not a common practice in some cultures, nor is such service available in their countries.

We're currently dealing with a case where a member is struggling to bring over her 80-year-old mother to stay with her in the UK. The mother is in need of support for her health condition and had in the past suffered numerous falls. There is a general fear that bring older people to the UK would put a strain on the NHS, however, the member and her family have never relied on public funds and have demonstrated that they can look after their mother without relying on public funds, yet they are still unable to bring their mother whose health is severely deteriorating.

***2. Does immigration law apply to every family the same? Do different rules apply to different circumstances? Are rules applied consistently in similar circumstances? What are the justifications for discrepancies? How do “mainstream” immigration pathways compare with “bespoke” ones introduced in response to geopolitical and refugee crises and how do the bespoke pathways compare with each other?***

There is a stark contrast between how family is defined in the family migration rules and how the parameter of family is set in other route, for example, the Ukraine family scheme. Under this scheme, family encompasses more than just spouses and children, but also extended relatives of the family. We assisted two Ukrainian families to come to the UK under the Ukraine family scheme. One of the families was able to bring with them their 80-year-old Ukrainian mother-in-law to the UK. Such an option is not available under the normal family migration route, as illustrated in the case above.

***3. Does the financial requirement for spouses and partners (also known as “minimum income requirement”) achieve its objectives? How could the requirement, and the process of demonstrating it is met, achieve them better? How could it be adapted to reflect changes in the economy and the labour market? Are there any unintended consequences for individuals and families?***

*And*

***10. How do family migration policies and their implementation affect the integration and participation in British society of (would-be) sponsors and their sponsored family members?***

When the MIR was announced, it was set to do two things: to prevent a burden on the taxpayers and to facilitate integration. Through our work, we do not see how the MIR would fulfil these objectives. The MIR instead has adverse effects on many families and society as a whole. The MIR subjects families to lengthy family separation and turn people into single parents. Many of our members who are mostly women are made into being single parents while going through this process. They juggle child care on their own, while also working multiple



jobs to meet the MIR. For some, the hard-earned income goes into child care, thus prolonging the time they could meet the MIR. By not having their partners around to help, emotionally and financially, some are left with no option but to rely on the benefit systems. One of our members explain the impacts of the MIR on her everyday life:

*“The short sightedness of the MIR is cruel and frustrating. With both parents present, childcare and chores can be shared. I am often left feeling guilty about having to do everything. Sometimes it can feel tantamount to child neglect in order to complete running a household alone”*

By not meeting the MIR some couples are then placed on the 10-year route, which means they have to renew their visa every 2.5 years. This means the family would have to spend more and longer waiting time until their migrant partner can get a secured status.

We also want to point out that not only does the MIR fails to achieve what it was set out to do, it also perpetuates a very unhealthy power imbalance between the couple. Proving the MIR, in most cases, is the responsibility of the British partners. Although we could see how this is a burden; the MIR could be used by the British partners to hold power over the migrant partners. It creates an atmosphere where the migrant partners have to rely on their British partners to be able to stay in the UK. Not only does it create an unhealthy dynamic of relationship, it can and has subjected migrant partners to years of abusive relationships. The same problem is identified in a report “Safety before status” conducted by the Domestic Abuse Commissioner in 2021:

*“Perpetrators of domestic abuse often use a victim’s insecure immigration status to exert further power and control. [...] Immigration abuse and insecure immigration status as a risk factor is not always identified in local safeguarding protocols, and often the risk faced by victims with insecure immigration status is misidentified.”*

There has never been a clear explanation as to how exactly the MIR is supposed to assist with integration in the British society. Although the government may have a view that having disposable income may help one to socialise thus “integrate” in the British society, we found in our work that having to work constantly to meet the MIR could have the opposite effect for the family. When gathering evidence for the Children’s Commissioner report, we found that for

some of our members, having to constantly work multiple jobs to continuously meet the MIR means some of their resources are taken away from their children to fully socialise.

A sense of belonging and integration are tied together. For some members, going through this process has put their sense of belonging and citizenship into question. Some reported feeling betrayed or feel like they are being treated like a “second class citizen” simply due to the choice of their partner. Some migrant partners feel unwelcomed and mistreated. These feelings and experience could make it really difficult to fully integrate or to feel like one belongs to the British society. In fact, we see a number of members, who were unable to meet the MIR, ended up having to self-exile themselves and their families to other countries. As illustrated by one of our members:

*“My wife is South African and we applied for a UK spouse visa in 2017, but were rejected upon the grounds of my having not supplied sufficient proof of my earnings to demonstrate that I was above the Minimum Income Requirement. As a consequence, we have been left with no alternative but to settle permanently in the Republic of Ireland, which has been our home since 2016. At present, there is no conceivable way to return to the UK with my wife under British immigration rules.”*

## How family migration policies affect society

- 4. What are the fiscal and economic impacts of family migration policies, for instance in respect of the labour market, recruitment, productivity, and innovation?;***
- 5. What is the impact of family migration policies on public services?; and***
- 6. What is the impact of family migration policies on local authorities?***

A study done by the Middlesex University on the fiscal implications of family migration rules in 2013 shows that partners were never a burden on the state and that in fact the MIR and associated rules harm the economy by forcing people into single parenthood, onto benefits and denying additional sources of tax revenue. The study also estimated the cost to the public purse as being £850 million over 10 years.

We find that members, particularly those from low-income background who are going through the spouse visa process hardly have the time or resources to explore, learn new skills, create or live to their fullest potential. In addition, we also see members in the group who are experiencing financial difficulties due to the MIR had to rely on their local authorities for social housing. Going through the family migration process can put a toll on people's mental health. Time and time again we see our members discussing their struggle with mental health such as depression, anxiety and PTSD. Some of them turn to the NHS mental health services but are often put on a very long waiting list.

## How migration policies affect families

***7. In what circumstances may family immigration law and practice result in an extended (or indefinite) period of family separation or place families under stress in other ways? How could they be adapted to prevent or shorten periods of family separation or be more accommodating of the wellbeing of families?***

There are many circumstances that could result in an extended (or indefinite) period of family separation. Wait times for visas are now as 'standard' 6 months. That is after the fact the British spouse has left the family in the other country, to return to the UK to find a job that pays £18,600 [consistently every month and a job is not immediate and could take months to find and secure – and was even more difficult during covid-19]. They then have to be in that job for 6 months before they can even begin the application process.

Where the British spouse is a woman and main carer for the children, the situation becomes even more difficult as previously explained above. Not all areas of the UK have a lot of jobs or pay well – for many families in regions outside cities there is less pay and less access to better paid jobs. Transport and living costs going up only add to the burden.

Visa fees can approach £9000 for a single partner over the entire period, more if legal help is needed. This is unaffordable to most British families. Although fee waiver is available, it is very difficult to navigate for a lot of people without help.

Due to the convoluted nature of this spouse visa rules, we also see some members try different route to reunite with their families. For instance, we have families who applied for visitor visa to be together, albeit for a short period. However, this visitor visa route has proven to

be very difficult and with a high rate of being unsuccessful. There's a common belief shared among caseworkers that when couple applied for a visitor visa, the non-British applicant would overstay and never leave. This shows that for some even alternative route to reunification is still not available to them.

We also want to draw attention to the fact that the family migration rules place a lot of stress on families even after they successfully reunite. The problems and trauma are not simply washed away after the visa is granted. We believe it is important to think about the long lasting impacts of the rules. Some couples who experience months or years of separation face great difficulties in learning to adjust and to live with each other again after they reunite. The separation has put a huge strain on their relationships. Some are able to navigate these difficulties while others the strain and trauma of separation break their relationship/marriage even after the visa is granted. During the separation, some try to apply for visit visa for their partners. However, there is an extremely low chance of it being granted, thus further damaging their chances to develop their relationships. Members who spent a large chunk of their money on the visa, that even after reuniting there is still a period of struggling. This difficulty is compounded also by the "No Recourse to Public Funds" condition attached to the migrant partner's visa, therefore, they are unable to access any mainstream benefits to help their families. When the status of the migrant partner is in chronic instability, it interferes with their ability to build their family like buying a house, have children, etc.

***8. How do family migration policies affect children separated from one or both of their parents (or other relative)? How do families separated by immigration law use modern means of communication, and what is the impact of this use?***

In October and November 2020, RFUK conducted two surveys: "Living online: impacts on families divided and the UK immigration system" and the "Coronavirus impact survey". The results of the survey show that majority of families affected feel that technology is no substitute whatsoever for a physically reunited family and any suggestion that family life can be conducted online is dismissed more or less out of hand. Some individual responses are also included - this one is typical:

*"Staying in touch online has been a crutch, a necessary evil that we hold onto, like onto a straw while drowning. It certainly does not allow actual relationship to develop and bloom. We need physical contact, and denying us family life due to how laws and borders are interpreted between countries -is nothing short of outrageous."*

When we gathered evidence for the Children’s Commissioner report in 2018, one of our member’s testimonial addressed the “Skype Families” as below:

*“Growing up as a Skype family is totally confusing. You have this interactive image on the screen that you are supposed to form bonds with. Trust, love, respect how can these complex emotions be formed via a screen? Our daughter has spent large chunks of her life in hospital, with chronic lung disease. How can a screen help her to feel brave and supported? It can’t.”*

The experience shared above is consistent with the finding by the Children’s Commissioner in 2015 on “Skype Families”. From these quotes we can conclude that even modern communication has facilitated relationship, it cannot by any means replace face-to-face communication that can nourish and develop meaningful relationships.

## Conclusion and recommendations

There are three main things the government can do to shorten family separation and accommodate the wellbeing of families. We shorten this to “The 3 Ss: Scrap the MIR, Simplify the rules, Slash the fees”. As explained above, the MIR does not achieve what it was set out to do, in fact it causes more damage to the country’s economy and the wellbeing of the families. The visa rules themselves are very convoluted and could have been simplified. For instance, the EU settlement application process is done on a phone app and the requirement for documents is more straightforward. We see members who can’t afford solicitor fees having to navigate these convoluted rules all by themselves which can lead to major mistakes in their applications. We also support slashing high visa fees that have put many families at risk of becoming destitute and in long term debt.

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