

# **HARSH, UNJUST, UNNECESSARY:**

Report on the Impact of the  
Adult Dependent Relative Rules  
on Families & Children

July 2014



My Mamma (grandmother) teaches me interesting things. Last year during my school holidays she showed me how to do knitting and I knit a whole big scarf all by myself. It was so much fun. I also did stitching with her and made big flowers in one of my jumpers.

When Mamma is here I don't have to go to holiday clubs in my holidays and I have lots of fun with Mamma at home. I don't like going to holiday clubs because they are so boring.

Sometimes when I don't want to sleep alone in my room I can go to Mamma's room and she helps me go to sleep by telling me Indian princess stories.

I enjoy doing gardening with Mamma. One day she showed me a frog in the garden. Mamma cooks my favourite dishes. She also asks me what type of hairstyle do I want and she makes that hairstyle for me. I really like that. Mamma gets Indian princess dresses for me. Mamma says I am the most beautiful girl in the whole wide world. I like it.

My Mamma is very very nice. I don't like it when she has to go to India. I miss her and all the nice things. When we have a family hug I miss her. I wish Mamma could be with us all the time. I wish she didn't have to go to India for such a long time. I am sure she misses me too. When we have class assembly and school plays I miss Mamma when I see grandparents of my friends.

My Mummy and Papa say that if Mamma cannot live with us here then we have to go to India because she cannot live all by herself there. It must be very boring to live in a house all by yourself and scary too. But I do not want to go to India. I don't have any friends there and I can't understand what the children and grown ups are speaking because I don't know their language. I cannot share the jokes and fun because they cannot understand me and I don't know what they are saying. I have to keep on asking my Mummy and Papa about what they are saying. I cannot watch telly because the TV programs are in Hindi.

I don't want to leave my country. I will miss my home I will miss my friends and school. I want to live in my country with my whole family and friends. I really really don't want to go to any other country. It doesn't feel nice and I don't want to do it.

— British child, 7 years old

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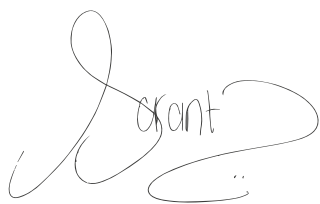
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**Saira Grant**  
Legal & Policy Director  
Joint Council for the Welfare of Immigrants  
July 2014



# CONTENTS

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<b>1</b>	Executive Summary	7
<b>2</b>	Past and Present ADR Rules	13
<b>3</b>	Compliance of ADR Rules with National and International Obligations	19
<b>4</b>	Data on ADR Applications, Refusals & Appeals	25
<b>5</b>	Government's Position on Families	31
<b>6</b>	Government's Justification for the ADR Rules	35
<b>7</b>	Research & Methodology	45
<b>8</b>	Statistical Data on Applications and Grants	47
<b>9</b>	Impact of Rules on Families & Children	51
<b>10</b>	ADR in other Cultures	65
<b>11</b>	Conclusions and Recommendations	75
<b>Annex 1</b>	The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust	79
<b>Annex 2</b>	Questionnaire results	91

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## ABBREVIATIONS USED IN THIS REPORT

<b>ADR</b>	Adult Dependant Relatives
<b>APPG</b>	All-Party Parliamentary Group
<b>EEA</b>	European Economic Area
<b>JCWI</b>	Joint Council for the Welfare of Immigrants
<b>MAC</b>	Migration Advisory Committee

Every year my daughter's school celebrates Grandparents Day. This is a lovely afternoon where the children sing and do a traditional maypole dance. They bake treats and serve all grandparents with a cream tea. It's an intergenerational event to celebrate the role of grandparents and it is clear from all the smiling faces the grandparents and children thoroughly enjoy it. It's a very special afternoon. Every year I am the only one who attends with my daughter. This year one of her classmates asked her why her grandparents never come and whether they were all dead. My daughter said, "No, my grandmother is in China and she is not allowed to live here and Mummy says she is too old to travel." Every year my daughter takes a cream tea and at the end of Grandparents Day she gives it to a homeless person instead of her grandmother. This year she bought a cream tea, and then she burst into tears.

— **British parent, 10 year old daughter , mother living alone in China**

We need to question the values as a society we believe in, what is our moral compass and what do we wish to pass down to our future generations? The way we treat our parents is the way our children will treat us.

— **SG, JCWI**

Like any British or any other children, the role of grandparents in their upbringing is huge. Without them [my son] will miss out on a very big influence, which might be a big void in the future. When [he] sees other kids playing with their grandparents, I will have no answer as to why he does not have one. Though we are British citizens we are still treated differently from others.

— **Written submission, affected individual, 3 year old son, parents in India**

Adult dependent relative route appears to have all but closed. British people and permanent residents who may wish to care for a non-EEA elderly parent or grandparent at their own expense in the UK now appear unable to do so. We question whether this is unnecessarily prohibitive and likely to have negative impacts into the future by prompting significant contributors to our society to move abroad or deterring them from working here at all.<sup>1</sup>

— **All Party Parliamentary Group (APPG) on Migration**

<sup>1</sup> All-Party Parliamentary Group on Migration "REPORT OF THE INQUIRY INTO NEW FAMILY MIGRATION RULES", June 2013 [www.appgmigration.org.uk/sites/default/files/APPG\\_family\\_migration\\_inquiry\\_report-Jun-2013.pdf](http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf)

# 01

# EXECUTIVE SUMMARY

## BACKGROUND

The new Adult Dependent Relative Rules ('ADR Rules') came into force in July 2012 as part of the changes to Family Migration rules. The ADR Rules provide for elderly parents or grandparents of permanent UK residents and British citizens to apply to join their family in the UK.

Previously, parents or grandparents over 65 years old and financially dependent on the UK relative with no other family abroad were able to apply for settlement (or under 65 if there were exceptional circumstances). We are aware of cases in the past where such visas have successfully been obtained and where grandparents are playing an active role in their grandchildren's lives whilst contributing to the financial prosperity of the family by allowing parents to work.

Under the new rules, relatives must demonstrate that they, as a result of,

*"...age, illness or disability, require long-term personal care to perform everyday tasks e.g. washing, dressing and cooking... [and are]... unable even with the practical and financial help of a sponsor to obtain a required level of care in the country where they are living..."<sup>2</sup>*

It is almost impossible to succeed in this visa category. Fit and healthy parents and grandparents cannot even apply. The All-Party Parliamentary Group on Migration (APPG) has stated that this visa category has "in effect been closed".<sup>3</sup>

The UK's immigration policies need to comply with its international legal obligations. The UK has ratified the United Nation's Convention on the Rights of the Child (CRC), which obliges a country to treat the best interest of a child as a primary consideration in domestic law and policy. This is translated into domestic legislation through both section 11 of the Children's Act 2004 and section 55 of the Borders, Citizenship and Immigration Act 2009 ('section 55'). As a result, the Home Office must ensure legislation safeguards children and promotes their welfare.

## OUR RESEARCH

Over a period of six months we have looked into the impact of the ADR Rules on families and specifically on minor children. We held six public meetings across the country, collated data from 111 questionnaires and undertook 18 interviews with affected individuals. In addition, we liaised with lawyers representing clients seeking to make an application under the ADR Rules. We sought and obtained 22 refusal letters and appeal determinations to assess how the best interest of children is being allowed for in Home Office decision making. We also commissioned an expert report by child psychologists at the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust ('Expert Report') to analyse the positive influences of grandparents on the developmental trajectories of young people and to assess the psychological impact of the ADR Rule changes on children.

## AIMS

The aims of this report were as follows:

- 1. To ascertain and assess policy justifications behind these rules.**
- 2. To assess the number of applications made and granted before and after the rule changes.**
- 3. To assess the impact on families and specifically on children of the Rules.**
- 4. To ascertain whether there was a disproportionate detriment from the rules to children from a migrant background.**
- 5. To ascertain whether the best interest of the child has been taken into account in the drafting and implementation of the rules.**

<sup>2</sup> Immigration Directorate Instructions, Appendix FM, Adult Dependent Relatives, Dec 2012

<sup>3</sup> All-Party Parliamentary Group on Migration "REPORT OF THE INQUIRY INTO NEW FAMILY MIGRATION RULES", June 2013 [http://www.appgmigration.org.uk/sites/default/files/APPG\\_family\\_migration\\_inquiry\\_report-Jun-2013.pdf](http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf)

## JUSTIFICATION FOR THE RULES

We look at the political positions on families and the Government's justification for these rule changes. We consider whether the rationale behind the policy change has been met and conclude that it has not. We demonstrate that the ADR Rules prior to the changes in July 2012 did not cause a significant burden on the taxpayer. In fact, the only monetised cost was to the NHS which was cancelled out by the revenue previously generated from the visa application fee. Settlement visas granted under the ADR category have always been a very small proportion of family migration visas and contribute less than 1% towards net migration. Data since 2005 demonstrates that the total number of parents and grandparents who have settled here in any one year has been below 1,790 people<sup>5</sup>. It is also clear from the data available that 50% of visas were granted to adult dependant relatives from Asia which corresponds with our research that the ADR Rules discriminate against migrants from the Asian subcontinent and their British families.

The Government's proposed policy objectives of reducing the burden on taxpayers, promoting integration, preventing and tackling abuse and contributing to net migration are not met by preventing migrant families from caring for their dependent parents and grandparents in the UK. When the pain and misery that is being caused to the families being kept apart by these measures is taken into account, the proportionality of these Rules is heavily called into question.

## STATISTICAL ANALYSIS

We undertake a statistical analysis of settlement visas granted before and after the rule changes. Parents and grandparents of UK citizens and settled residents consistently represent less than 1% of overall net migration and less than 3% of grants of settlement in the category "Family Formation and Reunion" since 2005<sup>6</sup>. Home Office settlement figures show that the grants since the Rules changed have halved, with 703 parents and grandparents being issued visas in 2013. However, this figure includes Ghurkhas, HM forces, refugees and those granted humanitarian protection, therefore the actual figure is probably much lower. A Freedom of Information Request to the Home Office by JCWI has revealed that between 1 November 2012 and 30 September 2013, 34 settlement visas were issued to an Adult Dependent Relative under Appendix FM to the Immigration Rules. This includes grants on appeal. A senior Home Office official has informed us that six to ten visas have been granted by Entry Clearance Officers from July 2012 until the end of 2013<sup>7</sup>. The numbers in this category have always been very low but now this visa category has almost been closed off. We echo Sarah Teather MP who stated in Parliament that the Rules are "a ban masquerading as a rule."<sup>8</sup>

## THE IMPACT ON CHILDREN AND FAMILIES

The impact of the Rules on families and children has been devastating. Families are extremely concerned that they are unable to care for their elderly parents at a time they need the care most. All families we interviewed expressed stress and constant anxiety; many felt guilty at not being able to look after their parents in their old age. Children in these families were acutely aware of what was going on and, as shown by our interviews, they were saddened and anxious themselves at being unable to spend time with their grandparents, whilst also being conscious of the resulting stress on their parents.

Children are missing out developmentally and culturally by being denied the chance to get to know and interact with their grandparents on a regular basis. This has particular salience for migrant children who otherwise may lose the opportunity to develop a secure sense of identity from the depth of knowledge and experience of history, language and culture which

4 The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), For full report see Annex 1

5 The highest number was in 2012 presumably due to the imminent rule changes and totaled 1783

6 Home Office: 'Settlement data tables immigration statistics January to March 2014', published 22 May 2014, available at <https://www.gov.uk/government/publications/tables-for-immigration-statistics-january-to-march-2014>

7 Personal Correspondence

8 Hansard 19 Jun 2013 : Column 261WH



grandparents are able to provide. We commissioned a expert report by the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust ('Expert Report')<sup>9</sup> which concludes the support network provided by grandparents may allow them "to more fully integrate with British society while maintaining a strong sense of cultural identity."<sup>10</sup>

The Expert Report also shows how vital grandparents are in the all grandchildren, allowing migrant children to attain the goals expressed in Every Child Matters.<sup>11</sup> It further demonstrates the detrimental impact of stress on children's developmental, social and educational attainment. Children from a migrant background are detrimentally affected by these Rules as they lose out on regular presence of grandparents. The report says, "given that grandparental involvement has such a positive and encompassing impact on development it is astonishing that their presence in the lives of only migrant grandchildren is so heavily legislated against."<sup>12</sup> Children from a migrant background are more detrimentally affected by these Rules as they lose out on the regular presence of grandparents.

The impact on poorer families is also more noticeable, as is the detriment to the children. Out of the 121 children affected from our sample, 20% came from families who live in a lower income household. These families were more likely to be single-earner households. Having a grandparent who is able to assist with childcare would allow both parents to work in families where childcare costs were prohibitive, thereby raising overall living standards.

Our research also demonstrates that many families are considering relocating to a country in which they can live with and look after their elderly parents, despite this signifying a severe disruption to their lives, careers and children's education. Families should not be forced to uproot their lives to look after their parents. Many of the individuals who were considering relocating are doctors and we highlight the potential loss to the exchequer and British society, clearly an unintended consequence.

These rules mandate a two-tier British citizenship for those whose parental ancestry is not British. They are unable to look after their elderly parents or benefit from their contribution to their family life. When adults have children of their own, their parents can provide a valuable source of support, which is denied to British citizens from a migrant background.

## **THE BEST INTERESTS OF THE CHILD**

It is clear from the evidence gathered that the ADR Rules do not take into account the best interests of the child. The formulation of the Family Migration rules did not take into consideration the potential impact on children. This Rule is perhaps symptomatic of the fact that the importance of grandparents is almost invisible on the policy agenda of the United Kingdom.<sup>13</sup>

However, as this research shows, children are in fact directly impacted by these Rules and in light of these findings it cannot be said that their best interests have been a consideration, let alone a primary consideration, in the formulation and implementation of these Rules.

The changes to Family Migration Rules were implemented with a limited public consultation on the proposed ADR changes. It seems highly unlikely that the opinion of child psychologists was sought or indeed a comprehensive study was done on the impact of the loss of a meaningful relationship with grandparents for children. The Expert Report clearly demonstrates there is a wealth of literature which highlights the extremely positive contribution grandparents play in child development.<sup>14</sup> Their added value and cultural

<sup>9</sup> The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), For full report see Annex 1

<sup>10</sup> Ibid. p. 12

<sup>11</sup> Every Child Matters: Change for Children, Department for Education and Skills (2004) [webarchive.nationalarchives.gov.uk/20130401151715 www.education.gov.uk/publications/eOrderingDownload/DFES10812004.pdf](http://webarchive.nationalarchives.gov.uk/20130401151715/www.education.gov.uk/publications/eOrderingDownload/DFES10812004.pdf)

<sup>12</sup> The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), p. 12, For full report see Annex 1

<sup>13</sup> Griggs, J., Tan J., Buchanan, A., Attar-Schwartz, A., & Flouri, E. (2010). "They've always been there for me": Grandparental involvement and child well-being. *Children & Society*, 24, 200-214.

<sup>14</sup> The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), For full report see Annex 1

necessity for migrant children has also been established. Yet this appears to have gone unnoticed in the formulation of these Rules.

Although this report is concerned specifically with the ADR Rules, many of our findings can only be magnified when applied to children who are separated from a parent as a result of the Family Migration rules. It is fair to say the Family Migration rules as a whole, decided by secondary legislation, have not undergone a thorough consultation with due consideration of the impact on children. This research demonstrates that Parliament has not been given a proper opportunity to debate and vote on the rule changes and thereby has failed to consider its legislative duty to safeguard children and promote their welfare when drafting these rules.

We have analysed refusal letters and appeal determinations which demonstrate how, even when grandchildren were discussed, entry clearance officers and their managers failed to engage with their existence and apply the section 55 duty, to safeguard and promote the welfare of children which is incumbent upon them.

However, it is fair to say not all ADR applications mentioned grandchildren even where they were a major factor in the desire for families to be together, as well as their inability to relocate abroad. This is in the main because the application form does not ask any specific questions pertaining to children with the focus being on the sponsor's income and finances. The application process and decision making needs to reflect the best interests of the child. This research shows it is not sufficient to say the immigration rules per se are compliant with Article 8 of the European Convention of Human Rights (ECHR) and section 55, since these rules are clearly failing children and families.

## **GRANDPARENTS IN OTHER CULTURES AND CARE HOMES**

We also looked at the role of grandparents in other cultures, especially those from which most applications for settlement are received. We note the reverence given to the elderly in many cultures. The usual household structure in Northern Europe and in the UK is that of a nuclear family, consisting of adults and their children. Grandparents are not generally afforded a central role. However, living in a nuclear family is a culturally specific phenomenon, likely to be a reflection of a more individualistic culture. Far more frequent worldwide are extended families with three or more generations living together and grandparents playing a large part in caring for, educating and socialising with their grandchildren. They provide their grandchildren with knowledge about their cultural traditions and religion, something that is all the more necessary in migrant families. Grandparents in these countries are seen as the heads of the household and are thus treated with great respect and highly revered. The ADR Rules are entirely based upon the 'western' notion of families. By not considering cultural differences the Government does not appreciate the extent of the potential harm caused in breaking the grandparent-grandchild relationship. It is forcing people to abandon their caring and loving cultural practices, whereby the elderly are valued and not seen as a burden. People who grew up with cultural values from these countries expect to look after their parents in their old age. This is seen as both a duty and a privilege. The UK could learn lessons from these values rather than forcing its new citizens and residents to abandon them.

In numerous countries including India, Ukraine and Russia, care for the elderly is the responsibility of their adult children. This is a cultural expectation and in Russia it is prescribed by law. This widely entrenched belief that the elderly should be cared for physically, emotionally and financially by their families means that care homes are very rarely adequate in terms of quantity or quality in many countries. There has not traditionally been a demand for such institutions, so they do not exist in a number of areas, or are treated with suspicion. Care homes are an alien concept for many. Less developed countries in particular do not have the resources to provide adequate state care for the elderly, meaning that care homes are overcrowded, poorly staffed and under-equipped. Even if one is able to find a care home for their parents overseas, elderly parents very often feel abandoned and neglected by their families and their children are faced with constant guilt and worry about maltreatment. The ADR Rules assume that care homes abroad are adequate and an acceptable solution, but in reality many lack provision of proper care and for most families are simply not a morally

## **CONCLUSIONS AND RECOMMENDATION**

These are discussed fully in the final section, but we summarise them as follows:

- The Rules are unnecessarily harsh, causing families suffering and anxiety, and are rationally disconnected from the stated Government policy on family values.
- The Government's justification for these Rules in both fiscal terms and to control net migration are not substantiated.
- The Rules have effectively closed off this visa category. Only 34 visas under the ADR Rules were issued in 11 months between November 2012-September 2013.
- The best interests of the child has been ignored in the drafting and implementation of these Rules.
- Children are significantly impacted as a direct result of these Rules. There is particular detriment to children from a migrant background.
- In many cultures around the world grandparents are treated with reverence. Britain should aspire to these values not seek to undermine them.
- The Rules effectively create a two-tier British citizenship with families from a migrant background being denied grandparental involvement.
- The Rules increase the financial burden on migrant families.
- Many families are considering leaving the UK in order to live near their elderly parents and look after them, a large proportion of these are medical professionals and this will have a detrimental impact on the NHS service.

## **KEY RECOMMENDATIONS**

- The Government should consider the report from the Child and Refugee Team at the Tavistock and Portman NHS Trust, annexed to this Report and consider the vital role grandparents play in the lives of children. If it is to put children first it needs to recognise the vital contribution of grandparents in their development. It also needs to appreciate the particular significance of grandparents to children from a migrant background.
- The Government should undertake its own assessment to evaluate the impact of all the Family Migration rules on children. They are silent victims of these policies.
- The Government needs to urgently re-evaluate its ADR Rules in light of this research and repeal them. They are harsh, unjust and unnecessary.

I support immigration rules, but these rules work against legal immigrants. Yes, this policy works to stop immigration but it stops legal immigration. It stops people who want to work and build this country. To some extent I do understand why they are trying to regulate immigration, but there should be a case where legal immigrants can have an opportunity to say something, but they don't. I can do nothing.

— Interviewee, parents in Ukraine

I decided to train as a consultant psychiatrist in the UK. I chose the UK knowing that my family including my mother could settle with me here. I knew my mother had to turn 65 before she would be allowed. Had I know that when that happened the Government would change the Rules, I would not have chosen to live in this country. My skills are valued worldwide I have served the NHS and served the people of this country. But this country has failed me. I had a legitimate expectation that hasn't been met.

— Written submission  
from affected individual

The rules also imply that paying a complete stranger to look after your elderly relative far away can be equated with caring for that relative one's self. Abandoning one's elderly parents to be cared for by strangers is not a welcome prospect. Would you or anyone else leave your parents welfare completely and totally to a stranger? When they're many hours by plane away, is that even reasonable, given that one can't check on and meet them regularly? There are many reports in the British mass-media about the abuse and neglect of elderly people and if this happens here in UK then it would be more likely to happen in a less developed country.

— Written submission,  
affected individual

We have always abided by the immigration rules. My mother has visited us and returned back home on time. She is completely financially dependent on us. When my father died five years ago, we wanted her to come and live with us but were told we had to wait until she turned 65. We waited five years. In August 2012 we tried to apply again after my mother's birthday. We were then told she now had to be very ill or severely disabled. We simply could not believe it, surely this can't be right.

— Interviewee, mother in Sri Lanka

# 02

## PAST AND PRESENT RULES

*“...policies that involve people cannot be and should not be allowed to be come, rigid inflexible rules. The bureaucracy of which Kafka wrote cannot be allowed to take root in this country and the courts must see that it does not.”*

– Lord Scott of Foscote<sup>15</sup>

### THE IMMIGRATION RULES ON ADULT DEPENDENT RELATIVES

In June 2012, the government published their Statement of Intent outlining the proposed changes to family immigration rules. This stated:

*“The new rules will reflect fully the factors which can weigh for or against an Article 8 claim... Immigration Rules will reflect the UK Border Agency’s duty under section 55... to have regard to the need to safeguard and promote the welfare – or ‘best interests’ – of children who are in the UK.”<sup>16</sup>*

The Family Migration rules are intended to be Article 8 ECHR and section 55 compliant.

### Rules Prior to 9<sup>th</sup> July 2012

Prior to the changes implemented to the Immigration Rules (HC 395 as amended) the rules on adult dependent relatives were to be found in paragraph 317 of the Immigration Rules. These rules applied to parents, grandparents and other dependent relatives (sons, daughters, sisters, brothers, aunts and uncles) of persons present and settled in the UK (hereto referred to as the ‘sponsor’). The requirements to be met by somebody seeking indefinite leave to enter or remain in the UK were:

1. They were related to the UK sponsor as a mother/father or grandmother/grandfather over 65 years of age.<sup>17</sup>
2. They were a parent or grandparent under the age of 65 years if living alone outside the UK in the most exceptional compassionate circumstances and mainly dependent financially on relatives settled in the UK or
3. They were the son, daughter, sister, brother, uncle or aunt over the age of 18 years living alone outside the UK in the most exceptional compassionate circumstances and mainly dependent financially on relatives settled in the UK.

In addition, the person had to be:

1. Financially wholly or mainly dependent on the UK sponsor
2. Accommodated by the sponsor in a home they owned or occupied exclusively without recourse to public funds
3. Maintained adequately by the sponsor without recourse to public funds and
4. Have no close relatives in own country to whom they could turn to for financial support.

The Rules also allowed people to obtain indefinite leave to remain (ILR) in this category without the need for entry clearance. Therefore, in-county applications could be made.

<sup>15</sup> Chikwamba v SSHD [2008] UKHL 40 para 4

<sup>16</sup> Statement of intent: Family Migration, June 2012, p.4b, available online at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257359/soi-fam-mig.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257359/soi-fam-mig.pdf)

<sup>17</sup> There are also provisions allowing parents or grandparents who have entered into second marriage to apply if they cannot look to the spouse/partner or children of the second marriage for financial support. In addition, where a couple travel together only one needed to be over 65 years.

Case law also established that third party support was acceptable and should be taken into account when assessing whether the applicant could be maintained in the UK without recourse to public funds.

Thus, the key requirements under the old rules for parents and grandparents were age, (unless there were exceptional compassionate circumstances) and financial dependence on the sponsor.

The rules also allowed children over 18, siblings, aunts and uncles to settle if there were exceptional compassionate circumstances and financial dependence on the UK sponsor. In the case of refugees, adult dependent relatives did not fall under the Family Reunion policy and at the discretion of the Secretary of State would be allowed to settle if there were compelling compassionate circumstances outside the immigration rules. Otherwise they would need to meet the requirement of rule 317, however, since 2005 refugees do not get ILR upon grant of refugee status, they get limited leave and have to wait 5 years before they can apply for ILR. Only upon receipt of ILR would they be deemed present and settled for the purpose of the rules.

### The Present Rules

The current rules for adult dependent relatives are to be found in Appendix FM of the Immigration Rules (HC 395) as amended by the Statement of Changes in Immigration Rules 194.<sup>18</sup> They came into force on 9th July 2012.<sup>19</sup>

These new rules apply to parents, grandparents, brothers, sisters, sons and daughters. Uncles and aunts are no longer considered dependent relatives for the purposes of the rules. The definition of the 'sponsor' has been widened to include those present and settled in the UK, refugees and those with humanitarian protection leave.<sup>20</sup>

The new rules no longer allow parents or grandparents with second marriages to apply.<sup>21</sup> If the parent or grandparent has a partner they must be applying for entry clearance at the same time.

The requirements to be met by somebody seeking indefinite leave to enter or remain in the UK are:

1. They are the parent, grandparent, brother, sister, son or daughter of the sponsor and over the age of 18 years.<sup>22</sup>
2. The applicant or applicant's partner (partner only applies to parents or grandparents applying together) must as a result of age, illness or disability require long-term personal care to perform everyday tasks.
3. The applicant or applicant's partner (partner only applies to parents or grandparents applying together) must be unable even with the practical and financial help of the sponsor to obtain the required level of care in the country where they are living because:
  - a. it is not available
  - b. and there is no person in that country who can reasonably provide it or
  - c. it is not affordable

<sup>18</sup> Immigration Rules Statement of Changes HC 194 13 June 2012

<sup>19</sup> There are some transitional provisions which can be found in Part 8 of the Immigration Rules

<sup>20</sup> Humanitarian protection is granted where a person does not qualify for refugee status but substantial grounds have been shown for believing that the person, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country. Those granted this leave also get 5 years after which they can be eligible to apply for ILR.

<sup>21</sup> The rules say "If the applicant is the sponsor's parent or grandparent they must not be in a subsisting relationship with a partner unless that partner is also the sponsor's parent or grandparent and is applying at the same time as the applicant." (This makes no provision for step parents or grandparents) Appendix FM E-ECDR 2.2

<sup>22</sup> The definition of parent includes step-mother or step-father of a child whose father or mother is dead and the reference to step-father/mother includes a relationship arising through civil partnership; it also includes the father or mother of an illegitimate child where he is proved to be the father; and it includes an adoptive parent; in the case of a child born in the UK who is not a British citizen a person to whom there has been a genuine transfer of parental responsibility on the grounds of the original parent(s) inability to care for the child.

In addition, the applicant must provide:

1. Evidence that they can be maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds
2. An undertaking signed by the sponsor confirming that the applicant will have no recourse to public funds and that the sponsor will be responsible for their maintenance, accommodation and care for 5 years from the date the applicant enters the UK.<sup>23</sup>

The applicant must also make an application for entry clearance from outside the UK (i.e. cannot switch to this category whilst in the UK unlike under the old rules) and must not fall foul of the suitability requirements. The suitability grounds are wide ranging and anybody subject to a deportation order or whose exclusion has been deemed conducive to the public will not meet the requirements, nor will anybody who has provided false information or failed to disclose a material fact in their application. In addition, the following are also grounds for not meeting the suitability requirement:

- Failing to attend an interview, provide information, physical data or to undergo a medical examination without a reasonable excuse
- Failing to pay charges in accordance with the NHS regulations on charges to overseas visitors which amount to at least £1000.
- A maintenance and accommodation undertaking has been requested or is required and has not been provided.

If the requirements of the Rules are met the applicant will be granted leave in line with the sponsor's leave. So where the sponsor is a British citizen or has ILR, the applicant will get ILR. Where the sponsor has refugee or humanitarian protection leave it will be in line with their leave and will expire at the same time. The adult dependent relative is able to extend their leave and apply for ILR in line with the sponsor.

There are transitional provisions in place dealing with the interplay of Part 8 and Appendix FM of the Immigration Rules. Rule 319V of Part 8 mirrors the old rule 317 and sets out the provisions for sponsoring a dependent relative. Rule 319V only applies to dependent relatives of refugees and beneficiaries of humanitarian leave and applies where an application was made before 9 July 2012 but has not been decided and to applications made by persons in the UK who have been granted entry clearance or limited leave to enter or remain under Part 8 prior to 9 July 2012 and still have that leave.

## THE NEW ADR RULES IN PRACTICE

The Immigration Directorate Instructions (IDIs) provide guidance<sup>24</sup> on the new ADR Rules, the evidentiary requirements under Appendix FM can be found in Appendix FM-SE, which is the specified evidence under the Rules and this states:

*"The applicant must as a result of age, illness or disability, require long term personal care: that is help performing everyday tasks, e.g. washing, dressing and cooking."*

The IDIs further explain that this could have been arrived at recently due to a serious accident resulting in long term incapacity or it could be a result of deterioration in the applicant's condition over several years. Medical evidence from a doctor or health professional confirming that the applicant's physical or mental condition means that they cannot perform everyday tasks is required. The Immigration Rules also give the Entry Clearance Officer the power to refer the applicant for medical examination and in addition to require that this be done by an approved doctor or health professional.<sup>25</sup>

*"The applicant must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living because it is not available and there is no person in that country who can reasonably provide it, or because it is not affordable."*

<sup>23</sup> Sponsors who are refugees or those with humanitarian protection leave are not required to give an undertaking but still must demonstrate that they can adequately maintain, accommodate and care for the applicant.

<sup>24</sup> This Guidance has effect from 13 December 2013

<sup>25</sup> Paragraph 36-39 of the Immigration Rules



Appendix FM-SE provides that there must be independent evidence of the above and should be from:

- a. a central or local health authority;
- b. a local authority; or
- c. a doctor or other health professional.<sup>26</sup>

Furthermore, if the applicant's required care has previously been provided through a private arrangement, the applicant must provide details of that arrangement and why it is no longer available.<sup>27</sup>

If the applicant's required level of care is not, or is no longer, affordable because payment previously made for arranging this care is no longer being made, the applicant must provide records of that payment and an explanation of why that payment cannot continue. In addition, if financial support has been provided by the sponsor or other close family in the UK, the applicant must provide an explanation of why this cannot continue or is no longer sufficient to enable the required level of care to be provided.<sup>28</sup>

It is interesting to note that the evidentiary rules do not assume that the UK sponsor should be providing for the care of their relative, the 'if' makes clear that an explanation is only needed where the sponsor was previously providing care. However, the Rules themselves do require 'practical and financial help from the sponsor'. It is clear from entry clearance decisions that entry clearance officers expect the sponsor to provide money for the dependent's care even if they have not been paying for it in the past. However, it would appear that if the sponsor has the level of finance to support their dependent in the UK and can give an undertaking to this effect for 5 years (unless a Refugee of someone with Humanitarian Protection) and they can show that the financial amount required to pay for care abroad exceeds what they have then it is not incumbent upon them under the Rules to actually pay towards the cost of care abroad.

The sponsor must show evidence of being able to support the applicant in the UK without recourse to public funds and evidence of adequate maintenance, accommodation and care in the UK for a period of 5 years.<sup>29</sup> 'Adequate' is not defined.

The IDIs specify the evidence required to demonstrate the above is as follows:

- Original bank statements covering the last 6 months
- Evidence of other income, pay slips, income from savings, shares, bonds etc covering the last 6 months. Note the word original is used for this.
- Information on outgoings, e.g. council tax, utility bills
- Information on support for anyone else who is dependent on the sponsor
- A copy of the mortgage or tenancy agreement showing ownership of occupation of the property in which the sponsor will live
- Planned care arrangements for the applicant, family members can contribute to this, but note below:
- The cost of the care arrangements, which must be met by the sponsor without undertakings of third party support.

We question the logic in allowing family members to contribute to the planned care arrangements for the elderly relative but not allowing them to contribute to the cost of this. When a family is jointly willing to provide care why should the burden only be on one member? This places an extra unnecessary financial burden on less well off families.

<sup>26</sup> Appendix FM-SE para 35

<sup>27</sup> Ibid. para 36

<sup>28</sup> Ibid. para 37

<sup>29</sup> The 5 year requirement does not apply to refugees or those with Humanitarian Protection. They only have to demonstrate that they can adequately maintain, accommodate and care for their relative without recourse to public funds.



## **CONCLUSION**

If a sponsor can provide a relative with the finances that will deliver the “required level of care” in the relative’s own country then the requirements of the Rules will not be met unless “long-term personal care” is not available and no one in the individual’s country can reasonably provide it. This is an extremely hard test to meet. If the sponsor has sufficient funds to look after their relative in the UK then it is hard to see how they wouldn’t be able to pay for some form of care abroad. A lot will turn on what ‘personal care’ means and whether this can only be provided by the family member in the UK.

The Government takes its responsibility to safeguard and promote the welfare of children very seriously, in line with existing legislation, case law, our public commitments and international obligations. The Government has a sustained track record of significant improvements in this area and has transformed its approach to children by ensuring that their best interests and human rights are fully protected whilst ensuring legitimate immigration functions are not compromised.

— **The Government Response to the First Report from the Joint Committee on Human Rights, Session 2013-14, Feb 2014**

It is easy to see that British naturalised immigrants are disproportionately affected and these [ADR] Rules have strong and obvious racist and xenophobic connotations. This is the price to pay for immigrating here. British citizens with relatives living outside of the UK are effectively being discriminated against for being British. All we want is to be treated fairly and equally. We do not want to be treated as second class citizens and the new immigration laws are a violation of basic human rights. This treatment may explain why some people, particularly young people from ethnic minority backgrounds, are increasingly becoming radicalised and disaffected with politics, politicians and unjust laws. These rules make naturalised citizens ashamed to be British. I don't see how driving people like us away will help the economy or the image of this country.

— **Written submission, affected individual**

The Government is fully committed to children's rights and the continued implementation of the UNCRC [UN Convention on the Rights of Children] to make the Convention a reality for all children and young people living in the UK.

— **Children and Families Bill 2013, 'Contextual Information and Responses to Pre-Legislative Scrutiny', February 2013, p.4**

Britain stands for democratic freedoms, universal human rights and the rule of law.

— **Minister of State Jeremy Browne, 'Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report', p. 8**

The Coalition Government is determined to enable all children and young people to succeed, no matter what their background. We want to give families freedom to manage the care of their children and balance their work and family needs effectively.

— **Children and Families Bill 2013, 'Contextual Information and Responses to Pre-Legislative Scrutiny', February 2013, Forward**

# 03

## COMPLIANCE OF RULES WITH NATIONAL AND INTERNATIONAL OBLIGATIONS

On 19th April 1990 the UK signed the United Nations Convention on the Rights of the Child (CRC) which grants all children and young people (under 17 years of age) a set of rights. The CRC codifies rights that can be found in various international documents and makes them applicable to children. The UK ratified this on 16th December 1991 and the CRC came into force on 15th January 1992.

Until 18th November 2008, the UK government had maintained a reservation to the CRC in respect of children subject to immigration control. This meant that the CRC did not apply to certain foreign national children in respect of matters of immigration control. However, this was withdrawn in 2008. Thus, all decisions relating to children, even those subject to immigration control, must be in accordance with the CRC and therefore all government immigration policies and practices must be compliant.

The withdrawal of the reservation paved the way for section 55 of the Borders, Citizenship and Immigration Act 2009. Section 55 creates a mandatory duty on immigration officials and others to safeguard and promote the welfare of (all) children in the UK as they carry out their functions. The duty is further articulated in the guidance issued at the time 'Every Child Matters: Change for Children.'<sup>30</sup>

The new Rules now allow refugees and those with humanitarian protection to also sponsor a dependent relative and it is the children of these groups who will have limited leave, but to whom the CRC and section 55 duty equally applies.

However, the vast majority of the children affected by the ADR rule are actually British citizens. In order to sponsor an elderly dependent the Rules require the sponsor to be British or settled for immigration purposes. Children of parents in these categories will be born British or will have the right to register in order to obtain British nationality. Yet the UK is failing to protect its own children by having scant regard for their welfare and best interests.

### UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

#### Article 2 (Non-discrimination):

*"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."*

The Convention applies to all children, whatever their race, religion, ethnic or social origin. No child should be treated unfairly on any basis. Rules that only apply to children from a migrant background and prevent them from enjoying family life with their grandparents prima facie breaches the non-discrimination provisions.

#### Article 3 (Best interests of the child):

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

<sup>30</sup> Every Child Matters: Change for Children, Department for Education and Skills (2004) <http://webarchive.nationalarchives.gov.uk/20130401151715/http://www.education.gov.uk/publications/eOrderingDownload/DFES10812004.pdf>

In the landmark case *ZH (Tanzania)*<sup>31</sup>, the UK Supreme Court considered the best interests of the child. Lady Hale held that:

*“it is clear from the recent jurisprudence that the Strasbourg Court will expect national authorities to apply article 3(1) of CRC and treat the best interests of a child as “a primary consideration”<sup>32</sup>.”*

Lady Hale went on to say that best interests “*must be considered first*”<sup>33</sup> before going on to consider what other factors, cumulatively, might act as countervailing considerations, for example the need to maintain firm and fair immigration control.

Lord Kerr held the following regarding the weight of best interests:

*“Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them ... the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child’s best interests should customarily dictate the outcome ... and it will require considerations of substantial moment to permit a different result.”<sup>34</sup>*

The best interests of children must be the primary concern when decisions are made that affect them. This particularly applies to policy and law makers. It is clear from the Impact Assessment produced by the Government prior to the change in the Family Migration rules, that consultation on the ADR Rule was limited and there was no consideration given to the possibility that the Rules might impact on children<sup>35</sup>. Our research shows a significant impact.

Depriving children from being able to interact with their grandparents in a meaningful way on a regular basis cannot be in their best interest. Our research shows that grandparents contribute significantly to a child’s life and enhance it. Children from a migrant background are being denied this regular interaction. Anxieties are mounted upon families resulting in stress which is passed on to the children. This is clear from the evidence obtained for this report from the Tavistock and Portman NHS Foundation Trust (the Expert Report)<sup>36</sup> and from the comments from parents and children alike. The impact on children and thereby their best interests have been overlooked completely in both the formation of these Rules and in their implementation.

#### **Article 4 (Protection of rights):**

*“States shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”*

Governments have a responsibility to take all available measures to make sure children’s rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children’s rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones. Creating laws that detrimentally impact on children from a migrant background in the interest of immigration control does not protect the rights of those children as spelt out in the Convention.

31 *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4

32 *Ibid.* Paragraph 25

33 *Ibid.* Paragraph 33

34 *Ibid.* Paragraph 46

35 ‘Changes to family migration rules: impact assessment’ (13 June 2012), part of ‘Family and private life immigration rule changes 9 July 2012’, available at: [www.gov.uk/government/publications/changes-to-family-migration-rules-impact-assessment](http://www.gov.uk/government/publications/changes-to-family-migration-rules-impact-assessment)

36 *The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust* (2014), For full report see Annex 1

The Expert Report shows that an environment where families are stressed is not a healthy environment for children. Children are impacted by stress. Stressed and worried parents cannot parent as well and stressed or upset children do not achieve their full potential. The Expert Report clearly demonstrates grandparents contribute positively to a child's development and in the case of migrant children this has a particular salience. Grandparents help form the child's sense of identity through a particularly poignant link with their cultural heritage and past and thus help the child reach their full potential.

**Article 8 ( Preservation of identity):**

*"States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference."*

It is arguable that helping to preserve and enhance a child's background and family relations help preserve a migrant child's sense of identity. The Expert report says grandparents allow migrant children 'to more fully integrate with British Society while maintaining a strong sense of cultural identity' (see Annex 1).

**Article 12 (child's opinion):**

*"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."*

It would be prudent in formulating rules on family migration if the views of the child were ascertained. As is clear from the countless letters and comments we have received children are greatly impacted by these Rules but their opinions and views have not been taken into consideration.

**Article 22 (Refugee children):**

*"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."*

Children have the right to special protection and help if they are refugees as well as all the rights in this Convention. This means that meaningful relationships with their grandparents should be allowed.

**Article 30 (Children of minorities/indigenous groups):**

*"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."*

Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

Again, intrinsic in this right is the recognition that the specific needs of children from a migrant background should be taken into account. The benefit grandparents can bring to a child from a migrant background in helping them understand their heritage, culture, roots and language are immense. This helps develop a child's sense of identity and is vital as they grow up to become fully integrated members of society with a holistic sense of their cultural origin as well as their British identity.

## ARTICLE 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Article 8 ECHR:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The right to family life enshrined in Article of 8 of the ECHR is a qualified right and thus does permit interferences with the right. The case of *Razgar v SSHD* [2004] UKHL 27, outlines the “five step approach that must be used in analysing Article 8 cases”. Having established that there is an interference with the right and that it is in accordance with the law, one needs to see if that interference has a legitimate aim. Immigration control has long been recognised as a legitimate aim as it relates to the economic wellbeing of the country. The question then becomes one of proportionality. Is the interference with the fundamental right of families to be together proportionate in a democratic society to the legitimate aim to be achieved?

There is a long line of established jurisprudence on Article 8 cases and it is beyond the scope of this report to analyse them. It is useful however to quote Lord Bingham in *Huang vs SSHD* “Human beings are social animals. They depend on others. Their family or extended family is the group on which most people heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant’s dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors will be relevant. The Strasbourg court has repeatedly recognised the general right of states to control the entry and residence of non-nationals, and repeatedly acknowledged that the convention confers no right on individuals or families to choose where they prefer to live...the crucial question is likely to be whether the interference (or lack of respect) complained of is proportionate to the legitimate end sought to be achieved.”<sup>37</sup>

### Economic Well-being and Proportionality Analysis

Whilst immigration control is a ‘justified interference’ and the state has a wide margin of discretion in applying such controls, in the case of the ADR Rules even prior to the rule changes the numbers of people settling in the UK has always been very small, averaging 0.5% of total net migration annually. We have also demonstrated in this report that migrants settling in this category are not a cost to the economy<sup>38</sup>. As this is the primary stated motivation behind these Rules we submit that the Government’s justification for changing the Rules is simply not met. We argue therefore, that when the full impact of the Rules are considered; the financial, emotional and social costs felt by UK residents as a result of separation from their elderly relatives outweigh any benefits of reduced migration, which is negligible in any event. Furthermore, the financial and social costs of highly skilled UK citizens and residents relocating abroad as a result of these Rules further undermine the Government’s stated intent of benefiting the tax payer. We call into question the proportionality of these Rules in relation to the Government’s commitments to Article 8 of the ECHR.

### SECTION 55 OF THE BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

Section 11 of the Children Act 2004 (the 2004 Act) places a duty on key people and bodies in England to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children.

The former UK Border Agency and now UK Visas and Immigration functions are not devolved, unlike those of the bodies listed in the 2004 Act, so in 2009 the Government chose to create a direct duty for border agency staff to safeguard and promote the welfare of children in the UK

37 Huang para 18

38 See section 6

and it appears in section 55 of the Borders, Citizenship and Immigration Act 2009 (section 55). The Guidance Every Child Matters (the 'Guidance') is issued under section 55 (3) and section 55 (5) which requires "any person exercising immigration, asylum, nationality and customs functions to have regard to the guidance. This means they must take this guidance into account and, if they decide to depart from it, have clear reasons for doing so."<sup>39</sup>

Safeguarding and promoting the welfare of children is defined in the guidance to section 11 of the 2004 Act as protecting children from maltreatment; preventing impairment of children's health or development, health has a broad meaning encompassing physical or mental health' and development means 'physical, intellectual, emotional, social or behavioural development' ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.<sup>40</sup> The Guidance also sets out the principles which must be adhered to and they are as follows:

- Every child matters even if they are someone subject to immigration control.
- In accordance with the UN Convention on the Rights of the Child the best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions affecting children.
- Ethnic identity, language, religion, faith, gender and disability are taken into account when working with a child and their family.
- Children should be consulted and the wishes and feelings of children taken into account wherever practicable when decisions affecting them are made, even though it will not always be possible to reach decisions with which the child will agree. In instances where parents and carers are present they will have primary responsibility for the children's concerns.
- Children should have their applications dealt with in a timely way and that minimises the uncertainty that they may experience.

The Guidance also specifies that entry clearance officials must have training on the importance of having regard to the welfare of children<sup>41</sup>. Whilst, this is in the context of children they may come into contact with abroad and to this extent the Guidance talks about embracing the 'spirit of the legislation' as it does not apply to children outside the UK, it is obviously highly relevant with regard to decision making where children are involved and impacted in the UK.

When making a decision on an ADR application the immigration official is not going to come into direct contact with children. However, where an application raises the relative's relationship with children in the UK this must be given due consideration and the best interests of the child must be assessed. This is an obligatory requirement but one which according to our data presented in the next section, is simply not being undertaken.

## **CONCLUSION**

We submit an analysis of the CRC and the section 55 duty demonstrates that the ADR Rules fall short of complying with either. It is clear that the formulation of these Rules did not take into account the impact they would have on children. However, as this report demonstrates children are significantly impacted and therefore these Rules need to be reevaluated taking into full account the obligation on the Government to protect and promote the best interests of all children in a holistic way that takes into account their ethnicity, language and culture.

<sup>39</sup> 'Every Child Matters Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children', UKBA & Department for Children, Schools and Families, November 2009

<sup>40</sup> Ibid p.6

<sup>41</sup> Ibid p.20



I have come across cases where I think the family would meet the requirements to sponsor their elderly relative, but even then they have been refused by the Home Office. Now I have meetings with a number of clients and advise them not to apply. Whenever I am approached by a potential client who wants to make an application under the ADR rules the first thing I say is that the threshold is very high. Most do not apply.

— Immigration solicitor based in London

I haven't taken on any [ADR cases] in the past year because they are impossible to meet the requirements. It would be completely unfair to charge and take their money, when I know they won't meet the requirements. I did do some ADR applications before the rule changes, maybe 2-3 a year, and they tended to be successful before.

— Immigration advisor,  
Surrey

I have not made any applications at all under the new rules. No one wants to risk losing their visitor's visa. I have daily enquiries. Some are now doing Surinder Singh. Under old rules I made many applications, perhaps 15 a year, maybe more. Now it is just too difficult to prove that care is not available in the country of origin. In my view, this is the most restrictive aspect of the rules.

— Immigration solicitor,  
more than 15 years experience, Wales

I haven't even bothered to make an application [under the new rules]. I have had a number of enquiries and spoken to people and asked for further evidence but I concluded that they would not meet the requirements so I advised them not to make an application. I would say that I have had at least 20-25 enquiries since the rule changes and that it a conservative estimate. No one has been advised to go ahead.

— Immigration solicitor,  
more than 15 years experience, London

I had a few cases since rule changes, all of them unsuccessful. Now as a rule I don't touch them.

— Immigration advisor, more than  
10 years experience, South England

I have had queries from people who want to apply for an ADR. Once they get advice they do not go ahead.

— Immigration caseworker, London



# 04

## DATA ON APPLICATIONS, REFUSALS AND APPEALS

We put a call out to legal practitioners to inform us of ADR applications they had made. We received responses from 80 law firms about their experience of making ADR applications under the new Rules. 63 firms had advised clients not to make an application, as they did not see any chance of success under the new rules. All 63 firms said most of their clients would have succeeded under the old rules. They also voiced concerns at the costs to the client at nearly £2000<sup>42</sup> for the application fee plus legal costs. Another factor was the refusal of a visitor's visa. Applicants who had applied for settlement under the ADR Rules and had failed stood a very high risk of being refused a future visitor's visa as immigration officials conclude that the applicant has already shown their desire to remain in the UK thus they have no incentive to return back home at the end of their visit visa. The Government has removed the right of appeal for family visa refusals. Thus elderly relatives are penalised severely if they apply for settlement and fail, which as we have seen from the data below is highly likely, because they lose the only option they have of coming to the UK to spend any time with their family.

We received information on 51 applications which had been made by lawyers and individuals directly. 50 of these were refused by Entry Clearance Officers. We have heard of one successful application but have not seen the grant letter.

In addition, 3 further applications were made in-country. These were refused as would be expected, but later 2 were successful on appeal under Article 8 ECHR. The vast majority (79%) of lawyers had advised clients not to apply under the new Rules.

We were sent 22 refusal letters.

In 15 cases the applicant appealed the decision, including two of the three in-country applications. In both of these applications from within the UK the applicant succeeded under Article 8 ECHR. In the first case the judge said the circumstances were so compelling that 'but for' the fact that the applicant was in the UK the application would have been allowed under the Rules. A further case failed under the Rules but also succeeded under Article 8 ECHR.

In one case, the appeal failed the first time (at the First Tier Tribunal) but on appeal to the Upper Tribunal, the applicant was granted leave under the Rules as well as under Article 8 ECHR.

In total 4 applications were allowed on appeal, but 3 on Article 8 grounds as the Rules were almost impossible to meet.

Out of the 22 refusal letter we received, the applicants had grandchildren in 12 cases. Thus almost 55% of the cases we analysed included grandchildren.

One sponsor has told us of the immense anguish caused to her teenage daughter when her mother lost her ADR appeal. *"She cries at night, her marks have dropped and she has had to see the school counsellor."* She further explains the bond between her mother and daughter is very strong. *"Her grandmother raised her. For seven years she saw her every day and when I was away she lived with her for 9 months."*

When asked why any of this detail was not in her mother's application, she looked bemused and replied, *"that is not what the rules asked us, I didn't think they [the Entry Clearance Officer] wanted to know."*

Another respondent told us *“the bond between family members is obvious... if I didn't love my father and if my children didn't love their grandfather why would we want him to live with us? The Rules ask about his health and my money...it never occurred to me that they would care how I felt or how my children felt.”*

However, out of those 12 cases only 4 applicants mentioned their grandchildren when completing the application form. The general explanation given by those who did not mention their grandchildren at the outset was that the application form and Rules asked them to address their health, financial situation, accommodation and care in the UK. They conceded that there was a section to provide 'any additional information', but did not think their relationship with their grandchildren would be relevant to the evidence they had to provide as this is not what the Rules asked for and the guidance to the form made it clear that the requirement was to provide medical and financial evidence.

In all applications where grandchildren were mentioned on the form, the entry clearance officer and entry clearance manager did not engage with this fact in any way. Whilst it is fair to say that an immigration officer is not looking for evidence on children when deciding an ADR application, it is also correct to say that there is a legal obligation upon them to consider any potential impact upon children should they be mentioned.

On appeal where applicants obtained legal representatives and provided detailed statements, grandchildren were mentioned in 9 out of 12 cases (75% of cases). However, none of the reviews conducted by entry clearance managers prior to the appeals addressed the section 55 duty. The children were simply not mentioned or referred to by entry clearance staff at any level.

During the appeals hearings 7 out of 9 judges referred to the section 55 duty, but the child's best interest were dealt with in varying levels of detail. Usually, whilst the applicable law was spelt out there was little engagement with the facts or any understanding of the potential impact on children of being deprived of a meaningful relationship with their grandparent. Only in one case was there a detailed analysis of the law and engagement with the facts. In this case though a social worker had provided a report outlining the harm that would face the children if the grandparents, who were joint primary carers, were forced to leave. It is of course correct that if evidence is not before a judge it cannot be evaluated. However, judges can ask relevant questions to elicit further information which was indeed done on the financial requirements and the nature of the applicant's medical condition.

Unfortunately, in two cases judges mentioned the existence of the grandchildren but did not engage with the section 55 duty at all.

## **CONCLUSION**

79% of lawyers we contacted informed us they are advising clients not to make applications because they do stand a chance of meeting the very restrictive criteria of the Rules, most of these client would have been granted settlement under the old criteria. The application process is very costly and the family risk being able to enjoy any form of family life in the UK however temporary, by being refused a visitor's visa. This is because once a person applies for settlement and is refused, it becomes almost impossible for them to demonstrate that they do not intend to settle in the UK and will return home after their visit. The right to appeal this decision has also been simultaneously taken away. This is a double jeopardy for families.

An applicant's UK based grandchildren have not been seen as a relevant consideration in the formulation of these Rules and therefore do not feature in the application process. However, where children are mentioned it is incumbent upon immigration officers to consider their interests and not ignore their existence as a mere irrelevancy to these Rules. Yet the section 55 duty was not addressed in any of the cases we saw.

Out of 50 applications only 1 was successful at entry clearance. 3 out of 4 successful appeals were allowed under Article 8 ECHR and/or on the best interests of the child, as the ADR Rules were impossible to meet.

## CASE STUDIES

We provide two examples of cases that would have succeeded under the old rules but do not meet the new Rules and demonstrate the complete disregard for the best interests of the child.

We were sent two decisions, both refusals, which were decided after the rule changes and therefore under the new Rules, despite the fact that the applications were made before 9th July 2012. In both of these cases there were compliance formalities and by the time they were resolved the Family Migration rules had changed. In both cases the applicants would have satisfied the old rules and would have been granted leave to remain as they could show age and financial dependency on their sponsor, as well as demonstrate that their sponsor could accommodate and maintain them without recourse to public funds.

Both cases also demonstrate not only the harshness of the new Rules but also the fact that the immigration officials completely disregard the section 55 duty even in cases where the grandparents are joint primary carers of the children. Given the legal obligation to safeguard and promote the welfare of children and to take their best interests into account and for immigration officials to give an explanation if they depart from the stated Guidance, this is a prima facie disregard of their legal duty when making decisions involving children.

### Case Study 1

A settlement application under the ADR Rules was made by a 68 year old Jamaican lady who had been living in the UK for 12 years with her daughter and grandchildren. The applicant demonstrated she was financially dependent on her daughter and that she had a very close relationship with her grandchildren and was involved in their day to day care. She explained that there would be a devastating impact on the children if she was forced to leave and return to Jamaica. She also provided medical evidence which demonstrated her own increasing ill health and need for care from her daughter. Her relationship with her daughter was a relationship of mutual support.

At the time of the application, the Home Office were unable to cash her application fee cheque, despite there being sufficient funds in her account. The applicant's solicitors wrote to the Home Office with confirmation from the bank that there been an administrative error on their part and there had been sufficient funds in the applicant's account. They asked for her application to be considered under the old rules. This was refused. Instead when the refusal decision was sent in July 2013, after the rule changes, the applicant's settlement application was not considered under the new ADR Rules but rather under the amended rules on Article 8 ECHR and specifically the requirements for private life under Article 8 ECHR enshrined in Rule 276ADE of the new Immigration Rules. This is because she had made the application in-country and the new Rules now prevent this. The requirement under 276ADE is that an applicant is over 18 years of age and must have lived continuously in the UK for at least 20 years. The applicant had been in the UK for 12 not 20 years. There was no further consideration of her right to family life, nor any reference to the children and their best interests. A right of appeal was not given.

The applicant's solicitors wrote back in July 2013 asking for reconsideration of the decision and outlined the applicant's relationship with her grandchildren again. Six months later in January 2014 they received a letter from Capita Business Services on behalf of the Home Office rejecting the request on the basis that there was no new evidence. There was no substantive engagement with the applicant's case despite the fact that the applicant's relationship with her daughter and grandchildren was central to her application there was no consideration of Article 8 of the ECHR or section 55. Consideration of Article 8 as formulated in the Immigration Rules was deemed sufficient.

## Case Study 2

This is a tragic case where an elderly couple's son committed suicide in their home country in 2009. This tragedy led to both parents becoming suicidal and attempting a failed suicide pact. They became very depressed and were unable to care for themselves. A few months later they visited the UK to be with their only remaining son and his then pregnant wife. They arrived on the same day their granddaughter was born. After a few months in 2010 they returned home and shortly planned another trip. Their condition deteriorated every time they returned home and were away from their family in the UK especially their granddaughter. In 2011, their son and his wife visited his parents and decided at great personal cost to leave their baby daughter with them on the basis that her presence would give them something to live for. Later that year the elderly couple visited the UK again with the baby and stayed for 4 months. Although looking after their granddaughter really helped their mental wellbeing and gave them a reason to continue living, their son and daughter-in-law were suffering from being apart from their daughter. It was causing considerable strife within their marriage too.

The elderly couple returned home and visited the UK again a few months later in 2012. However, this time their daughter-in-law could not bear to part with her daughter and it was decided that the family would make an application for the parents to settle with them in the UK so all three generations could live together and the parents and grandparents could care for the child jointly. Although the application was submitted before the rules changed, it was returned just after on the basis of non-compliance. The Home Office refused to consider the resubmitted application under the old rules and in August 2012 the applicants made a further application outside of the Immigration Rules fully detailing the family's circumstances and the involvement the grandparents had with the child and the impact this was having on the child's own parents. Despite this, the Home Office refusal letter, which was unusually 9 paragraphs long and acknowledged the tragedy, did not even acknowledge the child let alone undertaking an assessment of her best interests.

At the appeal a social worker produced a report referring to the 8 months the little girl had exclusively spent with her grandparents and the extremely close bond that developed between them as her primary carers. There was further evidence that the son would leave the UK and go back with his parents should they not succeed in obtaining leave to remain in the UK as they could not cope on their own.

The consequences of this on the children<sup>43</sup>, according to the social worker was that they would lose two primary carers and their father from their daily lives and he maintained that the separation would result in "significant harm" to the children. In addition, the solace the grandchildren gave the couple was also abundantly clear and the social worker and medical reports confirmed the risks to their mental health should they be forced to leave their grandchildren behind. The appeal judge considered it was in the best interests of the children to remain with their grandparents who should be allowed to live as part of the family unit in the UK. The appeal was allowed under Article 8 ECHR. The Home Office appealed this decision but lost again in the Upper Tribunal.

<sup>43</sup> A second grandchild has been born whilst the couple has been in the UK and they were involved in looking after both grandchildren.

## CONCLUSION

National and international law puts the best interests of children at the forefront of any decision concerning them. The duty is unequivocal and legally obligatory on law-makers, immigration officials and the judiciary. The duty requires the child's welfare to be looked at holistically taking into account their development mentally, intellectually, emotionally, socially and behaviourally. This must be done with due regard to their ethnicity and cultural background. Indeed, this duty that emanates from the CRC is explicitly spelt out in the section 55 Guidance<sup>44</sup>.

Alarming, in the cases we reviewed we did not find a single case in which this duty had been considered either at entry clearance level or on a review by an entry clearance manager. Judges dealt with the duty with varying degrees of competence some not actually engaging with the full facts.

Many people however did not mention their grandchildren in their applications and this was due to the fact that all applicants we spoke to thought this would be an irrelevant factor as it was not what the Rules asked for. The Rules of course are deemed to be Article 8 ECHR and section 55 compliant, however, we submit they fall short of this.

We conclude that if the best interests of the child is to be a genuine consideration that is given effect to, then the Rules must reflect this. The visa application form and guidance should specifically ask if the applicant has grandchildren in the UK and the nature of their relationship with them. All officials working in immigration and asylum law need further training on the section 55 duty and the Secretary of State needs to ensure that policies are in place to ensure implementation by officials. This is lacking at present.

In addition, the Rules themselves need to be reviewed in light of the body of evidence "of the positive and encompassing impact"<sup>45</sup> on child development from grandparental involvement. It is incumbent upon the Secretary of State and Parliament to ensure that when it becomes apparent that legislation does significantly impact upon children, they need to review that legislation in light of this evidence. Appropriate safeguards must be put in place or legislation must be amended to avoid contravention of domestic and international law and to give genuine primacy to the best interests of children.

<sup>44</sup> 'Every Child Matters Change for Children', UKBA & Department for Children, Schools and Families, November 2009

<sup>45</sup> The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), For full report see Annex 1 p.12

Though we are British citizens we are still treated differently from others, an undertone of second class citizens. This draconian law is inhumane and unjust. Especially if you consider that someone is denying one of the very basic and fundamental human rights that anybody can ask for, let alone a British citizen! This rule is outright wrong. The government, just to achieve their numbers, are potentially disregarding the core, fundamental value that I thought Great Britain stood for when I first came to this country... As a naturalised British Citizen I would be ashamed if this law is allowed to carry on in the name of immigration control. I will lose faith in humanity and politics. If this is truly allowed to continue I will pack up and leave, if that is what the ulterior motive is for law makers.

— **Written submission, affected individual, 3 year old son, parents in India**

If our concern is to create a culture in which the aged are respected, I should have thought that letting people bring in their parents and grandparents would be ideal. It sets an example to their children and to wider society and helps shift the culture in which the old are seen as a liability or burden.

— **Lord Parekh** <sup>46</sup>

The Government stresses the importance of family values, but what values and for which families? My family is discriminated against. My father has to live alone, even though I want to look after him, without his children or grandchildren, not in a care home hundreds of miles away but in another country thousands of miles away.

— **Written submission, affected individual, 7 & 9 year old boy and girl, parent in Sri Lanka**

Families are an easy target. They are not big companies whose voice politicians hear when tightening of immigration for skilled migrants proves bad for business. They are not universities who have the power to lobby the government when the very significant financial threat to our economy from the government's treatment of international student comes to the fore. Families do not have limitless funds to fight the Home Office for their rights. It is therefore even more imperative that those in a position of responsibility are fair in their treatment to this vulnerable group.

— **Sonel Mehta, BritCits**

# 05

# GOVERNMENT'S POSITION ON FAMILIES

## Conservative party manifesto 2010:

*“Strong families are the bedrock of a strong society. They provide the stability and love we need to flourish as human beings. And the relationships they foster are the foundations on which society is built. **We strongly value the role older people in families and in society. Britain’s families will get our full backing across all our policies...** We will support families to stay together.”<sup>47</sup>*

## Liberal Democrat manifesto 2010:

*“In Britain today, families come in all shapes and sizes. Liberal Democrats believe every family should get the support it needs to thrive, from help with childcare through to better support for carers and elderly parents... **the way older people are treated is the mark of a fair society.**”<sup>48</sup>*

## Labour Party manifesto 2010:

*“Strong families are the bedrock of our society. Secure and stable relationships between parents, their children, grandparents and other family members are the foundation on which strong communities are built.”<sup>49</sup>*

Labour’s manifesto goes further to recognise the role played by grandparents “we will ensure that the right to flexible working is extended for older people, recognising that many, including grandparents, want to vary their hours to the benefit of their families and to accommodate changing lifestyles” and “Parents who are able to call on grandparents to help with childcare, or during emergencies, know how essential their support is to a strong family life”<sup>50</sup>

## Coalition government’s manifesto 2010:

*“The Government believes that strong and stable families of all kinds are the bedrock of a strong and stable society. That is why we need to make our society more family friendly...”<sup>51</sup>*

All political parties stress the importance of families. In 2010, in their election manifestos the Conservative Party and the Liberal Democrats made statements on the importance of strong families and the need to protect them. The Labour party shared the same view. The Immigration Rules on family migration changed in 2012 after the coalition government came into power.

More recently, Jeremy Hunt, the Secretary of State for Health, and Simon Hughes, the Liberal Democrat Justice Minister, have made vocal their view on how the British public should take responsibility for the welfare of their elderly relatives, learning from the example set in other countries.

*“In those countries, when living alone is no longer possible, residential care is a last rather than a first option. And the social contract is stronger because, as children see how their own grandparents are looked after, they develop higher expectations of how they too will be treated when they get old.”<sup>52</sup>*

— Jeremy Hunt

47 ‘Invitation to Join the Government of Britain, The Conservative Party Manifesto’, 2010, pp. 41, 42 & 6

48 ‘Liberal Democrat Manifesto’, 2010 p.49 & 52

49 ‘A Future Fair for All, Labour Party Manifesto’, 2010, p.6.3

50 Ibid p.6.4

51 ‘The Coalition: Our Program for Government’, HM Government, May 2010, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/78977/coalition\\_programme\\_for\\_government.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf)

52 Martin, D., ‘Britain Should be Ashamed of How it Treats Elderly: Health Secretary Jeremy Hunt Condemns Elderly Neglect’, Mail Online, (17 October 2013), available at: [www.dailymail.co.uk/news/article-2465576/Health-Secretary-Jeremy-Hunt-condemns-elderly-neglect.html](http://www.dailymail.co.uk/news/article-2465576/Health-Secretary-Jeremy-Hunt-condemns-elderly-neglect.html)



Simon Hughes has also urged British citizens to follow the example of migrants and take greater responsibility for elderly relations.

*"...to learn better the lessons of many other cultures and communities, of which the Asian and African communities are noticeable. They understand the obligation to look after your family to the end."<sup>53</sup>*

— **Simon Hughes**

He further warned of the elderly being neglected, with their experiencing a much less happy ending to their lives than deserved, by being forced into care homes.

General Election manifestos for the 2015 elections have not yet been produced. However, the Liberal Democrat Policy paper 116<sup>54</sup> states that, "migrants bringing elderly relatives to the country should be allowed to do so where they are able to maintain and accommodate them without recourse to public funds."<sup>55</sup> They explain this means 'simpler rules' but to ensure there is no burden on the taxpayer they propose a health levy. Despite being in Government, their policy paper clearly demonstrates that the party agrees that the ADR Rules are too onerous.

## CONCLUSION

The ADR Rules make a mockery of the Coalition Government's single and joint election manifestos. It is evident from the Rules that Britain's families have not got the Government's backing "across all their policies". Instead, the Government has created a two-tier society in which British families from a migrant background are now virtually prevented from looking after their elderly parents or maintaining meaningful family ties. They do not get the benefit and support of having their parents on hand to help, guide and assist if and when they have children. British children from a migrant background are unable to benefit from family ties with their grandparents and those grandparents miss out on regular interaction with their grandchildren.

The pledges to families seem hollow in light of the fact that the ADR Rules actively keep family apart. The Government has thus far refused to entertain any modification to these Rules, despite several debates in both Houses of Parliament.

53 Swinford, S., 'Britain should learn from Asian and African immigrants about caring for elderly, says minister', The Telegraph, 21 April 2014, available at: [www.telegraph.co.uk/health/elderhealth/10775465/Britain-should-learn-from-Asian-and-African-immigrants-about-caring-for-elderly-says-minister.html](http://www.telegraph.co.uk/health/elderhealth/10775465/Britain-should-learn-from-Asian-and-African-immigrants-about-caring-for-elderly-says-minister.html)

54 'Making Migration Work for Britain: For a Stronger Economy and a Fairer Society', Policy Paper 116, Liberal Democrats, Spring Conference 2014

55 Ibid 4.3.12





To all intents and purposes the adult dependent relative route has been closed: people have to be able to prove in this country that they have so much money, they can care for those dependents; in which case, people should care for them in the country in which the dependents live, unless they are so ill that they cannot stay there, in which case they probably could not travel anyway.”<sup>56</sup>

— **Chris Bryant, Shadow Minister for Welfare Reform**

It is not just a question of physical care, which a sibling or nurse can provide; it is about emotional reassurance and support during the last days of one’s parents or grandparents, which only you can provide. Thirdly, people would leave the country if confronted with the choice of either going to their countries of origin to look after their parents or staying here Lord Parekh

— **Lord Parekh**<sup>57</sup>

We all know, in our own families, how important grandparents are to the operation of the family, enabling mothers to work and running children to school and to their activities. Grandparents have a crucial part to play in the success of the family as part of society. It is shooting ourselves in the foot to say that we want people who are entitled to come through our immigration system, and to welcome them so long as they are making a full, positive contribution to our society, but then to deny those very aspects of life which will enable them to maximise their performance. It just does not make sense.

— **Lord Judd**<sup>58</sup>

It could be argued that there is a dichotomy here between an immigration policy that is designed to limit numbers and reduce net migration and the maintenance of family structures.

— **Lord Taylor of Holbeach**<sup>59</sup>

Given that my in-laws would not draw from the state at all and have the potential to contribute to the UK, it seems spiteful and unfair they are precluded from joining their immediate (and only) family members in the UK, where there would be clear emotional and financial benefits to my family at no cost to the Government... the new restrictions are profoundly unfair across a broad spectrum of circumstances.

— **Written submission, British citizen, 3 children, mother-in-law in Russia**

Though we are British citizens we are still treated differently from others, an undertone of second class citizens. This draconian law is inhumane and unjust. Especially if you consider that someone is denying one of the very basic and fundamental human rights that anybody can ask for, let alone a british citizen! This rule is outright wrong. The government just to achieve their numbers, are potentially disregarding the core, fundamental value that I thought Great Britain stood for when I first came to this country...As a naturalised British Citizen I would be ashamed if this law is allowed to continue I will pack up and leave, if that is what he ulterior motive is for law makers.

— **Written submission, affected individual, 3 year old, parents in India.**

<sup>56</sup> Hansard 19 Jun 2013 : Column 274

<sup>57</sup> Hansard 4 July 2013 : Column 1388

<sup>58</sup> Hansard 4 July 2013 : Column 1393

<sup>59</sup> Hansard: 4 July 2013 : Column 1406

# 06

# GOVERNMENT'S JUSTIFICATION FOR THE ADR RULES

## CONSULTATION PROCESS

The Home Office conducted a consultation on changes to the Family Migration rules from 13 July to 6 October 2011. The consultation received 4,950 responses from 3,130 individuals and 243 organisations<sup>60</sup>. 96 responses were in narrative form and were not included. Of the individuals who applied, mainly through an online questionnaire, 67% described themselves as 'white'.

On ADR the following questions were asked and responses received, which are relevant for our discussion of the consultation and subsequent impact assessment of the proposals:<sup>61</sup>

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	Yes	No	No opinion
<b>Should we prevent family visitors switching into the family route as a dependent relative while in the UK?</b>	54%	39%	7%
<b>Should there be a minimum income threshold for sponsoring other family members coming to the UK?</b>	55%	40%	4%
<b>Should adult dependants and dependants aged 65 or over complete a 5-year probationary period before they can apply for settlement (permanent residence) in the UK?</b>	47%	49%	5%
<b>Should we look at whether there are ways of parents or grandparents aged 65 or over being supported by their relative in the UK short of them settling here?</b>	42%	42%	16%

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None of the consultation questions put forward by the Government suggested altering the definition of dependency in the case of adult relatives. There was also no suggestion of a family member requiring long-term personal care before being allowed to apply to join their UK based family member.<sup>62</sup> This is the most significant change in the Rules, yet it was not proposed or subject to consultation.

The final question cited above was ambiguous as the consultation response interprets this to mean providing for care overseas, but the question is asking about alternatives to permanent settlement in the UK. There was an equal split of answers, however 62% of organisations disagreed. Not allowing settlement was viewed by many as "impractical and inhumane", as well as hindering integration.<sup>63</sup>

<sup>60</sup> 'Response to Family Migration consultation' (11 June 2012), part of 'Family and private life immigration rule changes 9 July 2012', available at: <https://www.gov.uk/government/consultations/family-migration-consultation>

<sup>61</sup> Ibid. Annex C

<sup>62</sup> Ibid. Annex A

<sup>63</sup> Ibid. 5.3

## IMPACT ASSESSMENT

Following the consultation and Impact Assessment was published by the Home Office on 12 June 2012.<sup>64</sup> The policy objectives of the changes to the Family Migration rules were outlined in this document as follows:

### Policy objectives

- Reduce Burden on Taxpayers;
- Promote Integration;
- Prevent and Tackle Abuse; and
- Contribute to Reducing Net Migration<sup>65</sup>

Statements made by the various immigration ministers and the Home Secretary reaffirm the pursuit of the above objectives:

*"The Government implemented new family immigration rules on 9 July this year. These tackle the abuse of immigration based on sham marriages, ensure that family migrants do not become a burden on the taxpayer and promote the integration of family migrants in British society."*

— Mark Harper<sup>66</sup>

*"This is not just about numbers; it is also about ensuring that people are able to integrate and participate fully in British society."*

—Theresa May<sup>67</sup>

In response to the government being questioned as to what actions it was taking to reduce net migration, Mark Harper stated "In just over two years this Government have reformed every route of entry to the UK for non-EEA migrants. We have increased the skill level required to come for work, tackled abuse in the student sector and stopped family migrants who cannot financially support themselves coming to the country."<sup>68</sup>

We tackle each of these objectives in turn to show how preventing adult dependent relatives of British citizens and residents does not meet the government's aims.

## 1. REDUCE BURDEN ON TAXPAYERS

Theresa May: It has been *"too easy for elderly dependent relatives to join their migrant children here and then potentially become a burden on the taxpayer. Therefore, if someone wants to sponsor a dependent relative to come to Britain who requires personal care, they will have to show, first, that they cannot organise care in the relative's home country and, secondly, that they can look after the relative without recourse to public funds."*<sup>69</sup>

The ADR Rules are a disproportionate response by the Government to achieve their stated aim of reducing the burden on the taxpayer, for several reasons. Under the previous rules, as now the sponsor was requested to sign a 5-year undertaking that the dependant will be maintained and accommodated without recourse to public funds, with the effect that the dependant is excluded from access to public funds. This has not changed. The Government accepts that there will be "no impact on change of welfare benefits."<sup>70</sup> Therefore, the only burden to the taxpayer could potentially come from the elderly relatives requiring NHS medical treatment, which they can still do under the new Rules as they obtain indefinite leave to remain upon being granted a visa.

64 'Changes to family migration rules: impact assessment' (13 June 2012), part of 'Family and private life immigration rule changes 9 July 2012', available at: <https://www.gov.uk/government/publications/changes-to-family-migration-rules-impact-assessment>

65 Ibid. p. 1

66 Hansard 15 October 2012: Col. 1

67 Hansard 11 July 2012: Col. 54

68 Hansard 15 October 2012 Col 90W.

69 Hansard 11 July 2012: Col 48

70 'Changes to family migration rules: impact assessment' (13 June 2012), part of 'Family and private life immigration rule changes 9 July 2012', p. 34, available at: [www.gov.uk/government/publications/changes-to-family-migration-rules-impact-assessment](http://www.gov.uk/government/publications/changes-to-family-migration-rules-impact-assessment)

The cost benefit analysis in Government’s Impact Assessment primarily focuses on partners coming to the UK. In addition, it is clear that the financial benefits of changes to the ADR Rules are barely outweighed by the costs. The Impact Assessment suggests that the new Rules will reduce health costs by an estimated £23 million over 10 years. However, this is offset by their own findings that there will consequently be a reduction in income to the Home Office from a reduced volume of applications, also estimated at £23 million.

However, the Impact Assessment manages to show net monetary benefit of £10 million over 10 years<sup>71</sup> from the changes to the ADR Rules. This is based on reduced in-country casework costs £6 million (as people are no longer permitted to switch whilst in the UK to this category) and increased fee income of £6million from overseas posts together with increased overseas processing costs of £2 million. However, in country applications also have a fee and the loss of this revenue does not appear to have been taken into account in the calculation.

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### Summary Costs and Benefits of proposal 2.4

	10 year impact (£m)
<b>Costs</b>	
1. Increase in casework costs	£2
2. Reduction in UKBA fee income	£23
<b>Total Costs</b>	<b>£24</b>
<b>Benefits</b>	
1. Reduced ILE and LRT casework costs	£6
2. Increased UKBA fee income	£6
3. Reduced welfare benefit costs	£0
4. Reduction in health costs	£23
<b>Total Benefits</b>	<b>£35</b>
<b>Net Impact</b>	<b>£10</b>

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In any event, even on the basis of the potential one million pound annual revenue, there appears to be no basis for a claim that the elderly dependent relative poses a significant burden on the taxpayer.

### Families Willing to Pay for Private Healthcare

Our research also shows that when asked if the UK sponsor would be willing to pay for privately for the NHS or obtain private health insurance, every respondent said yes without hesitation. Sponsors said they would be willing to pay a ‘financial bond’, health levy or take out private health insurance in order to secure a settlement visa for their elderly relative and to demonstrate they would not rely on state health and social care in any way.

*“I just don’t want my mother to spend her last remaining years completely alone. She needs to be with me and her grandchildren. Soon they may never get an opportunity to get to know their grandmother. I want the Government to tell me what I need to do to show them that she is not going to be a burden on the state. I have already signed an undertaking for 5 years, shall I get private medical insurance? Deposit some money in their account? I’ll do whatever it takes... my mother needs her family around her before she dies...”*

– Interviewee, mother living in Sri Lanka

*“I am willing to take any tests, I am willing to pay, to do any community service, everything for an opportunity to live with my elderly parents in the UK. By applying for a dependant adult settlement visa I am not asking for anything but for a chance to love and care for my parents. It is the human nature; when children are small they are looked after*

*by their parents and in return children have to look after parents when they need help and for elderly people the biggest help is love and care of their children.”*

– **Interviewee, parents living in Ukraine**

*“As a society, the UK government wants children to take on their care of their British parents so that they are not a burden on the state and to reverse the trend of the last generation. I am trying to do exactly this.”*

– **Written submission, affected individual, parents living in Pakistan**

Indeed, evidence shows that the majority of those wanting to avail the ADR Rules for their relative are financially independent and not reliant on the state. In any event, all have to be able to financially maintain and accommodate their relative without recourse to public funds. But the Rules prevent most people applying irrespective of their income or wealth.

*“As a consequence of the new requirements, should the sponsor earn a reasonable salary, they can afford to pay for care in their parent’s country of residence. If the sponsor does not earn a reasonable salary, they will not be able to prove that they can support their elderly parent without recourse to public funds. So, regardless of your personal financial circumstances, it is unlikely that you will be able to bring your elderly parent over to live with you in the UK. This means that even in cases where relatives can afford to pay for private healthcare and have enough savings to live on, thus not needing government benefits, they would still not be able to stay in Britain.”*

– **Affected individual, mother-in-law living in Jamaica**

### **Costs of Relocation**

*“My career doesn’t really exist in Pakistan. What I do is very skilled so there would be a huge impact on my company as well if I had to move from the UK and leave my job. I don’t know what job I would have in Pakistan.”*

– **Interviewee, working in the Pharmaceutical Industry, parents living in Pakistan**

No mention is made in the Impact Assessment of the costs that would be incurred due to the relocation of skilled individuals from shortage occupations as a result of no longer being able to sponsor their elderly relatives to come to the UK.

Evidence submitted by the BMA also indicates these rules are most detrimental to people with professional medical skills which are in shortage in the UK. They tend to be net contributors to the economy. If their elderly relatives are prevented from living with them in the UK, our evidence has shown these individuals will move to a country where they can fulfil their responsibilities.

*“My parents are getting older and being able to bring them to UK is an issue I face. I am seriously considering relocating to another county, where I can bring and look after my parents when they need, as they did for me when I needed.”*

– **Written response, Consultant NHS Surgeon**

*“I have been trained in the UK and I am now working as a consultant. Given my 12 years of service to the NHS, I never sought any state support but feel cheated by the HM Government. We have to let down our own parents, despite the fact that we support and look after elderly citizens of this country to best of our ability. I am the only surviving child of my parents and now they are getting old. [I am] constantly worried that I would not be there in their hour of need. I am seriously considering alternatives to seek employment somewhere else where I can take my parents with me as in coming years they would need my support and my kids would like to benefit from company and wisdom of their grandparents.”*

– **Written response**

In addition, the number of people entering under this category has always been very low.<sup>72</sup> Since the rule changes these relatively low numbers have fallen significantly. A freedom of

information request has revealed that between 1 November 2012 and 30 September 2013, only 34 ADR grants of settlement were issued.<sup>73</sup>

There is also a significant financial argument against these Rules. There is an impact on less well off families who are not able to afford childcare and thus have a single income family. Unlike their indigenous counterparts they are unable to avail of the help of grandparents who are prohibited from entering the UK unless in need of day to day care themselves. This limits the family's chances of improving their financial situation, which has an impact on the children and also impacts the family's contribution to the exchequer and society as a whole. In addition, our research clearly identifies well off professionals are considering relocating in order to be able to care for their elderly abroad.

*"I know my parents will be refused if I apply. I am very scared. It would be better if my parents were here then I can support everybody. With their help looking after my boys, I can both work and look after them in their old age... The impact is that I might resign, and if I have to leave my job, this would be my first time to be a burden to the government and to ask for benefits... I lost my husband and I have 2 small boys to look after. If I don't work what will happen to us? It's not just about my parents, it's about all of us, about our position as British Citizens. If they give my parents to me I can work and provide security for my two boys. They must consider my situation, they need to be compassionate and not to put us in an even more difficult situation. My parents can help me and I can help them and I do not want help from any else."*

– Interviewee, 2 sons aged 8 and 10, parents living in the Philippines

The old ADR rules did not place a burden on the tax payer as is acknowledged in the Impact Assessment. The cost to the NHS appears equal to the revenue from visa application fees thus cancelling each other out. In any event, most sponsors are willing to pay for health services. The old ADR rules did not contravene the purported fiscal rationale of the new policy and therefore there is no justification for rule change. Introducing these new Rules is a disproportionate response by the Government to achieve its stated aim of saving the taxpayer money in light of its own financial evidence.

## 2. TO PROMOTE INTEGRATION

*"To play a full part in British life, family migrants must be able to integrate – that means they must speak our language and pay their way. This is fair to applicants, but also fair to the public."*

– Mark Harper<sup>74</sup>

The ADR settlement visa does not require the applicant to take an English language test. The old rules have also established clearly that the family members of the applicant are to support them financially. Thus, the premises of integration as defined by the Government "speak our language" and "pay their way" are not pertinent to the ADR category. The rule changes do not introduce an English language requirement, nor do they change the financial requirements<sup>75</sup> and thus cannot be justified as furthering this objective.

The ADR Rules actually hinder integration rather than promoting it if integration is seen in a broader light. Families have spoken to us about their disillusionment with the Government's policy and of being let down because whilst British they have a different ethnicity. It is hard to integrate or feel loyalty for a society which prevents you from being with your loved ones.

The ADR Rules create a two-tier British citizenship with British families from a migrant background not having the same rights as those whose parental ancestry is British. British children from migrant background are unable to have their grandparents play an active role in

<sup>73</sup> FOI Request 31085

<sup>74</sup> MCLeod, B (2012) 'How UK immigration laws are splitting families apart', BBC News Online 06/11/2012, available online at [www.bbc.co.uk/news/uk-20207357](http://www.bbc.co.uk/news/uk-20207357)

<sup>75</sup> Apart from introducing the need to provide a 5 year undertaking to confirm financial support for the elderly relative. However the principles of no recourse to public funds and the sponsor being responsible for accommodation and maintenance remain the same.



their lives. This feeling of being a second class citizen does not promote a sense of belonging to one's country nor does it foster true integration.

*"I worked here, I spent my whole working life in this country, and then I start to think – if it was 12 years ago when I applied for citizenship, if this rule was in place, then I wouldn't have stayed here. So in my situation I feel as if I was lied to. I am not asking for anything, I am just asking for an opportunity to look after my parents and love them in return for everything they have done for me and my daughter. I look back, when I came to this country I was sure that if I work hard, adopt British culture, do everything by the rules and then you can have something that you need and I believe I have done everything. I wasn't born a citizen, but I earned it. Now I need to choose between my daughter and my parents, destroy the life of my daughter or destroy the life of my parents?"*

– Interviewee, parents living in Ukraine

*"I am their only son and with the passage of time they have no close relatives left to them in India. I see this as a nasty trick targeted precisely by the UK government to destabilise and demoralise migrants like myself, who by the way are the "best and brightest" as we have qualified through the acid immigration rules designed only to allow the best and brightest into the UK. So does the government truly believe that such underhand rule changes will fool us into believing that they are to "protect the UK taxpayer"? I am a UK taxpayer and feel no more "protected" by the new rules."*

– Written response, Indefinite Leave to Remain, parents living in India

*"The government, just to achieve their numbers, are potentially disregarding the core, fundamental value that I thought Great Britain stood for when I first came to this country... As a naturalised British Citizen I would be ashamed if this law is allowed to carry on in the name of immigration control. I will lose faith in humanity and politics. If this is truly allowed to continue I will pack up and leave, if that is what the ulterior motive is for law makers."*

– Affected Individual, parents living in India

Rules which allow elderly relatives to become part of the settled family's lives in fact could aid integration if grandparents are able to help with childcare and school pick-ups, support the parents and grandchildren and take part in their lives as the children grow up. Allowing the extended family unit to live in the UK will tend to reduce their ties to their country of origin, with families thus more willing and able to form new ties in the UK.

### 3. TO PREVENT AND TACKLE ABUSE

There is no evidence of this settlement category abusing the immigration system. The Government has not given or been able to show any evidence of abuse.

*"The government is breaking up families. They may say, "yes, but you chose to come here." But I think we are making a contribution coming here. I feel I am, through my job, for the community. I have never taken any cent from this country in terms of benefits, I have always worked. In terms of my parents, they have their pension. We just can't understand why this has happened. I understand that some people abuse the system, but I don't think it is in this category that people are trying to come into the country."*

– Interviewee, British citizen, parents living in Guyana

### 4. REDUCE NET MIGRATION

James Brokenshire, the current Immigration Minister:

*"Honoured to have been asked to take on the role of Immigration Minister and to continue to reduce net migration to sustainable levels."<sup>76</sup>*

The government states in its summary 'policy objectives and intended effects' that "a consequential reduction in net migration would be a welcome benefit". However, in its four stated objectives described above, it clearly lists contributing to the reduction of net migration as a key objective.<sup>77</sup>

76 Twitter, 8 February 2014

77 Impact Assessment, 12 June 2012, page 1 and page 10



Lord Avebury has commented:

*“The Government want to get total net immigration down to below 100,000 by hook or by crook, and they do not care if in the process they divide thousands of families by excluding spouses and elderly parents.”<sup>78</sup>*

Nearly a year later he re-affirmed his view that these rules were put in place not for economic reasons but in order to achieve the net migration target and is clear that tightening the screw on family immigration combined with prevention of legal aid to challenge refusals is *“not really aimed at saving money. It is part of the government’s campaign to reduce net migration...”<sup>79</sup>*

The Government cannot currently control EEA migration thus its only option is to lower non-EEA migration. It also cannot control emigration.

However, it is unclear as to why such restrictive rules have been put in place for adult dependent relatives when published statistics demonstrate the portion of total net migration attributable to parents and grandparents is less than 1%. See section 8 for a statistical analysis of migration figures.

Despite this, the Government has introduced rules which are causing anguish and suffering to British and settled families. In addition, in an attempt to target all aspects of Family Migration rules the Government is being short-sighted. They are putting into place rules which enable them to control the type of the person who comes in to the UK, and overlooking the type of person being forced out by the very same rules.

*“I didn’t expect this rule to be amended. It was always a tough rule to crack and I find it absurd that they have decided to make it impossible to succeed in this visa category. What they should be doing is focussing on how to make life better for British people, when they are just trying to make it harder. This is not an area where they have to meet targets. Overall this rule is most emotionally hard and very circumstantial for each family who will have to deal with it in time. Everyone will grow old one day, and it will have a huge impact on all families who are here now and working now.”*

— **Interviewee, British citizen, 2 year old son, parents living in India**

Of particular concern is the evidence we have received from the medical profession, which suggests that many highly skilled doctors, psychologists, nurses and paediatricians are considering relocating abroad as a direct result of the Rules.

The impact of this is that Britain could potentially lose consultants, psychologists and paediatricians all of whom have been trained in the UK at great expense and whose skills are in short supply. The British Medical Association (BMA) estimates that it costs the NHS between £269,527 and £564,112 to train a practicing doctor.<sup>80</sup> It seems counter-intuitive to put in place policies that force the very skilled people we have sought to attract and paid to train, to leave the country when they are significantly contributing to the wellbeing of our nation.

We have been contacted by 15 doctors ranging from paediatric consultants to a consultant metabolic physician, all of whom are considering relocating due to the restrictive ADR Rules. The BMA have also collected data on their members who have been impacted by the family immigration rules, and have raised their concerns that many are considering relocating.<sup>81</sup> We know of a further four doctors who have already relocated at a great loss to the NHS.

*“We also need to assess the effect on the NHS, not only of people coming to this country, but of losing people who are working in the NHS—they might be worried about their*

<sup>78</sup> Hansard 23 October 2012 : Column 189

<sup>79</sup> Hansard 4 July 2013 : Column 1396

<sup>80</sup> BMA Briefing, ‘How much does it cost to train a doctor in the United Kingdom?’, January 2013

<sup>81</sup> All-Party Parliamentary Group on Migration “REPORT OF THE INQUIRY INTO NEW FAMILY MIGRATION RULES”, June 2013 [www.appgmigration.org.uk/sites/default/files/APPG\\_family\\_migration\\_inquiry\\_report-Jun-2013.pdf](http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf)

*elderly dependent relatives elsewhere in the world and decide to leave this country to go there. That issue is already affecting recruitment in south Wales and other places."*

– Chris Bryant<sup>82</sup>

The average training cost of only 20 practicing doctors who are likely to leave or have left the UK as a direct result of these Rules is £833,6390.

The latest figures from the General Medical Council's List of Registered Medical Practitioners reveal that almost 100,000 currently registered doctors, GPs and specialists completed their primary medical qualification in a non-EU country. NHS staff hold 163 different non-EEA nationalities.<sup>83</sup> As the migration statistics reveal 50% of all ADR visa grants are to those from Asia. Asians form the largest majority of foreign born doctors. It is clear to see that Asian doctors are greatly impacted by these Rules and the most likely to relocate. This is mirrored in our research sample.

The evidence obtained through our research, as well as from the BMA, when combined with the numbers of migrants working in the NHS and the Home Office's own estimation of the perceived fiscal impact of the Rules, beg the question as to whether the cost to Britain through the loss of skills and tax revenue justify the government's policy to keep families apart.

### **PARLIAMENTARY SCRUTINY**

The Home Secretary Theresa May announced changes to the Family Immigration rules in Parliament less than one month before they were due to come into effect.

On 13th June 2012, amendments were laid before Parliament by way of a Ministerial Statement of Changes (HC 194) under the Immigration Act 1971.

Immigration Rules are subject to the 'negative procedure' under section 3(2) of the Immigration Act 1971. They are laid as secondary legislation and there is no need for a debate or vote for them to have force of law. Yet, as the Government's own website states, "the Immigration Rules are some of the most important pieces of legislation that make up the UK's immigration law."

The right to family life is of course a basic and fundamental human right. How can it be right that such wide sweeping changes to family migration which detrimentally impact upon thousands of families in the UK not be debated or allowed proper parliamentary scrutiny by the Government of the day.

In the House of Commons, a motion to recognise the qualified nature of Article 8 ECHR and to approve the role of the Immigration Rules in determining Article 8 cases was debated for four hours on 19th June 2012.

There was no debate on any other aspects of the rules. The motion was carried without a vote. With minimal opposition or scrutiny, the Family Immigration rules came into force on 9th July 2012.

In an open letter to Theresa May following the Family Migration Rule changes, the Joint Committee on Human Rights expressed its dismay that parliament was not given the chance to properly scrutinise the rule changes before they came into force. They suggested as a matter of general practice that to ensure the warranted level of parliamentary scrutiny, any Statement of Changes in Immigration Rules which engaged the European Convention on Human Rights should be debated in both, the House of Lords and House of Commons.

The Secondary Legislation Scrutiny Committee was equally critical in their report published on 4th July 2012 A Motion of Regret on HC 194 was debated in the House of Lords on 23rd October 2012. The Motion was withdrawn without a vote at the end of the debate.

<sup>82</sup> Hansard: 19 Jun 2013, Col. 274WH

<sup>83</sup> NHS Hospital & Community Health Service (HCHS) monthly workforce statistics by nationality: HEADCOUNT - September 2013, Provisional Statistics

## **CONCLUSION**

The consultation process did not deal with the proposed ADR Rules changes in any adequate detail. Parliament was not allowed the opportunity to vote on these rule changes. The Government's stated objectives behind the rule changes are not furthered by the new ADR Rules in any way, indeed we have demonstrated that these Rules could result in a cost to the exchequer and society. There is a complete rational disconnect between the harshness of the Rules and the aims they are meant to achieve. We conclude there is no economic or moral justification for these Rules.



We held 5 public meetings across the country.

111 Questionnaires were returned to us from affected individuals and families.

We undertook 18 interviews with individuals affected by the Rules.

We commissioned a report from child psychologists of the Child and Refugee Team at the Tavistock and Portman NHS Trust.

We put a call out to lawyers and immigration advisors who had experience making applications under the new Rules.

# 07

## RESEARCH & METHODOLOGY

Research into the impact of the ADR Rules was conducted by JCWI and BritCits over six months in 2013 and 2014.

### **PUBLIC MEETINGS**

In order to reach out to individuals affected by the ADR Rules, six public meetings were held across the UK in London, Manchester, Birmingham and Edinburgh. These meetings were intended as a way to meet families in order to explain the Rules and their requirements, as well as to provide advice and information and the aims of our research. Meetings were publicised through the BritCits and JCWI websites, social media, legal forums and through civil society organisations and local cultural and faith organisations. These meetings also provided a platform to bring together individuals and families who had been affected by the rules in order to share their views and experiences with one another.

### **QUESTIONNAIRES**

Questionnaires were chosen as an effective and efficient method to collect quantitative information on the demography and background of individuals and families, the perceived impact on families and minor children, elements of the Rules that sponsors found most restrictive, how the rule impacted on their future plans and the impacts on their family life.

Questionnaires contained both closed questions eliciting a “yes” or “no” response, multiple choice questions and open-ended questions where respondents could write about their personal views and experiences.

Hard-copies of the questionnaire were distributed to attendees at meetings and available to download on the JCWI website and BritCits blog, to be returned via email. In addition, an online version of the questionnaire was created for distribution amongst BritCits members. This resulted in a sample of 111 responses.

### **INTERVIEWS**

Semi-structured interviews were conducted with 18 questionnaire respondents who indicated a willingness and ability to take part. This provided greater insight into the impact of the ADR Rules on families which could not be captured quantitatively. Interviews were conducted in person or over the phone with the duration of each interview lasting approximately one hour.

Questions focussed on migration history, views on family and identity, role of intergenerational relationships in the family unit including impact on children and significance of the ADR Rules on future plans.

### **REPORT FROM CHILD PSYCHOLOGIST**

A report was commissioned by the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust in order to assess the impact of the ADR Rules on children.<sup>84</sup> The team undertook a literature review, obtained evidence from a focus group and considered data obtained from the interview transcripts and submissions from written responses.

### **ANALYSIS OF REFUSAL LETTERS AND APPEAL DETERMINATIONS**

We put a call out to legal professionals with experience of making applications under the ADR Rules. We also asked for copies of redacted refusal/grant letters and appeal determinations. From the 80 law firms who responded to our request, 54 had made applications on behalf of a client. Of those, one had received a positive decision from an entry clearance officer under the Rules. A further three were successful on appeal to the First Tier Tribunal under Article 8 ECHR.

A manual review of the available management information to identify Adult Dependent Relative applications granted in the period from 1 November 2012 to 30 September 2013 indicates that 34 settlement visas were issued in that period to an adult dependent relative under Appendix FM to the Immigration Rules.<sup>85</sup>

– **Response to Freedom of Information Request 31085 by JCWI**

In 2010, family immigration accounted for approximately 18% of all non-EU immigration to the UK—around 54,000 people out of 300,000. However, like the rest of the immigration system, family immigration has not been regulated effectively for many years.<sup>86</sup>

– **Theresa May, 11 June 2012**

6-10 ADR visas have been issued by Entry Clearance Officers to Adult Dependent Relatives between July 2012 and the end of 2013.

– **Senior Home Official, 2014**

85 FOI 31085

86 Hansard 11 June 2012

# 08

## STATISTICAL ANALYSIS

By analysing the published information that is available on grants of settlement to parents and grandparents, it is clear that the numbers have consistently represented an insignificant proportion of total immigration to the UK.

Our analysis shows that settlement grants to parents and grandparents have not exceeded 3% of all family grants of settlement since 2005. Parents and grandparents have also accounted for less than 1% of total net migration in the same period.

In response to a Freedom of Information request, the Home Office revealed that, according to an internal management review, 34 settlement visas were issued to an adult dependent relative under Appendix FM to the Family Immigration Rules in the space of 11 months between 1st November 2012 and 30th September 2013. This includes applications granted on appeal. This represents just 0.05% of total settlement grants in the category 'family formation and reunion' and 0.02% of net migration in 2013. These numbers do not match with their official published figures, which suggest far higher numbers of settlement grants to parents and grandparents.<sup>87</sup> This can in part be accounted for by the fact that this category also includes settlement grants to parents and grandparents of Ghurkhas, HM forces, refugees and those granted humanitarian protection.<sup>88</sup> However, it is a matter of concern that the Home Office published statistics are not consistent with the information released on review. While we have attempted to account for this in our analysis, it must be recognised that the information available is insufficient to truly assess the numbers of applications granted in this visa category."

When it is clear that the numbers of parents and grandparents granted settlement are an extremely small proportion of family and net migration to the UK, it begs the question as to why this category has been targeted for such harsh immigration control measures.

Furthermore, we argue that the Government's proposed policy objectives of reducing the burden on taxpayers, promoting integration, preventing and tackling abuse and contributing to net migration are highly unlikely to be met by preventing migrant families from caring for their dependent parents and grandparents in the UK. When the pain and misery that is being caused to the families kept apart by these measures is taken into account, the proportionality of the Rules is called heavily into question. It is also clear from the data available that 50% of visas were granted to adult dependant relatives from Asia which corresponds with our research that the ADR Rules discriminate against migrants from the Asian subcontinent and their British families.

### **HOME OFFICE PUBLISHED MIGRATION STATISTICS<sup>89</sup>**

In the most recent Home Office published statistics, Parents and Grandparents granted settlement as the Adult Dependent Relative of a UK citizen or settled person, either on arrival or, before the rule changes, after switching from another visa category, are recorded in the settlement tables. These numbers also include settlement grants to parents and grandparents of Ghurkhas, HM forces, refugees and those granted humanitarian protection.<sup>90</sup> We have removed grants of visas to Nepalese family members from the data in order to focus on grants under the current rules rather than the special terms afforded to Ghurkhas. We consider it a reasonable assumption that Ghurkhas and their family members represent a large proportion of Nepalese nationals granted entry clearance in this category. By extracting this data we can clearly see the impact of the 2009 High Court ruling allowing for Ghurkhas discharged before 1997 and their dependents to settle in the UK.

<sup>87</sup> Immigration Statistics - January to March 2014 Data tables Settlement\_q1\_2014

<sup>88</sup> FOI 31085

<sup>89</sup> Immigration Statistics - January to March 2014 Data tables Settlement\_q1\_2014

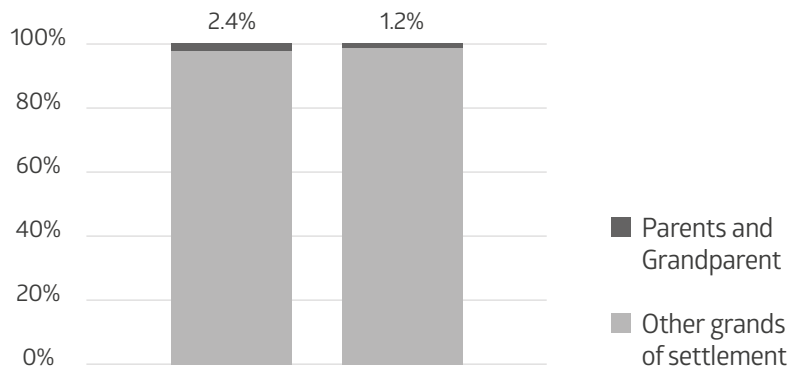
<sup>90</sup> FOI 31085



## Results

1. Settlement grants to “parents and grandparents” have not exceeded 3% of all family grants since 2005. This does not include grants to Nepalese nationals.
2. The Home Office settlement figures suggest almost a 50% drop in grants of settlement to parents and grandparents between 2012 and 2013.
3. These grants represent just 1.2% of total grants of settlement in the category “Family Formation and Reunion” and 0.3% of overall grants of settlement. We can expect these figures to be lower when grants to family members of Ghurkhas, outside the ADR Rules, are taken into account. However, data on nationality is only available up to 2012.
4. Furthermore, if we consider the 34 visas granted in the 11 months since the Rules changed, as suggested by the Freedom of Information request, this represents just 0.05% of total settlement grants in the category ‘family formation and reunion’ and 0.02% of net migration in 2013.

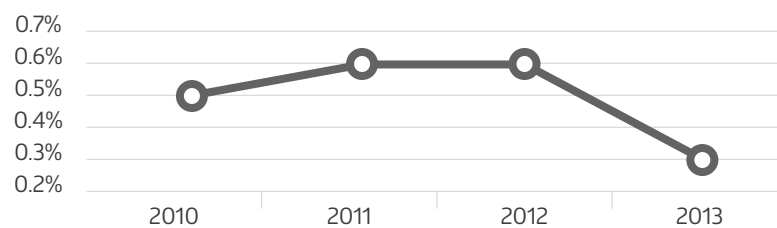
### Family Formation and Reunion



Parents and Grandparents as Proportion of Settlement Category “Family Formation and Reunion” 2011

■ Parents and Grandparent – 2.4% ■ Other grants of settlement – 97.6%

### Parents and Grandparents as % of Net Migration



### Settlement Grants

Year	Total Parents and Grandparents	Parents and Grandparents without Nepalese Data	Total “Family Formation and Reunion”	% of Family Formation and Reunion	Total Net Migration (ONS)	% of Net Migration
2005	1,449	1,443	59,638	2.4%	267,000	0.5%
2006	1,469	1,443	47,374	3%	265,000	0.5%
2007	1,001	962	50,822	1.9%	273,000	0.3%
2008	975	944	55,348	1.7%	229,000	0.4%
2009	1,003	923	72,239	1.3%	229,000	0.4%
2010	1,766	1,334	69,228	1.9%	256,000	0.5%
2011	1,783	1,303	54,086	2.4%	205,000	0.6%
2012	1,389	1,050	47,374	2.2%	177,000	0.6%
2013	703	Unknown	59,638	1.2%	212,000	0.3%

## HOME OFFICE INTERNAL MANAGEMENT REVIEW DATA

We have looked at data from the Home Office on grants to adult dependants in the period April 2010 – March 2011, as provided in Home Office's Policy Equality Statement dated 13 June 2012.<sup>91</sup> This data is from an internal management review and is not available from their published statistics.

	Out-of-country ILE grants	In-country ILR grants	Total
Parents and grandparents (65+)	483	832	1315
Parents and grandparents (under 65)	108	179	287
Other dependent relatives (65+)	241	36	277
Other dependent relatives (under 65)	137	309	446
<b>Total</b>	<b>969</b>	<b>1356</b>	<b>2325</b>

The ADR Rules abolish the right to grant settlement visas to in-country adult dependant relatives. From Home Office's own statistics, in-country grants represented 58% of all ADR grants, yet the current rules mandate that a person unable to bathe, dress or cook for themselves, even if already in the UK, be forced to leave the country to make an application to settle.

Entry clearance management information is also provided on the nationality of out-of-country grants of Indefinite Leave to Enter to adult dependent relatives from April 2010 – March 2011.<sup>92</sup> Over 50% represent adult dependent relatives from Asia, corresponding with our research that the Rules discriminate against migrants from Asia.

Nationality	Female under 65	Female 65 and over	Male under 65	Female 65 and over	Total
India	36	100	7	58	201
Sri Lanka	23	84	2	50	159
Somalia	19	60	5	12	96
Pakistan	20	51	0	22	93
Afghanistan	21	15	0	11	47
Nepal	19	17	3	3	42
China	10	16	2	12	40
Philippines	5	21	0	5	31
Russia	0	17	0	5	22
South Africa	4	11	0	6	21
All other	61	94	8	54	217

<sup>91</sup> Home Office Policy Equality Statement, 13 June 2012, page 47

<sup>92</sup> Ibid.

My mother has an irreplaceable influence on my son, because the relationship between my mother and my son is a very special one. As a grandparent my mother bridges the gap between the generations. This is the most important link that carries on the religious customs, beliefs and cultural values through to my son. They share a natural affectionate bond between them.

– **Written submission, affected individual, mother living in India**

My sons often complain that they are among the very few children whose grandparents can never see them perform a Christmas nativity or a play in school, or an away received in school or the school sports events and awards in swimming etc. Every festival or birthday is marked with an absentee present and long distance phone/video call. No birthday hugs and cuddles from beloved grand-parents.

– **Written submission from affected individual, parents in India**

I would definitely not have considered the UK as my home if I would have known that the immigration rules will change.

– **Written submission from affected individual, British national, parents living in India.**

The child can benefit from grandparental contact by getting love from grandparents and building strong family values and emotional and cultural ties. The child knows that parents are being cared for and will learn this valuable lesson for life. The child is passed on the wealth of grandparent's knowledge and experience.

– **Written submission, affected individual, 5 year old child, parents in Sri Lanka**

I am a loyal citizen who works hard, who adopted British rules and culture and who is proud to be British. But no citizen should come at the cost of the parents. There are some cases when the UK Immigration Rules are abused but the system should consider basic rights of legal immigrants as well.

– **Interviewee, parents living in Ukraine**

# 09

## IMPACT OF RULES ON FAMILIES

Data from questionnaires, interviews and written submissions reveal the considerable detrimental impact of the ADR Rules on families who are being prevented from caring for parents and grandparents in the UK. The negative impact on children is clear through the denial of meaningful relationships with grandparents who can contribute to their stability, wellbeing and sense of heritage and identity. There is also a considerable financial impact on households, through having to make frequent payments to support their parents abroad as well as travel and visa costs. There is evidence that the consequences of such financial strain on poorer migrant families may have a severe negative impact on their children. We have also identified a childcare deficit through our interviews with parents, suggesting that if grandparents were able to provide informal childcare then this could increase household productivity and income, especially vital to lower-income families who are working hard to make ends meet. These consequences of the Rules are compounded by the psychological impact on families of being separated from an elderly dependent relative abroad. Intense feelings of stress, worry and grief as a result of being unable to care for a parent or grandparent came across through interviews and written submissions. These facts are especially worrying in light of the conclusions drawn by the Expert Report by the Children and Refugee Team of the Tavistock and Portman NHS Foundation Trust.<sup>93</sup> Their evidence demonstrates both the positive potential contribution of grandparents to children's developmental, educational and social wellbeing, as well as the significant detriment that may be caused to children, both as a result of this relationship being denied. These results call into question the proportionality of the Rules, as well as clearly demonstrating that the best interests of the child has not been taken into account in their formulation and implementation.

### IMPORTANCE OF GRANDPARENTS

Studies have shown that children benefit considerably from the involvement of grandparents and this improves their social and behavioural wellbeing and their educational attainment. From our own research, as well as evidence from the Expert Report, it is apparent that children from a migrant background are being deprived of this interaction to their developmental detriment.

98% of questionnaire respondents said they considered it “very” or “quite” important that their children could have regular contact with their grandparents. However, 84% also answered “no” to the question, “If your parents were prevented from moving to the UK, would your children be able to visit them on a regular basis (e.g. summer holidays)”. The main reasons for this were time commitments (71%) and cost (63%).

The Expert Report highlights that while grandparents are a “heterogenous group”, they often play a vital role in the lives of their grandchildren, predicting positive emotional development, social adjustment and educational benefits.<sup>94</sup> As the report states,

*“These grandchildren who grow up with their grandparents have a complex cultural understanding of, not only their host country, but also the country where their grandparents are originally from. However, for families affected by this recent legislation the prospect of grandparents contributing to their grandchildren’s lives in this way has been undermined.”<sup>95</sup>*

The report goes on to describe how having grandparents close by can also help to alleviate feelings of anxiety, worry and alienation, which may be exacerbated in families as a consequence of migration into an unfamiliar, and at times hostile, country:

<sup>93</sup> The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), For full report see Annex 1

<sup>94</sup> Ibid.

<sup>95</sup> Ibid p. 5

*The presence of grandparents in families can... help to alleviate feelings of anxiety and alienation in families.*<sup>96</sup>

Those who contacted us described grandparents as having an important and overwhelmingly positive influence on their grandchildren. Whilst visiting, parents described how grandparents spent a lot of their time interacting with their grandchildren, mentioning a number of activities such as reading books and telling stories, helping with homework, going on trips to the park, as well as educational visits, such as to museums. These activities were considered especially important to parents who felt that they were unable to spend as much time with their children as they would like due to work commitments.

*"[My father] would always explore with the children, they would go out and find new things. I was really jealous of that, having a good time and going out, but because of my time spent on my career I couldn't do that."*

— **Interviewee, 2 children aged 8 and 5 years old, mother in India**

*"[With their grandparents] my children have more human interaction than just watching TV or using the I Pad whilst parents are busy coping with housework at the end of the working day."*

— **Written submission, 2 children aged 6 and 4 years old, mother in India**

Even from a distance, parents we spoke to considered the contact they were able to maintain between their own parents and their children as not only vitally important, but also beneficial. Ensuring that these relationships were not lost was incredibly significant to families living apart.

*"In the UK, we Skype [my mother] every week and he recognises her voice and picture and watches the screen and smiles at her when she talks to him."*

— **Interviewee, British citizen, 1 year old son, grandmother in USA**

*"My son has picked up most of the good habits from his grandparents rather than his parents. He listens to her stories and I have noticed since my mother has been away he misses her. He has noticed that she is not there. He speaks to her on the phone every day and jumps up and down when he hears her voice."*

— **Written submission, 2 year old son, grandparents living in India**

However, as outlined in the Expert Report, measures such as sporadic contact through Skype or over the phone are not the same as physical contact, "as it is established that the most important predictor of the quality of relationship is the physical distance between grandparents and their grandchildren."<sup>97</sup> The level of physical dependency required by the new Rules will prevent grandchildren from forming meaningful relationships with their grandparents and having the opportunity to convey the myriad benefits described by families involved in our research.

### **Contribution of Grandparents to Social Identity**

In the eyes of the parents who contributed to our research, maintaining a sense of family heritage and cultural identity was a vital contribution grandparents could make to their young grandchildren. Language, history and a sense of respect, love and care towards the elderly were mentioned time and again in interviews and questionnaires. This is backed up by evidence from the Expert Report, which explains how, "The mutual support networks that the wider family can provide can facilitate the well-being and resilience of migrants and refugees. This means that they might be able to more fully integrate with British society while maintaining a strong sense of cultural identity."<sup>98</sup>

Language emerged as an important source of transmitting cultural knowledge and values. Many working parents were worried that this was something their children would otherwise miss out on, as they did not have the time themselves to spend encouraging their children to

96 Ibid, p. 10

97 Ibid, p. 11

98 Ibid, page 12

learn a second language. Grandparents, on the other hand, were naturally more proficient in their mother tongue and had the time and patience to provide this vital cultural link across the generations.

*“My daughter knows four languages; English is her mother tongue, and also Hindi, Punjabi and she also knows a little bit of Sanskrit from her grandmother. My mother is fluent in Hindi, though she also speaks English very well. But here, we speak only English with the children.”*

– Interview, Interviewee, 2 children aged 9 and 5, grandmother in India

*“I try hard to speak our language at home but it is difficult. My wife and I both work. If my parents lived with us here then they would speak more of the language with my children. I want to teach my children the language partly in order to keep the language alive. It is estimated that it is spoken by less than 100,000 people globally today. Also, with an understanding of language you have access to traditions and culture. You understand the values and ethics. All these things can't easily be understood in another language, they can't be translated, so you lose that connection. There would be so many negative impacts if my children were unable to form a relationship with their grandparents. ... Without the language you lose the understanding of culture, tradition, theatre, drama, humour. When you start teaching them the language at a young age then they grow up with an automatic insight into the culture, rather than reactively having to learn when they are older, and then only if they are interested. Children are like sponges, they absorb so much. In the future that might be too late to introduce them to it. There is a rich tradition in our culture and if you don't understand the language then you can't participate. If you don't understand the language you are just copying without knowing.”*

– Interviewee, Interviewee, 2 children aged 6 and 4, parents in Tanzania

The role of grandparents in sharing their knowledge and understanding of history with their grandchildren, through anecdotes, stories and life experience, was mentioned by many respondents in interviews as equipping their children with an invaluable sense of their family ties, “roots” and “place in history”.

*“Their grandparents can teach my children about history, what life used to be like when they were young. It is a good opportunity to learn about the past.”*

– Interviewee, 2 children aged 4 and 1, parents living in Pakistan

*“[My mother] is my only surviving parent and the only family on my side who is still there for him to be able to form a relationship with. She is the only one left of my immediate family, apart from me... she would definitely bring that sense of heritage to my son, as well as any other children we have in the future, which otherwise which would be totally lacking from their lives.”*

– Interviewee, 1 year old son, mother in USA

*“My dad tells them stories...so the children get to know about our culture and religion. Also he tells them about his childhood and the lifestyle back home, so the children get to know how life was in the past.”*

– Written submission, affected individual, father living in Sri Lanka, 2 children aged 9 and 10 years old

This sense of identity is especially important to children from migrant families. As the Expert Report outlines, feelings of anxiety, worry and alienation, which may be exacerbated in families as a consequence of migration into an unfamiliar, and at times hostile, country can be lessened through the presence of grandparents in the family.<sup>99</sup>

Furthermore, many parents were concerned that without their grandparents playing a role in their lives, their children would grow up without the sense of familial attachment, responsibility and respect for elders that, they hoped, would keep the family close when they themselves grew old.

*“To be with grandparents is very, very important for my children’s growing up. That will help them to care about family, to know how to love and look after people.”*

– **Written submission from affected individual, one year old child, parents living in China**

*“I am responsible for my parents’ wellbeing. I want to set up an example for my daughter, who will raise her children in the UK, to care for people who love her.”*

– **Interviewee, 17 year old daughter, parents living in Ukraine**

*“I think the main thing my children can learn from my own parents is respect for older generations, as your grandparents are often the only people of the older generation that you know, so this grandchild/grandparent relationship is very important. ...I also want my children to see that we are looking after our parents and for them to think that this is the normal way of family life. This way, I know that my children will do the same for my wife and I in our old age. I want these values to continue and to have some assurance that we will be looked after in old age. Otherwise our children might think it is not their responsibility to care for us.”*

– **Written submission from affected individual, 2 children aged 4 years and 1 year old, parents in Pakistan**

*“Children understand their culture and religion at home and grow to be moderate loving individuals who value relationships.”*

– **Written submission from affected individual, one year old child, mother living in Pakistan**

Learning about another culture from their grandparents was not seen to be at the detriment of their children’s attachment to British culture, which parents recognised and encouraged. Instead, it was seen as a complimentary cultural knowledge that would benefit them in terms of their social awareness, tolerance, confidence and sense of identity.

*“If my parents were able to move to live with us in the UK, my children would understand their roots and this would help them to appreciate the English culture more, because they can compare and contrast. If you only have one culture you can’t really judge the other, but if you have two it evens your understanding and you won’t discriminate against one or segregate the differences. Understanding the language gives you a sense of the history of origins, the depth and breadth of a culture. With this my children would be able to make better informed judgements on how they want to progress in life and which values they wish to adopt and which they do not. More than one cultural background enriches societies, as you can appreciate the differences between cultures. It teaches tolerance and understanding of both. If you have an understanding of culture you will also grow up with a more positive self-identity. People will see you as different, but if you understand and value those differences, and also what makes you both similar then you will have more confidence to face these challenges.”*

– **Interviewee, 2 children aged 6 and 4, parents in Tanzania**

*“Of course, I want them to grow up in an environment where it is more than just our culture. We welcome the culture of the British, my children were born here, they go to school here, but we want a combination of the British culture in the way of what needs to be learned.”*

– **Interviewee, 2 sons aged 7 and 10, parents in the Philippines**

*“At his early age, this relationship will be most influential for fundamental aspects of his life. With the spare time at hand, my mother’s experience of life and wisdom will help him forming his identity; acquire the ethical, moral values and beliefs that include religious affiliation, education, occupational achievements. Denial of this relationship will have an irrecoverable loss to developmental aspects of my son.”*

– **British citizen, one child, mother in India**

*“With my parents in his life, my son will become an international person and learn to treat everyone equal. Overall my son can become a better person by living with my parents.”*

– **Written submission from affected individual, son aged 1, mother living in India**



The vast cultural and social contribution of grandparents to the lives of their grandchildren came across in all of the interviews, as well as many of the written submissions we received. Parents also described how they were worried about their children missing out on the positive contribution to their identity and sense of self. As the expert report highlights, “These grandchildren who grow up with their grandparents have a complex cultural understanding of, not only their host country, but also the country where their grandparents are originally from. However, for families affected by this recent legislation the prospect of their grandparents contributing to their children’s lives in this way has been undermined.”<sup>100</sup>

## IMPACT OF STRESS ON PARENTS AND CHILDREN

Our research revealed how separation from parents and grandparents who were emotionally dependent on their family in the UK is causing a huge amount of stress, worry and guilt for their children and grandchildren. This is especially worrying when seen in light of the Expert Report:

*“Although immigrants from stable nations have chosen to leave grandparents behind, the experience of continual questioning and the anxiety of not knowing about their welfare is still a deeply unpleasant and painful experience.”<sup>101</sup>*

The Expert Report demonstrates how, when family support structures are not in place, migrants are likely to experience guilt and anxiety associated with leaving loved ones behind, as well as “cultural bereavement”, potentially affecting their mental health.<sup>102</sup> This stress may also be transferred to children, resulting in significant developmental consequences.

Our research revealed that the definition of dependency in the new Rules fails to encompass the levels of emotional and physical dependency that exist, resulting in high levels of anguish for families who wish to care for relatives abroad. Questionnaires revealed that emotional dependency was the most frequently cited form of dependency between older parents and their adult children, with 96% stating that their parents were currently emotionally dependent on them. Furthermore, while many older parents and grandparents did not require daily care or assistance with everyday tasks, as prescribed by the Rules, 49% of questionnaire respondents felt that physical dependency did exist between themselves and their elderly parents. Memory loss, forgetfulness, high blood pressure, mobility problems, isolation and loneliness were the most frequently mentioned concerns in interviews and written submissions. Elderly relatives were in most instances vulnerable and had limited support structures in their home country. This caused family members in the UK a great deal of stress and anxiety, as they knew that they would be unable to help if something went wrong.

*“My mother is getting old, she cannot see properly, she can’t cook. She has high blood pressure, which I can monitor, and she recently had an eye operation. When she is here I am able to care for her. In India, she would be completely alone.”*

– Interviewee, mother visiting from India

*“With old people, especially with dementia, there are times when they can look after themselves and there are times when they cannot look after themselves. When they cannot I want to have the opportunity to look after them here.”*

– Interviewee, parents living in Ukraine

*“If my mother lived with us we would not have to worry about her alone in Russia. We are concerned she may die alone and we would not even know about it.”*

– Interviewee, mother in Russia

The negative impact on careers and family life of having to be constantly available in case something happened to their parents abroad was mentioned repeatedly in interviews and written submissions. Time differences meant that the limited support that could be offered was frequently at anti-social times, resulting in sleepless nights worrying and trying to organise care arrangements from hundreds of miles away.

100 Ibid, p. 6

101 Ibid, p. 9

102 Ibid, p. 7

*"I spend out of my 24 hours 5 hours minimum thinking about my mother. It is a constant stress, so if I didn't spend those 5 hours worrying and spent it resting or working, my productivity would increase a lot. This is what I am feeling."*

– Interviewee, 2 children aged 8 and 5, mother in India

*"There would be a significant improvement in the emotional and mental well-being of my mother, my partner and myself as we would all be much less worried about what the future holds. At the moment I worry constantly about my mother and we are all concerned about what will happen when the time comes that she is no longer capable of physically taking care of herself."*

– Written submission from affected individual, mother living in Malaysia

Respondents recognised the detrimental impact this was having on their work and family life. The strain was especially apparent for those working in jobs where they frequently came into contact with elderly and vulnerable people, such as doctors and those working in the care sector:

*"I get stressed sometimes when they are not here and I am there looking after other patients and I am thinking how I can't even look after my own parents. Obviously I am professional all the time, but it does make me think about my parents. I cannot enjoy my life knowing that they are not happy and that things are hard for them...I speak to them at least once a week and I worry about how things are. I think about it when I get to work because I see the other patients, I try not to, but I can't help but think of my parents."*

– Interviewee, NHS geriatric nurse, parents living in Guyana

Others mentioned the negative impact this was having on their family life.

*"Living far away [from my mother] means I am forced to wake up at night, for example if she has an important medical appointment, and it disturbs everyone. Leaving at short durations during emergencies leaves the whole family routine disturbed."*

– Written submission from affected individual, 2 children aged 11 and 7 years old, mother in India

Furthermore, many parents felt that their own feelings of stress were also affecting their children and were especially anxious that this was impacting on their education and mental wellbeing.

*"My sons are very close to my grandparents. We went together to the airport yesterday and already they asked when [their grandparents] are coming back. We just lost a loved one, and for the children that is very hard. They lost their father, so when somebody goes I can see that they don't like it... The fear of losing someone is very strong for my sons. They feel supported when everyone is around here. The house is very quiet when it is the 3 of us."*

– Interviewee, 2 children aged 7 and 10 years old, parents living in the Philippines

*"My daughter was in pieces when my mother's visa was denied. Here I can cry, but at home I cannot allow it. She is doing her A-levels now. If she will go to the same stage as I am at the moment she will not be able to cope with her exams. In 2 months' time she has exams and I cannot...I try to protect her as much as I can, but she's depressed. And now my dad needs to leave because his [visitor's] visa will end in 3 days' time and this means that she may never be able to see him again. She is so worried."*

– Interviewee, 17 year old daughter, Parents living in Ukraine

The Expert Report clearly documents the damaging impact of stress when experienced by children and young people. As stated in the report, "high levels of parental stress are linked with poor outcomes for children such as separation anxiety, attention deficits and depression... Stress impacts on the developing brain and there is evidence of how prolonged stress undermines other physical systems that are developing during these formative years."<sup>103</sup>

*“I worry for my daughter. She is very close to her grandmother.”*

– Interviewee, daughter aged 9, mother living alone in India

The evidence obtained through our research highlights the psychological suffering caused by these Rules. Individuals described how the stress and guilt associated with being unable to care for their elderly family members in the UK, relying instead on insufficient support networks in their home country, was causing mental anguish which transferred to the rest of their family, including their children. The detrimental impact on children is outlined in the Expert Report, which demonstrates how growing up in a stressful environment can cause a myriad of long and short term negative developmental outcomes.

*“There can be no value placed on the peace of mind of being able to look after your own parents, seeing them regularly, taking care of them yourself.”*

– Written submission from affected individual, 2 children, mother living in South Africa

## FINANCIAL IMPACT ON FAMILIES

Individuals described the significant financial impact of supporting their parents or grandparents abroad, in some cases through the cost of maintaining two households, but also smaller costs which added up over time, such frequent trips abroad to organise care, arrange visas and provide the emotional and physical support their elderly parents required.

This was highlighted in the data from questionnaires, with 62% of respondents stating that their parents were currently financially dependent on them. 80% expected their parents to become financially dependent on them in the future.

*“Even the visa application procedure is so onerous – people need to be fingerprinted – how the hell are elderly people going to make a trip 300km to have their fingerprints taken? Also, all applications are online now, there are no paper applications anymore, so they have to rely on someone else to fill out the application for them. All these things, they don’t talk about it, but it is having a massive impact on people, especially older people. Then they ask for medical evidence – at their age, how are they going to get this evidence together? I just don’t get it. They are playing a hidden game. The minute they become physically dependent, they wouldn’t be able to go through the process.”*

– Interviewee, parents in India

The cost of frequent travel overseas was a significant consideration for many families we spoke to. Cost was cited as a main factor by 63% of questionnaire respondents who said that their children would not be able to visit their grandparents abroad on a regular basis.

*“Financially, one visit costs around £1,200, so 4 visits annually is about £6,000, which is about the mortgage on a 6 bedroom house for 1 year. It is not viable in the long term. People are limited in how much leave they can take to care for parents, so this is a huge expense people have to pay to be with their families.”*

– Interviewee, mother living in India

*“It is expensive, all the flights back and forth. If my parents were here it would definitely be financially easier. I send money every month, then there are the phone calls, flights, visas...”*

– Interviewee, parents living in Guyana

## Cost of Childcare

While the primary motivation for all families was to be able to provide their parent or grandparent with emotional, physical and practical support in their old age, many parents also mentioned the benefit to the family if grandparents were able provide childcare for their young grandchildren. This was both a financially factor, as well as a chance for grandparents to provide their grandchildren with the developmental, social and cultural benefits described above.

*“We pay a lot of money for childcare. This has given both my wife and I the opportunity to move up the career ladder and progress in our careers, as we have the time available to be able to manage this. My parents living here would ease the burden of childcare costs a bit, but we wouldn’t rely on them for this, this would be an added benefit. The main thing is*

*that we would look after my parents, the priority is that they are looked after in old age.”*  
– Interviewee, 2 children aged 4 and 1 years old, parents living in Pakistan

*“If my parents were here it would reduce the amount we would have to spend on childcare because they can look after them. For example, if there is urgent work and we have to stay late, all those headaches would be taken care of. It would mean less stress, less time off, less unpaid leave, it would add up to a significant financial benefit.”*  
– Interviewee, 2 children aged 6 and 4 years old, parents in Tanzania

The important role played by grandparents in providing childcare support to families has been recognised by academics and professionals and is further demonstrated by the Expert Report, which outlines the “vital source of emotional support and a containing household structure”, which grandparents can contribute, and which the Rules are denying migrant children, to their detriment.<sup>104</sup>

Analysis of care arrangements among participants in the Avon Longitudinal Study of Parents and Children (ALSPAC) at age 8, 15 and 24 months demonstrated that, with the exception of fathers, grandparents were the main source of non-maternal care in the UK. 44% of children were regularly cared for by grandparents at each age, while 28% received some level of grandparental care.<sup>105</sup>

This pattern of childcare provision by grandparents has been shown to be replicated across Europe. A study of intergenerational care across 10 European countries, based on data from the Survey of Health, Ageing and Retirement in Europe (SHARE), found that 58% of grandmothers and almost 50% of grandfathers had regularly or occasionally looked after their grandchildren aged 15 or younger over the past year.<sup>106</sup> Research suggests that grandparents often act as a “reserve army”, “filling in gaps between childcare needs and parents’ availability”<sup>107 108</sup>

A briefing paper for the Department for Education by the Childhood Wellbeing Centre reveals that while use of formal childcare has risen between 2001 and 2011, reliance on grandparent care in the same period has remained the same, at around a quarter. The author argues as a result that grandparents in the UK are playing a vital role as a safety net for families, “stepping in where care is needed in an emergency or when other care arrangements break down”.<sup>109</sup> This was also evident from our research.

*“[If my mother was here] we could both work...Children, when they are young need a lot of care and do fall sick frequently. This makes it untenable for one partner to go to work. If there were grandparents here then at least there could be someone close who would be able to support us in such an eventuality.”*

– Written submission from affected individual, 1 child aged 2 years old, parents living in India

Among many families private childcare was a significant, and at times unaffordable, expense, which prevented both parents from working full time. Grandparents Plus and Age UK have estimated the value of grandparental childcare in the UK at £7.3 billion, almost double its value in 2004.<sup>110</sup> Among our questionnaire respondents who answered that they or their partner did not work, 58% cited childcare as the main reason.

104 Ibid, p. 6-7

105 Fergusson E1, Maughan B, Golding J. (2008) “Which children receive grandparental care and what effect does it have?” J Child Psychol Psychiatry, 49(2):161-9.

106 Hank, K & Buber, I 2009, ‘Grandparents Caring for Their Grandchildren Findings From the 2004 Survey of Health, Ageing, and Retirement in Europe’, Journal of Family Issues, vol. 30, no. 1, pp. 53-73

107 Glaser, K., Montserrat, E., Waginger, U., Price, D., Stuchbury, R. & Tinker, A. (2010) ‘Grandparenting in Europe’, a report by Grandparents Plus, p.4

108 Hagestad, GO 2006, ‘Transfers between grandparents and grandchildren: the importance of taking a three-generation perspective’, Zeitschrift Fur Familienforschung, vol. 18, pp. 315-332

109 Statham, J. (2011) “Grandparents providing childcare”, Childhood Wellbeing Centre, Page 6

*“At the moment my wife does not work because she has to look after our child. She does not have the time to work on top of this. She would definitely work if my parents could come and live in the UK. This would have a massive financial benefit on the household as well. I am travelling all the time in my job. The support we need isn’t just about financial support, or even for the most part, it’s moral and emotional togetherness. If we have two children we would have to pay £1,900 a month for childcare. On top of that we would still have to look after our children. In my view the rules are totally disproportionate to the intended outcome. If [the government] are seeing it as a burden, there is no evidence that it is true that it will cost the taxpayer money, it will save the taxpayer money. My wife has had to leave her job because full-time childcare is too expensive. We need someone to be there.”*

– **Interviewee, 2 year old child, parents living in India**

Among lower income families in our sample, 67% answered that they or their partner did not work, as opposed to 38% overall. In these households, children were more likely to be younger (65% under 6 years old as opposed to 47% in total sample). Childcare remained the most frequently cited factor for one parent not working. This suggests a childcare deficit, especially among poorer migrant families, which we argue could, in many cases, be filled by allowing grandparents join their families in the UK.

20% of the children from families in our research came from lower income households. In addition, all respondents from lower income households stated that their elderly parents were dependent on them financially, indicating a significant extra financial burden placed on these families from caring from their elderly parents abroad.

The Expert Report outlines the harm caused to children growing up in a household with limited financial resources. In lower-income households, parents are likely to have higher levels of stress, which transfers to their children. High levels of stress in childhood can result in the long-term impediment to neurological and physiological development.<sup>110</sup> As highlighted in the Expert Report, “Childhood poverty is embedded in the body at an early stage in life and affects the child physiologically and neurologically, negatively impacting on developmental trajectories.”<sup>112</sup>

Evidence obtained through our research suggests that if grandparents were allowed to settle with their families in the UK before they are fully physically dependent, this would in many cases enable both parents to work, increasing the productivity of the household and contributing to overall income and reducing stress.

*“Economically, my wife cannot work because of the age of our youngest children and the prohibitive cost of childcare would completely negate her income. Were my mother-in-law to be living here, my wife would work (something she desperately wants to do).”*

– **Written submission from affected individual, 3 children aged 17 and 3 years and 1 year old, in-laws living in Russia**

*“There is a possibility my wife may not be able to join back work due to high childcare costs, which would partly be helped through my parent’s support while they will have better support from us in terms of care.”*

– **Written submission from affected individual, new-born son, parents in India**

As the Expert Report argues, “This recent legislation ignores these trends in grandparental involvement and as such denies migrant children the same rights afforded to those from the United Kingdom”<sup>113</sup>

*“I know my parents will be refused if I apply. I am very scared. It would be better if my parents were here then I can support everybody. With their help looking after my boys,*

110 Wellard, S. (2013), “Policy Briefing 04: Grandparents and childcare”, Grandparents Plus available at [www.grandparentsplus.org.uk/wp-content/uploads/2013/05/Briefing-paper-on-grandparental-childcare.pdf](http://www.grandparentsplus.org.uk/wp-content/uploads/2013/05/Briefing-paper-on-grandparental-childcare.pdf)

111 The Adult Dependent Relative Family Immigration Rule: Impact on Children: Report from the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust (2014), For full report see Annex 1

112 Ibid p. 11

113 Ibid, p.1



*I can both work and look after them in their old age, as well as my family in the Philippines. The impact is that I might resign, and if I have to leave my job, this would be my first time to be a burden to the government and to ask for benefits. This would be my first time and I don't want to do that. That is my point – if somebody can help me, I will not depend on the government funds or benefits because I can earn enough money. I lost my husband and I have 2 small boys to look after. If I don't work what will happen to us? It's not just about my parents, it's about all of us, about our position as British Citizens. If they give my parents to me I can work and provide security for my two boys. They must consider my situation, they need to be compassionate and not to put us in an even more difficult position – my parents can help me and I can help them and I do not want help from anyone else.”*

– Interviewee, 2 sons aged 10 and 7 years old, parents in the Philippines

As demonstrated above, the financial cost of caring for elderly parents abroad, through transfers of money to maintain them, as well as frequent expenditure on visas, flights and unpaid leave was significant. Allowing elderly parents and grandparents to live with and be cared for by their children and grandchildren in the UK could alleviate this financial burden. In addition, many families mentioned how their parents would be able and willing to provide informal childcare for their grandchildren, alleviating the cost of private care and increasing household productivity. This could also significantly reduce parental stress in households where funds are stretched and the task of juggling careers and childcare is taxing. The Expert Report clearly outlines the detrimental consequences of stress on child development.

## IMPACT OF RELOCATION

Many families we spoke to were considering relocating abroad in order to care for their elderly relatives. This was overwhelming seen to be at the expense of their careers, financial prospects and children's futures. 83% of questionnaire respondents who would consider moving abroad said that this would result in reduced career prospects and 73% in reduced financial prospects. 62% envisaged separation from their partner or child if they were forced to relocate. Just 5% answered that relocation would result in improved career or financial prospects.

*“It's creating an awkward environment of litigation. [My parents] have not applied as we have been in two minds about relocating somewhere else. If push comes to shove then we will go, I will not spend my whole life fighting with the government over nothing.”*

– Interviewee, 2 year old son, parents living in India

*“We are thinking of relocating back to Sri-Lanka with disastrous financial consequences, giving up our careers, selling houses and depriving my children of the opportunity to grow up and be educated in the UK. There is no other way to look after my mother. There is no “private care” for elderly parents in a country where children look after elderly parents. It is against my Buddhist religious values not to look after my mother, and she needs emotional care which only I can give her.”*

– Written submission from affected individual, mother living in Sri Lanka

## Loss of career

*“Given current circumstances I would have to take an indefinite leave of absence from my job should this happen and this would obviously have a significant impact on my finances. In addition, I would have to leave my partner behind in the UK. All this would no longer be a concern should my mother be able to join me here.”*

– Written submission from affected individual, mother in Malaysia

Many of the individuals we spoke to were encouraged to train and move to the UK to fill shortage occupations, such as midwifery and nursing, but were facing the incredibly difficult choice of leaving their jobs to move abroad and care for their parents.

*“They opened the career for nurses in the Philippines and we were encouraged to move to the UK. A nurse's salary in the Philippines is only £50 a month, if you're lucky then maybe £100. How could I support my children on such a wage?”*

– Interviewee, 2 children aged 7 and 10, NHS geriatric nurse, parents living in the Philippines

*"I cannot return to care for [my mother] as I work in the NHS as a senior midwife and my husband and children have a good strong network of friends around us.... It is not possible and seems unfair to uproot them and disrupt their education and life to move, whereas my mum by herself can move into my home here."*

– **Written submission from affected individual, NHS midwife, 2 children, mother living in South Africa**

Others had trained in the UK and possessed skills that were not transferable to the country their parents were living in, resulting in a huge detriment to their future careers and quality of life if they had to retrain and find new careers to support their families;

*"I am qualified as a solicitor in the UK, so I would have to relearn everything, which is quite a daunting prospect. I have no idea. It would be difficult because I would be starting from scratch. We are starting to look at opportunities [abroad] even though we don't want to. My husband is considering turning down a PhD in Oxford, in case we have to move. The subject is niche and there are few departments to do it, it just wouldn't be possible."*

– **Interviewee, 1 year old son, mother living in USA**

## **Impact of Relocation on Children**

The negative impact on their children, in terms of taking them away from friends and other family members, as well as the disparity in quality of education, was also a frequently cited concern.

*"We are looking for the kids' future here. They can get a job anywhere in the world, but when it comes to studying you have to be in one place. If [my daughter] goes to India, everything will change, the atmosphere. It would be a big challenge for her. I have seen the hard life when I was young. I used to struggle a lot. My father also, he struggled, but now we are here and I don't let them believe that they have to go through any hard life. So that is a difference I can see there, if they have to go back to India. My daughter, she is now in Year 5 so it would definitely be a complete change. She would need to start again from the first step. She is not a baby anymore, she is a 9 year old girl, and starting something in India again could be a big mess. She says "no I don't want to go to India", not at all, that is what she is saying, but what can we do? I used to tell her, ok you stay with your mum and I'll stay with my mum, but that is not an option either."*

– **Interviewee, 2 children aged 9 and 7, parents living in India**

*"The main impact [of moving abroad] would be on my children's education. It would demoralise them. Their quality of life would be much worse. It would impact their future too. I have spoken about the fact that we might move with them. They know that it is ultimately their parent's decision, but I can tell that they are very hesitant. We are all a little scared about what to do, what the future holds for our family."*

– **Interviewee, 2 children aged 9 and 6, parents living in India**

*"If we had to move back my daughter wouldn't be able to do anything. The reason I stay in this country is because I am a scientist and I moved 17 years ago because there were greater opportunities here. There aren't those opportunities in Ukraine. My daughter started and has almost finished secondary school here, so she can't continue her education there and she would not be able to do a degree. The system doesn't recognise the British system. But I cannot leave her here on her own because she is still 17, how can I leave her on her own? I came here to build a life for my daughter, to help her achieve something, to be an honest person. My daughter has 15 GCSE's, 13 A\*. Her aim is to go to Oxbridge. This is her ambition and I will help her to achieve this ambition. But what will she do with all these stars if we go back? Moving back will destroy her. If she stays here she probably can achieve quite a lot with her potential and education, she is an incredibly hard working person. She achieved because of her ability and because since her early age my parents spent time with her. They have done everything for her. I left her in care of my parents when she was 6 months old. She said mama when I was here and I didn't hear it. My parents have done everything for me. What should I do? Destroy my daughter's life because I cannot look after my parents? Leave her here on her own when she needs my help and go there? I don't know, I am trapped."*

– **Interviewee, daughter aged 17, parents living alone in Ukraine**



While questionnaires revealed that the majority of families would consider relocating abroad if unable to care for their elderly parents in the UK, this was overwhelmingly seen to be at the detriment of their careers, livelihoods and financial prospects. It was also considered by parents not to be in the best interest of their children, who would suffer in terms of their education and quality of life and at the loss of social ties to the country where they grew up. To uproot the lives they have built in the UK in order to care for a dependent family member was not an easy choice, or one taken lightly, but it is a reality many families are facing as a result of these Rules.

## **CONCLUSION**

The interviews conducted through our research, as well as views expressed at meetings and those submitted to us in writing, reveal the devastating impact the ADR Rules are having on families in the UK. By being forced to live apart and maintain a caring and supportive relationship from a distance, families are experiencing financial hardship, pain, stress and misery, all of which have been shown to have a devastating impact on young children. This evidence is backed up by the Expert Report, which demonstrates the multiple negative influences on children from being denied the chance to form meaningful and mutually beneficial relationships with their grandparents. These facts call into question the proportionality of the Rules under Article 8 ECHR, as well as highlighting that the best interest of children has not been taken into account in the formulation and implementation of the Rules.



Putting my mother in a care home is like saying I don't care about her anymore, I disown her. I would bring shame on myself and my whole family. I could never do that.

– Interviewee, mother in India

Even now in Britain there are lots of families with close bonds – Mediterranean cultures for example – but it is getting eroded, there is a disjoint in families, people are busy and I understand this. They live separately and it is difficult to maintain these relationships, but in our culture we don't have that separation. There are advantages and disadvantages, but in Britain I do feel that there is that disconnect, The British celebrate mothers and fathers day once a year because they do not see their parents that often. We do not celebrate those days because we see our parents every day.

– Interviewee, 2 children, parents living in Tanzania

It is against my Buddhist religious values not to look after my mother and she needs emotional care which only I can give her.

– Written submission, affected individual, mother in Sri Lanka

# 10

## ADR IN OTHER CULTURES

### REVERENCE TO GRANDPARENTS IN OTHER CULTURES

The nuclear family is frequently taken for granted as being the universal family form, but this is actually a cultural peculiarity, specific to some (but by no means all) Euro-American contexts. A much more usual family structure both historically and culturally is the extended family, with parents, grandparents and often aunts, uncles and cousins living under the same roof. These various family structures both stem from and create differing cultural traditions as well as differing understandings about personhood and individuality. Roles and responsibilities of certain family members, such as grandparents, therefore vary a huge amount cross-culturally. The role of grandparents in family life cannot be seen as universal; the cultural differences need to be acknowledged and the consequently varied implications of the ADR Rules need to be recognised. As the quote from Lord Bingham of Cornhill quoted earlier in the report demonstrates, these factors must also be taken into account when considering proportionality under Article 8 ECHR.<sup>114</sup> By exploring the more central significance of grandparents in certain cultures in terms of childcare, education and the forming of one's sense of identity, the magnitude of the potential harm caused is made apparent.

This section will examine reverence to grandparents in a variety of countries within Asia, Europe, Africa and North America. As well as ensuring a geographical range by including such countries as Nigeria, Italy and Jamaica, we will mainly investigate some of the most frequent countries in our sample in terms of elderly parents' nationality: India (62% of our sample), China (7%), Russia (5%) and Ukraine (4%).

#### India

Caring for elderly parents and grandparents is a ubiquitous part of Indian life, with the tradition of three or four generations living under one roof very much a general and expected feature of families. Elderly family members are highly respected and are considered the heads of the household, always being consulted on important decisions.<sup>115</sup>

This close proximity of three generations means that grandparents are usually very involved in the lives of their grandchildren, looking after and playing with them, as well as telling stories and imparting knowledge about religious and cultural traditions. One interviewee spoke about his Indian parents' relationship with their grandchildren:

*"My parents teach my children family values. Also Asian culture and ethics. They educate my children about Asian rituals, festivals, prayers and the 'do's' and 'don'ts' - what you should and shouldn't do. They teach my children about their roots and where they fit in in our family tree as well."*

— **British citizen, 2 children aged 9 and 6, parents Indian nationals**

Grandparents imparting cultural knowledge to their grandchildren is particularly important for migrant children, who are able to develop a clearer sense of identity from learning about their cultural and religious roots.

This prevalent extended family living arrangement in India means that grandparents are able to provide childcare for their grandchildren in many cases, benefiting families financially due to the reduced need for costly childcare alternatives, as well as creating the opportunity for both parents to work.

<sup>114</sup> Huang para 18

<sup>115</sup> Sonawat, R. 2001 'Understanding Families in India: A Reflection of Societal Changes' *Psicologia: Teoria e Pesquisa*. Maio-Ago 2001, Vol. 17 n. 2, pp 177-186 (185).

## China

Close family ties are an important feature of Chinese society and grandparents customarily see it as their role to care for their grandchildren, sometimes as the primary caregivers. A recent poll in 32 Chinese cities showed that 36 percent of those asked felt that grandchildren being raised by their grandparents is “completely normal”.<sup>116</sup> A number of generations living under one roof has historically been a part of Chinese culture and enables traditions and a sense of shared cultural identity to be passed down through the generations. Filial piety, broadly defined as respect for one’s parents and ancestors, is a key part of the philosophical system of Confucianism that is central to Chinese culture. For many people of Confucian ancestry, filial piety is ‘pervasive’ and as well as being a dominant feature of Chinese family life, is also central to one’s well-being and sense of self.<sup>117</sup> In their study among Chinese immigrants living in the United States, Lieber et al. found that filial piety remains a “meaningful and socially relevant concept”, despite challenges faced from living in a different sociocultural context and having to make adjustments in the practical applications.<sup>118</sup>

This feature of Chinese family life has persisted today, not necessarily as a result of this pull of traditional values, but largely as a result of the socio-economic benefits of this extended kin structure. It can be argued that the multi-generational living arrangement is a reflection of the cultural emphasis on collective interests over individual interests and is therefore a family adaptive strategy to improve the well-being of the whole-family in terms of finance and gender equality.<sup>119</sup> Fifty-one percent of senior management positions in China are held by women, compared to only twenty percent in the US<sup>120</sup>, which is in part a reflection of the involvement of grandparents in looking after their grandchildren.

## Ukraine

Grandparents are an important part of family life in Ukraine. A national report on the regional implementation strategy of the Madrid International Plan of Action on Ageing found that Ukrainian pensioners are ‘closely interwoven’ into the structure of the family and deem it important to spend time with their children, grandchildren and other relatives.<sup>121</sup> The survey also revealed that elderly Ukrainians generally believe it to be a necessity to help bring up their grandchildren.

*“In Ukraine or in Russia, everyone lives together, several generations live together. I grew up living with my grandparents and great grandparents. When my great-grandmother got old my mum brought her to our home and she lived with us for 10 years, so it is normal, it cannot be otherwise.”*

— Interviewee, parents living in Ukraine

## Jamaica

In Jamaica the family, particularly in rural settings, is a “loosely structured extended network”<sup>122</sup>, comprising numerous relations including grandparents. Despite family members coming and going, the family itself remains one of the most central characteristics of traditional Jamaican society, creating a sense a security and stability. The loose and extended family structure means that members are able to respond creatively to any crisis that might occur within the family, with certain members filling the gaps left by members who leave.<sup>123</sup> With grandparents in Jamaica living close to their children and grandchildren in this extended network, the possibility is left open for them to fill the role of caregiver if their daughter or daughter-in-law goes to work.

116 Yang, K., Sept 2013. ‘In China, it’s the Grandparents who ‘lean in’’. The Atlantic.

117 Eli Lieber, Kazuo Nihira and Iris Tan Mink 2004 ‘Filial Piety, Modernization, and the Raising of Children for Chinese Immigrants: Quantitative and Qualitative Evidence.’ Ethos Vol. 32, No. 3 (Sept, 2004), pp324-347 p. 325

118 Ibid. p. 343

119 Feinian Chen, Guangya Liu, and Christine A. Mair, 2011. ‘Intergenerational ties in context: Grandparents Caring for Grandchildren in China.’ Soc Forces, 2011; 90(2): 571-594

120 Yang, K., Sept 2013. ‘In China, it’s the Grandparents who ‘lean in’’. The Atlantic.

121 Ukraine National Progress Report on the Regional Implementation Strategy of the Madrid International Plan of Action on Ageing 2007-2011

122 Seaga, E., 2005. “The Folk Roots of Jamaican Cultural Identity” Caribbean Quarterly Vol.51 No. 2 (June 2005) pp79-95

123 Seaga, E., 2005. “The Folk Roots of Jamaican Cultural Identity” Caribbean Quarterly Vol.51 No. 2 (June 2005) pp79-95

## Nigeria

In Nigeria extended families are the cultural norm and are the basis of the whole social system, with all family members perceived of as working together harmoniously as an organic unit. In Nigeria personhood is understood as one's relationships to members of one's clan, lineage and family: as being part of a whole. People only exist in terms of these relationships.<sup>124</sup> Extended family ties are therefore central in the forming of a person's sense of identity.

Large families are common in Nigeria, with many generations living together, and there is an expectation of mutual support between family members. The extended family in Nigeria, particularly in rural areas, serves as a "welfare and insurance agency" that distributes resources to those in need, such as the elderly.<sup>126</sup> Nigerian grandparents tend to play an integral role in raising their grandchildren, providing advice and educating the younger members of the family and passing on traditions. Children derive their identity in part from this transmission of knowledge and so this relationship is crucial both psychologically and socially for them. The learning of culture, heritage and background is all the more important for migrant children.

## Italy

Whereas in Northern Europe families tend to be nuclear, in southern Europe there is a marked culture of living in extended families. In Italy for instance it is regarded as traditional for three generations to live under one roof. Even though this is less apparent today, the extended family is still seen as important and regularly meeting up for meals and celebrations remains a common occurrence. Grandparents, or nonni, frequently play an important role in family life and are generally very involved in the upbringing of their grandchildren. Approximately 40 percent of grandparents in Italy provide regular childcare for their grandchildren, compared with less than 20 percent in the Nordic countries.<sup>127</sup>

As well as being regarded as the 'traditional' way of doing things, the close involvement of grandparents is actually on the rise, largely due to the fact that more and more families are seeing both parents working full-time.<sup>128</sup> The involvement of grandparents in the upbringing of their grandchildren also has great financial benefits and improves gender equality as both mothers and fathers are able to pursue full-time careers.

## CONCLUSION

There is much variation worldwide in the perceived and actual role and status of grandparents, partly as a result of cultural differences in family structure and living arrangements. Living in extended families as opposed to the typically 'western' nuclear family unit is prevalent in many cultures. Grandparents generally play a greater role in their grandchildren's lives where this is the case. They teach their grandchildren about their cultural heritage and help them to understand their heritage background. This is of particular importance for migrant children. Grandparents in other cultures also often share in the childcare responsibilities, alleviating pressure on parents in terms of time and money. The household benefits financially where support from grandparents means that parents are able to work as a result of not being the sole carers of their children.

By keeping grandparents from living near their children and grandchildren, the ADR Rules ignore the central role that grandparents play in numerous cultures. In failing to recognise the value of the grandparent-grandchild relationship cross-culturally, the Government risks the well-being of children and the elderly whilst financially burdening families entirely unnecessarily.

124 Ogunidipe, A. & PA Edewor, 2012. "Sociology and Social Work in Nigeria: Characteristics, Collaborations and Differences" *African Sociological Review* 2012. 16(2)

125 Falola, T. 2000 *Culture and Customs of Nigeria*. Greenwood. (p117)

126 Ogunidipe, A. & PA Edewor, 2012. "Sociology and Social Work in Nigeria: Characteristics, Collaborations and Differences" *African Sociological Review* 2012. 16(2)

127 Tomassini, C. & K. Glaser, 2013 "Unmarried Grandparents Providing Child Care in Italy and England: A Life – Course Approach." EPC 2012. Princeton.edu, n.d. Web. (12 Nov. 2013).

128 Grandparent Plus June 2010 Report - 'Grandparenting in Europe'

## CARE HOMES

The ADR Rules have an underlying assumption that there are adequate care facilities and care homes for the elderly worldwide. In reality however there is huge global variation in the provision and quality of care homes, resulting from differences in a range of factors such as cultural familial values and structure, wealth, resources and demographics.

With sharp increases in the size of elderly populations both in more developed and, to an even greater extent in less developed countries<sup>129</sup>, the government must not take for granted that adequate care is available for the elderly worldwide. By 2050 it is estimated that the global population over the age of 60 will double from approximately 11 percent in 2000 to 22 percent.<sup>130</sup> The resources are simply not available, particularly those in less developed countries, to keep up with this rapidly expanding demand for long-term care.

Another factor contributing to the lack of care homes in many countries is the fact that traditional family values and concepts of familial care of the elderly in many cultures completely contradicts the whole concept of formal care, such as care homes. As the erosion of intergenerational family bonds increases more and more elderly people will require formal care facilities. However, such facilities are not yet available in countries that have still rely to a great extent upon the extended family to provide this care. Specific interventions for elderly care are often not in place as there is an assumption that these informal support networks continue to function well.<sup>131</sup>

*“Perceptions of formal care are by no means cross-culturally consistent, meaning that in some countries care homes are far less abundant or even occasionally non-existent. If you put your parents in a home in the Philippines they would curse you. It is expected that, as they care for you when you are a child, therefore when they are elderly it is your turn to look after them. There are no care homes in the Philippines - it would be a curse, people will disrespect you if you put your parents in a nursing home, so we don't have that kind of nursing homes. They do not exist.”*

— Interviewee, parents living in the Philippines

Maltreatment within care homes is a serious problem worldwide. According to the World Health Organisation, institutional maltreatment is most likely to occur where there are poor health care services and care facilities for the elderly, where staff are undertrained, overworked and underpaid and where the physical environment is deficient.<sup>132</sup> Maltreatment of the elderly will increase globally as countries often lack the resources to provide satisfactory care in rapidly ageing populations. Less developed countries are more likely to have insufficient resources to deal with their growing elderly populations. As such, the lack of formal care structures tends to be a bigger issue in these countries.

## India

### Demographics

In India, the rate of population growth is much faster among the over 60s (3.8% annually) than among the general population (1.8% annually) and the number of people over the age of 60 is expected to rise dramatically from the current figure of 98 million to 240 million by 2050.<sup>133</sup> The number of formal care homes in India is slowly increasing, mainly on the outskirts of the main cities. This is a delayed response to these demographic changes, as well as increased migration and global influence. There are however by no means enough providing good care, especially for the poor and less affluent who are often forced to live on the streets or move into ashrams, homes that traditionally existed to provide basic accommodation for widows who had no family to turn to.

129 Graham, J. Oct. 2012, 'How in the world will we care for all the elderly?' The New Old Age Blog, The New York Times

130 'Global elderly care in crisis.' March 2014. The Lancet Volume 383, Issue 9921. p927 Elsevier Ltd.

131 Redondo, S. & Lloyd-Sherlock, P., 2009. 'Institutional care for older people in developing countries: repressing rights or promoting autonomy? The case of Buenos Aires, Argentina.' Working Paper 13, DEV Working Paper Series, The School of International Development, University of East Anglia, UK

132 World Health Organisation, 2011. Fact Sheet no. 357 - 'Elder Maltreatment'

133 Shanbaug, A. & S. Kumar Singh., July 22nd 2013. 'Are retirement homes for you?' The Times of India.



In Mumbai, elderly care homes are in drastically short supply with only 120-150 old-age homes for 1.1 million elderly.<sup>134</sup> As well as the shortage of elderly care homes, there is no comprehensive state health care and only 4 percent of over 60s receive a pension, often making complete family support a costly necessity.<sup>135</sup>

HelpAge International's Global AgeWatch Index ranks countries by how well their ageing populations are faring, based income, health, employment and education, and enabling environment. Currently, India ranks very low (73rd out of 91 countries)<sup>136</sup> with its population rising at such a fast rate, the problems faced by the elderly population in the areas of income security, health, and employment and education, are set to become more widespread.

### Cultural Values

Care homes are not the regular method of care for the elderly in India. As extended families remain the norm, the older generation have traditionally relied on the security and care that this household structure allows for. Care of the elderly is first and foremost the responsibility of family members.<sup>137</sup> In most Indian religions this falls upon the eldest son. The hierarchy and expectation are deeply rooted in cultural values.

*"They have done their job, now it is our job to do our part for them. I wouldn't be happy if they were living in a care home, I wouldn't want to live with that decision. Care homes were made for families with problems; step families, broken families. I have not seen any real family choosing a care home. Children would never put their parents in a care home."*

— Interviewee, mother living alone in India

As a result of this widely-held cultural value of familial care and reverence of elderly relatives, there is generally a stigma attached to the idea of formal care homes in India.<sup>138</sup> Therefore not only might the care not be adequate as a result of assumptions of robust informal support networks, there may also be a psychological impact on care home residents resulting from feelings of abandonment. It is crucial to take seriously people's perceptions of care homes, how this varies cross-culturally, and how this may impact on the health and wellbeing of elderly dependent relatives.

*"If my son can't look after me [in the UK] then I will just kill myself... there is nowhere else for me to go without shame."*

ADR applicant, Indian widow, son and daughter-in-law in UK

### Institutional maltreatment

In India there is a striking divide between rich and poor, and this is reflected in the conditions of care homes. While the most expensive institutions appear in the main to provide adequate care, there is evidence that free homes (ashrams), or those that are more widely affordable, often are overcrowded and have exceptionally poor conditions.<sup>139</sup>

A 2013 article in the Times of India stated that, "the government does not even know how many old age homes there are in Chennai, much less the condition of their inmates, who are among the most vulnerable and abused members of society."<sup>140</sup> The description of residents as 'inmates' is pertinent. Care homes in India are often not registered with the social welfare department for fear of being closed down. The President of the Federation of Senior Citizens Association of Tamil Nadu says that elderly people in free care homes have to sleep on the floor and are only given one meal per day.<sup>141</sup> NASCAI secretary R Subharaj says that conditions are similarly appalling at homes that charge.<sup>142</sup>

134 Cengel, K. 2013. 'Ageing India.' World Ark Magazine, Heifer International.

135 Prasad, R. April 14th 2007. 'India's shrinking families.' The Guardian.

136 Global AgeWatch Index 2013 – www.helpage.org

137 Sonawat, R. 2001. 'Understanding families in India: A reflection of societal changes.' *PsicologiaTeoria e Pesquisa*. Vol 17 n. 2, p. 177-186 (p. 184)

138 Magnier, M., May 15th 2012. 'As India's old ways change, senior-care homes are on the rise.' Los Angeles Times

139 Pathak, N. & A. Raji., January 23rd 2013. 'Why India's youth are abandoning their elderly parents'

140 Raj, M., May 9th 2013. 'In city of elderly, homes make big bucks but offer little care.' The Times of India.

141 Ibid.

142 Ibid.

The fear of elderly relatives being mistreated in care homes in India and elsewhere is widely a source of worry and stress for family members overseas. Managing the care of their loved ones from such a distance can be hugely difficult and far more stressful than if they were close by. One interviewee told us:

*"I have a friend in the UK. Her father is in a nursing home in India. The level of care in nursing homes is not good. You are putting your parent into someone else's hands. She's always on alert and has to go to India any time anything goes wrong. She had to go for a month when she had to put her father into a home. There is nobody else for her to rely on. I don't want to be in that situation. I wouldn't be able to cope."*

## Russia

### Cultural Values and Legal Requirements

In Russia, adult children are obliged to care for their elderly parents. This is not only a cultural expectation but also a requirement in law. Part 3 of Article 38 of the Constitution of the Russian Federation states that 'able-bodied children over 18 years of age shall take care of disabled parents.'<sup>143</sup> Care is understood not only in the material sense but also in the giving of physical assistance and moral support. State care homes are therefore not routinely available for elderly people who have able-bodied children over the age of 18.

### Institutional Maltreatment

There is a huge disparity in access to healthcare in Russia, with only the wealthiest able to afford private care or paid state treatment and those with less money receiving extremely poor care or no care at all. Elena Prikhodova, the executive director of a fund that allocates health cover for personnel at a health clinic in Moscow, JSC Medicina, says of health care in Russia in general: "Free health care in Russia doesn't exist. The range of medicines that are available for free are probably not enough. You need more. If you want to be healthy, then you have to pay."<sup>144</sup>

According to Dobroe Delo, a charity for the elderly and an Affiliate of Help Age International, state medical institutions do not provide an adequate level of care for the elderly in Russia. Help Age International's Global AgeWatch Index ranks Russia 78th out of 91 countries, scoring very low in health status and enabling societies and environment. Care homes often have extremely poor and often dangerous conditions. In 2009 Roszdravnadzor, the Federal Service on Surveillance in Health Care of Russian Federation, inspected care homes for the elderly and disabled in ten regions of the Russian Federation. They found that repair was required in all these institutions, and they did not have enough health workers, medical equipment or medicine.<sup>145</sup> In recent years there have been numerous fatal fires in care homes for the elderly and disabled in Russia, revealing major shortcomings in health and safety standards in these institutions, and, more generally, a widespread neglect of the elderly by the state.<sup>146</sup>

## Ukraine

*"There are no care homes in Ukraine, it is not something people will do to their parents."*  
—Interviewee, mother in Ukraine

### Demographics

Ukraine is similarly seeing a substantial growth in the size of its elderly population, ranking among the top 30 oldest countries in the world.<sup>147</sup> Simultaneously, the country has a low average life expectancy of 71 years, according to the World Health Organisation. They rank low in Help Age International's Global Age Watch Index at 66 out of 91, faring especially badly in health status, enabling environment and social infrastructure. Ukraine's population ageing is accompanied by overall depopulation and declining numbers in the labour active population, threatening the social security of older people.

<sup>143</sup> Reproduced in Part 1 of Article 87 of the Family Code of the Russian Federation

<sup>144</sup> Balmforth, T. Jan. 2013, 'Health care disparity reveals Russia's income inequality crisis.' Global Post.

<sup>145</sup> 'Nursing Homes - A national disgrace Russia.' (www.ryzkov.ru)

<sup>146</sup> Liyalenkova, T. February 7th 2009. 'Retirement-home fire underscores plight of Russia's elderly.' Radio Free Europe. Radio Liberty.

<sup>147</sup> Ukraine National Progress Report on the Regional Implementation Strategy of the Madrid International Plan of Action on Ageing, 2007-2011

Residential institutions for the elderly in Ukraine comprise boarding houses and geriatric care homes. With such high growth in the size of the elderly population, there are not enough to meet this rapidly increasing demand.<sup>148</sup> In the Lviv region in 2008, the rate of growth of elderly people applying for places in boarding houses is rising at an annual rate of 3%.<sup>149</sup>

### **Cultural Values**

Intergenerational mutual support is widespread in Ukraine, despite globalising influences, with grandparents generally playing a very active role in bringing up their grandchildren and adult children supporting their parents physically, emotionally and often financially in old age.<sup>150</sup>

Due to 'family' being the traditional means of support in old age, boarding houses are often deemed unethical, widely considered a last resort, and usually only used by elderly people who need specialist care or those whose adult children are unable to take them in or support them at home.<sup>151</sup>

### **Institutional Maltreatment**

With the elderly population in Ukraine growing at such a fast rate, boarding houses and care homes are becoming more and more overstretched and are often struggling to provide adequate care as a result. They are insufficient in terms of meeting quantitative demand and ensuring high quality care, often leading to the deprivation of older people.<sup>152</sup> Boarding houses in particular have a bad reputation of squalid conditions and of providing poor care.<sup>153</sup>

## **Nigeria**

### **Demographics**

In Nigeria there are approximately 8.1 million old people, according to the UN, and a growing ageing population.<sup>154</sup> The number of people over the age of 60 in the country is expected to rise to 16 million by 2030.<sup>155</sup> There are however currently only an estimated 40 elderly care homes in Nigeria<sup>156</sup> and seemingly no adequate plans in place in the country for elderly care.

### **Cultural Values**

The traditional reliance on family networks for elderly care is evident in Nigeria. According to Nigeria's Minister of Women Affairs and Social Development, Hajiya Zainab Maina, increased rural-urban migration of young families has had a negative impact on these informal care structures.<sup>157</sup> Formal care facilities have not caught up with these changes, resulting in a significant deficit of care homes and increased poverty of older persons.

Care homes in Nigeria are often treated with distrust due to strong traditions of multigenerational family support.<sup>158</sup> This is despite the tradition of extended families becoming less ubiquitous. Many Nigerians would never consider taking their elderly relatives to an old people's home, and formal care is a concept that is commonly frowned upon. There is clearly a stigma attached to care homes in Nigeria, which derives from cultural beliefs about the role of families in providing support, despite the fact that this picture is changing. This has resulted in a lack of necessary facilities including the homes themselves, as well as feelings of abandonment for the elderly residents.

148 Ibid.

149 Amjadeen, L., 2008 'Gender Equality, Social Justice and Elderly Care: Problems and Transformations in Ukraine.' Institute of Sociology, National Academy of Sciences of Ukraine.

150 [www.constitution.ru/en/10003000-01.htm](http://www.constitution.ru/en/10003000-01.htm)

151 Amjadeen, L., 2008 'Gender Equality, Social Justice and Elderly Care: Problems and Transformations in Ukraine.' Institute of Sociology, National Academy of Sciences of Ukraine.

152 Ukraine National Progress Report on the Regional Implementation Strategy of the Madrid International Plan of Action on Ageing, 2007-2011

153 Amjadeen, L., 2008 'Gender Equality, Social Justice and Elderly Care: Problems and Transformations in Ukraine.' Institute of Sociology, National Academy of Sciences of Ukraine.

154 Ogunshola, F., May 7th 2014. 'Caring for the elderly in Nigeria.' News Agency of Nigeria (NAN)

155 Umukoro, A., August 18th 2013. 'Old people's homes: mixed fortunes of Nigeria's senior citizens.' The Punch

156 Ibid.

157 Ogunshola, F., May 7th 2014. 'Caring for the elderly in Nigeria.' News Agency of Nigeria (NAN)

158 Ibrahim, K., June 16th 2013. 'Who takes care of the aged in Nigeria?' Sunday Trust

### Institutional Maltreatment

Care homes in Nigeria often have extremely poor conditions. According to the Minister of Health, Professor Christian Onyebuchi Chukwu, the needs of the elderly are often consigned to the background due to them constituting a relatively low proportion of the population.<sup>159</sup> Due to the severe shortage of old people's homes in Nigeria, those that exist are severely overstretched. One care home in Lagos is forced to decline several requests per week by elderly people and their families who want the home to take them in, because there is simply not enough space.<sup>160</sup> Old age is a source of worry for many due to the lack of assistance given by the government, and it is not uncommon to find elderly people begging on the streets. Nigeria ranks very low in Help Age's Global Age Watch at 85 out of 91 countries. This reveals that the elderly in Nigeria are far from adequately looked after by the state and generally have a poor quality of life.

### CONCLUSION

It is clear that in many countries care homes for the elderly are in seriously short supply, are not affordable, or are providing inadequate care. As the population of the elderly increases globally, in many countries there are not enough care homes for the entire adult dependent population. Those homes that do exist are either unaffordable for the majority of families or are seriously overstretched and struggling to provide satisfactory care for all residents. This shortage is often a financial issue, but it is also, significantly, a matter of cultural difference. With care homes not a familiar concept in many countries where extended families and multigenerational support networks are the norm the facilities are seldom in place to accommodate all in need. It must be pointed out that the strangeness of the concept of care homes in many countries can also lead to amplified feelings of abandonment and psychological stress for elderly persons who are unable to rely on their families for support.

Even if, theoretically, the availability and quality of care homes were not an issue, we strongly argue that it is not right for older persons to be so far away from the family on which they are financially, physically and emotionally dependent. Elderly people are especially vulnerable and it makes no sense for them to be separated from those who are most likely to ensure they receive good care and are able to have a good quality of life in their remaining years.

*"Abandoning one's elderly parents to be cared for by strangers is not a welcome prospect. Would you or anyone else leave your parents' welfare completely and totally to a stranger? When they're many hours by plane away, is that even reasonable, given that one can't check on and meet them regularly? There are many reports in the British mass-media about the abuse and neglect of elderly people and if this happens here in UK then it would be more likely to happen in a less developed country."*

— **Written submission, affected individual**

The ADR Rules have a simplistic and undifferentiated understanding of care homes, not recognising the global differences in the care homes themselves, as well as the difference between care given by a stranger and care given by one's family. Putting elderly parents in a care home overseas causes significant stress and a lower quality of life for residents due to not having contact with family members or receiving the emotional care that families provide. Furthermore, the potential for maltreatment is far greater when family members are not there to oversee the quality of care provided. When a British or settled person in the UK is willing and able to look after their own parent, at no expense to the British state, they should not be denied that right.

159 'Nigeria – as senior citizens savour care homes.' January 28th 2013. All Africa.

160 Umukoro, A., August 18th 2013. 'Old people's homes: mixed fortunes of Nigeria's senior citizens.' The Punch





# 11

## CONCLUSIONS AND RECOMMENDATIONS

Our aims were to look at the Government's policy objectives behind these rules, to assess the statistical evidence on settlement visas granted under the Rules and then to specifically consider the impact of the Rules on children. We also evaluated whether the best interest of the child has been taken into account in the drafting and implementation of these Rules.

We draw some general conclusions and take a more in-depth look at take a at the conclusions on children and families.

### CONCLUSIONS

- **The Rules are unnecessarily harsh, causing families suffering, and anxiety, and are rationally disconnected from the stated Government policy on family values.**
- **In many cultures around the world grandparents and the older generation are treated with reverence and are seen to contribute significantly to the family unit. Britain should aspire to these values not seek to undermine them.**
- **The Rules effectively create a two-tier British citizenship with families from a migrant background prevent from enjoying the full benefits of family life with their parents and grandparents.**
- **The Government's justification for these Rules in both fiscal terms and to control net migration are not substantiated. The old ADR Rules did not place a burden on the tax payer and prior to the rule changes migrants in this category contributed to less than one percent of net migration.**
- **The Rules have effectively closed off this visa category. Only 34 visas under the ADR Rules were issued in 11 months between November 2012 and September 2013.**
- **The best interests of the child' have been completely ignored in both the drafting and implementation of these Rules. Entry clearance officers completely failed to apply this duty in decisions involving children.**
- **Children are significantly impacted as a direct result of these Rules:**
  - » Families are being put under immense pressure from knowing they won't succeed in obtaining settlement for their elderly relatives when they are ageing and require their care. This is resulting in high levels of stress, anxiety and guilt, which is impacting negatively on parents and children and has serious consequences on the mental health of both.
  - » Studies have shown children benefit considerably from the involvement of grandparents and this improves their social, behavioural and even at times their educational attainment. Children from a migrant background are being deprived of this interaction to their developmental detriment.
  - » Children from a migrant background are also missing out on many aspects of their heritage, language and culture as a result of the absence of grandparents in their lives. This impacts on them developing a secure sense of identity; grandparents can help avoid cultural conflict, through the transmission of strong cultural and ethnic values to their grandchildren which then allows them to embrace British culture without losing sight of their roots.
- **The new Rules increase the financial burden on migrant families and impact upon their life chances:**
  - » Individuals find they are repeatedly travelling abroad to provide support and often urgent care to their elderly relatives at short notice. This is having an impact on people's jobs and careers with long periods or repeated amounts of time off required.
  - » Individuals also have to take time off work to travel and spend time in their parents' home country to assist with visitor visa applications as this is the only way they can come to the UK.



- » The financial burden also comes from families having to pay expensive childcare costs or one half of a couple having to leave their job or work part time. If the grandparents were living with them, a mutual care relationship could be formed, where grandparents are assisted in their old age while they in turn help with childcare, consequently easing the financial burden on families.
- » Many migrant families are considering leaving the UK in order to live near their elderly parents and look after them. This would be a major upheaval for many families, resulting in a loss of job and career and adding to financial pressures.
- » Our research shows many individuals considering relocating are professionals, particularly doctors, this is a great loss to British society and detrimental to our National Health Service.
- » Relocation and in particular to a poorer host country can have a detrimental impact on children's education, social ties and life chances. Children's voices are often unheard when a family has to make this decision.
- » Evidence also shows stress of migration, discrimination in the host country, and in poorer host countries, lack of access to health services and other resources, has a damaging effect particularly on children.

## RECOMMENDATIONS

- **All immigration officials need to receive proper training to ensure they understand and implement the section 55 duty to safeguard children and promote their welfare in all cases.**
- **It must become practice within the Home Office and in entry clearance posts to ensure where children are involved their best interests are properly assessed and that this is recorded.**
- **The Government should appreciate the report from the Tavistock and Portman NHS Foundation Trust's Children and Refugee Team annexed to this Report and consider the vital role grandparents play in the lives of children. If it is to put children first it needs to recognise the contribution of grandparents to their development. It also needs to appreciate the particular significance of grandparents to children from a migrant background.**
- **The Government should undertake its own assessment to evaluate the impact of the family migration rules on children. It needs to look at available evidence on the importance of grandparents in children's lives especially children from a migrant background. The assessment must also consider the impact of the distress, stress and anxiety on families and children. This needs to be properly understood and balanced against the stated policy objectives behind these Rules.**
- **All officials need to be fully aware of the relevance of the grandparent/grandchild relationship both objectively through research such as ours and subjectively so it can properly be taken into account when making decisions under the ADR category.**
- **The visa application form and guidance should specifically ask if the applicant has grandchildren in the UK and the nature of their relationship with them.**
- **Family members should be able to give undertakings to assist with the care costs of elderly relatives and this should be taken into account when making an assessment as to whether a sponsor can financially care for the relative in the UK.**
- **Finally, and most importantly, the Government needs to urgently re-evaluate its ADR Rules in light of this research and repeal them.**
- **In the alternative, the Government should consider a long term visa for parents and grandparents in line with many other countries such as Canada. There could also be a rolling 3-5 year visa so that if the British citizen's situation changes and they are no longer able to look after their parents, the visa is not renewed.**

*“It is an exigent duty to look after your parents in their old age,  
and making that virtually impossible is doubly inhuman.”*

— Lord Avebury<sup>161</sup>



# THE ADULT DEPENDENT RELATIVE FAMILY IMMIGRATION RULE: IMPACT ON CHILDREN EXPERT REPORT

Report from the Child and Refugee Team at the Tavistock and Portmanw

## CONTENTS

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Background	82
Introduction	82
Grandparental Attachment and Positive Outcomes	82
» Social and Emotional Aspects of Development	83
» Intergenerational Learning	83
» Mediating Difficult Times	85
Migration and Multiple Stressors	86
» The Loss of Home	86
» Stress in Young Migrants	88
Conclusion	89
References	90
Appendix	91

## BACKGROUND

In July 2012 changes to the adult dependent relative visa category came into effect. Previously an adult dependent, living outside the European Economic Area, could enter the United Kingdom as the relative of a British citizen, a person with settled status or a person with refugee leave or humanitarian protection. While this is still the case, entry under this particular visa category is now technically closed because the criteria have become so stringent that they are almost impossible to fulfil. Relatives must now demonstrate such a poor level of physical health or disability that they need assistance with everyday tasks such as washing, dressing and cooking. They also need to demonstrate that even with financial and practical help that they could not obtain a satisfactory standard of care where they currently reside, either because it is not available or because it is not affordable (All-Party Parliamentary Group on Migration, 2012).

## INTRODUCTION

“Grandparents are great. Children love them and so do parents.”  
 – Gyllenspetz, 2007

When discussing grandparental care and involvement, it is important to recognise that the ways in which young people experience their grandparents is complex and diverse. Grandparental care ranges from legal guardianship to infrequent visits to the family, and grandparents comprise a heterogeneous group in terms of age, ethnicity and socio-economic circumstances (Mitchell, 2008). Grandparents play an important role by providing emotional and practical support to both mother and child (Mitchell, 2008; Buchanan & Griggs, 2009). The relationship between grandparents and grandchildren is invariably experienced as positive, satisfying and meaningful by both generations (Smith, 2005). Grandparents participate in a range of activities with their grandchildren, such as attending family events, learning about cultural history, sharing treats, playing games, providing personal advice, assisting with school work and watching television (Smith, 2005).

Lower fertility rates and increased life expectancy mean that a quarter of the population in European countries will be over 65 in the next two decades (Glaser, Price, Di Gessa, Ribe Montserrat, Stuchbury & Tinker, 2013). This change in demographics mean that many men and women will spend longer being grandparents than parents (Griggs, Tan, Buchanan, Attar-Schwartz & Flouri, 2009). There are approximately 14 million grandparents in the United Kingdom (Buchanan & Griggs, 2009), and in Britain 63% of grandparents care for their grandchildren who are under 16 when their parents are away (Wellard, 2011). Ageing populations and a greater proportion of working mothers indicate that the role of grandparents in caring for their grandchildren is likely to increase (Glaser et al., 2013). Austerity measures in Britain and the cuts to public services mean that grandparents will be expected to fill these gaps in child care and provision. This report will demonstrate how this recent legislation ignores these trends in grandparental involvement and as such denies migrant children the same rights afforded to those from the United Kingdom. Through synthesising evidence from semi-structured interviews, a focus group and existing literature, it will explore the ways in which grandparents can positively influence the developmental trajectories of young people. The ways in which grandparents are able to support families and young people who are going through difficult transitions will also be explored as this is fundamental to the experience of migration and resettlement. Acknowledging how the secondary stresses associated with migration are exacerbated by this legislation, the end of the report concerns evidence from more recent studies that investigate the physiological impact of stress on the developing brain and other systems in the body.

## GRANDPARENTAL ATTACHMENT AND POSITIVE OUTCOMES

Lussier, Deckard, Dunn and Davies (2002) point out that the positive implications of grandparental support have been discussed in academic literature for the last forty years. There is compelling recognition from the interviews and across relevant literature of the strong emotional bond that children form with their grandparents. This fundamental attachment relationship predicts positive emotional development for grandchildren, provides the foundation for intergenerational learning and mediates difficult times in families.

## Social and Emotional Aspects of Development

*“My son is very attached to her [his grandmother]. Being able to be there for her grandson, there is so much happiness and joy there, it is a fundamental bond. Children need to understand who their grandparents are, depriving them of that connection is wrong.”*

– **British citizen, male, 2 year old son, wants to sponsor both parents living in India (63 & 57 years old).**

*“They have a very close relationship – they are always around for birthdays and spend a lot of time in the UK. They have been around for maybe half of the children’s lives...I would like them to have the same relationship as my children have with my wife’s parents. They see them every day and are incredibly close.”*

– **British citizen, male, 2 children aged 4 and 1, wants to sponsor both parents (69 and 64 years old) living in Pakistan**

It is unsurprising that attachment relationships beyond the traditional mother-child dyad and nuclear family should be felt as integral to children’s development. This is especially true of families that have migrated from collectivist cultures where there is more emphasis on wider networks of social support in raising children (Bhugra & Becker, 2005). Lussier et al. (2002) show how grandchildren’s self-reported feelings of closeness to their grandparents were associated with better socio-emotional adjustment. Children who felt close to their grandparents were less withdrawn, suffered from fewer somatic complaints, and exhibited less delinquent and aggressive behaviour than their peers. A nationally representative study of 1569 school-aged young people’s views demonstrated that most grandchildren in England and Wales experience high levels of grandparental involvement (Griggs et al., 2009). There was a significant relationship between closeness to a grandparent and the well-being of children, as evidenced by the Strengths and Difficulties Questionnaire that is an internationally recognised measure of psychological adjustment. For example, when grandparents showed more interest in their hobbies and interests, the grandchildren reported fewer emotional difficulties and problems with their peers (Griggs et al., 2009). The authors argue that this particular finding represents clear societal gains in the sense that these young people were more able to understand the feelings of others and demonstrate more willingness to help. This study extended previous work that looked at emotional closeness by investigating in detail the ways in which grandparents were involved in the lives of their grandchildren. These descriptions provide a richer understanding of the value that young people place on spending time with their grandparents. Time spent with grandparents was described as valuable, as a break from the strictness of their parents and as a space to do something that was relaxing (Buchanan & Griggs, 2009). The fact that their grandparents were motivated to spend time with their grandchildren, at whatever extra-curricular activity, was deeply appreciated by the children in the interviews.

These findings are particularly pertinent when considering how grandparental involvement might impact on the social and emotional development of migrants. Based on years of clinical experience and discussions with colleagues, Losi (2006) has argued that one of the defining features of migration can often be withdrawal from social engagements as often interactions are felt as uncomfortable and anxiety-provoking. A corollary of this is that migrants can often find themselves isolated in a host culture and can experience hostility towards others and sudden outbursts of anger (Losi, 2006). Therefore the finding that active contact with grandparents is important for adolescents’ adjustment (Attar-Schwartz, Tan, Buchanan, Flouri & Griggs, 2009), does indeed represent an undeniable gain both for the young people themselves and for the communities where they are trying to build a life.

## Intergenerational Learning

Nine out of ten parents in the United Kingdom agree that grandparents have a substantial amount to teach their children (Al-Azami, 2006). In addition, there is evidence for the crucial role that grandparents play in child development, both from an educational and moral perspective. Dunifon (2013) recognises the direct influence that grandparents can have on their grandchildren by role modelling appropriate behaviour, encouraging academic success and providing help with homework. A pervasive theme across both the interviews and focus group was the recognition of the importance of grandparents sharing rich cultural, historical, religious and linguistic knowledge with their grandchildren.

*“They can offer them the culture. We grew up in a very close family. My father is a pastor, and we pray together in the morning and evening. My parents can give them guidance, for example, we don’t say bad words. It is very difficult if there is someone outside the family circle who doesn’t know the daily routine. We teach them respect. Of course I want them to grow up in an environment where it is more than just our culture. We welcome the culture of the British, my children are born here, they go to school here, but we want a combination of the British culture in the way of what needs to be learned.”*

– **Single mother, British, 2 sons aged 10 and 8 years old**  
**wants to sponsor both parents who live in the Philippines, both 65 years old**

*“When [my parents] were coming here and meeting my daughter and my son it was a knowledge sharing from them to my kids. I was relaxed for my parents to watch the kids. We were both working and they were taking care of and educating our children.”*

– **British Citizen, male, wishes to sponsor his mother who lives in India,**  
**2 British children, 9 year old daughter and 5 year old son**

*“The main thing they [grandparents] would be helping with my children’s education. They would also enjoy playing games together and going to the park, but the main thing is education. I think this is really important.”*

– **British citizen, male, wishes to sponsor both parents who live in India**  
**(74 and 65 years old). Father to 2 British children, 9 and 6 years old**

Research by Goldsmiths College, University of London, and the Basic Skills Agency demonstrates that grandparents play a significant role in developing the linguistic and cultural knowledge of children (Gregory, Arju, Jessel, Kenner & Ruby, 2007; Gyllenspetz, 2007; Kenner, Ruby, Jessel, Gregory & Arju, 2007). Working with white English and ethnic minority grandparents and their grandchildren, these studies explore the transmission of cultural values, language and family history. Fundamental to these intergenerational learning relationships is the feeling of warmth and mutuality between grandparents and grandchildren which fosters a mutually supportive environment where learning can take place (Al-Azami, 2006). Grandparents who were more involved in their grandchildren’s daily routine were more likely to take an active interest in their education (Buchanan & Griggs, 2009), and were enthusiastic about sharing their knowledge (Gyllenspetz, 2007). At home grandparents often took on the role of educators, homework assistants and careers advisors, and their grandchildren really felt as though they played a key role in their education.

It is important to recognise how these home-based learning exchanges facilitate children’s access and engagement with different aspects of the school curriculum. Gregory and colleagues point out that there is often an assumption that grandparents in migrant families, who might not necessarily have a firm grasp of the host language, contribute little to language learning. However, the grandparents in their research enjoyed reading with their grandchildren and played an active role in their literacy development. They found that grandparents do not just read books to their grandchildren but in fact blend the language and cultural practices of the host country with their own traditional practices to create a richer way of appreciating a story. Syncretising practices in this way allowed grandparents to use their new skills in English to share their cultural histories and develop the child’s sense of identity and cultural continuity.

Some grandparents explained that their role as educators in the family system was much more than could be defined or expected by the constraints of the national curriculum. These learning contexts were defined more by exploration and shared goals than by homework-driven activities (Al-Azami, 2006). This atmosphere of mutual collaboration gave grandchildren an opportunity to learn about their grandparents’ pastimes, such as cooking, gardening and drawing in frameworks of learning that were complementary to those valued by schools.

These grandchildren who grow up with their grandparents have a complex cultural understanding of, not only their host country, but also the country where their grandparents are originally from. However, for families affected by this recent legislation the prospect of their grandparents contributing to their children’s lives in this way has been undermined. In the focus group, conducted at the Tavistock and Portman NHS Foundation Trust, part of the discussion revolved around the disadvantageous position that children from families starved of grandparental support would face at school.



*“And going back to your earlier point, Nsimire in terms of that cultural transmission of values and learning is such a key tool for when children start school. If a family is quite isolated here and they don’t have the rich cultural tools of learning from grandparents etc. the children start school at a disadvantage and then that’s very difficult to catch up on later because the tools of learning just aren’t transmitted as they should be. I think it’s a resource heavy way around, in a way, because then you’re spending money on interventions in the system later on for children that have missed out.”*

– **Clare Collins, Educational Psychologist, Child and Family Refugee Team**

Reviewing this literature, Mitchell (2008) has noted that pilot schemes and policies often don’t acknowledge the importance of schools working with grandparents to develop links with families and strengthen these existing support structures. Migrant children growing up without this vital resource will be excluded from not only accessing the variety of the curriculum but also from significant aspects of their cultural heritage.

### **Mediating Difficult Times**

Grandparents have always been a vital resource for families during times of strain. A study involving 17,000 parents demonstrated that most go to their families with financial, relational or emotional difficulties before friends or professional bodies (Buchanan & Ten Brinke, 1997). Beyond promoting the educational and emotional development of grandchildren, grandparents also serve as protective factors against the adverse life events that young people can go through.

Stressful events are common in the lives of young people. In a representative sample of children from England and Wales, Buchanan and Griggs (2009) found that more than a third had experienced the loss of a close friend or the death of a family member in the last year. A quarter of the young people had attended a new school and a fifth reported being aware of a change in the family’s financial circumstances. Importantly, more than three quarters of the sample had experienced multiple adversities in the last year. It is also important to consider that there may be specific and additional stresses experienced by young migrants. Coupled with the organisation of the United Kingdom’s current immigration systems, Bhugra and Becker (2005) have argued that racism, unemployment, financial hardship, legal concerns, poor housing and socio-economic disadvantage can exacerbate the sense of dislocation that migrants can experience. Exploring how grandparents might mediate the unique interaction of these secondary stresses is crucial to furthering the policy debate.

*“We have seen a lot of divorces in the Somali community, we have seen a lot of kids going into gangs and if grandparents were here they could have held the whole family...they tell stories, and husbands and also wives they also respect them, they value them so they, in terms of family breakdown, they call the whole family and see what’s happening, they act like an intermediary or something and that was really nice and that’s what missing in the communities and we see like mothers and they have a lot of single mothers and single parents who struggle a lot. If their parents were here they would actually come in and share the burden.”*

– **Fatima Ahmed, Somali Mental Health Practitioner, Child and Refugee Team**

Close grandparental relationships moderate the association between an experience of a stressful event with problematic behaviour and emotional disturbance during adolescence. In addition, experiencing a family transition, such as parental separation, is significantly associated with fewer adjustment problems and depressive symptoms among young people if they report feeling attached to their grandparents (Attar-Schartz et al., 2009; Lussier et al., 2002; Silverstein & Ruiz, 2006). Lussier et al. (2002) argue that the positive influence of grandparents is often felt more keenly during times of family stress. Dunn, Davies, O’Connor and Struggess (2001) demonstrate that during times of family transition grandchildren often report that they feel able to confide in their grandparents about family problems and how they are affecting them. Griggs et al. (2009) show how these children felt that their grandparents had demonstrated themselves to be better listeners and more sensitive to their concerns in the past. Research has shown how having a confidant in the family who will share and explore your problems has a strong buffering effect against depression (Brown & Harris, 1978).

Having a close relationship with grandparents also protects grandchildren from developing the depressive symptoms of their mothers through young adulthood (Silverstein & Ruiz, 2006). The authors assert the importance of intergenerational relationships for society, arguing that they protect young people who might be at risk developmentally from family stressors and weak community infrastructures. There is evidence from an American study that grandmother involvement, and household structure, can mediate the risks associated with growing up in socio-economically deprived areas (Pittman, 2007). The sample was predominantly Hispanic American and African American, and focused on young people from ethnic minorities who were growing up in low-income urban households. Those young people co-residing with their grandmothers reported fewer internalising problems (symptoms of depression, somatisation and anxiety) than their peers from different household structures. Pittman (2007) concluded that young people growing up in multigenerational households have lower levels of material hardship, higher quality parental involvement and more structure which also explains the higher levels of socio-emotional development. The changes to the family migration rules will have the immediate effect of splitting up families, which will mean that grandchildren will be deprived of a vital source of emotional support and a containing household structure as they grow up. The ill-considered nature of this particular legislation and the potential consequences were discussed in the focus group.

*“But also it’s just such an economically short-sighted rule because it sounds as though grandparents can be carers, primary carers, they can be arbitrators for the family if there is conflict, they can be child minders or whatever, they can be teachers, counsellors, you know they have all these different roles that we [service providers] end up trying to reproduce, sending people on parenting courses, to social services and actually what you were saying Fatima it sounds, like if grandparents were here then many of those things could be managed in the families.”*

— **Gillian Hughes, Consultant Clinical Psychologist and Team Leader of the Child and Refugee Team.**

## **MIGRATION AND MULTIPLE STRESSORS**

Having looked at the positive influence of grandparental involvement and care, this section explores the challenges involved in the migratory process when those support structures are not in place and the impact this will have on children. Discussion will look into the secondary stresses that families might face when settling into a new country and how these might undermine the cognitive and physiological development of children who are made vulnerable through processes of migration and dislocation.

### **The Loss of Home**

When looking at how stress is maintained in migrant family systems, key themes were apparent across the literature and interviews. These included the guilt and anxiety associated with leaving loved ones behind, the attendant sense of cultural bereavement and how conflicting value systems can undermine migrant’s mental health.

*“When my father died in June, [my mother] said straight away ‘don’t go back, I don’t want to live alone; I have done anything to deserve to live alone’. She was right, but we have to compromise to some extent. I have to think of the kids as well, but it is unfair that my mother needs to compromise...I spend out of my 24 hours, five hours minimum thinking about my mother, it is stress so if I didn’t spend those five hours worrying it resting or working my productivity would increase a lot. This is what I am feeling.”*

— **British citizen, two British children (nine year old daughter and five year old son) wishes to sponsor his mother who lives in India**

*“My research is with mothers who are refugees and how that affects family life being away from home and a lot of the women said similar things, that the pain of consistently having questions from children about why can’t they go to their grandparents on a Saturday, or why can’t grandma pick us up or look after us, so I think that’s something that affects mother’s mental health as well potentially, if they feel like because of the system that quite um...if affects their sense of self and they can’t give the family life that they would want to give or the way it should be if there were more flexible policies in places.”*

— **Aisling Kelly, Trainee Clinical Psychologist**

Ward and Styles (2012) argue that distance makes caring for dependent parents an impossible task, and one that frequently leads to migrant adult children feeling as though they have failed in their duty of care. The authors assert that these feelings of guilt are actually compounded by geographical separation as families may also feel as though they are losing a close attachment relationship. The experience of guilt is related to deeds which the individual might perceive as being forbidden and usually involves a negative appraisal of actions and self (Ward & Styles, 2012). Aktar (1999) argues that guilt may also be related to a feeling of having surpassed the material possessions and standard of living of one's family and friends who are still at home. Although immigrants from stable nations have chosen to leave grandparents behind, the experience of continual questioning and the anxiety of not knowing about their welfare is still a deeply unpleasant and painful experience.

Displacement can entail multiple disconnections from established family, peer, friendship, community and cultural networks of support (Bhugra & Becker, 2005; Losi, 2006; Summerfield, 2000). Papadopoulos (2005) has explored extensively both what home means and what it means for migrants to move on from their home. He argues that home is made up of myriad familiar tangible and intangible qualities (background sounds, geographical landscapes, architectural designs, interactions and traditional cuisine) that form our sense of humanity and give us confidence to live our lives. As an example of what might be lost, Al-Azami (2006) argues that a family's original language may be forgotten when they migrate unless grandparents help to preserve it and keep it alive. The dislocation that physically breaking from all one is familiar with can cause a fundamental yet indefinable sense of loss (Papadopoulos, 2005). Research indicates that this can negatively impact the mental health of migrants, potentially inducing feelings of depression, anxiety, alienation and cultural bereavement (Bhugra & Becker, 2005; Summerfield, 2000).

Another theme that was apparent in the interviews was the sense that the countries that migrants settled in were different from their home country and often unwelcoming. Losi (2006) draws on the work of Papadopoulos by explaining how the psychological sense of dislocation that migrants feel is compounded by new alien elements within the countries that they are seeking to settle in.

*"What is conflicting here is the culture – it is so hard to understand why they would implement these rules. That's why we were planning to go to Canada before because they have the reunification of families...they believe in close family ties, they support families. But coming from this country, it is a culture shock because I cannot see that close family bonding...the government needs to consider the multicultural diversity in the UK now, and when they implement such changes they need to consider such cultural preferences."*

**– Single mother, British, 2 sons aged 10 and 8 years old,  
wants to sponsor both parents who live in the Philippines, both 65 years old**

These differential elements could include the climate, the darkness in winter, food, and the impersonal places that food is bought such as large supermarkets (Losi, 2006). Such elements form the intangible experience of residents in the host country and thus their impact on the mental well-being of migrants is often overlooked. Furthermore, the institutional barriers that can disqualify their relatives from citizenship subject migrants to forms of governance not faced by UK citizens (Sinha, 2008). This may create feelings of anxiety and otherness that hinder migrants and refugees from experiencing a sense of rootedness and belonging in the new country. The presence of grandparents in families can, for reasons explained in this report, help to alleviate feelings of anxiety and alienation in families. Bhugra and Becker (2005) have described how the tension experienced by those from minority cultures is more common in children than parents because the parents' value system often competes with the value system of the majority culture where the child is spending most of their time. Together these elements, alongside the loss of familiar ones, exacerbate the painful separation from figures such as their grandparents that migrant children experience. Bhugra and Ayonrinde (2004) argue that having a strong cultural identity and extended family networks are protective against these secondary stresses. However, given the absence of grandparents in migrant families we are forced to consider the actual effects on vulnerable children who experience prolonged periods of adversity.

## Stress in Young Migrants

This paper has established that there are numerous challenges and stressors that are transmitted to migrant children. Poverty will be considered as an example of how stressful situations undermine children's biological development. It is well established that immigration policies restrict access to benefits, public services and the labour market which sustains the cycle of poverty and destitution that many migrant families find themselves in (Pinter, 2012). The material and psychological impact of poverty on the developing child is very real (Blair & Raver, 2012), and can drastically alter cognitive, socio-emotional and physical health trajectories for young people (Evans & Kim, 2013).

*"I was just thinking as well how if you're grandma is, or your grandparents are very far away and resources are very limited here, what, if you thought that your parent could never be reunited with you here, you know, how much is your ability to care for your children if you're, you're going to be worried about the grandparent back home who is in an unstable place, in a changing context so I think, you know just that thought alone that it's impossible for the law to change would be devastating to families and it just feels so important for that parent to know that could take the grandparent to a safe place as they have found."*

– **Clare Collins, Educational Psychologist**

Family homes with limited financial resources are likely to be less cognitively stimulating environments. Evans and Kim (2013) argue that these households commonly contain less reading material, fewer age-appropriate toys and fewer informal learning spaces. As a consequence of struggling with multiple stressors, the parents are more likely to experience depressive symptoms, be less responsive and exhibit more punitive behaviours towards their children (Blair & Raver, 2012). Finally, children from low-income families are more likely to live in areas with higher crime rates, with fewer areas to engage in physical activity and have less access to healthy foods (Evans & Kim, 2013).

Blair and Raver (2012) argue that repeated experience combines with biology to influence behaviour, in ways that often go unnoticed. High levels of parental stress are linked with poor outcomes for children such as separation anxiety, attentional deficits and depression (Huang, Costeines, Kaufman & Ayala, 2013). One reason for these poor trajectories is that stress impacts on the developing brain (Hackman, Farah & Meaney, 2010; Lupien, McEwen, Gunnar & Heim, 2009), and there is evidence of how prolonged experience of stress undermines other physical systems that are developing during those formative years (Blair & Raver, 2012; Thompson & Haskins, 2014). Because the body is going through such rapid developmental changes, children are particularly vulnerable to the effects of stress (Lupien et al., 2009; Thompson & Haskins, 2014). Poverty becomes embedded in children early in life, both neurologically and physiologically, undermining both cognitive development and health outcomes.

Stress activates the Hypothalamic-pituitary-adrenal (HPA) axis which releases stress hormones such as cortisol (Lupien et al., 2009). Cortisol has widespread actions throughout the brain and can alter the functioning of the immune system, which resists infection, and the nervous system, which manages adversity. Increased adrenergic and glucocorticoid responses are adaptive because they allow the child to react faster to threats, conferring an advantage when growing up in unpredictable environments. However, the short-term benefits of such responses come at the expense of long-term neurological and physiological development. Cortisol also affects a number of specific brain regions such as the hippocampus (which consolidates memories from experience), the amygdala (involved in decision-making and emotional processing) and the pre-frontal cortex (which involves self-regulation and rational thought). Relative to more socio-economically advantaged children, those from low-income households show more elevated HPA-axis activity, indicative of dysregulation of cortisol (Evans & Kim, 2013). Impairing those brain regions associated with memory, decision-making and thinking will contribute to academic underachievement and mental health difficulties during childhood and through later life (Lupien et al., 2009; Thompson & Haskins, 2014). In addition to this, prolonged stress in childhood is related to elevated blood pressure due to increased sympathetic nervous system activity, elevated adiposity due to atypical metabolic activity and greater inflammation due to compromised functioning of the immune system. Childhood poverty is embedded in the body at an early stage in life and affects the child physiologically and neurologically, negatively impacting on developmental trajectories.

Although studies on stress to date have mainly focused on parental maltreatment and socioeconomic disadvantage (Miller, Chen & Parker, 2011), children from migrant families might be exposed to multiple, chronic stressors throughout their development as has already been discussed. However, these findings in the research can be minimised as there are a number of factors that can lessen the impact of child poverty and migratory stress on the developing brain. Blair and Raver (2012) argue that the quality of care giving is something that can mediate the effects of growing up in impoverished environments. They argue that the wider ecological context in which children develop needs to also be recognised in child development. Given that grandparental involvement has such a positive and encompassing impact on development it is astonishing that their presence in the lives of migrant grandchildren is so heavily legislated against.

## CONCLUSION

This report has shown how vital grandparents are in the lives of their grandchildren and how their involvement has multiple benefits on development as well as protecting their grandchildren from the multiple adversities related to migration. The mutual support networks that the wider family can provide can facilitate the well-being and resilience of migrants and refugees. This means that they might be able to more fully integrate with British society while maintaining a strong sense of cultural identity.

This rule is perhaps symptomatic of the fact that the importance of grandparents is almost invisible on the policy agenda of the United Kingdom (Griggs et al., 2009). Even though schools have recognised the role that grandparents play in education and other areas of life (Gyllenspetz, 2007), the government have yet to address this vital developmental resource. Currently, the rule describes the possibilities of children connecting with their grandparents via conversations over Skype in tacit concession to the importance of the relationship. However, this measure is not enough as it is established that the most important predictor of the quality of relationship is the physical distance between grandparents and their grandchildren (Dunifon, 2013). The point is that physical contact is the key to positive relationships with grandparents, upon which all of this discussion is founded. The fact that current immigration policy systematically ignores the role of grandparents in child development is short-sighted and unjust. Short-sighted because it doesn't acknowledge how grandparents can influence development over the course of life, meaning that children are less likely to burden public health services, more likely to achieve at school and in their careers. The policies are unjust because viewing development through the narrow lens of the nuclear family does not recognise the growing influence of grandparents in British life and how integral they are to child development, or the culturally different patterns of care in families that have migrated to the UK.

*"I don't know what I have done wrong. I have worked hard, my parents helped me to work, my parents helped me to have a daughter who has great potential. Now I need to choose between my daughter and my parents; destroy the life of my daughter or the life of my parents?"*

— **Single mother, British, 1 child aged 17, wants to sponsor both parents (68 and 73) living in Ukraine, mother's visit visa was refused in November 2013**

By denying migrants support from their extended families in this way, these policies are further disadvantaging the young children who are most vulnerable to the effects of early adversity. The continued existence of this rule risks contravening governmental obligations to protect children under the UN conventions on the rights of the child (Pinter, 2012). In agreement with the All Party Parliamentary Group on Migration, this report urges the government to reconsider these amendments to ensure that families who can financially support their adult dependent relatives be allowed to do so before they become fully physically dependent.



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## APPENDIX

### The Focus Group

Below is the list of the members of the Child and Refugee Team at the Tavistock and Portman NHS Foundation Trust who participated in the focus group.

- Gillian Hughes: Consultant Clinical Psychologist
- Christopher Jones: Assistant Psychologist
- Clare Collins: Educational Psychologist
- Fatima Ahmed: Somali Mental Health Practitioner
- Korina: Trainee Child Psychotherapist
- Lynne Taylor: Child Psychotherapist
- Aisling Kelly: Trainee Clinical Psychologist
- Nsimire Bisimwa: Congolese Mental Health Practitioner
- David Amias: Consultant Family Therapist
- Suzanna Fairweather: Consultant Child Psychiatrist





# QUESTIONNAIRE RESULTS

## RESPONDENTS

We received 111 questionnaires from individuals affected by the rules. 69 were returned to us in person or via email, while 42 filled out the question via Survey Monkey. All respondents included in the final sample provided an email address to verify their identity and avoid duplicates.

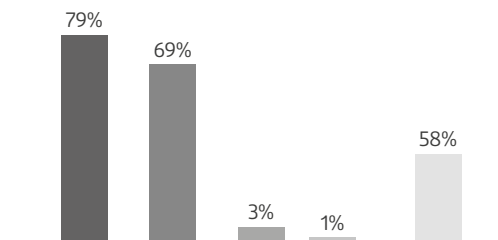
## AGE OF PARENTS

- 50% of parents were aged between 65-75.
- Mothers were more likely than fathers to be under 65 (50% as opposed to 29%)
- Fathers were more likely to be aged 65-75 (66% as opposed to 40%).

	Total	% mother	% father	% total
< 65	72	50%	29%	42%
65-75	85	40%	66%	50%
76-85	12	10%	2%	7%
86- 95	1	0%	0%	1%
95+	0	0%	0%	0%

## RELOCATION

- 75% of respondents would consider moving abroad to care for their relative if unable to sponsor them to move to the UK
- This included the parents of 85 British children
- The impact of relocation abroad was overwhelmingly negative. 83% of respondents expected that relocation to another country would result in reduced career prospects and 73% reduced financial prospects. 62% envisaged separation from their partner or child as a result of relocating



### Impact of Moving Abroad

- Reduced Career Prospects (79%)
- Reduced Financial Prospects (69%)
- Improved Career Prospects (3%)
- Improved Financial Prospects (1%)
- Separation from Partner/Child (58%)

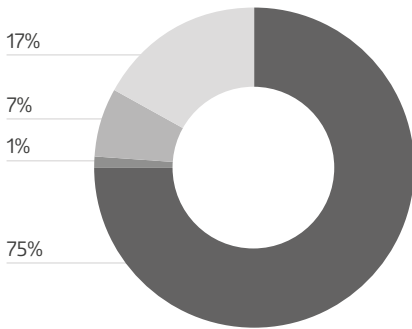
Would you consider moving abroad?

**75%** Yes, I am responsible

**25%** No, I have other obligations

### STATUS IN UK

Most respondents were British Citizens (75%). 17% had indefinite leave to remain, 7% were in the UK on a work or study visa and one respondent had refugee status.

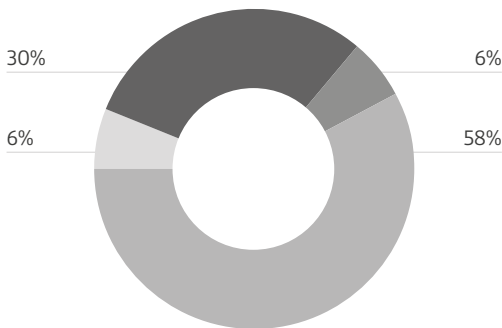


#### Status of Sponsor

- British Citizen (75%)
- Refugee (1%)
- Visa (7%)
- ILR (17%)

### HOUSEHOLD

Most respondents stated that both they and their partner were in employment (64%). Among the 36% who answered that either they or their partner did not work, childcare was the most frequently cited factor (58%).



#### Main Reason for Preventing You/Your Partner from Working

- Choose not to (30%)
- Unable to find work (6%)
- Lack of Childcare (58%)
- Other (6%)

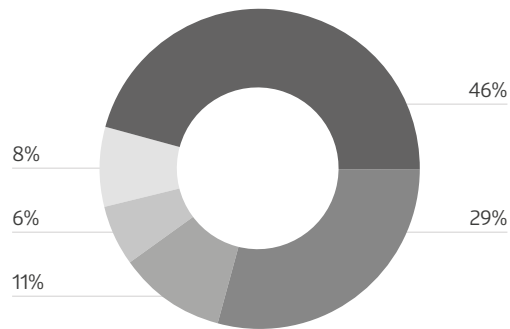
- Among the lower income families, 67% answered that they were a single-income household. Among lower income families, childcare remained the most frequently cited reason for one parent not working.
- In households where one parent did not work, children were more likely to be younger (88% under 10 as opposed to 76% in total sample and 65% under 6 as opposed to 47% in total sample) suggesting a childcare deficit.

### INCOME

- Most stated that their income was in the higher income bracket of above £25,000 (81%). 14% stated that they earned below £25,000 and 5% preferred not to answer the question.
- 20% of children lived in lower income households.

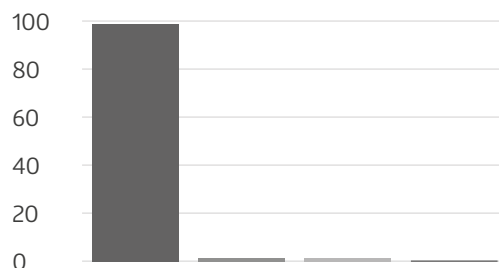
### CHILDREN

- Our sample included 121 children under the age of 21
- 96% of children were British Citizens
- 84% of respondents stated that their children would not be able to regularly visit their grandparents (e.g. in school holidays).
- Main reasons were time commitments (71%) and cost (63%)
- 98% of respondents said that they considered regular contact between their children and children's grandparents as "very important" or "quite important".



#### Age of Children

- 0-5 (46%)
- 6-10 (29%)
- 11-15 (11%)
- 16-20 (6%)
- 21+ (8%)



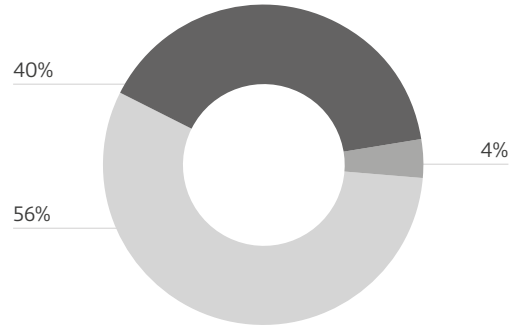
#### How important do you consider that your children have regular contact with their grandparents?

- Yes very
- Yes quite
- Neither important nor unimportant
- Not important

## SPONSORSHIP

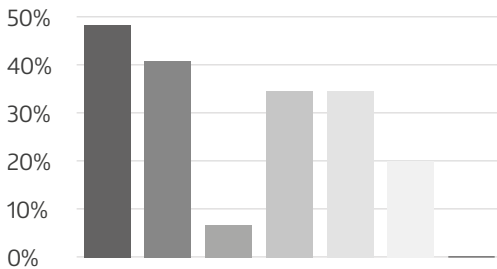
- Most respondents wanted to sponsor both parents (56%), followed by those looking to sponsor only their mother (40%). Only 4% of respondents wanted to sponsor just their father.
- 80% of respondents had not yet applied for their parents to join them in the UK. The most commonly cited reasons were that their parents do not need daily care (48%), or are not physically dependent (41%)
- Other reasons included parents being financially independent (35%), fear of invalidation of visitor's visa (35%), cost of visa application fees (20%).
- No respondents cited the inability to afford care in the UK as a factor. Just 7% stated that care would be available in the country of origin.
- Parental care was considered a "very

important" consideration in relocating to the UK among 69% of respondents. Only 18% claimed it was not very important, or not a consideration.



### Sponsorship of Parent(s)

- Mother Only (40%)
- Father Only (4%)
- Both (56%)



### Main reason for not applying under the new Rules

- Parent does not need daily care
- Parents are not physically dependent
- Care is available in their country of origin
- Parents are not financially dependent
- Invalidation of visitors visa
- Cost of visa application fees
- Cannot afford to care for parent in the UK

Importance of Parental Care as a Factor in Moving to the UK

**81%**

Very/quite important

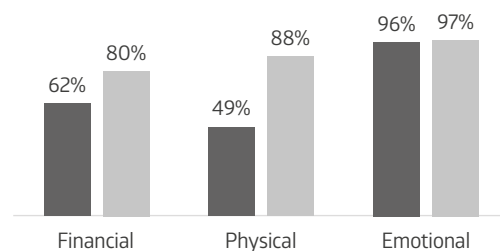
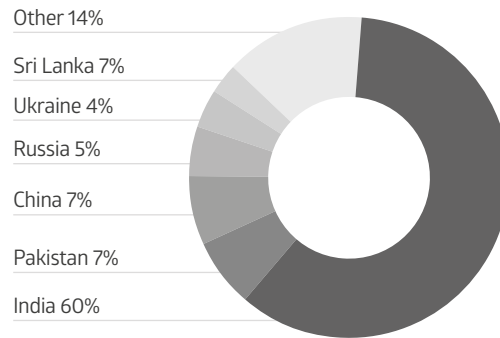
**19%**

Not very important/Not a consideration

## NATIONALITY OF PARENTS

- Parents held a total of 18 different nationalities.
- Emotional dependency was the most frequently cited form of dependency between older parents and their adult children, with 96% claiming that their parents were currently emotionally dependent on them and 97% expecting their parent(s) to become emotionally dependent on them in the future.
- This was followed by financial dependency with almost 2/3 of respondents (62%) financially supporting their parents. 80% of respondents expected their parents to become financially dependent on them in the future.
- While only 49% of respondents stated that their parents were currently physically dependent on them, this rose to 88% when considering their expectation that they would become physically dependent in the future

### Nationality of Parents



### Dependency of Parents Now and in the Future

# HARSH, UNJUST, UNNECESSARY:

Report on the Impact of the  
Adult Dependent Relative Rules  
on Families & Children

Report produced by JCWI in collaboration with BritCits.  
July 2014

