



**The population with hidden
'No Recourse to Public Funds'**

How the Right to Reside test
traps EU citizens in destitution

**the 3 million**



ABOUT US

Our vision is a world where EU citizens can thrive, reach their potential and have an equal voice in UK society.

The need for EU citizens to be represented has never been greater, due to the fragility of their status within the context of complex immigration rules and the negative backdrop of the hostile environment.

Our work ranges from organising and mobilising EU citizens' communities, informing people of their rights, holding the Government to account on the implementation of the Withdrawal Agreement, promoting access to justice, giving EU citizens in the UK to change the narrative on migration, and advocating for social justice.

CAN EU CITIZENS CLAIM WELFARE SUPPORT?

EU citizens and their family members who lived in the UK prior to Brexit have to apply for a new immigration status to be able to continue living in the UK. Under the EU Settlement Scheme (EUSS), people are now granted either pre-settled status or settled status.

For the purposes of claiming welfare benefits, applicants need to pass a 'Habitual Residence' test. They must show the UK is their main home, and that they have a 'right to reside'. Several immigration statuses automatically satisfy the 'right to reside' requirement and initially those with pre-settled status under the EUSS were also deemed to satisfy the test.

In July 2019 the UK government introduced an amendment to the Universal Credit Regulations 2013 which reversed that, imposing a requirement that those with pre-settled status demonstrate a second 'right to reside'. This is assessed by reference to the old EU free movement rights - for example, showing they are a worker or are self-employed.

WHY IS THERE A PROBLEM?

3,500 applications for Universal Credit by EEA nationals are refused every month because of the right to reside test.

Many with pre-settled status are unable to satisfy, or prove that they satisfy, this second test. For people with a patchy work history, such as those working in the gig economy, proving that they are working enough to satisfy the right to reside test is difficult. It can be hard to prove that work is 'genuine and effective'. It can also be hard to access proof of chequered employment.

This is particularly problematic in the context of the current cost of living crisis, and in the wake of the

Covid-19 pandemic during which so many lost their jobs.

Accessing advice and legal support is very challenging. There are not enough advisors to help. Challenging DWP decisions is costly and difficult, but appeals do often succeed. This shows that there is a need for proper legal help. For many people on the brink of destitution, getting access to the support they need is simply beyond reach.

LIVING WITH DIGNITY IS A HUMAN RIGHT - STOYAN'S STORY -

Stoyan is used to relying on himself. He came to the UK in 2019, found friends and community, and was granted pre-settled status. He worked various jobs. He likes cars and was happy working at a car wash.

Stoyan was arrested following an argument with his ex-girlfriend and although he was never charged with a crime, a police check showed he had an old conviction from abroad, which he had served, and a minor case against him still pending.

When Stoyan was released from immigration detention with a GPS tag, he still made it work and started as a driver for food delivery apps, despite his options being very limited with the tag.

His income was minimal, and he was evicted after struggling to pay rent. He had to live in his car, and his mental health was fragile

as a result of abuse he had suffered in the past.

DWP incorrectly cited ongoing legal procedures to justify putting his claim on hold. His local council helped him for a while, and told him he should be entitled to Universal Credit. At the same time, DWP wrongly told him he had no right to reside, so he was not able to receive that much needed Universal Credit.

This led Stoyan into a downward spiral, and he attempted suicide.

With the help of the 3million, Stoyan demonstrated how he was at risk of destitution, and his welfare claim was eventually granted. The good news came with a warning: 'the Universal Credit you are now receiving may be recovered from you in the future.' Even the stability Stoyan now has is in jeopardy.



COMPLICATED RULES LEAD TO MARGINALISED PEOPLE FACING UNFAIR DEBTS OF THOUSANDS - EVELINA'S STORY -

Evelina is a single mum to 3 year old Daniel. She has lived in the UK since 2011 but struggled to prove it, so didn't challenge it when she was granted pre-settled instead of settled status.

When her maternity allowance ended, she moved onto Universal Credit. She kept DWP updated and when Daniel was able to go to nursery, she was able to work part time.

In April 2023 DWP told her that they had reversed the decision about her 'right to reside' - she didn't actually satisfy the test. She was told to repay £48,000 she had received over the past 3 years.

Evelina was faced with potential eviction and homelessness for herself and Daniel. The stress of such a huge debt on top of destitution was horrendous. Luckily, she told an immigration advisor who helped her make a new application to upgrade from pre-settled to settled status, which she had always been eligible for.

She now passes the right to reside test, and is looking for new accommodation. She can't afford to pay the £48,000 that DWP still say she owes, and finding specialist debt advice is very challenging.

“ I think it is unfair that DWP changed their decision after 3 years without ever letting me know that that could happen. I had always been transparent and up front with DWP about my income and circumstances.

- Evelina



PEOPLE SHOULD NOT BE TRAPPED IN POVERTY - PEDRO'S STORY -

Pedro came to the UK in July 2018 with his girlfriend. They settled in Wales and in April 2020 he secured his pre-settled status. He worked for close to two years, but there were some gaps in his employment when he separated from his partner, fell into homelessness and struggled with alcohol.

He claimed Universal Credit for a few months but then his benefits were cut. He was convicted of theft, sent to prison and then to an immigration removal centre. His immigration solicitor successfully appealed his deportation order and Pedro was released to a bail hostel in the south of England.

Far away from his Welsh home and in need of support to get back on his feet, he made a new claim for Universal Credit but that was refused on right to reside grounds.

He is not yet able to work due to ongoing health problems and when his bail accommodation runs out he is at risk of homelessness again. He survives on food bank vouchers and soup kitchens, while trying to find any kind of work that would give him a minimum of income and a chance to get welfare support.

28%

of destitute households are headed by a migrant, despite migrants constituting only 14% of the overall population

www.jrf.org.uk/report/destitution-uk-2020



EUSS DELAYS AND DWP INCONSISTENCIES MAKE THINGS SO MUCH WORSE - EMIL'S STORY -

Emil is German but has lived in the UK all his life. Growing up in poverty, he has experienced discrimination from a young age. He is now in his early 20s and has been arrested by police on several occasions because of hanging around with the wrong crowd. Thankfully he has never been convicted of any crime.

Emil submitted an application for settled status under the EUSS in time. He received a Certificate of Application confirming this, which should entitle him to all the same benefits and rights that he would have if and when his application is successful. Two years on, he is still waiting for a decision.

Struggling to make ends meet, Emil applied for Universal Credit. Despite having his Certificate of Application, Emil was told he needed to prove his entitlement. That evidence was not easy for him to get. His parents' work history was patchy and they hadn't kept many records.

Finding a lawyer with the right expertise was very difficult in the area where he lives, but the 3million put him in contact with a solicitor who was able to take his case to the Social Security Tribunal. That made all the difference. The judge directed DWP to search their own records and in doing so they discovered that Emil's mother had secured a permanent right to reside in the UK years ago. This meant Emil had too.

DWP revised their decision before the appeal went ahead and he was finally granted Universal Credit, which was backdated almost two years. He is doing well and has his own flat, and is able to find work without the stress of eviction looming over him.



As the case studies show, there is a lack of proper accountability and it is the individuals, already in a precarious and vulnerable state, who suffer as a result.

According to research carried out by the NRPf Network



in 2021-2022, people with status under the EUSS, or with an EEA nationality, became the largest group referred to local councils for emergency assistance against destitution

<https://www.nrpfnetwork.org.uk/nrpf-connect/nrpf-connect-data>

Councils are absorbing the costs of this, against a backdrop of ever-tightening budgets.

These case studies highlight the range and severity of the issue.

Removing the hurdle of the right to reside test would be easy.

It would cushion people from destitution, it would save local authorities money, and it would streamline the administrative process.



THE SOLUTION

Removing the DWP habitual residence test for pre-settled status holders would be simple enough to do, given that the test was introduced through an amendment to the Universal Credit Regulations 2013 in 2019.

Its reversal would entail the introduction of secondary legislation via a Statutory Instrument, thereby undoing the changes of "The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019".

The result would mean far fewer costs and a reduction in the administrative burden on local authorities and DWP caseworkers.

Moreover, those with a literal right to reside through the EUSS would no longer need to prove a further residence right, and as a result many currently pushed into destitution would instead be able to thrive.

HOW PARLIAMENTARIANS CAN WORK WITH THE3MILLION AND SUPPORT THE CAMPAIGN



1. Make a public statement of support on social media
2. Commit to meeting with the3million again ahead of the next general election
3. Write to the Immigration Minister and Secretary of State for EUSS about these proposals
4. Submit an Early Day Motion
5. Apply for a Westminster Hall debate
6. Write to your party's Policy Director about including these proposals in your Manifesto
7. Organise a roundtable meeting with the Immigration Minister and Secretary of State for EUSS



the  million