

**European Affairs Committee  
House of Lords**

To the Chair of the European Affairs Committee,

We write to highlight the issues relating to the preservation of European citizens’ rights in the UK post-Brexit which persist following the European Affairs Committee inquiry in 2021.

We prepared a memo<sup>1</sup> for the European Affairs Committee in May 2021 to highlight the key issues at that time with the EU Settlement Scheme and the ongoing protection of EU citizens’ rights. Many of the issues raised in those submissions remain unresolved, and serious additional concerns have arisen since that point.

This letter seeks to set out an overview of the most pressing concerns that have been raised with the3million. For ease of reference, the first issues highlighted below relate to those previously addressed in the 2021 memo.

## Continuing Issues

Issue raised in <a href="#">memo</a> May 2021	Update - April 2023
<b>Not everyone who has WA rights can obtain evidence of their WA rights</b>	<p>This has not changed. Dual nationals are still unable to get proof of their WA rights.</p> <p>An extra impact has emerged, namely the inability to travel with a national identity card after October 2021 (when the UK stopped accepting national identity cards). For example, if I were a Dutch citizen with settled status, I would be able to travel to the Netherlands on my Dutch national Identity Card. However, as a dual British Dutch citizen, I would have been unable to apply for settled status and therefore unable to prove that I am a WA beneficiary, and am therefore not able to travel with my national identity card.</p>
<b>Not everyone who has been granted EUSS status is considered to have WA rights</b>	<p>This issue of “true” and “extra cohort” is still a live, unresolved issue and remains a point of difference between the EU and the UK.</p> <p>However, the size of the extra cohort has shrunk considerably with the <a href="#">CJEU judgment</a> that access to the NHS constitutes having Comprehensive Sickness Insurance.</p>
<b>Legal certainty on scope</b>	<p>It is still the case that people who have status under the EU Settlement Scheme (EUSS) do not have any legal certainty as to whether they have rights under the Withdrawal Agreement and whether they are in full personal scope or have rights as a family member only.</p>

<sup>1</sup> <https://the3million.org.uk/sites/default/files/documents/t3m-memo-HoLEuropeanAffairsCommittee-MismatchEUSSWA-25May2021.pdf>

<p><b>Rights pending late applications</b></p>	<p>At the time of writing the 2021 memo, just before the 30 June 2021 EUSS deadline, the government was still of the view that anyone who made a late application would only have any rights in the UK once their application was granted. In the memo we set out why that was wrong. On 6th August 2021, the government changed its mind about this and agreed that everyone with a late application would have their rights protected as soon as they receive a certificate of application.</p> <p>While this was welcome, there are several problems, including the government's refusal to create clear legislation for the rights of those with pending applications.</p> <p>Pending applications are only covered by legislation for those who are “true cohort” – those who lived in the UK before 31 December 2020, and submitted an application before 30 June 2021. All other pending applications, including late ones and those of joining family members, are told to rely on the direct effect of the Withdrawal Agreement to assert their rights. The Home Office says that guidance covers these rights, but a lot of this guidance is very confusing and decision makers, including the DWP and local authorities, frequently make the wrong decisions. We have written to the government about this on several occasions, see <a href="#">here</a> and <a href="#">here</a>. Some of these issues are covered further below.</p>
<p><b>Loss of residence rights for pre-settled status holders</b></p>	<p>This was taken up by the Independent Monitoring Authority (IMA) in their Judicial Review, with interventions submitted by the3million and the European Commission. We very much welcome the judgment, but we await to see how the Home Office will change the EUSS to accommodate the judgment. There should be a consultation process: see <a href="https://the3million.org.uk/news/2023-02-15/secretary-state-will-not-appeal-judgment-which-found-brexit-rule-makes-eu-citizens">https://the3million.org.uk/news/2023-02-15/secretary-state-will-not-appeal-judgment-which-found-brexit-rule-makes-eu-citizens</a></p>

An overview of the other most pressing concerns which have arisen since 2021 and which were not covered previously are set out as follows.

## Digital status

There are a myriad of problems with the current form of digital-only status. It is not fit for purpose and a different form of digital status is needed. Fundamentally, our concern is that the current form is not a stable status that belongs to the individual, rather the individual must repeatedly make cumbersome requests for permission to access it through a Home Office website. We have seen many cases where someone has been able to successfully obtain permission one day, but not the next due to a glitch beyond their control.

We have written to the Home Office on a number of the **specific technical issues**, see:

- Those with multiple Home Office applications: <https://the3million.org.uk/publication/2022112101>
- Those with corrupted digital status (where photograph is missing and no share code can be created): <https://the3million.org.uk/publication/2022112102>

- Those with ‘entangled’ status: where details belonging to someone else appear:

<https://the3million.org.uk/publication/2022081202>

- Adding additional names (eg married names) to digital status:

<https://the3million.org.uk/publication/2022111801>

One of our reports to the Independent Monitoring Authority was dedicated entirely to the challenges of **maintaining the digital status**: <https://the3million.org.uk/publication/2022032801>

We also anticipate that there will be an increase in serious problems such as with denied boarding, when the Electronic Travel Authorisation (ETA) scheme is introduced. We submitted a report to the Independent Monitoring Authority in November 2022 on **this and other challenges of travelling with a digital-only status**: <https://the3million.org.uk/publication/2022112301>.

The Government has repeatedly recognised that digital-only status will be difficult for some, but repeatedly states that its mitigation of a **telephone helpline** is sufficient. Through our *Report-it!* form we gather it is not sufficient and takes unacceptably long to resolve technical issues. One such comment illustrates this: “*No. Met with same response of 'we are looking into it' but no action taken for 6 months, problem still unresolved.*” We have also written to the Home Office multiple times about the inadequacy of the helpline: <https://the3million.org.uk/publication/2022012101>.

### ***Our proposal***

We have developed a **proposal for an alternative implementation of a digital status**, which would reside with the individual rather than on a Home Office web portal, and which is capable of providing a very cost-effective and secure physical backup as needed. It would involve use of a simple app with a secure QR code, similar to that rolled out by the NHS regarding Covid vaccine status.

You can see our proposal and the subsequent correspondence with the Home Office regarding it here: <https://the3million.org.uk/publication/2022030802>.

The Home Office rejected our proposal without properly engaging. We strongly disagree with the reasons for its rejection.

**We remain of the strong view that our proposal has substantial merit and deserves to be considered and engaged with in good faith.**

## **EUSS Applications**

### ***Delays***

We continue to see long delays in the making and implementing of EUSS decisions.

Delays in receiving **certificates of application** are very serious; people are prevented from accessing their rights and free NHS healthcare until they have the certificate. The IMA launched an enquiry into this in July 2022 ([https://ima-citizensrights.org.uk/news\\_events/ima-launches-inquiry-to-investigate-euss-certificate-of-application-delays/](https://ima-citizensrights.org.uk/news_events/ima-launches-inquiry-to-investigate-euss-certificate-of-application-delays/)) which has not yet published any findings. The Home Office position is that delays for

eligible applicants are justified, due to concerns about spurious/speculative/fraudulent applications from ineligible applicants. We say this is not in keeping with the Withdrawal Agreement which stipulates that certificates ought to be issued immediately.

**Those who do have a certificate of application** can also struggle to assert the right to work given. Employers are directed in those cases to use the employer checking service, which introduces delays and an extra barrier. We receive many exasperated reports from people who say they are overlooked in favour of other candidates who can prove their right to work instantly.

**Appeals** are taking a very long time to be implemented when allowed, see this letter we have just written to the Home Office about this: <https://the3million.org.uk/publication/2023021601>. The letter also contains reports of disjointed digital status when EUSS status is granted after a successful appeal.

**Administrative reviews** are taking an unacceptably long time: see [this FOI](#). Originally, people were told an administrative review would be concluded within 28 days. The FOI shows that more than half are taking well over 6 months.

### *Support for vulnerable people*

The Grant funded network has had to survive from short-term extension to short-term extension, without any long-term funding guarantee. The applications submitted now are invariably more complex than those at the start of the EUSS scheme, as they often pertain to vulnerable people or family reunion applications involving dependency. Ongoing support is also needed for people who have status, but who were helped to get status by advisers in the first place and cannot manage their digital only status.

We fully support this [letter of 14 Feb 23 from Here for Good signed by Grant Funded Organisations \(GFOs\)](#) which states: *“there are significant pressures currently facing immigration support providers across the UK. There are particularly problems with areas already recognised as ‘advice deserts’, the widespread lack of access to higher level (OISC Level 2+) advice, and the fact that EUSS support generally is not covered by Legal Aid.”*

### *Home Office contact with people*

We are very concerned by the Home Office stated methods of contacting individuals. In April 2022 the Home Office changed their [caseworker guidance](#) (see ‘Truncated Process’) so that they could more easily refuse certain applications after less frequent contact attempts. Many individuals have told us, and other organisations have mentioned this too in the various forums we are members of, that the Home Office will state that they made attempted contact with individuals, but the individuals (or organisations helping individuals) say this is simply not true. A recent ‘*Report-it!*’<sup>2</sup> individual wrote in their report to us:

*“Applied late because of problems with the corona virus. Application was denied twice on ground of providing insufficient evidence - residential. Contacted citizens advice, immigration lawyers (2 different ones), was told to apply again and appeal. Didn't have the financial resources to get more help from the lawyers and eventually gave up (after 1.5 years). **Home Office repeatedly sent the same automated replies & stated that they had tried to contact me which never happened, not on a single occasion- whether by email or phone.**”*

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<sup>2</sup> The3million launched a reporting tool, called *Report-It!*, on its website in December 2020 - <https://the3million.org.uk/report-it>. We offer follow-up conversations with respondents. It has received over 1,200 reports to date.

See here for further corroboration by others:

<https://freemovement.org.uk/members/forum/subject/ho-caseworker-claims-attempted-contact-unsuccessful/>

## **COVID**

Though some Covid related absences and other exemptions were created in the immigration sphere, they were not made across the board, so there is disparity between circumstances in which a more flexible approach has been adopted as a result of Covid-induced difficulties, and those where it has not.

For example, we continue to see the fallout for durable partners who were unable to get married before the December 2020 deadline due to the Covid restrictions in place at the time. An appeal on this issue is due to be heard in the Court of Appeal in July 2023 (*Celik (EU Exit; marriage; human rights)* [2022] UKUT 00220 (IAC)).

## **Other issues**

### ***NHS charges***

We have been very concerned about NHS charging for secondary healthcare in the following situations:

1. Late applicants who ultimately go on to receive status, for the period between their deadline and submitting their EUSS application;
2. The period between submitting an application and receiving a certificate of application;

Number 1 is still government policy, and we remain very concerned about this. You can read our letter to the Home Office about this here: <https://the3million.org.uk/publication/2022090701>.

Number 2 is intertwined with the IMA's enquiry into delays for issuing certificates of application.

We are very grateful that the retrospective charging of healthcare for people who are ultimately refused status has now been reversed.

### ***Exclusion from Government online processes***

There are a number of cases where government actors are no longer allowing EUSS status holders to access online processes, where formerly they could. Two examples include:

- DBS checks - We have heard anecdotally that the DBS checking services do not cater for the use of share codes. Instead people are required to use the postal service which take much longer. This leads to delays in other processes, such as obtaining licences essential for work. We are looking to gather more information on this.
- DVLA - EU citizens are no longer able to use the online process for renewing / applying for driving licences. Instead they have to send forms through the post, including their identity documents.

### ***Social security coordination***

Social security coordination legislation is extremely complex. There is a real lack of clear information on this, and we are seeing many cases of people being denied benefits in the UK because a family member receives a small pension from another EU member state, for example, which makes that member state the so-called

‘competent state’. The DWP appears to be using this competency argument to refuse paying out benefits to citizens living in the UK. Although this problem predates Brexit, we expect more such cases to emerge in the future. One example was covered in the Press, see: <https://www.mirror.co.uk/news/politics/british-war-hero-disability-benefit-28534585>.

### ***Comprehensive Sickness Insurance (CSI)***

Following the European Court of Justice ruling in March 2022, some naturalisation guidance has now been updated by the Home Office. However, we feel the government should consider a compensation scheme because this 20-year injustice will have caused much financial hardship and injustice to thousands of people. See <https://the3million.org.uk/faq/csi> for our statement on this, and <https://www.csi-justice.org.uk/> for more information.

### ***Rights for those leaving prison and detention***

We have a team member within the3million who has been supporting, in conjunction with a firm of immigration solicitors, a number of EU citizens who have left prison or detention. A report on this will be out in due course, but as an indication there are many systemic issues at play for these individuals which make it extremely difficult for this group of ex-offenders to re-integrate and get their life back together. This includes the lack of access to their ID document (for EUSS applications, interactions with DWP, and local authorities), and incorrect bail conditions denying them the right to work.

There is also the issue that even a one day detention breaks continuity of residence so for pre-settled status holders this means being unable to ever gain settled status. We understand this remains a point of difference of WA interpretation between the EU Commission and the UK Government.

We welcome the interest of the European Affairs Committee in writing to the government on these matters and in pursuing a further debate on citizens’ rights. We would be happy to provide further evidence and support as and when required.

Yours faithfully

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