the3million submission to Independent Monitoring Authority August 2021

Who is the3million?

the3million is the leading grassroots organisation representing EU citizens in the UK, formed in 2016 after the Brexit referendum. Our work ranges from monitoring the implementation of the Withdrawal Agreement, advocating for the integration of EU citizens through a pathway to citizenship, informing people of their rights, and giving EU citizens a voice in British society to change the narrative on migration.

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Summary

Up till now, the success of the citizens' rights chapter of the Withdrawal Agreement has been largely fixed on the EU Settlement Scheme [EUSS]. Whether it be the performance of applications concluded, backlogs and so forth, the attention has been on ensuring that EU citizens[1] apply for their status.

The 30 June 2021 deadline of the scheme does not mean an end to people needing to apply for status (as extensively observed in this report) but it does mean a renewed focus must be placed on how EU citizens access and prove their rights and the various points at which they need to do so.

The previous report to the IMA set out initial concerns for rights under the Withdrawal Agreement. This report builds on these whilst also reflecting on where our previous recommendations for action have been met.

We will highlight the various barriers those with status and those without status will encounter now that the EUSS deadline has passed. These barriers reflect the complex and dangerous hostile environment mechanics established to prevent migrants without status from accessing work, housing and other vital services.

Our recommendations identify immediate solutions but also set out areas where the IMA should research, understand and challenge the risk of rights protected under the Withdrawal Agreement being abused or breached. The refusal of access to work, housing, support and healthcare has dire consequences for the people experiencing such refusals, and for the integrity of those rights.

Does the hostile environment framework undermine the rights of EU citizens under the terms of the Withdrawal Agreement?

It raises a question: does the hostile environment framework undermine the rights of EU citizens under the terms of the Withdrawal Agreement? We believe this needs to be a focus for the IMA and we look forward to working with them to deliver an answer.

In addition to this, our key areas of concern are:

- Those who miss the deadline and have no immigration status have no rights to work, rent or access vital services including health care. We are beginning to see examples of this, and it requires urgent attention.
- Those with pending in-time applications have rights but are increasingly struggling to enforce them. We are receiving increased reports of people being denied access to vital services and rights.
- "View and Prove" is now a mandatory process for people to prove their immigration status in the UK. We continue to receive reports of technical, accessibility and other issues.

[1] Throughout this report, unless stated otherwise, we use 'EU citizens' to include EEA and Swiss citizens and family members deriving their rights from EEA and Swiss citizens.

Chapter 1. Introduction

1. This report should be read alongside our first report to the IMA of February 2021, much of which is still valid. We have included in this report a review of the recommendations made in our earlier report, to take stock of which recommendations have been addressed, partly addressed or not addressed.

2. The grace period of 1 January 2021 to 30 June 2021 is now over, and a new relationship between EEA/Swiss citizens and family members and the British state has begun. There is a new legal landscape governing people's rights.

3. We have been extremely concerned about the consequences to rights, and the impact on people's daily lives as they navigate their new status amongst the UK's existing hostile environment policies. Our fears are broadly divided into the following areas:

    - How people with status or pending status can access the rights that they have, this depends on their understanding of their rights, and the ability to prove those rights
    - How well various government departments (such as the Home Office, the NHS, the DWP, HMRC, the DVLA, DfE) understand those rights and new ways of proving those rights
    - How people without status are signposted and helped to be reunited with their rightful status without devastating consequences to them while they go through the process

4. We welcome the very recent announcement[2] that the Government has belatedly accepted that those who apply late to the EU Settlement Scheme should have all their rights protected while their application is determined – in clear accordance with the Withdrawal Agreement.

5. From the outset, it is important to stress our continuing concern about the Government's hostile environment policies. The current government did commit to undertake a review of the various policies - in particular those delegated to private actors such as landlords and employers - as part of the recommendations made by Wendy Williams in her report[3]. Considerable reform is still required to ensure that those the Withdrawal Agreement aims to protect are not facing continued discrimination. We look forward to the details of the review being published and hope that the IMA will consider and act upon any undermining of rights arising from the Government's policies.

6. A lot more needs to be done to reach out and encourage people to apply to the EUSS. Our main concerns are focused on:

    - The ability to prove and access rights – which will definitely require a physical proof of status
    - Backdating of rights for late applicants so that people are not penalised for applying late. The most severe, life changing consequences of not doing so will likely be seen by vulnerable or elderly people who first find out about their lack of status as and when they need urgent NHS treatment.

[2] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme
[3] https://www.gov.uk/government/publications/windrush-lessons-learned-review

- Far more education and clear information to the many organisations within the hostile environment legislation who need to interact with a brand-new status for over five million people.

7. In our February report we used a breakdown of those who have not applied, those who have applied but are waiting for status, and those who have been granted status. In this second edition, we will adopt a slightly different structure, since there is increasing overlap between these categories, for example someone may already have pre-settled status and is now awaiting a decision on an application for settled status, or someone is appealing a refusal on an EU Settlement Scheme decision.

8. Considering the ongoing impact of the immigration policies of the Government on those we aim to represent, we instead organise this edition by the points of interaction between citizens and the UK, their host country. The report will consider the backlog of applications, the process of applying, the accessing and proof of the new status, followed by a detailed examination of all the component rights of entry and residence in the UK:

    - ***Chapter 6. The right to enter the UK***
    - ***Chapter 7. The right to work***
    - ***Chapter 8. The right to rent***
    - ***Chapter 9. The right to benefits***
    - ***Chapter 10. The right to social housing and homelessness assistance***
    - ***Chapter 11. The right to NHS healthcare***
    - ***Chapter 12. The right to study***
    - ***Chapter 13. The right to family reunion***
    - ***Chapter 14. The right to data protection***
    - ***Chapter 15. Other rights***

9. These chapters are followed by a closer look at the provision of help, loss of EUSS status, and the UK's detention system.

10. In ***Appendix A***. ***Recommendations from our February 2021 IMA report*** we revisit all the recommendations made in our previous report, to consider whether they have been addressed, no longer relevant or still outstanding. In ***Appendix B. Consolidated list of recommendations***, we bring together all the new recommendations made throughout this report. Where it is unclear, the recommendations set out are for those to be pursued or investigated by the IMA.

11. Finally, ***Appendix C*** provides a brief note on the methodology used in this report. Throughout this report, unless stated otherwise, quotes are from reports to the3million using our report-it tool or our Contact Us webpage, or from posts on our Facebook forum.

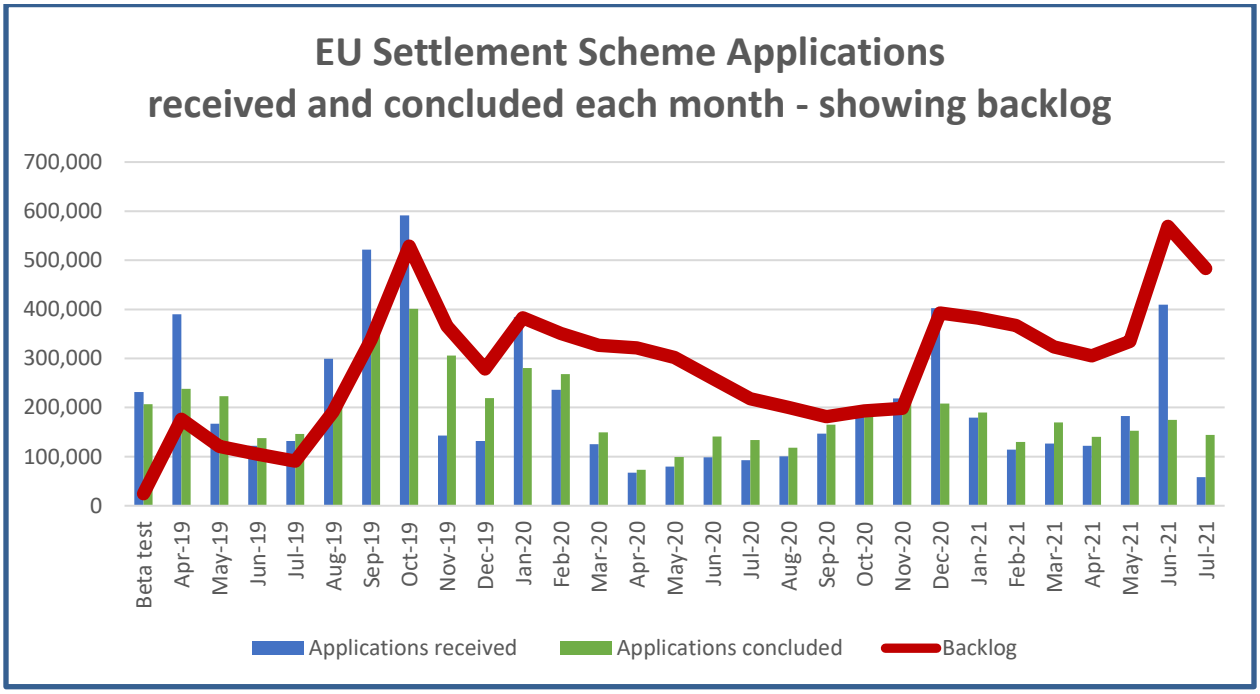
Chapter 2. The EU Settlement Scheme backlog

Overview

12. As of 30 June 2021, the EU Settlement Scheme deadline, 6,015,400 applications had been received, and 5,446,300 had been concluded. Therefore nearly 570,000 applications were still to be concluded, which is the highest level of backlog since the start of the scheme.

13. Despite the increase in applications before the EU Settlement Scheme deadline having been foreseen, and the Home Office having stated that they had increased their resources[4], only 175,000 applications were processed during June. This is considerably lower than the number processed leading up to previous perceived 'deadlines':

    - 400,000 in October 2019 when the Home Secretary Priti Patel vowed to end free movement on 31 October 2019 in the event of a no-deal Brexit
    - 280,000 in January 2020 when the UK left the EU
    - 208,000 in December 2020 when the transition period came to an end



[4] On 21 April 2021, Kevin Foster MP said there were 1500 caseworkers in post (https://questions-statements.parliament.uk/written-questions/detail/2021-04-16/182056), and on 15 June 2021, he said there were 1675 caseworkers in post (https://questions-statements.parliament.uk/written-questions/detail/2021-06-10/13963). Both answers link to a webpage giving estimated processing times (https://www.gov.uk/government/publications/eu-settlement-scheme-application-processing-times/eu-settlement-scheme-pilot-current-expected-processing-times-for-applications) which has not been updated since May 2020.

14. On 12 August, the EU Settlement Scheme statistics[5] were updated with extremely minimal post deadline information – namely that 58,200 applications were received, and 144,100 applications were concluded. There was no breakdown (as given up till now) between grants of settled and pre-settled status, or information on refused, withdrawn/void and invalid applications. We are concerned at the reduction of transparency and statistics, at a time when additional statistics should be added – such as how many of the 58,200 July applications were late applications, as opposed to applications for settled status by pre-settled status holders, or applications from joining family members.

15. The number of applications concluded in July was lower than in both May and June. The backlog still stands at 483,200 applications. Even if no further applications were to be made to the scheme, at this rate it would take over three more months to clear the backlog. Given however that applications will still be made, including late applications, pre-settled to settled upgrades, and joining family member applications, it may take far longer to finally process all these applications.

16. No data is published on EU Settlement Scheme processing times. This was last provided during the trial phases (before March 2019) of the EU Settlement Scheme.

17. The Gov.UK webpage[6] which provides the user information on expected processing times was last updated on 22 May 2020, well over a year ago. The figures of 5 working days, a month and "longer than a month" are not sufficient to ease people's anxiety while waiting for such a crucial status.

> *"I applied 14 months ago and still am waiting for an answer. I have been calling to check on it but been told it can take a little while sometimes but never got told when I would hear anything back. I am worried as it has taken so long and having a young family here now makes it very important. Also worried my employer might ask for a proof at some point." – April 2021*

18. In our previous report to the IMA, we reported on an FOI request to show how long applications were taking to process. We can now update this with the results of further FOI requests:

	As at 31 March 2020	As at 31 Dec 2020	As at 30 April 2021
Waiting 1 - 3 months	142,280	56,175	114,660
Waiting 3 - 6 months	69,830	9,270	80,055
Waiting 6 - 12 months	32,815	7,990	4,405
Waiting more than 1 year	710	6,120	6,755

Disproportionate composition of the backlog

19. The Home Office has repeatedly said that only cases involving criminal records take longer than a year. However, we have seen several cases which involved no criminal history and which had been waiting for longer than a year and got resolved once the media was involved, or we / other

[5] https://www.gov.uk/government/collections/eu-settlement-scheme-statistics
[6] https://www.gov.uk/government/publications/eu-settlement-scheme-application-processing-times/eu-settlement-scheme-pilot-current-expected-processing-times-for-applications

organisations contacted the Home Office directly about the individual. We remain concerned about these numbers, as each of the 569,100 in-time applications waiting for a resolution represents an individual:

> *"Please note I have been now waiting for 18 months for an outcome. I have made a complaint that was not upheld, and I have contacted my local MP and I am still waiting. Please I would appreciate any help and support that your organisation can offer." – May 2021*
>
> *"This is an email to say thank you for all your support and help with my EU Settlement Scheme application. I got a decision today via email for settled status. Your email to the scheme helped I know that, I am forever grateful." – June 2021.*
>
> *Note - all we did was email the Home Office, we did not intervene in any other way, and the individual was not asked for any further information.*

20. As at the time of writing, the last quarterly statistics were published for applications up to 31st March 2021. At that time, children made up 26.2% of the backlog, despite only accounting for 15% of applications overall.

> *"I made the application on behalf of my son. I received a confirmation that the application had been received in December. The child passport (which had to be submitted in hard copy) was returned in mid-January. Last week I made an enquiry through the website and received an unhelpful response, basically telling me to be patient." – March 2021*

21. Applications from non-EU family members made up over 16% of the backlog despite accounting for only 6.4% of applications overall.

> *"I'm a non-EU family member with clean immigration history and work as a highly qualified scientist in the UK. I would like to bring it to your attention that there have been unnecessary delays in processing specially non-EU applications. It took the Home Office one whole year to grant me pre-settled status and the same is happening this time. I have applied to upgrade to settled status in May this year and I have been waiting ever since. I have emailed the resolution centre several times without any positive response so far. Therefore, I strongly believe that they will take another year to decide on my settled status application. This is frustrating and has affected my mental health significantly." – July 2021*

Acknowledgements of Application [AoA] and Certificates of Application [CoA]

22. In our February report we wrote about Certificates of Application [CoAs], and the delay in issuing these to those who submit a paper application. The picture has become far more complex since then, as has the legal and policy landscape. As we wrote in February, Article 18(1)(b) of the Withdrawal Agreement states that a "*certificate of application … shall be issued immediately*". We are now seeing that many who submitted applications using the "EU Exit: ID Document Check" app followed by online completion, have also not received a CoA.

23. the3million has been corresponding with the Home Office for several months to try to ascertain how people will prove their rights if they have an in-time application but not yet received status. All correspondence is available on our website library page[7].

24. On 31 March we asked for more clarity on how people would prove their rights after 1 July 2021 if they were waiting for a decision on an in-time application. We asked how using the employer / landlord checking services delivered on the Withdrawal Agreement's Articles 18(3) and 23 of

[7] https://www.the3million.org.uk/library

having equal treatment rights to British citizens in terms of accessing work and housing. Furthermore, we asked how people with pending applications would prove their rights to organisations *other* than employers / landlords.

25. On 19 April we received a reply stating that a CoA, "which is issued automatically once a valid application has been made" is proof of rights. Our question about how rights are proved to anyone other than employers / landlords was not addressed.

26. On 30 April we asked about the rights of those who submit an in-time application but do not receive a CoA by 30 June. We also asked specifically how a delay to issuing a CoA complies with Article 18(1)(b) of the Withdrawal Agreement. This letter was acknowledged but not replied to until 29 June despite reminders being sent.

27. On 22 June we sent a further letter, to ask what will happen to those who submit a late application *within* the 28-day notification period imposed by an Immigration Enforcement officer, employer or landlord, but do not receive a CoA before the 28-day notification period elapses.

28. On 29 June we received a reply explaining that:

    - People with a CoA should be able to rely on their CoA for their right to work and rent via the employer / landlord checking services, and DWP and HMRC will be able to check their status "with the Home Office using existing services".
    - Those who do not receive a CoA by 30 June will still have received an automated acknowledgement email. We will refer to this as an Acknowledgement of Application [AoA] for ease of discussing in this report.
    - The AoA has been revised to explain how it can be used to prove status while waiting for CoA. Employers and landlords can contact the employer / landlord checking services for information. Again, there is no information about anyone other than employers or landlords.
    - People who submit a paper application will receive an AoA by letter.
    - Everyone with an outstanding in-time application will receive a digital CoA, and people will be contacted when this is available (no timescale is given).
    - In reply to our question of how this delay in issuing a CoA complied with Article 18(1)(b) of the Withdrawal Agreement, we were told that delays were generally due to a missing component for a valid application (e.g. proof of identity, or biometrics), and that otherwise an AoA can be used to prove rights while waiting for a CoA.

29. On 6 July we wrote to the Home Office again, as the earlier letter still did not provide sufficient answers to account for actual experiences reported to us by individuals affected by their lack of CoA. We have not received a response to this letter at the time of writing. We asked:

    - How people with a CoA/AoA can prove rights *other* than the right to work and right to rent?
    - What are the rights of those who have not received a revised AoA?
    - Why is a CoA delayed for someone who used the ID Document Check app and has not been asked for any further information?
    - Can an AoA result in a negative result from the employer / landlord checking service?
    - When will digital CoAs be available to all in-time applicants?
    - Will the digital CoA be able to generate all three types of share code?

30. There appears to be a lot of confusion around digital CoAs. People with CoAs can log in to the View and Prove service and see their pending application. They can then also see the option to generate a share code. However, unless their CoA is a digital CoA, attempting to generate a share code results in an error message for example '*There's a problem with this service at the moment*' or '*We cannot show your details*'.

> *"A client of mine has had issues generating her share code to prove her rights for the last 3 days. She has a pending application to the EUSS. We can see her COA when we log in, but there is no way to generate a share code - we land on a page that says "We cannot show your details." She may lose a placement at college due to a technical glitch. The SRC has hung up on me twice today and I spent nearly an hour calling them with this query." – From organisation helping applicants – August 2021*

Legislative basis for rights of those in the backlog

31. We are extremely concerned about the legal basis of rights for those with pending in-time applications. This is exacerbated by the concern that it may take many months to clear the backlog. The Home Office have repeatedly stated that anyone who applies before the deadline will have their rights protected in law. The Minister, Kevin Foster MP, told the House of Lords European Affairs Committee[8] on 22 June 2021 (our emphasis): "*Anyone who applies before the deadline will have their rights protected while the application is pending.* ***That is set out in law.***" This is also repeated in Home Office spokesperson contributions in media stories[9].

32. However, as described in a blog[10] on 'EU Rights and Brexit Hub', only those who satisfy **all** the following conditions have their rights protected *according to the law* (The Citizens' Rights (Application Deadline and Temporary Protection (EU Exit) Regulations 2020)):

- Those who made an application on time; and
- were exercising a right to reside under the Immigration (European Economic Area) Regulations 2016 on 31 December 2020; and
- are currently exercising a right to reside under those regulations; and
- will continue to exercise a right to reside under those regulations until their application has been determined

33. The differences between this legislation and the various codes of practice will be examined in turn in each of the relevant chapters such as ***Chapter 7. The right to work***, ***Chapter 8. The right to rent*** and others.

34. During the debates for the 'saving' regulations in October 2020 we worked with members of the House of Commons and the House of Lords to ask this of the Home Office, but the reply was consistently that no new rights should be created, only existing free movement rights should be preserved.[11] We note that our February report to the IMA called for the 'saving' regulations to be simplified such that they cover everyone who is eligible for status under the EU Settlement

[8] Paragraph 111, https://publications.parliament.uk/pa/ld5802/ldselect/ldeuaff/46/4602.htm
[9] https://www.theguardian.com/uk-news/2021/jul/19/spanish-woman-in-uk-for-44-years-sacked-over-post-brexit-rules
[10] https://www.eurightshub.york.ac.uk/blog/9da4glyi9saw0jsv7rv1agjugftgbm
[11] Column 1700, https://hansard.parliament.uk/Lords/2020-10-22/debates/02B36DD4-2E97-449B-AFED-FE7264E45E87/Citizens%E2%80%99Rights(ApplicationDeadlineAndTemporaryProtection)(EUExit)Regulations2020?highlight=csi%20rights#contribution-6B28F797-E645-4464-B843-2FD58694E297

Scheme. The refusal to consider this has directly led to Kevin Foster MP's assertion to the House of Lords that "*Anyone who applies before the deadline will have their rights protected while the application is pending.* ***That is set out in law.***" which is incorrect.

35. This is not just an academic point. For someone who loses their job, their home, benefits or access to healthcare, a case in front of a Tribunal needs legislation that applies to a claimant, they can't rely on words from a Minister.

36. The de-facto replacement of a CoA with an AoA for the purpose of proving rights adds to this legislative gap. CoAs are embedded into UK Statutory Instruments, whereas acknowledgement emails are not.

37. We continue to be concerned about the delay in producing CoAs. For those where the delay is due to biometrics appointments, we repeat our assertion in paragraph 4.3 of our earlier report that a CoA should be issued as soon as an application is submitted rather than being dependent on biometrics being obtained. Furthermore, as set out in our letter to the Home Office of 6 July, we are seeing cases of people waiting for a CoA even where no biometrics or further identity validation has been requested.

38. It is not too late to create secondary legislation to properly protect *everyone* **in law** who has submitted an application to the EU Settlement Scheme before 30 June 2021 *regardless* of whether a CoA has yet been issued.

Impact of finding oneself 'in limbo' in the backlog

39. The Home Office has at times attempted to portray outstanding applications as "not actually a backlog" but rather as merely "progressing through the system".[12] However, this is not how it feels to individuals who are still waiting for news on their application, without any way of receiving any 'progress updates'.

> *"My [EU citizen] father was planning to emigrate to the UK from Australia last year, but due to Covid could not travel. He applied for an EUSS family permit to join me and my family here and on the application it said it would take 4-6 weeks. It is now nearly four months. My parents sold their house in Australia and have bought a flat here in London, and so while they wait for the decision they are effectively homeless.*
>
> *My parents are in their late 70s and we could not risk their health to travel to the UK before the Brexit deadline. And now they are trapped in Australia unable to see me, their only child and my daughter, their only grandchild. I am also 7 months pregnant and the stress and anxiety of being separated from my parents is almost unbearable for all of us. It could be another four months, it could be four days, the lack of communication and information is inhumane." - June 2021*

40. People who have submitted applications but not even received a CoA experience a lot of anxiety, which greatly increased as the EU Settlement Scheme deadline drew nearer:

> *"I applied for settled status over three weeks ago. My application was received by the Home Office the following day but still haven't received a Certificate of Application. I am in limbo. I am a user of several*

[12] Column 199GC, https://hansard.parliament.uk/Lords/2021-06-07/debates/76A9DE40-DFE3-46F2-9C59-9336986843D1/BritishNationalityAct1981(ImmigrationRulesAppendixEU)(Amendment)Regulations2021#

services due to a mental health condition but without a CoA I don't know if I will be able to access services. Therefore, my mental health is rapidly deteriorating even more." – July 2021

41. We have had many reports of citizens having to send in their ID documents to the Home Office due to not being able to use the app, and then receiving regular reminders from the Home Office asking for the ID documents to be sent. This appears to be down to the Home Office being overwhelmed and struggling to process receipt of the documents in time. Receiving reminders to send identity documents is creating enormous anxiety in citizens who feel their documents may be lost and who are unable to speak to anyone about it.

"I applied using an Android mobile, but the app wouldn't confirm my ID (reading my German I.D. card). So, I had to send it in (using first class mail). A week later I received an email saying they hadn't received my ID Card and I have a further 10 days to send it. Those 10 days are over in a day. They still haven't received my I.D. Card! I'm totally freaked out! Not only can I not prove my identity (even though the app took photos of my I.D. card - so why did I have to send it in?), but now my I.D. card is lost!!" - July 2021.

42. In other cases, even where ID documents have been acknowledged, there is a substantial delay in returning these to their owners. Article 18(1)(i) of the Withdrawal Agreement states: "*Where the identity document is retained by the competent authorities of the host State while the application is pending, the host State shall return that document upon application* ***without delay****, before the decision on the application has been taken".* Especially in the light of the pandemic, where travel to see family members is finally becoming a possibility, this lengthy delay causes great upset and frustration.

"We sent our ID docs special delivery and with a prepaid envelope. They arrived at the Liverpool processing centre weeks ago. We want to travel to Germany next week to finally see our family and for our four-year old son to see his grandfather whom he misses very much." – July 2021

43. An article in Farmers' Weekly[13] talks of a Polish worker whose "*passport is yet to be returned more than two months after it was submitted with his EU Settlement Scheme (EUSS) form*".

[13] https://www.fwi.co.uk/business/business-management/staff/passport-issues-cause-holiday-difficulties-for-eu-workers

Recommendations (The EU Settlement Scheme backlog)

- Make legislative change such that anyone who has proof of submitting an in-time application to the EU Settlement Scheme has their rights protected in law.
- Ensure everyone with a pending application can not only ***view*** their status online but also generate a share code to ***prove*** their status. This is essential because it appears the Home Office has only made provision for employers and landlords to check pending status via the Employer / Landlord checking services, but there is no clarity or guidance around how other organisations who need to check status can do so with pending applications.
- Substantially improved communication with those who have applied for EUSS family permits of status and are awaiting a decision, giving clear timeframes for concluding their application.
- Increase resources to process the backlog of applications, and urgently prioritise at least those people who:
  - are awaiting permission to travel
  - are trying to finalise study places for the 2021/2022 academic year
  - are awaiting Certificates of Application
  - have sent in ID documentation
- Provide at least the level of statistics for post-deadline applications as were published for pre-deadline applications; namely a breakdown of grants of settled and pre-settled status and number of refused, withdrawn / void and invalid applications.
- Provide extra statistics around the breakdown of applications between late applications, upgrades from pre-settled to settled status, and joining family member applications.
- Provide data and statistics around the types of cases in the backlog, the time it is taking to process EUSS applications and targets / key performance indicators.

Chapter 3. EU Settlement Scheme applications

Technical issues applying

44. We have had reports of various technical issues with the 'EU Exit: ID Document Check' app. We list a few here to demonstrate that even for people who are digitally literate and have access to the correct smartphone technology, an application is not always straightforward.

> *"The application keeps crashing when I was trying to take a picture about my passport and the system logged me out straight. This is my second application I am making could that be the reason?"- March 2021*
>
> *"The app couldn't scan my face or my ID card despite being a brand-new card. Then I couldn't keep applying as it would say my details were wrong." – March 2021*
>
> *"I am not getting a text message on the number provided, and the link that was sent to me to verify my email address leads to a page that says invalid link" – April 2021*
>
> *"I was asked to provide a selfie but the website doesn't allow me to do so. My application was declared invalid for this reason." – May 2021.*
>
> *This case was only resolved after seeking media attention[14] through the3million as a last resort after "a labyrinthine nightmare of telephone calls, emails and bureaucratic disarray. [spending] over 100 hours contacting government officials who he said were either unable to help or gave conflicting information."*

45. While we understand that any system may face technical issues at times, far greater resources are required for the EU Settlement Resolution Centre, together with more scrutiny, transparency and monitoring of its performance. This will be discussed in more detail in ***Chapter 16. Access to help***.

Paper applications

46. People who are unable to submit online applications (people with derivative rights or Surinder Singh rights or those without identity documents) have to call the EU Settlement Resolution Centre [EUSRC] and gain agreement from a caseworker to send them a paper application form. In our first report to the IMA from February 2021, we explained in section 3.3 that it should be easier to obtain paper applications. Many other organisations also called on the Home Office to do so. Concerns were raised not just about people struggling to get through to the EUSRC staff but also poor decision making when it came to the issuance of paper forms. We received reports of applicants facing 'gatekeeping' practices where people were discouraged by EUSRC staff from receiving a paper application form. Some people were denied forms and others were provided with the wrong form.

47. On 15 June, just over two weeks before the EU Settlement Scheme deadline, the Home Office allowed people to directly download paper application forms from the Gov.uk website[15] for those with expired ID documentation. On 24 June, just one week before the deadline, it became possible to also download paper application forms for Surinder Singh and derivative rights applications. This was welcomed even though it was extremely late in the day.

[14] https://www.reuters.com/world/uk/brexit-bureaucracy-creates-british-nightmare-dutch-boat-captain-2021-06-09/
[15] https://www.gov.uk/government/publications/apply-to-the-eu-settlement-scheme-by-post-or-email

48. However, on 6 July these forms were removed, and people had to revert to requesting forms from the EUSRC. We are concerned that the 'gatekeeping' practice and potential for incorrect forms to be issued will return. The reintroduction of requests for forms from the EUSRC creates a further administrative hurdle that delays someone from getting their application submitted to the Home Office and a decision being made. Given that a late applicant has no rights until they receive confirmation of their application status it is crucial that the application process be streamlined to shorten the time between submitting the application and people receiving an AoA / CoA. In some cases, the difference of days could be vitally important. Following the announcement[16] on 6 August 2021 that people's rights are protected once they have confirmation of a late application, we await the publication of implementing legislation.

49. We wrote to the Home Office on 6 July to request the policy was reinstated to make paper applications available from the website and removing the condition that the EUSRC must be contacted. In the absence of this, we asked what processes are being put in place to ensure that gatekeeping practices are not adopted, and that the speed at which an applicant receives a form is not hindered by this administrative step. Although our letter was acknowledged, we have not received a reply at the time of writing.

Right to apply from prison

50. Eligibility for the EU Settlement Scheme depends on continuous residence which started before 31 December 2020. If someone has five years' continuous residence, then they are eligible to apply for settled status, following which the continuous residence requirement no longer applies, and they can be absent for up to five years without losing their settled status. A period in prison, regardless of its length, breaks continuous residence.

51. The combination of these rules means the right to apply for status under the EU Settlement Scheme is complex, as described in detail on the Unlock website[17].

52. There are a number of circumstances where people currently in prison are able to apply, including where someone had a previous period of five years continuous residence in the UK and has not been subject to a deportation order. Since people in prison don't have access to smartphones, and struggle to access their identity documents, they are likely to need paper applications. We are concerned that not enough was done to provide prisoners, or prison officers, with information and guidance to ensure all those eligible for status were able to submit applications.

53. Bail for Immigration Detainees [BiD] recently wrote to the Home Office[18], noting that:

    - where bail applications were made by citizens who had submitted paper applications to the EUSS, the Home Office has adopted the position that there is no evidence that the applicant has made an EUSS application, and thereby arguing that the individual can be removed

[16] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme
[17] https://hub.unlock.org.uk/knowledgebase/settled-status/
[18] https://www.biduk.org/articles/856-bid-writes-to-the-home-office-over-failure-to-acknowledge-euss-applications

- that those submitting paper applications forms are sometimes prevented from completing their applications due to the Home Office retaining identity documents, and being unable to arrange passport-style photographs to be taken
- paper application forms are no longer available online and need to be requested from the EUSRC instead which is not viable or practical for those detained in prisons with limited opportunities and resources to make external calls

54. Due to the construction of the rules, there are a number of circumstances where people are unable to apply to the EU Settlement Scheme, including those who did not have five years' continuous residence before going to prison and who:

- were serving a sentence over the 31 December 2020 deadline
- served a short (less than 12 months) sentence that started after 1 January 2021

55. In both these cases the prison sentence severed their continuity of residence and therefore they were unable to establish a continuity of residence that started before 31 December 2020.

56. However, Article 20 of the Withdrawal Agreement states rights of residence may only be restricted on the grounds of criminal conduct where:

- The conduct occurred before 30 December 2020, in accordance with Chapter VI of Directive 2004/38/EC[19].
- The conduct occurred after 1 January 2021, in accordance with UK's national legislation – where the person's presence in the UK is 'not conducive to the public good'[20].

57. The Case of Onuekwere v Secretary of State for the Home Department, heard by the CJUE (C-378/12[21]) determined that a prison sentence cannot count as lawful residence, and periods before and after a prison sentence cannot be aggregated for the purposes of acquiring the right of permanent residence. However, this was within a context of always being able to restart the process of building up sufficient lawful residence towards permanent residence.

58. In cases where a prison sentence does not meet the threshold of Article 20, but nevertheless prevents (re-) application for pre-settled status (and ultimately building up sufficient residence for settled status) due to broken continuity of residence, this presents a catch-22 situation which was clearly not intended by the Withdrawal Agreement. Indeed, the Commission's Withdrawal Agreement Guidance Note[22] expressly states in section 2.3.2 (continuity of non-permanent residence) that '*A period of imprisonment before the right of permanent residence is acquired restarts the clock and a new period of five years of continuous residence has to be accumulated (case C-378/12 Onuekwere)'.*

59. The Guidance Note states in section 2.9 (safeguards and right of appeal) that "*In line with the CJEU's established case law on the general principles of EU law, restriction decisions taken in*

[19] https://www.legislation.gov.uk/eudr/2004/38/article/28/adopted
[20] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939380/non-conducive-v1.0ext.pdf
[21] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CC0378
[22] https://ec.europa.eu/info/sites/default/files/brexit_files/info_site/c-2020-2939_en.pdf

*accordance with national legislation must comply also with the **principle of proportionality** and fundamental rights, such as the right to family life.*"

60. It is therefore arguably incompatible with the Withdrawal Agreement to prevent someone who, being otherwise eligible for status under the EU Settlement Scheme, had a short prison sentence ending after 1 January 2020 for conduct which does not meet the threshold of being 'not conducive to the public good' from acquiring pre-settled status.

Reasonable Grounds

61. The Government updated the EU Settlement Scheme caseworker guidance to add its 'reasonable grounds'. We published a reflection[23] on the 'reasonable grounds', which highlights our main concern with the general policy that the more time that has elapsed since the deadline, the harder it will be to satisfy reasonable grounds. We refer to paragraphs 122 - 136 of the recent House of Lords European Affairs Committee report on Citizens' Rights[24] which echoes this concern and raises several others which we agree with.

Recommendations (EU Settlement Scheme applications)

- Improve monitoring and scrutiny of EU Settlement Resolution Centre – what indicators and performance measurements are relied on? How is success measured?
- Reinstate the policy to download all paper applications forms from a website.
- Review whether prisoners and prison staff had sufficient timely guidance for ensuring anyone eligible to the EU Settlement Scheme was able to submit an application. The Home Office needs to undertake a specific focus on those in detention and prisons and support them to apply to the EUSS.
- Allow citizens to restart continuous residence after 1 January 2021 if it was broken solely due to imprisonment and conduct which did not meet the relevant threshold for restriction of residence rights.
- Given that several million people with pre-settled status are beginning to apply for settled status and this trend will continue, the IMA should work with the Home Office to establish what can be put in place early and improve on in the application process. We are particularly concerned about issues for people to prove five years' residence and how the scheme will be able to accommodate people such as those in detention and prison for example.

[23] https://the3million.org.uk/reasonable-grounds
[24] https://committees.parliament.uk/publications/6900/documents/72571/default/

Chapter 4. "View and Prove" digital-only status

Multiple applications

62. The View and Prove system does not properly handle an individual's progression through the EU Settlement Scheme. An individual may have more than one interaction with the Scheme, using the same identity document. For example, they apply and spend some time waiting for status, followed by a refusal and then an appeal or a second application. Or they may have been granted pre-settled status and go on to apply for settled status. Rather than the online status showing a history of applications, or reflecting the individual's correct current rights, it appears to show the most restrictive status possible.

63. For example, a refusal followed by a new application does not show a CoA, but only shows refused status.

> *"An [EU-citizen] client contacted us for help with re-applying for status for her mum who had been refused pre-settled status because evidence she had provided with her application was not sufficient. We supported her mum to make a second application before the deadline. The mother has not yet received her COA and when she logs in to view and prove status it is still showing that her application was refused, there is nothing about a new application." – July 2021*

64. Similarly, those who are refused and are then appealing their decision will only see a refusal when they log into their status. This goes against Article 18(3) of the Withdrawal Agreement which states (our emphasis): "*Pending a final decision by the competent authorities on any application referred to in paragraph 1,* ***and pending a final judgment handed down in case of judicial redress sought against any rejection of such application*** *by the competent administrative authorities, all rights provided for in this Part shall be deemed to apply to the applicant, including Article 21 on safeguards and right of appeal, subject to the conditions set out in Article 20(4).*"

65. We have even had a report of someone initially refused, then granted status, who when logging in to View and Prove was only presented with proof of refusal.

> *"I had a case where an applicant had been refused his first application and then submitted a second application which was granted before the deadline and was alarmed to discover that his online status showed a refusal and no record of his granted status. He had already received the confirmation letter of his new approved status, but he was unable to see his status online or generate a share code for his employer. We rang the resolution centre who reported it and said they would fix it." – From organisation helping applicants, August 2021*

66. A pre-settled status followed by an application of settled status does not show the existing pre-settled status, but only a much more time-limited CoA. We know that the Home Office was aware of this on or before 9 July since we were told that day "*the HO is aware of the problem and working on a fix*", and yet we were still receiving reports of this at the time of writing, 26 July:

> *"I have been struggling to get through over the phone or get sensible answers why my application to change from pre-settled status to settled status is taking 3 months AND why my pre-settled status that was initially valid till 2024 has disappeared and only shows 6 months of right to work. I cannot secure the job I have applied for, as I am not able to demonstrate more than 6 months right to work." – July 2021*

> *"I want to prove my immigration status to my employer, but to my surprise my immigration status has*

been downgraded from the pre-settled status I had to a "certificate of application" status. This has happened after applying for settled status. My employer requires an immigration status valid for more than 6 months, so I am at risk of being fired." – July 2021

Multiple identity documents

67. An EU Settlement Scheme application can be accessed via two government web portals:

    - Update your immigration account details: https://www.gov.uk/update-uk-visas-immigration-account-details
    - View and prove your immigration status (this can only be used once a status is granted, or if a digital CoA has been issued): https://www.gov.uk/view-prove-immigration-status

68. In order to log in to either portal, the person needs their identity document with which they last applied for status, or "*If you have updated your identity document since you last applied, you must use the updated document to sign in*". (Those who applied without identity documents, using a paper application, need to log in using their UAN reference number instead).

69. We have received many reports from people who have used the service to update their identity document, but who could nevertheless not log in with their new document.

    "I have changed my identity document (passport) details but after a week, the system still needs me to use the old passport for logins. This suggests to me that if I had to leave the UK and return, the border officials wouldn't see my new passport being linked to my EUSS status! It worries me as there was no email confirmation that my updated details were sent, and there is no way to see the progress of my update. I am scared if it will take months due to this backlog - how can I go visit home if I know there would be trouble at the border when I return, unless the Home Office updates my documents." – July 2021

70. The View and Prove guidance[25] states that when people inform the Home Office of a new document, their old document will remain linked to their account.

71. At some point it also became possible to add an extra identity document, for example for people who travel with two passports, or who have both a national identity card and a passport. However, it is not clear whether people can thereafter choose to log in to the portals with any of the identity documents, or only with the last one they attached to their account.

72. When using the portals to log in, people either successfully log in or are told their details are not recognised. If they successfully log in, they see their status, but they have no way of seeing which identity documents are attached to their account. This is a shortcoming of the system and should be addressed. The following is the experience of someone who added both passport and identity document to their account:

    "When updating your document, they just update new one and you can't use the one you used before [to log in]… I registered with my ID but changed it to passport. When they updated my details, I can use my passport details, but they show no details of my ID. It is really confusing… Why shouldn't it show at least

[25] https://www.gov.uk/government/publications/view-and-prove-your-immigration-status-evisa

your linked documents in your account? I was sure I couldn't travel with my id as I thought they just updated it (unlinked old document and linked new one)." – July 2021

73. It is worth noting that this would not be a problem if people were issued with a physical proof of status that is not tightly linked to a particular identity document. People could travel with a valid identity document for travel, alongside a document proving immigration status, without needing to keep the two in step with all the ensuing problems around updating their status.

Mismatch of name between EUSS and all other documents

74. We have had a very large number of reports from people who complain of a mismatch between the name on their EUSS status and the name used in all their other documents in the UK. This affects mainly married women, but also others such as people who changed their name by deed poll.

75. EUSS status is granted in the name that is in the 'machine-readable zone' [MRZ] of the passport of identity document.

76. Many EU countries insist that their identity documents show the birth name in the MRZ, even if they can add 'spouse of' to the human readable area of the identity document.

77. Therefore, for example a Dutch woman who has married and has followed the UK process to inform HMRC, DWP, DVLA, banks, utility, insurance companies etc. of her married name using a marriage certificate, will still have her birth name in the MRZ of her Dutch passport or national identity card. EUSS status will therefore be issued in her birth name.

78. People in this position are understandably very concerned that they will struggle to prove their rights.

"I have received under my married name letters from the Home office and HMRC to remind me to apply for settled status. I already have this status as I applied with my maiden name which is used on my passport. I have called the EU Settlement Scheme to ask if my married name can be added. I was only confirmed I have settled status under my maiden name and if I want my married name to be used I need to change my name on my passport which I can't do. I'm worried about entitlement after 30th June and called DWP carer allowance to check the information about me. They can see on their system that I started using the married name 8 years ago but apparently, they can't see I have settled status. I received a lecture about not changing my name on my passport." – May 2021

79. We call for the EUSS record to be able to hold an additional name, e.g. 'spouse of' as shown on many passports, or 'changed by deed poll to' or similar.

Expiry of code after 30 days

80. The digital View and Prove service has been designed such that share codes expire after 30 days. Although this is by design for security reasons, this contributes to the anxiety for those who have to rely on a digital-only status. Moreover, we have encountered several situations where the 30-day expiry has led to an extremely frustrating catch-22 cycle, for example when applying to DVLA for a driving licence:

"DVLA ask you to provide your share code to them, by sending it by post. Until they get your post around 8 to 10 weeks has to pass as they have a massive backlog and they only proceed in chronological date

and the share code last for 30 days. Sending a renewed share code until they open the second post will be at least another 8 weeks so the share code will always be out of date." – June 2021

Problems updating status

81. As also mentioned in paragraph 69, the process of updating EUSS details is confusing and does not give people clear information on whether / when the update takes effect.

> *"My passport is about to expire and I received my new one from my embassy. I went to the Home Office website to update my details for the first time on 8 July. The process is such that you don't receive a reference number or confirmation email that you requested an update of your identity document. I hadn't heard anything so contacted the Settlement Resolution Centre on 14 July. The case worker could not see any update nor that I had tried to update my details. She sent me through the update process on the Home Office website again, with her on the phone. Still haven't heard anything and have therefore contacted my MP to take this up on my behalf. I can't leave the country without risking being detained upon my re-entry with my new passport." - July 2021*

> *"The passport linked with my settled status expired a few months ago and I renewed it while in France. I have since updated the details of my new passport on the Home Office website and everything seemed to be OK.... but when I flew back to Edinburgh, the border officer told me that he could not see my status. He let me in anyway after I confirmed my address in Edinburgh. When I tried to see my status on the Home Office website, I realised that it had not been changed and was still linked to my old passport, although I had updated it more than a month before!" – July 2021*

82. Others have reported that they do receive an email notification of an update being successful, but then are still unable to access their status with their updated identity document details.

> *"I had to update my SS ID following passport renewal in November, which I did in December 2020 using the online update facility. The update does not take effect until an email notification is received and in the meantime I could access my profile using my old Passport ID. On the 19th January I received the email notification that my update had been successful and no further action was required. A day or so later I tried to access my status using the new ID. The system recognised this as 'valid' and took me through the access process up to and including sending me my one time code. Once I input that though, I got the following message: "We cannot find your current status in this service" and I could get no further. (Old ID no longer worked by the way). On 2nd February I finally managed to get through to the helpline and spent about 40 minutes with a case worker, who got me to try all sorts of things, but finally gave up and said they would have to 'escalate to their IT Dept', who would investigate and contact me direct via phone or email. When I asked for an approximate timeframe, the answer was "usually within 15 days". So far no contact and still no access to my status." – February 2021*

83. Some people have had issues updating their status with new identity documents through minor changes on their identity documents outside of their control.

> *"I recently received a new passport and wanted to update the passport information online. I submitted the required info and picture. After over two weeks' of wait, I received a mail that the Home Office was 'not able to update your profile with the new document you have provide' because 'Your new passport contains a different Name to the original document you provided.' I struggled to see what this referred to as both documents contained my forename, my middle name, and my surname, all of which had remained the same. I then called the indicated number, and after a very long wait in the queue, I eventually found out what the 'problem' was. In my old (German) passport, at the bottom, it repeated my surname (first), and then my forename. In the new passport, at the bottom [MRZ], it gave my surname, forename and middle name. Clearly, Germany had meantime decided to now include all names in that line at the bottom. It was for this very tiny detail that the proof of my new passport could now allegedly not be accepted, even though I was clearly the same person. The woman on the phone said don't worry, just restart the process, and click on 'name change' this time, and you will be able to*

make the change. What she did not say was that to make this change, as I then found out, I would have to send my current and valid passport to some Liverpool address, leaving me without valid travel document for a number of weeks. I cannot do this as I have already planned and booked my travel abroad next week." – July 2021

84. In another case reported to us, an update failed based only on unspecified 'technical issues'. An EU citizen had used the update website to update her passport details, and several days later received an email stating "*Thank you for your request to update your profile with your new document details. Unfortunately, we have been unable to process your request due to a technical issue. Please resubmit the request, ensuring all your details are entered correctly."* A family member reported this on her behalf, saying:

"With a few days left until we travel back to the UK, this has left her in fear of border officials rejecting her entry and separation from our children (UK Nationals). Most likely the resubmission will not be processed on time, and there is no clarity on whether expired documents will still be accepted." – July 2021

85. If people try to update their status with a new passport which contains a change of name, for example through marriage, we have seen reports of passports needing to be posted in, and long delays before their travel documents are returned. This gives rise to similar consequences as we described in ***Chapter 2. The EU Settlement Scheme backlog*** – see paragraphs 41 to 43.

"I am an EU national and have held a settled status since January 2019. However, my last name and passport have since changed (I got married and obtained a new passport in my married name). Since the UKVI online portal indicates that it is my responsibility to ensure the details they hold for me are correct, I wished to update these. The portal advised that I was to send my new passport (original, not a copy) into the UKVI Offices via recorded mail, alongside a cover letter which could be downloaded from the portal. I did this, and could see on the Royal Mail tracker that my parcel had been received before 8am on Monday 5th July. My problem is that it has now been a full five weeks and I have not yet received my passport back, nor have my details been updated on the online portal. I have phoned the contact number provided numerous times and selected every option the automated voice provides. I've only got through to two advisors but neither was able to tell me anything about the progress of my application. The second one advised that I email traveldocumentsenquiry@homeoffice.gov.uk which I have now done five times, to no response whatsoever. I've also asked my MP to make enquiries on my behalf, which he has done. I was due to fly to visit my family for the first time in more than a year on Saturday (14th August) but I can't now go. My father has had two cardiac arrests in the last year, so it's quite stressful not to know when I'll be able to go and see him." - August 2021

86. In order to access the EUSS account, people need to receive a security code either by email or text message, to the email address / phone that were linked to the application when people first initiated an application. In cases of people who struggled for various reasons to complete their application initially, but then returned to it at a later date perhaps with help, this is causing unacceptable delays:

"I first applied for the EUSS in March 2019 when it was still the pilot scheme. Response "need further information". I did not have the docs at hand, then suffered a bereavement and upheaval/illness etc. I attempted to reactivate my application in Oct 2019. However, the website said my application had been deleted. I called the Resolution Centre. She said a/she couldn't reopen my file b/it had been deleted c/ I had to start it again from scratch.

I have to get help to apply as I do not use phones or email. I decided to wait until closer to the deadline to apply.

I attempted to make a new application in late April 2021.The person helping me took a picture of the same passport as last time with her smartphone, and immediately the machine sent a code to the

telephone number used in 2019. However, this phone is no longer in use. Neither is the email used for the purpose of the application (as I do not use email it was created for that purpose only) and the email address cannot be retrieved. I am trying to track down the phone used.

After a call to the SRC, the operator took note of new contact details (those of the centre helping me), said my application had been logged on somewhere but that to reopen it he had to send my details to the "technical centre" at another location and that the update would take a minimum of 2 months!

In Oct 2019 the phone and the email were still valid. If the RC operator had not misled me, I could have had the file reopened. It is a problem that contact details cannot be updated quickly or old applications retrieved quickly." – May 2021

Technical issues

87. There are bugs that appear to be known about by the Home Office, regarding people who were granted status in the earlier days of the EU Settlement Scheme, could access their status in the past, but now cannot. In mid May 2021, the Home Office confirmed to us that "*Digital colleagues are working through the cases which have been having problems accessing status - there are small numbers who have got stuck for various technical glitch reasons, and they are working through them, with a timetable to fix them in the next month. We think the numbers are low hundreds.*"

88. However, we continued receiving reports from people in this position, unable to generate share codes (we have seen screenshots proving the problem), and being told by the SRC that everyone affected would have to individually contact the SRC to have the problem corrected:

"I obtained pre-settled status in 2018, as part of the pilot group. I have realized some time ago that I am able to see my status on the website of the Home Office, but not to get the share code that should be in principle used to prove right to work and to rent to third parties. (An error 'We cannot show your details' is shown when a share code is requested). After failed attempts to solve the issue through my employer, I have had to call the EU settlement scheme centre (0300 1237379). I got three times an automated message telling me that the lines are too busy and disconnecting the call. At the fourth attempt, after waiting almost half hour, I was finally able to speak with an agent. Basically, what I have been told is that it is a bug in the online system. I updated my passport when it expired one year ago and, more recently, my personal email. In both cases, I followed the correct procedure, but somehow this has been recorded in some bits of the systems but not in others. I have been told that I will get an email confirming that my details have been corrected. I told the operator that this problem might have potentially affected many other people, and that the Home Office should check it, but basically the response is that it is their problem – the people affected have to call to rectify it. I have been recently asked by an estate agency to generate a share code for proving my right to rent an apartment, and I have been unable so far. I hope that the estate agent accepts alternative evidence, or that the Home Office corrects the error soon. I have also wasted a lot of time trying to solve the problem." – July 2021

"I was granted settled status 2 years ago. However I am not able to view my status as it says "we cannot find your current status". I rang the Home Office but they weren't able to help and told me they do not know what the issue is. I am moving houses soon as well as planning to travel to Poland. I am concerned I will have problems." – August 2021

89. We also continue to receive many reports of people who correctly enter their date of birth and their identity document number and receive the error '*The details entered don't match our records*'. They are therefore prevented from seeing their status at all. The system has definitely recognised their identity document number and date of birth however, since it ***was*** able to send a two-factor authentication security code by email or SMS message.

90. We are still receiving reports on an ongoing basis of error messages such as "*There's a problem with this service at the moment. Try again later*" and "*You are already logged on*". In the light of the Government's continued insistence that a digital status cannot be lost, stolen or tampered with, we would request that service availability statistics are published.

Accessibility for those who needed help to get status

91. As described earlier, accessing digital-only status involves sending a security code by text message or email to the phone or email address linked to the EUSS status. This is problematic for people who are not digitally literate. We raised this in section 5.5 of our February IMA report ('Digitally excluded citizens'). The recent 'Citizens' Rights' report published by the House of Lords European Affairs Committee on 23 July 2021 corroborates this in paragraph 152:

> *"EU citizens will also need to have access to the contact details with which the original application was made. The EU Rights and Brexit Hub said this was 'particularly problematic for those who required support to make an application in the first place', for example by using someone else's contact details. The AIRE Centre agreed: 'The Home Office is placing an indefinite onus on the applicant to have digital skills. For vulnerable applicants without digital skills, this means that the Home Office is making them indefinitely reliant on another person with digital skills. This has obvious issues around independence, potential abuse/exploitation, and where the relationship no longer exists for whatever reason.'"*

92. We therefore are extremely concerned around the Government's lack of commitment to providing a dedicated helpline for View and Prove. This is discussed more fully in the sections ***EU Settlement Resolution Centre [EUSRC]*** and ***View and Prove guidance*** in ***Chapter 16. Access to help.***

Alternatives - secure QR code proposal

93. For all the reasons above, the3million are more concerned than ever about the impact of a digital-only status on EU citizens in the UK, and their ability to access their rights on an equal basis with British citizens as envisaged by the Withdrawal Agreement.

94. It is important to note that British citizens are expressly not to be forced into a digital-only proof of status. A July 2021 press release on **Plans for governing body to make digital identities as trusted as passports**[26] states: "*digital identity use will not be mandatory and people will retain the option to use available paper documentation.*" This in contrast to EU citizens where the proof needed to live everyday life in the UK is a status which is mandated to be digital-only.

95. After several decades of the law assuming that computer systems are reliable, there is a growing call to rethink this presumption[27]. The case *Bates v The Post Office [2019]* reveals that this presumption is unsafe and unjustified. Although clearly there are differences between the Post Office scandal case and the digital nature of an immigration status, it is nevertheless the case that without a physical backup, a citizen has no evidence to counter the Home Office website saying the citizen has no status. Given the large number of reports we have had where people receive various types of error messages when trying to view or prove their status, it is essential that citizens have a tangible, physical proof of their status alongside any digital status.

[26] https://www.gov.uk/government/news/plans-for-governing-body-to-make-digital-identities-as-trusted-as-passports
[27] https://cornerstonebarristers.com/cmsAdmin/uploads/jibfl-marshall-english-law-s-evidential-presumption-that-computer-systems-are-reliable-time-for-a-rethink-jul-2020-1-(1).pdf

96. Since early 2021, the3million have been looking into alternative ways of producing physical documentation which still aligns with the Government's cost and security objectives. We produced the proposal which is available at http://t3m.org.uk/t3m-SecurePrintedEUSS. In June 2021 the Home Office agreed to meet with the3million to discuss this proposal in more detail, and since then letters from MPs to constituents on the subject have included the following wording: "*Home Office officials have recently met with the3million group to discuss their proposal on the use of an approach similar to the COVID-19 certification in more detail. We will consider whether the approach used for the COVID-19 certification could be used for immigration status.*"

97. We are pleased that the Home Office engaged with us on the proposal. However, we need clear, time-tabled, public and transparent updates on the progress of their consideration. It is imperative that such a solution be rolled out in an equally urgent timeframe as COVID-19 certification has been, allowing for it to be adopted by both citizens and organisations checking status before needlessly damaging impacts on people's lives are felt.

Recommendations ("View and Prove" digital-only status)

- Ensure the View and Prove service correctly shows the rights that an individual has. If they have pre-settled status, this must be shown even if they are currently applying for settled status. If they were refused before but are appealing or have another pending application, the pending application must be shown.
- Ensure the View and Prove service shows the status holder all the identity documents that are linked to their status, so that they have the information required to travel with a particular document. A history of linked documents should be shown, providing an audit trail of when updates were made.
- Allow the EUSS account to show an additional name, such as 'spouse of' or 'changed by deed poll to' alongside the name obtained from the machine-readable zone of the applicant's identity document.
- Address technical issues especially around updating status contact details. Commit to short timeframes (two working days maximum) in which these can be addressed in order to reunite people with rightful proof of their status.
- Provide a solution to the problem where a government department is not processing applications within 30 days yet is requiring share codes which expire after 30 days.
- Reduce the number of circumstances where people must send in their identity document by post, and commit to clear, short timeframes for securely returning identity documents where people do have to send them in. The expense of secure delivery should be borne by the Home Office and not by the applicant. A tracked return service should be used so that the applicant can check the status themselves rather than having to phone the EUSRC for updates. This would also benefit the Home Office by reducing pressure on the EUSRC.
- Publish a statement about the known issues with certain cohorts of status holders who were previously able to see their status but are no longer able to and commit publicly to a timeframe within which these are fixed proactively by the Home Office rather than relying on status holders to contact the Home Office.
- Publish statistics on the availability of the View and Prove web service.
- Provide updates on the consideration of the secure QR proposal for physical documentation.
- Provide the option for EU citizens to apply for a biometric residence document.
- The IMA should work with the Home Office to establish an evidence base of impact and performance of the View and Prove system to ensure that EU citizens can prove their status in the most effective and safe way.

Chapter 5. Proving status for non-EU citizens

98. Non-EU family members of EU citizens were able to apply for status under the EU Settlement Scheme by using[28] either a passport or an existing biometric residence card [BRC - if they had an EEA Residence card as family member] or biometric residence permit [BRP - if they had leave under the immigration rules that did not depend on their EU family member]. Their status when granted is linked to their passport / BRC / BRP, depending on what they used to make the application. They will receive an EUSS BRC ***only*** if they do not already have a BRC[29].

99. There are therefore many non-EU citizens with (pre-)settled status who only hold an existing EEA residence card, with existing expiry dates. There has been a lot of confusion around the validity of EEA residence cards, with this website https://www.gov.uk/uk-residence-card initially stating that all EEA residence cards would be invalid after 1 July 2021 regardless of their expiry date, but later changed to say that the card could still be used to apply to the EU Settlement Scheme, or to evidence the right to enter the UK if an EUSS application had been made with the card.

> *"My non-EU husband with pre-settled status did not receive a physical card as they said his current card was valid for travel. However we were not told it would become invalid after Dec 2020. He went abroad a few months ago. Now wants to return to UK and has been refused to board his flight as his card wasn't valid anymore and he could not use his digital status to prove he has a right to stay as the airline didn't know if they had to accept it for non-EU family members. He's unable to fly home without a card yet the Home Office never issued him a new card and never informed us he should upgrade his old residence permit into a new card before Dec 2020. He's stuck in Dubai unable to board a flight home. Lost money due to non-refundable plane ticket. Has to book a new flight but has no idea if he will be allowed to fly despite having pre-settled status." – July 2021*

100. It is not entirely clear whether someone who applies with a biometric residence *permit* automatically receives an EUSS biometric residence card after being granted EUSS status. The webpage[30] to update, replace or transfer biometric residence permits or cards is confusing in this respect.

101. We have seen problems experienced by people who did *not* apply for replacement residence cards, but were asked for proof of their EU Settlement Scheme status.

> *"I acquired an EU settled status as a family member of an EU citizen. No separate document was issued to me as I can continue using my BRC. However my BRC has no mention of my settled status, and when I and my fiancé were giving a notice of intention in Westminster Council, the council employee had no means to check my ILR. They had to email and call the home office, which delayed the application process significantly." – December 2021*

102. Many organisations in the migration sector are citing very long timescales for BRC issuing and replacements, and it is completely unclear what the Government expects non-EU citizens, who are often visa nationals, to do to prove their right to enter the UK. There is no guidance on this, though some organisations have been told informally that people can consider applying for an EUSS Travel Permit if they are outside the UK and wish to return.

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[28] https://www.gov.uk/settled-status-eu-citizens-families/what-youll-need-to-apply - Proof of identity

[29] https://www.gov.uk/settled-status-eu-citizens-families/after-youve-applied - Viewing and proving your status "you will get a physical document if you do not already have a biometric residence card".

[30] https://visas-immigration.service.gov.uk/product/biometric-residence-permit-replacement-service

"After receiving pre-settled status on the 9th of January 2021, no BRP has been sent and cannot follow up as no-one answers the phone at the call centre. No response to emails." – May 2021

103. The following case encompasses both the insistence on seeing proof of EUSS, a mortgage lender, and a lengthy delay waiting for a replacement card which is affecting the ability to travel.

"I am non-EU family member and was granted settled status on 23 March 2021, on 25 March I applied for my BRP replacement as my current BRP was expiring on 23 April. I had my biometrics appointment on 25 April, and since then I have been waiting for my new BRP. In the meantime, I have lost a chance to secure a mortgage despite having all necessary documents ready, because the lender wanted to see an updated BRP with settled status. I also wanted to travel to my home country which I cannot because I have only my non-EU passport and online status, and online status is not acceptable for traveling purposes as I am from a country that would need a visa to travel to the UK. I tried many times to call the EU Settlement Resolution Centre but cannot get hold of them. My phone calls do not even go in a queue, I try to send them a message via their website but no answer, I tried the UK general Visa and Immigration helpline, but they said I have to speak to the EU Settlement Resolution Centre, now I have no clue who I need to contact and who will help me to get my BRP replacement" – July 2021

Recommendations (Proving status for non-EU citizens)

- Issue all non-EU holders of EU Settlement Scheme status with EUSS biometric residence cards as soon as possible.
- Improve the UK.Gov webpages to provide very clear and unambiguous information around the use of existing EEA biometric residence cards and EUSS biometric residence cards.

Chapter 6. The right to enter the UK

Complexity of the rules

104. There is a great deal of uncertainty about the right to enter the UK, particularly for people with pending applications for (pre-)settled status and EUSS family permits. the3million worked with a lawyer from NexisLexis to create a 7-page document to attempt to give people better information – which is available at https://www.the3million.org.uk/rights-enter-uk.

105. Some organisations have reported being told informally by Home Office staff that people with pending EUSS applications from abroad are allowed to enter the UK – however as can be seen on page 5 of https://www.the3million.org.uk/rights-enter-uk, this is not backed up by legislation so we are not able to recommend that people do this.

106. Being able to travel to the UK to join family members is understandably of vital importance for individuals. The Government's page on travel requirements https://www.gov.uk/uk-border-control/before-you-leave-for-the-uk only divides people into those with (pre-) settled status / EUSS family permit, and those who have not applied. Given over half a million people have applied but are waiting for a decision (and within those, many are even waiting for a CoA), the Government urgently needs to provide far more detailed information.

107. In our first report to the IMA (February 2021), we raised the issue of joining family members who did not realise that they were not allowed to travel to the UK after 1st January 2021, and then apply for status under the EU Settlement Scheme once in the UK. They would not have realised that entering the UK without a pending application would mean they were entering on a visitor visa, and that Appendix EU of the Immigration Rules forbids switching from a visitor visa to an EUSS status. We recommended (in section 3.4 of our report) "to change the rules such that an in-country switch from visitor visa to pre-settled status is allowable".

108. This appears to have been partly, and very belatedly, addressed by the Home Office when they published updated EUSS caseworker guidance[31] on 20th July.

> ***"Temporary concession***
> *The requirement that a person applying as a joining family of a relevant sponsor must not be in the UK as a 'visitor', in accordance with that definition in Annex 1 to Appendix EU, is disapplied, as a temporary concession outside Appendix EU, where the applicant's leave as a visitor expires on or before 30 December 2021. This includes applicants who entered the UK from 1 January to 30 June 2021 with six months' visitor leave, and those who arrive after 30 June 2021 but whose visitor leave is of less than six months' duration. It also includes applicants who make a late application, where there are reasonable grounds for them having missed the deadline, if they are still visitors when they apply."*

109. However, it is only addressed for those whose visitor visa expires on or before 30 December 2021 – which means those arriving before 30 June 2021, or for those who arrive after but know to obtain a shorter visitor visa. We are not aware of any routine way of obtaining a visitor visa of less than six months. This renders the concession meaningless of anyone arriving in the UK going forward.

[31] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004627/main-euss-guidance-v13.0ext.pdf - p98

110. This will continue to trip people up, and we cannot see why this concession cannot be applied indefinitely. We do not understand why someone is not able to simply enter the UK on a visitor visa and then apply to the EU Settlement Scheme if they are eligible for it on the basis of family relationship to an EU citizen with EUSS status. Equally, nowhere is it set out in the Withdrawal Agreement that a person must not be a visitor to be granted status via the EUSS.

Consequences for late applicants to EU Settlement Scheme

111. The Government have said[32] that "You can make a late application to the EUSS. But, if you do not have status or a pending application and you are encountered by Immigration Enforcement, and you may be eligible for the EUSS, you will be provided with a written notice giving you an opportunity to apply to the EUSS, normally within 28 days, and directed to the support available to you if you need it."

112. This 28-day notice process is described in other guidance documents (such as right-to-work, right-to-rent). However, any Border Force guidance documentation is not available for public or indeed parliamentary, scrutiny[33]. We therefore do not know whether this 28-day process will also be adopted by Border Force officers. If a long-term resident of the UK who was not aware they had to apply for the EU Settlement Scheme travelled abroad, what would happen to them as they try to come home to the UK? Will they be signposted to the EU Settlement Scheme and informed they have 28 days to apply to the scheme, or will they be subject to detention? Will Border Force officers have sufficient training to be able to determine whether someone, including non-EU citizens, are potentially eligible for a late application to the EU Settlement Scheme?

EU Citizens struggling to prove EUSS status at the UK border

113. We have received many reports of people who, despite having EUSS status, had difficulty proving their status to Border Force officials. It is not clear what information people should carry. Some carriers, e.g. Eurostar, recommend printing out a share code in advance, but the View and Prove guidance suggests information can be checked digitally as long as people travel with the document linked to their status. (However, see section ***Problems updating status*** in ***Chapter 4*** for problems people are having when updating their status with a new travel document.)

> *"I was asked at the Eurotunnel border in Calais when coming back to the UK to prove my settled status by showing them the email I got when I applied which was more than two years ago. When I said that I didn't have the email but that my passport should be registered on their system the guard got very angry and started shouting that it was up to me to prove my immigration status and that I was using excuses. Given that I was travelling with my wife and children who all have British passports, in my car that has a British registration and had only left the UK five days earlier on a short break to France I was somewhat taken aback by the border guards attitude. He then walked off with our passports having told me to park on the side. I was desperately trying to log on to the government website to prove my status but needed my passport number for that which luckily I found on the passenger locator form which I had dutifully filled in but which seemed of no interest to the guard. Neither were the COVID test certificates we all had obtained at great cost. Once I had logged on I went to the office the guard had disappeared to and knocked. He did then agree to hand back our passports and let us through. It was a humiliating*

[32] https://www.gov.uk/government/publications/eu-settlement-scheme-information-for-late-applicants/eu-settlement-scheme-information-for-late-applicants
[33] https://questions-statements.parliament.uk/written-questions/detail/2021-05-27/8620

experience that makes me reconsider whether living in the UK is going to be viable for me as in normal times I have to travel internationally several times a month." – August 2021

"I came back from France after visiting my elderly parent. At arrival at Heathrow there were two immigration officers at border control. They asked why I was here I said I live here. They said where is your visa then. I said "I don't have a visa, I live in London for over 15 years. After Brexit I applied for Settled Status which was granted. " I showed them the email granting me settled status in April 2019. They said that's irrelevant, I still needed a visa and a (something something) card. I don't even know what they meant. I kept saying I have settled status and can not apply for a visa, that IS my visa and it should be connected to my passport. I asked if she couldn't see anything when scanning my passport and she laughed as if that was a Sci fi vision from the future. They kept saying that even before Brexit I wouldn't have been allowed to live in the UK without a visa. I said I fly for work out of the UK monthly for the past 15 years (except during the pandemic) and have never been asked for one. In the end they read the letter and let me pass. By then I was in tears and had never felt so humiliated." – June 2021

EU Citizens denied entry at the UK border

114. Even while still in the grace period, there were cases of EU citizens detained at the UK border when wishing to enter the UK. Many of these detentions were not in compliance with the law and showed a lack of training and up to date knowledge of Border Force officials.

115. There were cases where people were denied entry for stating their intention to attend an interview, which is in fact allowed under a visitor visa.[34]

116. There were cases where EU citizens with (pre-)settled status were denied entry because they could not prove their status, or Border Force officials were unaware of the digital-only nature of the EU Settlement Scheme.[35]

117. Many were detained rather than granted bail, which was considered to be 'disproportionate' by many EU member states[36] and by the EU Parliament as shown in this Parliamentary Question[37]. On 14 May 2021, the Home Office "*announced a rule change allowing EU citizens stopped at the frontier to ask for bail in order to spend time with their friends or families in the UK awaiting their expulsion flight.*" [38]

118. A recurring theme is that training and information is inadequate and above all unbalanced. There is far more emphasis on the success of imposing barriers, rather than on ensuring people successfully access their rights. We need to know what training is given to UK Border Force officials, and how their performance is monitored.

Impact of EU Settlement Scheme delays on the right to travel

119. Non-EU citizens with status under the EU Settlement Scheme who have an expired biometric card or permit and are facing very lengthy delays for a replacement EUSS biometric residence card are struggling to prove their right to enter the UK.

[34] https://www.theguardian.com/uk-news/2021/may/18/eu-citizens-are-allowed-to-visit-britain-for-a-job-interview-says-minister
[35] https://www.theguardian.com/politics/2021/may/21/uk-like-an-enemy-state-to-eu-nationals-detained-by-border-force
[36] https://www.politico.eu/article/eu-citizens-detained-uk-work-visas-brexit/
[37] https://www.europarl.europa.eu/doceo/document/P-9-2021-002650_EN.html
[38] https://www.theguardian.com/uk-news/2021/may/17/handcuffed-detained-denied-medicine-eu-citizens-uk-border-ordeals

"I am a non-EU spouse of an EU national. I have settled status based on the EU Settlement Scheme and a UK issued Biometric Residence Card stating I have Permanent Residence valid until 2028. I had problems proving my settled status when at the UK border when returning into the country. My EU settled status was not linked to my passport as I applied to the EU Settlement Scheme using my UK issued BRC. The border officer said that my UK issued BRC would not be valid from 30 June 2021 although it clearly states that it is valid until 2028. I had to bring up the email with my confirmation letter of the outcome of my EU Settlement Scheme which says I have been granted settled status but clearly states in bold that the letter was not proof of my status. The Border officer finally accepted the email confirmation letter taking down the reference number." – June 2021

120. People with pre-settled status who are abroad with dependent family members who are waiting for EUSS status or an EUSS family permit are in danger of exceeding their absence allowance. For example, we heard of a case through another organisation of a woman with pre-settled status who had gone to her country of origin to give birth to her baby and is now wanting to come back to the UK. The EUSS application of her new-born baby is still pending, with no information being given to her of how long this might take. Given the over-representation of children's applications in the scheme's backlog, the difficulty of getting through to the EU Settlement Resolution Centre, and the often "you just need to be patient" response that those who *do* get through to the EU SRC, this is causing great anxiety.

121. There appear to be particular problems of EUSS family permits taking a very long time to process. This has been ongoing for a long time rather than being a feature of the late rush of applications in June.

"My husband arrived to the UK as an EU citizen before 31 December 2020, he is still waiting for 4 months and we, his family with two daughters are waiting for the family permit. We live separated, he is in London we are in Budapest. Nobody can reply or help. We called the given phone number hundreds of times without success. We wrote several emails, no help... We are having to pay our living in two countries." – March 2021

"I'm an EU citizen, partner is British, we lived in Europe for the last 7 years and moved to the UK in February. I applied for the EU settlement scheme family permit Surinder Singh in January and as of today, 6 months later, there has been nothing done from the UKVI, contacted the MP twice and got a solicitor. I need this to apply for the EU settlement scheme under the Surinder Singh route. It's bonkers that I need a visa/permit to then be able to apply for the pre-settled status because if one gets delayed the latter can't be done. I have been almost 6 months now without being able to do the most basic things, work, rent, open a bank account, access the NHS (I can use my EU health card but only for emergency care). I'm suffering from depression, I've thought about suicide many times already and now my partner is also pregnant. I can't also travel outside of the UK because I am not sure if I then would be able to come back, my visitor visa has almost run out of the 6 months available and I will soon be considered as staying illegally." - August 2021

122. Article 14(3) of the Withdrawal Agreement states: "*Where the host State requires family members who join the Union citizen or United Kingdom national after the end of the transition period to have an entry visa, the host State shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge* ***as soon as possible, and on the basis of an accelerated procedure.***" We therefore consider the reported delays to be a contravention of the Withdrawal Agreement.

Non-EU family members travelling to the EU

123. Before Brexit, non-EU citizens from visa-required nationalities were able to accompany their EU family member to travel to the EU without requiring a visa, by showing an EEA Residence Card stating 'family member'. When they apply to the EU Settlement Scheme using this residence card, they are not automatically issued a new EUSS biometric residence card. When they apply using a passport instead, or when they apply to replace their EEA residence card, they are issued an EUSS residence card. Neither the EEA residence card (regardless of its expiry date) nor the EUSS residence cards are recognised for travel to the EU[39].

124. Although we acknowledge that the recognition of an EUSS residence card for travel purposes would be within the gift of the EU rather than the UK, the UK Government could do more to inform citizens of this clear reduction of rights, especially in the light of the overarching narrative of rights remaining 'broadly the same'.

> *"My non-EU national unmarried partner and myself (French citizen) have been denied boarding on a flight from London to France today, despite holding a UK Residency Card (family member - EU Residence) valid until 2022 and both with the settled status. The flight attendants refused to acknowledge the family member of a EU citizen aspect on the residence card and ignored our EU settled status. We were denied boarding, it made us feel powerless, insignificant and almost illegal, after spending 6 years in the UK building a home it made us feel like we were not allowed to be a family." – July 2021*

[39] As explained in our FAQ https://www.the3million.org.uk/faq-1/euss-travel-to-eu

Recommendations (The right to enter the UK)

- Provide accurate, detailed information on who has the right to enter the UK, which takes into account pending applications for EU Settlement Scheme status (for both those who were in the UK before 31 December 2020 and those who are applying as joining family members) and pending applications for EU Family Permits.
- Change the rules such that an in-country switch from visitor visa to pre-settled status is allowable permanently, rather than only for those whose visitor visa expires on or before 30 December 2021, as Article 18(1)(e) states "the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided".
- Information must be published that explains how Border Force officers will determine whether anyone entering the UK without status, who informs Border Force officers that they live in the UK, is potentially eligible for status under the EU Settlement Scheme, and signposts them accordingly giving them 28 days to apply for status.
- Sufficient training must be given to UK Border Force officials, and performance must be monitored to ensure that people with the right to enter the UK are treated properly. Evidence of this must be provided.
- Inform non-EU family members with (pre-) settled status that they may (depending on their nationality) now require visas to accompany their EU family members to travel to the EU.
- An end-to-end review of border control procedures to ensure that there are no other areas where EU citizens' rights are compromised. The IMA should work with the Home Office on how best to report problems at the border and how to identify them effectively.

Chapter 7. The right to work

Legislation, codes of practice and guidance

125. The hierarchy of legislation in the UK includes:

- Acts – primary / statutory legislation
- Regulations – secondary legislation, subordinate to Acts, aiming to aid a person to apply the principles of an Act
- Codes of practice and guidance

126. For those who have not yet been granted status under the EU Settlement Scheme (and who do not have another right of abode or immigration status) – i.e. those with pending in-time applications, pending late applications or those who have not yet submitted an application, the right to work is treated inconsistently by both regulations, codes of practice and guidance.

127. The primary legislation governing right to work is the Immigration Act 2014 and the Immigration Act 2016.

128. In terms of regulations, the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020[40] saves the EEA Regulations 2016 (and hence the right to work by exemption from the Immigration Acts) for those who:

- were lawfully resident (i.e. exercising a right to reside under the EEA Regulations 2016) on 31 December 2020; or had permanent residence rights; and
- had made an in-time application – i.e. before 30 June 2021
- currently exercise treaty rights and continue to do so until their application has been determined

129. The code of practice and guidance were published at a very late date – a draft code on 10 June, and the final version on 1 July, and the corresponding guidance on 18 June and 2 July respectively.

130. The code of practice for employers[41] broadens this, because it includes as an acceptable document for a right to work check for a 'time-limited statutory excuse' the following: "*a document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or before 30 June 2021* ***together with a Positive Verification Notice*** *from the Home Office Employer Checking Service."*

131. It is not publicly stated what will give rise to a Positive Verification Notice, however, the Home Office responded to a Safeguarding User Group question by saying that "*in practice all "in-time" applications will be treated the same*", thereby dropping the requirement that someone needs to be exercising treaty rights.

[40] https://www.legislation.gov.uk/uksi/2020/1209/regulation/4/made
[41] https://www.gov.uk/government/publications/illegal-working-penalties-codes-of-practice-for-employers-2018

132. Furthermore, the proof of an 'in-time application' has become much more confused (see earlier discussion, paragraph 40) as the delays in CoA have now resulted in the Home Office telling the3million by letter that an AoA email will also result in a Positive Verification Notice.

133. The right to work guidance[42] goes further still, because "*as a transitional measure to provide additional flexibility*", an employer does not need to cease the employment of an EEA or Swiss citizen already employed prior to 30 June 2021 who is found not have applied to the EUSS by 30 June 2021, but should instead advise the employee to make an application within 28 days. This transitional measure is not extended to non-EEA family members who have an EEA residence card or family permit which is no longer valid.

134. The guidance discusses a digital CoA, however we have had many reports of people still waiting for this – see also our letter of 6 July (unanswered at time of writing) to the Home Office. It goes on to say "*There are a small number of individuals who made their EUSS application using a paper application. Due to the postage and processing time related to paper applications you may be required to undertake a check before they receive their Certificate of Application. The individual will, however, have received a letter or email notification acknowledging receipt of the application, which you should request. You can then request a right to work check from the ECS, using the online form 'request a Home Office right to work check' on GOV.UK at: https://www.gov.uk/employee-immigration-employment-status*". It is not only applicants with paper applications who are suffering CoA delays, and many of those with paper applications are waiting even for the acknowledgement of their application – as reportedly many paper applications are with the Home Office as yet unopened.

135. Whilst it is welcome that there are some transitional measures and additional flexibility, it is extremely concerning that they are not supported by legislation. This makes it much harder to challenge decisions in employment tribunals, such as the reported case where a Spanish woman was sacked[43] where she could not provide a CoA on 2 July 2021. Her continued right to work depends on many extra-statutory pronouncements including a letter to an organisation (the3million) that says acknowledgement emails count as formal certificates.

136. The delays in issuing CoAs, and the lack of clarity and accountability will lead to a lot of losses of employment going forward.

> *"How long has it taken others to get an acknowledgement letter or CoA after submitting a paper application? My application was received 23 June, and even after many calls to the resolution centre and escalations, I've still had nothing back at all. Lost my job 2 weeks ago because I couldn't prove my right to work. I can't understand how this can happen, when I'm trying to support my disabled husband and child. I'm hoping for some light at the end of this tunnel." – August 2021*

Employer vs Home Office Accountability

137. It is inevitable that we will see many more cases of employers terminating employees' contract without properly complying with the guidance, using the Employer Checking Service, or informing their employees that they have 28 days to submit an application to the EU Settlement Scheme.

[42] https://www.gov.uk/government/publications/right-to-work-checks-employers-guide
[43] https://www.theguardian.com/uk-news/2021/jul/19/spanish-woman-in-uk-for-44-years-sacked-over-post-brexit-rules

138. The Codes of Practice and the Guidance were both published on 1 July 2021. Before that date, the Employers' Toolkit 'information for employers'[44] made no mention of the processes to protect citizens eligible for status under the EU Settlement Scheme, rather mentioning 30 June 2021 only as the deadline for applications and the date at which right to work checks would change.

139. This toolkit information changed only on 1 July 2021[45] to make reference to the full guidance for the steps to be undertaken if the employer identifies "*an EU citizen in your workforce who has not applied to the EUSS by the deadline and does not hold any other form of leave in the UK. They may tell you they have missed the deadline through no fault of their own and you may believe it to be disproportionate were you to take immediate steps to cease their employment.*"

140. The information to employers is problematic in three ways:

- It was only changed on 1 July, and the Home Office public narrative around the EU Settlement Scheme up to that date had been around 'time running out'[46] to continue to work
- The language places no obligation on the employer to do everything they can to signpost citizens without status to the EU Settlement Scheme, instead it only says "*they <u>may</u> tell you*" and "*you <u>may</u> believe*"
- It does not cover non-EU citizens who may well also be eligible for status under the EU Settlement Scheme, not realising that their EEA Residence Card is no longer valid

141. The Home Office has already made clear that it considers it has fulfilled its obligations and communications responsibility in this area, and that any cases of potentially eligible citizens losing their employment is the sole responsibility of employers. Questions to the Secretary of State on 12 July[47] includes this exchange:

> *Bambos Charalambous:*
>
> *As the Home Secretary is aware, acquiring settled status has an impact on a person's right to work and to access accommodation and other services. What steps are the Government taking to ensure that employers and landlords are complying with the right to work and rent guidance, and are not discriminating against EU citizens? Will she also tell me what protections are in place for people to submit late applications to the EU settlement scheme, so that they are not left in limbo, unable to work or at risk of homelessness while they await the outcome of their application?*
>
> *Priti Patel:*
>
> *First, the Home Office has been very clear in the support it will provide to people and late applications. The hon. Gentleman has rightly made an important point about the right to work and the role for employers. Let me give him the assurance that we have been working with employers' organisations and*

[44] https://web.archive.org/web/20201222154227/https://www.gov.uk/government/publications/eu-settlement-scheme-introduction-for-employers/eu-settlement-scheme-introduction-for-employers
[45] https://www.gov.uk/government/publications/eu-settlement-scheme-introduction-for-employers/eu-settlement-scheme-introduction-for-employers
[46] https://twitter.com/cumbriachamber/status/1409532310026964994?s=20 – example of the 'hourglass' image (supplied by the Home Office) of time running out to continue to work
[47] https://hansard.parliament.uk/Commons/2021-07-12/debates/50A3822B-2A6F-48B4-AEA6-55C4F58733DE/EUSettlementSchemeApplicationDeadline?highlight=settled%20status%20employers%20landlords#contribution-BE3CCB0F-D9E9-4A35-888C-920C2F2E261E

groups; this is exactly the vehicle through which, even throughout the pandemic, we have been working to communicate the need for employers to work with us to secure the settled status of many, many individuals. Finally, may I pay tribute to many of the employers who have been working with us on this scheme to guarantee that settled status for individuals?

142. A fundamental rebalancing of approach is needed. Rather than focusing on the success of the hostile environment, in other words the success of the barriers put in place to prevent anyone without the right to work from working, the Government must place much more emphasis on ensuring everyone can be united with their rightful legal status. It is not sufficient to publish complex guidance the day after a deadline, a toolkit which makes a soft reference to that guidance, and then to state that the Home Office has worked with employers' organisations and groups. House of Commons 'Business Statistics'[48] show that the estimated number of private sector businesses in the UK with employees was 1,413,000 in 2020.

Article 18(3) pending late applications

143. On 6 August 2021, the Government announced[49] that those who apply late to the EU Settlement Scheme, and joining family members, will have rights protected while their application is determined. We welcome this, following our view, as stated in section 4.2 of our February report to the IMA, that the UK was in breach of Article 18(3) of the Withdrawal Agreement by not ensuring that anyone with a pending application (whether in-time or late) has all their rights of residence, access to work, rent, healthcare and benefits protected. At the time of writing, no further information is available, and we await the necessary legislation in order to scrutinise the detail.

144. The webpage "Right to work checks: employing EU, EEA and Swiss citizens"[50] was updated to mention the temporary protection, but the guidance and code of practice has not been updated.

145. As regards information given to applicants, we are disappointed that a CoA dated 16 August 2021, ten days after the Government's announcement (of an application made on 1 July 2021) states that the individual **does not have their rights protected** while their application is determined:

> *"**Note for employers and landlords Employers***
> *From 1 July 2021, employers should not recruit new employees who have made a late EU Settlement Scheme application, until they can prove they have been granted status under the scheme using the online right to work service at: www.gov.uk/view-right-to-work"*

[48] https://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf
[49] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme
[50] https://www.gov.uk/guidance/right-to-work-checks-employing-eu-eea-and-swiss-citizens

Recommendations (The right to work)

- Create a clear legislative basis for anyone who has submitted a valid application to the EU Settlement Scheme to have a right to work, regardless of whether this application was submitted before or after 1 July 2021.
- Ensure this legislation clearly applies from the point at which an acknowledgement of an application is received, rather than from when a Certificate of Application is finally received.
- Ensure employers' guidance and code of practice, and communications to applicants correctly states that applicants have their rights protected while their application is determined, in line with the Government's statement of 6 August 2021[51].
- Ensure an AoA, both for an online and for a paper application, is issued promptly and certainly within two working days of an application being submitted by the applicant. Provide clear time frames within which CoAs should be issued.
- All transitional measures – such as the 28-day notice period which an employer should give to an existing employee – must be specifically aimed at both EEA and non-EEA citizens.
- Create a strong public communication campaign that is aimed at ensuring no-one eligible for status is left behind and is instead given every opportunity to be reunited with their lawful status. This must include both EU citizens and non-EU citizens.
- The IMA should work with the Home Office to establish an evidence base on how well Right to Work checks are performing with respect to Withdrawal Agreement rights. It is not clear on what basis the Home Office monitor performance of this policy and we have serious concerns that issues of discrimination and breaches of rights are going unreported.

[51] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme

Chapter 8. The right to rent

Legislation, codes of practice and guidance

146. In the same way as described in ***Chapter 7. The right to work***, the right to rent is treated inconsistently by regulations, codes of practice and guidance for those who have not yet been granted status under the EU Settlement Scheme (and who do not have another right of abode or immigration status) – i.e. those with pending applications, or those who have not yet submitted an application.

147. The primary and secondary legislation applicable to the right to rent is again the Immigration Acts 2014 and 2016, and the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020[52] which saves the EEA Regulations 2016 (and hence the right to rent) for those who were exercising a right to reside under the EEA Regulations 2016 on 31 December 2020 and beyond, and who made an in-time application to the EU Settlement Scheme.

148. The code of practice and guidance were published at a very late date – a draft code on 10 June, and the final version on 1 July, and the corresponding guidance on 18 June and 2 July respectively, with a final PDF version of the landlord's guide to right to rent checks only published on 6 July – a week after the EU Settlement Scheme deadline.

149. The codes of practice for landlords[53] was updated to reflect that from 1 July EEA citizens and family members require immigration status, on 1 July with an updated draft about civil penalties for landlords and agents, and only on 6 July a final version on civil penalties was published. As with the codes of practice for employers, it includes as an acceptable document for a 'time-limited' right to rent: "*a document issued by the Home Office, confirming an application for leave to enter or remain, under Appendix EU to the immigration rules, made on or before 30 June 2021* ***together*** *with a positive right to rent notice issued by the Home Office Landlord Checking Service."*

150. It is again not publicly stated what will give rise to a Positive Verification Notice, and the only information we have is the Home Office responding to a Safeguarding User Group question by saying that "*in practice all "in-time" applications will be treated the same*", thereby dropping the requirement that someone needs to be exercising treaty rights.

151. The confusion around proving an 'in-time application', with delays in CoAs and AoA emails applies as with the right to work (see earlier discussion, paragraph 40).

152. The right to rent guidance[54] says that if landlords find existing EEA citizen tenants do not have lawful immigration status, the landlord must report this to the Home Office in order to maintain their statutory excuse, and they should advise the individual they must make an application to the EUSS within 28 days in order to regularise their immigration status.

153. The guidance states that "*There are a small number of individuals who made their EUSS application using a paper application. Due to the postage and processing time related to paper applications you*

[52] https://www.legislation.gov.uk/uksi/2020/1209/regulation/4/made
[53] https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice
[54] https://www.gov.uk/government/publications/landlords-guide-to-right-to-rent-checks

may be required to undertake a check before they received their Certificate of Application. The individual will, however, have received a letter or email notification acknowledging receipt of the application, which you should request. You can request a right to rent check from the LCS". This is problematic in several ways. Firstly, many people with paper applications are in fact facing long delays simply to be issued with an *acknowledgement* of receipt of their application. Secondly, many people with *online* (not just paper) applications are also experiencing lengthy delays in receiving a CoA.

154. Again, it is very concerning that none of the mitigating measures are not backed up by primary of secondary legislation. This makes it much harder to challenge decisions in court / claim for illegal eviction.

155. The delays in issuing CoAs, and for some (especially paper applications) even acknowledging receipt of applications, together with the poor communication about rights of those with pending applications will invariably lead to a cycle of destitution for many, where a loss of employment leads to non-payment of rent, in turn leading to evictions. This is exactly what happened to many victims of the Windrush scandal.

> *"I had no idea until May that I was eligible to apply for EUSS, as letter that came with my visa only advised to apply if I was an EU/ Swiss citizen. Had I known before, I would have applied much sooner. I posted my forms 22 June with next day recorded delivery. The guidance says most cases were decided in 5 days, but some take longer. Fair enough, however I had no idea they would take over a month (so far) to even acknowledge I'd submitted an application.*
>
> *By July my work was asking me for a reference number to prove I could work. The EU resolution centre (who are almost impossible to get on the queue and even then over an hour on an awful hold message/ music each time) kept saying all I could do was wait. Most of their staff are working from home (even though it's not a requirement anymore) and only those physically there can check paper applications.*
>
> *20 July I still could not get any confirmation. My area manager informed me that if I could not get confirmation of my application by 1:45 the following day, my employment of over 4 years, would be terminated. I spent the last hour crying, feeling very embarrassed.*
>
> *I called EURC when I got home, hoping for a miracle. The call handler told me she'd escalate it to ask if they could look at my forms sooner, and would copy me into the email, so I'd have something to give to my work. After a few hours with no email, I begrudgingly called again. I was told there was no record of my first call, and that they could not copy me into an email. However, she would also have her manager escalate the issue.*
>
> *21 July, I couldn't bear waiting all day at work to be fired at the end of my shift, and my anxiety and depression were really starting to sink in, so I called in sick my last day. I lodged an official complaint to the EURC (the first time I got to speak to a team leader) who again said they'd try to have it expedited. I received a generic response to my complaint a few days later with no help. Just keep waiting.*
>
> ***I'm now 2 weeks without work. I'm struggling with my own mental health and am scared to call the GP in case they too cut me off. I've never missed a rent payment but don't know what I'll say next month when I can't pay it, will my landlords kick us out as I can't prove my right to rent either?"** – August 2021*

Landlord vs Home Office Accountability

156. The case above is only an initial indication of countless such cases we will see. The Codes of Practice and the Guidance were both published on 1 July 2021.

157. The information to landlords is problematic in three ways:

- It was only changed on 1 July, and the Home Office public narrative around the EU Settlement Scheme up to that date had been around 'time running out'[55] to continue to rent
- The language places no obligation on the landlord to do everything they can to signpost citizens without status to the EU Settlement Scheme – the guidance only says "*Any prospective tenant who is an EEA citizen and has not made an application to the EUSS by the 30 June 2021 deadline, and does not have any other form of UK immigration leave, will not have lawful status in the UK or the right to rent. You should encourage them to make an application to the EUSS, even if it is after the deadline of 30 June 2021.*"
- It does not cover non-EU citizens who may well also be eligible for status under the EU Settlement Scheme, not realising that their EEA Residence Card is no longer valid

158. As described above in the right to work section, the Home Office has already made clear that it considers it has fulfilled its obligations and communications responsibility in this area, and that any cases of potentially eligible citizens illegally losing their home is the sole responsibility of landlords. In the exchange with Bambos Charalambous referenced in paragraph 141, it is notable that the question related to both employers and landlords, whereas the Secretary of State's answer only addressed employers.

159. Again, we reiterate our view that a fundamental rebalancing of approach is needed, and that much more attention must be given to ensure everyone can be united with their rightful legal status. According to 2020 research by Hamptons[56], there were 2.66 million landlords in Great Britain.

Article 18(3) pending late applications

160. On 6 August 2021, the Government announced[57] that those who apply late to the EU Settlement Scheme, and joining family members, will have rights protected while their application is determined. We welcome this, following our view, as stated in section 4.2 of our February report to the IMA, that the UK was in breach of Article 18(3) of the Withdrawal Agreement by not ensuring that anyone with a pending application (whether in-time or late) has all their rights of residence, access to work, rent, healthcare and benefits protected. At the time of writing, no further information is available, and we await the necessary legislation in order to scrutinise the detail.

161. As regards information given to applicants, we are disappointed that a CoA dated 16 August 2021, ten days after the Government's announcement (of an application made on 1 July 2021) states that the individual **does not have their rights protected** while their application is determined:

> *"**Landlords – England only***
> *From 1 July 2021, landlords in England should not let to new tenants who have made a late EU Settlement Scheme application, until they can prove they have been granted status under the scheme using the online right to rent service at: www.gov.uk/view-rightto-rent"*

[55] https://twitter.com/cumbriachamber/status/1409532310026964994?s=20 – example of the 'hourglass' image (supplied by the Home Office) of time running out to continue to work
[56] https://www.hamptons.co.uk/research/articles/2020/lettings-index-january-2020.pdf/
[57] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme

Recommendations (The right to rent)

- Create a clear legislative basis for anyone who has submitted a valid application to the EU Settlement Scheme to have a right to rent, regardless of whether this application was submitted before or after 1 July 2021.
- Ensure this legislation clearly applies from the point at which an acknowledgement of an application is received, rather than from when a Certificate of Application is finally received.
- Ensure landlords' guidance and code of practice, and communications to applicants correctly states that applicants have their rights protected while their application is determined, in line with the Government's statement of 6 August 2021[58].
- Ensure an AoA is issued promptly and certainly within two working days of an application being submitted by the applicant. Provide clear time frames within which CoAs should be issued.
- All transitional measures – such as the 28-day notice period which a landlord should give to an existing tenant – must be specifically aimed at both EEA and non-EEA citizens.
- Create a strong public communication campaign that is aimed at ensuring no-one eligible for status is left behind and is instead given every opportunity to be re-united with their lawful status. This must include both EU citizens and non-EU citizens.
- The IMA should work with the Home Office to establish an evidence base on how well Right to Rent checks are performing with respect to Withdrawal Agreement rights and what improvements can be made. There has been previous evidence and serious issues identified with this policy relating to discrimination (in particular the work of JCWI[59] and others[60] [61] [62] in their legal challenge). It is not clear on what basis the Home Office monitor performance of this policy and we have serious concerns that issues of discrimination and breaches of rights are going unreported.

[58] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme
[59] https://www.jcwi.org.uk/right-to-rent
[60] https://research.rla.org.uk/wp-content/uploads/right-to-rent-impact-private-renting-2018.pdf
[61] https://www.equalityhumanrights.com/en/our-work/news/equality-commission-seeks-reverse-%E2%80%98right-rent%E2%80%99-scotland-and-wales
[62] https://www.libertyhumanrights.org.uk/issue/legal-intervention-right-to-rent-scheme/

Chapter 9. The right to benefits

Pre-settled status and the 'right to reside'

162. Decision making relating to entitlement for benefits and other social entitlements has been a consistent challenge for EU citizens. This has arguably centred on 'right to reside' testing and the complexities of the law and policy associated with it. We have had reported to us an increase in bad decision making since the pandemic and in particular since the end of the transition period. As we have set out here, there is a complex tapestry of legislation and policy that undoubtedly is creating a framework that puts many at risk. We are concerned that these complexities are leading to discrimination.

163. Accessing benefits depends, in most cases, on proving the 'right to reside', before the more specific eligibility to the benefit is assessed.

164. Social security is governed by a complex set of legislation, various Social Security Acts and a sway of Regulations such as the Income Support (General) Regulation 1987, the Jobseeker's Allowance Regulations 1996, the Housing Benefit Regulations 2006, the Universal Credit Regulations 2013 and others, together known as the "income-related benefit regulations".

165. The income-related benefit regulations provide that a claimant is ineligible for benefits where they are not habitually resident, which is phrased in the various regulations as a "person from abroad", "person not in Great Britain", or in the case of universal credit, a "person to be treated as not being in Great Britain".

166. It was the case that having indefinite leave to remain or limited leave to remain that is not expressly limited by 'no recourse to public funds' meant that someone was not 'a person to be treated as not being in Great Britain'. Therefore, the first grants of status under EU Settlement Scheme in late 2018 – whether settled status (indefinite leave to remain) or pre-settled status (limited leave to remain) – entitled people to satisfy the 'habitual residence' test.

167. In May 2019, the Government introduced regulations 'The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019'[63] which had the effect of expressly adding pre-settled status (limited leave to remain under Appendix EU of the Immigration Rules) to the lists of "person from abroad", "person not in Great Britain" and "persons to be treated as not being in Great Britain". People with pre-settled status could still prove habitual residence as they had done before under the EEA Regulations by for example being a worker, but they could not do so by merely showing their pre-settled status.

168. This was successfully challenged at the 'Fratila' Court of Appeal[64] hearing on 18 December 2020 but is currently awaiting a Supreme Court hearing, which was in turn awaiting a decision in a CJEU case CG v the Department for Communities in Northern Ireland[65] which was delivered on 15 July 2021.

[63] https://www.legislation.gov.uk/uksi/2019/872/made
[64] https://cpag.org.uk/welfare-rights/legal-test-cases/current-test-cases/eu-pre-settled-status
[65] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62020CJ0709&qid=1626382799528

169. This has left people with pre-settled status, who are unable to evidence an alternative right to reside, in an extremely precarious situation. Many of them are vulnerable, and increasingly so due to the effects of the Covid-19 pandemic. Child Poverty Action Group [CPAG] – acting for the claimants in the Fratila case - has issued an advice leaflet[66] to explain what advisers should do to protect the rights of such claimants.

170. Although the legal process on this question is not complete, we reiterate our view that the EU Settlement Scheme fundamentally does not deliver on the requirements of Article 18(1) of the Withdrawal Agreement, in that it does not issue "a new residence status which confers the rights under this Title". Alongside our oral evidence to the Citizens' Rights enquiry by the House of Lords European Affairs Committee, we provided written evidence[67] which sets this out in greater detail.

171. In the 'Way forward' section of this written evidence, we highlight the serious difference of opinion between the UK and the EU. We see the choices available to resolve this conundrum as:

- Both sides accept that ***all*** people with pre-settled status and settled status are full beneficiaries of the Withdrawal Agreement (and as such, all people with pre-settled status should be entitled to equal treatment with British citizens and therefore have their status accepted as a right to reside)
- A new scheme is devised which tests six million people afresh to determine whether they are beneficiaries of the Withdrawal Agreement
- Render the discussion moot by giving everyone with pre-settled status identical rights, without further tests down the line to determine true/extra cohort membership (and similarly everyone with settled status has identical rights)

Benefits for those with in-time EUSS applications waiting for a decision

172. In law, the only people (apart from those already granted status) protected to continue receiving existing benefits or indeed to apply for new benefits are those who have a CoA of an in-time application to the EU Settlement Scheme, were exercising a right to reside on 31 December 2020 and continue to do so until their status is granted.

173. However, the Government have said in a Safeguarding User Group meeting that ""*in practice all "in-time" applications will be treated the same*".

174. The Government have said in a letter to the3million that an AoA (in the form of an email) will suffice where people are waiting for a CoA.

175. It is problematic (as described in earlier sections) that many with paper applications are waiting even for an AoA, and many others are waiting for a CoA. For example, we know of someone[68] who has been waiting since submitting an online application on 16 June and has still not received a Certificate at the time of writing.

[66] https://cpag.org.uk/sites/default/files/files/resource/Fratila-advice-for-claimants-01-07-2021-v.3.pdf
[67] https://committees.parliament.uk/writtenevidence/37390/pdf/
[68] See letter to Home Office with further questions on delayed CoA, July 2021 on www.the3million.org.uk/library

176. Someone who can evidence living in the UK for many years and is therefore entitled to settled status, would be able to satisfy a right to reside for benefits if they had that settled status. However, while waiting for a decision they instead have to jump through complex hoops to demonstrate a right to reside under the EEA Regulations. This, combined with both the extraordinarily large number of unprocessed EUSS applications and the unprecedented economic consequences for many due to the Covid-19 pandemic, will result in much unnecessary and unacceptable hardship for many, especially vulnerable people. It is imperative that the backlog of unprocessed applications is cleared as swiftly as possible, and in any case within two months.

Existing benefits for those who did not apply to the EUSS in time

177. As seen above, those who did not apply to the EU Settlement Scheme before 30 June 2021 have lost their right to claim benefits overnight. (Pending changes to be made following the Government's announcement[69] on 6 August.) However, the Government has said on various occasions that this will not happen in practice to those already in receipt of benefits.

178. For example, in the oral evidence session of 22 June 2021 to the House of Lords European Affairs Committee, Kevin Foster said[70]: "*To be very clear, people will not be losing benefit payments on 1 July, although cases are dealt with directly by DWP. […] There will be a second process after 30 June when we do another data matching process to write again to encourage people to apply. To go to the example you have just given, if someone is elderly, or perhaps has a power of attorney or deputy position in place, we will inherently see that as reasonable grounds for a late application, and we will signpost them again to the EUSS. I think it is our intention to give them 28 days to make another application. After that, we would advise DWP and HMRC, but they would then take them on as individual cases; they would not be the subject of just a block removal of support, given the type of situations we could be talking about.*"

179. It is concerning that the minister says, just over a week before the deadline "*I **think** it is our intention*", as this accurately summarises the lack of legal certainty around this process. There is no guidance anywhere publicly available on the Government website, and – as with the 28-day process for existing employees and existing tenants – there is no legislative basis for the continuation of benefits to people without an immigration status or pending in-time application.

180. The only written evidence of this process that has been seen by the3million is this letter from DWP to Revenues and Benefit Managers, dated 2 July 2021, which we cannot find on the Government's website but which has kindly been made available on the RightsNet website: https://www.rightsnet.org.uk/pdfs/DWP_EUSS_letter_to_local_auths_2_July_2021.pdf. The letter refers to an earlier letter dated 18 June[71] which we also cannot find on the Government's website.

181. The letter makes clear that the continuation of benefit payments while people are given time to apply for status under the EU Settlement Scheme is '***extra statutory***'.

182. Whilst again, we of course welcome the fact that it is not the intention to terminate people's benefits from one day to the next, it is extremely concerning that these transitional measures are

[69] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme
[70] https://committees.parliament.uk/oralevidence/2459/pdf/
[71] https://cd54e371-cab3-4887-826a-0feff2e25a2c.usrfiles.com/ugd/cd54e3_b1306cd09b2f40249214086d817db66a.pdf

not backed up by legal protection. How will anyone be able to argue a case in a tribunal if there is no legislation to base the argument on?

183. Local authorities can be penalised for making payments that they should not, so in the absence of clear legislation and guidance, there will be an incentive to terminate payments rather than continuing on an extra statutory basis.

184. The DWP letter also sets out the process of further letters to be sent, by both the Home Office (in mid-July 2021) and DWP (in September 2021). We are concerned about the data matching exercises, as we know there were people who should have got a letter in May 2021 but did not. There were also many people who got a letter but should not have[72].

185. We are concerned also that there is no mention of HMRC in this process, who are responsible for child benefit and child tax credit.

186. We believe that there was an intention for the DWP and HMRC to produce regulations to cover this process, but that this was not done hence the current reliance on extra statutory payments. Benefit claims from EU citizens have been problematic for many years, with endless wrong decisions having to be overturned at tribunals. This "extra statutory payments" policy is highly problematic, as hardly anyone appears to know about it, and there is no public guidance. We are strongly of the view that legislation should have been amended to give a legal basis for these payments, and we urge the Government to retrospectively create this legislation.

> *"One of our practitioners has been asking me about a EUSS specific problem. We supported mum to apply to EUSS for her children at the deadline via paper application. Mum needs the passports back to prove identity for UC. UC has since been stopped and they're on brink of homelessness as can't pay rent. We'd requested documents back asap in the application and have been following up with Home Office to push for their return. Based on the letters on your website from HO and DWP, one would have hoped for more understanding for pending applications/administration and UC wouldn't have been stopped." – From organisation helping applicants, August 2021*

187. All of the above is a distraction in any case from the fact that the Government has certain knowledge that EU citizens in receipt of existing benefits are by definition eligible for status under the EU Settlement Scheme. This also applies to some extent to non-EU citizens where the DWP / HMRC would have had sight of their EEA residence card in the past. The number of such people (in receipt of benefits but without having submitted an EUSS application) must be reasonably low in any case. The Government departments should be doing far more to protect these people, such as:

- Granting them an interim status on a declaratory basis
- Working with them far more closely than merely sending them a letter, instead telephoning them, visiting them, working through local community organisations to reach them, and helping them to put in an application

188. On 18 August 2021, we were made aware of a letter that was sent to citizens, dated 9 August 2021[73]. We assume this is the second letter referred to in the DWP letter, using the 1 July 2021

[72] https://www.theguardian.com/uk-news/2021/may/17/immigration-letter-sent-to-long-term-british-citizens-causes-alarm
[73] A redacted copy is available at https://cd54e371-cab3-4887-826a-0feff2e25a2c.usrfiles.com/ugd/cd54e3_5163f4a7bf694ac8bbb73e1916947c8d.pdf

data match. The letter states that Home Office records indicate that the recipient is an EU, EEA or Swiss citizen living in the UK and may not have valid UK immigration status and has not applied to the EUSS.

189. It makes a 'crossed-letters' allowance for those who have applied to the EUSS and are still awaiting a decision – question 6 on page 4 says:

> *"**I have already applied for status; why have I got this letter?***
> *If you have applied to the Home Office recently for immigration status including through the EUSS, and are awaiting a decision **you do not need to apply again or contact us.** This letter may have been sent before your application was received."*

190. However, for any recipient of the letter who already has status under the EUSS, is British or a dual national, or has another immigration status, the onus is on the recipient to telephone the Home Office in order that their records can be updated and that no further action is taken "*with regard to any benefit payments you may be receiving*".

> *"If you have British citizenship, including if you are a dual citizen, please contact the Home Office on 0300 1050 888 (lines will be open 09:30-16:30 Monday - Friday) within 28 days of this letter so we can update our records and ensure we do not contact you again, and we do not take any further action with regard to any benefit payments you may be receiving."*
>
> *"If you already hold a document that confirms you have immigration status in the UK, or you have status under the EUSS, please contact the Home Office on 0300 1050 888 (lines will be open 09:30-16:30 Monday - Friday) within 28 days of this letter so we can update our records and ensure we do not contact you again, and we do not take any further action with regard to any benefit payments you may be receiving."*

191. We received a number of reports from people who have had settled status for a long time, some since 2019, who received this letter. Some had also received an earlier mailshot letter in May. They were extremely concerned and upset that it was their responsibility to inform the Home Office that they already have settled status.

> *"Has anyone else received a letter asking you to phone the Home Office so they can update their records about your EU immigration status? Needless to say, it's impossible to even get through. They say if you do not contact them within 28 days of the date of the letter, you'll lose your right to work etc. The date on my letter is 9th August. I received the letter today on the 18th. Where has it been all this time? I have a settled status. How is it possible they do not have a record of this even though they themselves sent me the confirmation of the settled status earlier this year? What does this say about how well they keep our information secure? Why should we have to waste time queueing on the phone to update records they already have?" – August 2021*

192. Recipients are told they have to inform the Home Office within 28 days of the **date of the letter.** The letter was dated 9 August, but many people told us they only received it on 18 August, leaving only 19 days.

193. Moreover, the telephone number given is only open from 9:30 to 16:30 on weekdays, and people reported not being able to get through. This will be very problematic for those who work full time and are not able to spend working time waiting in a lengthy telephone queue.

194. It cannot be acceptable that those who have rights under the Withdrawal Agreement and have successfully applied for status under the EU Settlement Scheme, face any risk of losing access to services or benefits simply for not responding to such a letter.

195. On 6 August 2021, we wrote[74] to the Secretary of State for Work and Pensions about our concerns with this letter writing approach and asked a series of questions, including how the Government would ensure everyone who needed to be contacted would be, and how the Government would ensure that those who should not be contacted would not be.

196. On 18 August 2021, only a few hours before we heard about the above mailshot letter, we wrote a follow-on letter[75] to the Secretary of State for Work and Pensions, asking what Equality Impact Assessments were completed in relation to the Government's communication strategy, and wider decision-making regarding suspension / termination of benefits for EU citizens who have not applied to the EUSS.

197. We now similarly ask what Equality Impact Assessments were completed in relation to the Government's communication strategy, and wider decision-making regarding suspension / termination of benefits for EU citizens who **have** applied to the EUSS.

New benefit claims by those who did not apply to the EUSS in time

198. The DWP letter to local authorities makes no mention of considering whether new applicants for benefits have any potential eligibility for status under the EU Settlement Scheme and signposting them to the scheme accordingly.

199. The letter states "*Q2. I have applied to the EU Settlement Scheme but have not yet been given a decision. Can I make a claim to benefits? A2. Yes. You can make a new claim for benefit* ***as long as the application to EUSS was made on or before 30 June 2021****. You will be paid the benefit if you meet the eligibility criteria.*" The letter therefore makes clear that those with pending late applications are not entitled to make new claims for benefits.

200. Once someone submits an application to the EU Settlement Scheme, they do not have any access to benefits until they are granted a status. This is in direct contravention to Article 18(3) of the Withdrawal Agreement, as already mentioned in ***The right to work*** and ***The right to rent*** chapters. Waiting for status could take many months, and the UK Government could be genuinely failing an EU citizen who has made the UK their home for many years, has reasonable grounds for a late application, and has only found out about the need to apply when they first find they need to turn to their host state for help. This situation is what Article 18(3) is designed to protect, and instead the UK Government is happy to treat such an applicant as undeserving until proven deserving, or alternatively as guilty until proven innocent.

201. However, on 6 August 2021, the Government announced[76] that those who apply late to the EU Settlement Scheme, and joining family members, will have rights protected while their application is determined. We will need to see the detail of implementing legislation, to know the full extent of which rights are protected and under what conditions.

[74] See August 2021, https://www.the3million.org.uk/library
[75] See August 2021, https://www.the3million.org.uk/library
[76] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme

Dependence on View and Prove

202. The View and Prove guidance[77] states that increasingly, some Government departments and public authorities are able to automatically access immigration status information, including the Department for Work and Pensions [DWP]. The guidance states that this means a share code is not needed to access the services. It then, somewhat contradictorily, goes on to say that where the organisation *does* need to see status, they will inform the individual and request a share code. We have received many reports of people having to supply share codes, and moreover these share codes not working.

> *"My partner and I are applying for Universal Credit. I had a phone appointment today, but they were not able to verify my share code. My DOB was right, but they said it didn't match with the code. I generated a new one for the clerk, but they kept on having the same issue. I applied for the EU Settlement Scheme in 2019, I received an email from the Home Office (I know it is not proof per se, but it is proof I did apply) and I was granted status until October 2024. I am worried I will be asked to leave the country. I have been living and working in the UK for the past 2.5 years. I have a National Insurance number, I am renting a flat with my partner, our names are registered under the Deposit Protection Scheme, there are bills under my name. I have a life here now." – July 2021*

[77] https://www.gov.uk/government/publications/view-and-prove-your-immigration-status-evisa

Recommendations (The right to benefits)

- Regardless of the outcome of legal action, reconsider the decision that pre-settled status is not a right to reside for benefits purposes, especially in the light of the WA/EUSS scope mismatch and the fact that the number of affected people is limited and shrinking over time.
- Provide extra resources to clear the number of unprocessed EUSS applications as quickly as possible and in any case within two months.
- Publish clear guidance for all decision makers on benefit claims.
- Create clear legislation to provide an unambiguous legal basis to protect people from having their benefits stopped without clear measures to support them towards obtaining status under the EU Settlement Scheme.
- When DWP and HMRC encounter individuals without immigration status applying for social security assistance, they should have a statutory duty to signpost them to the EU Settlement Scheme if these individuals are potentially eligible for EUSS status.
- Provide more clarity and transparency over the systems in place whereby DWP can access the immigration status of benefit claimants who are unable to provide a share code, and particularly the circumstances in which they nevertheless require a share code.
- Comply with Article 18(3) of the Withdrawal Agreement, and give people access to social security assistance as soon as they submit a late application to the EU Settlement Scheme.
- Grant an interim declaratory status to people in receipt of existing benefits as they are, by definition, eligible for the EU Settlement Scheme and work closely with them to ensure a successful application for and grant of EUSS status.
- The Government must ensure no-one has their benefits terminated who has lawful status, whether as someone with EUSS status, someone with another immigration status or a dual British national, regardless of whether those individuals succeed in contacting the Home Office to inform them their records are incorrect.
- More generally, the IMA should work with the DWP/HMRC to identify what measures they have put in place to prevent discrimination in practice and policy and how they monitor it. Given the complexities in the current policies and the risks they carry, a clear strategy needs to be identified as to how the Government and decision makers are ensuring rights are upheld.

Chapter 10. The right to social housing and homelessness assistance

203. We have seen a letter (again, we cannot find this on any Government website so we cannot provide a link to it, however we can send it to the IMA on request) from the Ministry of Housing, Communities & Local Government, about the guidance available to local housing authorities on managing applications from EEA citizens for homelessness assistance and social housing following the end of the grace period on 30 June 2021. The letter is undated, though its PDF file name suggests 1 July 2021.

204. The letter points to both Allocation Guidance[78] and Homeless Code of Guidance[79]. Both these guidance documents contain a minimal sentence on those who missed the deadline: *"EEA citizens who have missed the 30 June 2021 deadline and who do not have a different form of UK immigration status will be considered to have no lawful basis for remaining in the UK. They will need to obtain status under the EU Settlement Scheme or another UK immigration status to resolve this. In line with the Withdrawal Agreements, late applications to the EU Settlement Scheme will be accepted where there are reasonable grounds for missing the 30 June 2021 deadline. Further information can be found in the EU Settlement Scheme guidance."*

205. Neither guidance makes mention of pending applications or CoAs, let alone acknowledgement emails for those still waiting for CoA. This is a serious oversight.

206. The letter however does make a reference to those who have applied for status, but only in terms of being able "*to use their digital status to demonstrate their entitlement to access social housing or homelessness assistance*", thereby relying entirely on digital CoAs, and ignoring those who are still waiting on such a digital certificate, or indeed on even an acknowledgement of their application.

207. The letter states that failure to apply to the EUSS by 30 June 2021 should not impact those who are already in social housing, and that "*under the Housing Act 1985, a change in immigration status is not a ground for possession in the context of an existing local authority secure tenancy."* It goes on to point out that their failure to apply may impact on their right to access benefits.

208. However, the letter states: "*For EEA citizens who are currently in receipt in England of homelessness assistance and being housed in temporary accommodation under Part 7 Housing Act 1996, if they have not applied to the EUSS by 30 June 2021 they will be ineligible for assistance and no longer owed a duty under homelessness legislation.* ***Once a household ceases to be eligible then the local authority can serve an eviction notice in the usual way."*** It goes on to remind local authorities of their duties under other legislation such as the Children Act 1989 or the Care Act 2014.

209. We disappointed to hear that those receiving homelessness assistance are not in scope of the 28-day process to signpost and unite people with the status they are entitled to, or to allow them any transitional support while they do so. Together with the gradual criminalisation of rough sleeping, this is an extremely unwelcome development.

[78] https://www.gov.uk/government/collections/social-housing-allocations-guidance
[79] https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities

210. Beyond the above statutory and policy concerns, we are very concerned about the levels of representation and problems facing EU citizens amongst the homeless population in the UK. The effect of the ending of freedom of movement, the EUSS deadline and ongoing concerns with EU citizens' access to work/housing have come together to create a high-risk situation.

211. We have had reports to us via organisations and individuals of the terrible impact on EU citizens who lose work/housing etc. (either because of the deadline or other matters) and facing continuing barriers with emergency support from local authorities. We continue to hear of bad decision making and 'gate keeping' practices by local authorities towards EU citizens. Research recently undertaken by PILC[80] identifies trends that require urgent attention and analysis. They have identified clear areas that relate to rights under the Withdrawal Agreement - in particular rights of equal treatment and discrimination - that are being failed in practice.

Recommendations (The right to social housing and homelessness assistance)

- Urgently put in place provisions to protect people who are in receipt of homelessness assistance and who are eligible for, but have not applied for, status under the EU Settlement Scheme.
- The IMA should work with local authorities to identify how rights are being championed rather than undermined – especially in areas of rights to equal treatment and discrimination around support / homelessness provision.
- The IMA should, if not already, be working closely with civil society specialising in homelessness support (in particular CRISIS and PILC) to identify key areas and work with local authorities to drive forward an agenda for improving the implementation and championing of rights for EU citizens.

[80] https://www.pilc.org.uk/wp-content/uploads/2021/07/PILC_EEA_A4_ONLINE.pdf

Chapter 11. The right to NHS healthcare

Legislation

212. The National Health Service Act 2006 contains powers for the Secretary of State for Health, to make regulations to provide for charging[81] "*persons not ordinarily resident in Great Britain*".

213. The National Health Service (Charges to Overseas Visitors) Regulations 2015[82] [NHS Charging Regulations] replaces previous charging regulations to "*provide for relevant NHS bodies in England to make and recover charges from overseas visitors (anyone not ordinarily resident in the UK) for relevant services provided to them, unless the overseas visitor, or the service they receive, is covered by one of a number of exemption categories as set out in the regulations*".

214. The NHS Charging Regulations were amended in December 2020 by The National Health Service (Charges to Overseas Visitors) (Amendment) (EU Exit) Regulations 2020[83] [**charging regs amendment**], in order to implement the consequences of the UK's withdrawal from the EU:

- EU rights are removed from the existing legislative framework
- Chargeable EU/EEA/Swiss visitors will pay the same amount as a chargeable third-country national, namely 150% of the tariff for the relevant service
- Provisions are made for the chargeable status of EU/EEA/Swiss visitors residing or staying temporarily in the UK, as well as frontier workers and posted workers

215. The Guidance on implementing the overseas visitor charging regulations[84] [**charging guidance**] was published in February 2021. We welcome the early publication of this guidance as compared to the very late publication of the right to work and right to rent guidance, and the non-availability of any public guidance on the right to benefits.

216. This guidance also makes reference to 'Ways in which people can be lawfully resident in the UK'[85] [**lawfully resident guidance**], the latest version of which was updated in January 2021.

Pending in-time applications

217. The rights of those with pending in-time applications are covered by the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020[86] [**grace period regs**]. As we explained in earlier chapters, this only protects those who were exercising an EEA-regulations right to reside on 31 December 2021.

218. The **lawfully resident guidance** makes this explicit in paragraph 30: "*Applicants for EUSS status before the end of the grace period (30 June 2021) must also demonstrate they were exercising those rights on or before 31 December 2020 and that those rights would continue to exist after that date*

[81] https://www.legislation.gov.uk/ukpga/2006/41 - sections 175 and 272(2) and (8)
[82] https://www.legislation.gov.uk/uksi/2015/238
[83] https://www.legislation.gov.uk/uksi/2020/1423/made
[84] https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations
[85] https://www.gov.uk/government/publications/ways-in-which-people-can-be-lawfully-resident-in-the-uk
[86] https://www.legislation.gov.uk/uksi/2020/1209/regulation/4/made

in order to be able to access 'relevant services' without charge, providing they remain ordinarily resident in the UK."

219. As discussed in detail in section 4.1 in our February report to the IMA, we remain concerned that anyone in the backlog of nearly 570,000 people who applied before the EU Settlement Scheme deadline, who was not exercising treaty rights on 31 December 2020 (most likely because they did not have Comprehensive Sickness Insurance if they were not economically active) is not actually covered by legislation to be exempt from NHS charging.

220. We would like to know in how many cases across the UK applicants were in fact asked to demonstrate they were exercising such rights, and in how many cases applicants were charged as a result of failing to successfully demonstrate this.

Definition of pending (in-time or late) applications

221. Furthermore, we are concerned about the definition of pending applications. The **grace period regs** (to cover pending in-time applications) defines this in 6(a) as "*an application […] which is valid under residence scheme immigration rules and is made before the application deadline*". The **charging regs amendment** (in the context of late applications) describes this as in 13A as "*the date on which an application is made*".

222. The **lawfully resident guidance** talks of "*Applicants for EUSS status before the end of the grace period*" and "*where an application for status under the EU Settlement Scheme (Appendix EU to the Immigration Rules) has been made but not determined*". The **charging regs guidance** however, make a more explicit statement, saying in 9.15 "*Where a late application has been made to the Home Office, **as evidenced by a Home Office Certificate of Application**"* and *"Should a patient **claim to have a Certificate of Application** but is unable to provide it at the time of treatment, Overseas Visitor Managers [OVMs] should contact the Home Office Status Verification and Enquiries Checking [SVEC] service."*

223. If CoAs were issued immediately upon receipt of an application, as required in Article 18(1)(b) of the Withdrawal Agreement, this would not be a problem. However, we have seen many delays and have been in correspondence with the Home Office about this – see our section ***Acknowledgements of Application [AoA] and Certificates of Application [CoA]*** in ***Chapter 2***.

224. In their reply to us in June 2021[87], they answer our question "*How does any delay in issuing a Certificate of Application comply with Article 18(1)(b) of the Withdrawal Agreement, which states 'A certificate of application for the residence status shall be issued immediately'?"* by saying:

> *A CoA is issued **as soon as an application is valid** in accordance with paragraph EU9 of the Immigration Rules for the EUSS in Appendix EU, which means:*
>
> *• the application has been made using the required application process*
>
> *• the required proof of identity and nationality has been provided, where the application is made within the UK*

[87] All correspondence available at https://www.the3million.org.uk/library

• the required proof of entitlement to apply from outside the UK has been provided, where the application is made outside the UK

• the required biometrics have been provided

225. Because this clearly creates a stark problem with those who submitted paper applications and are required to make separate biometrics appointments which can take many weeks to schedule, the Home Office has informally said to us in correspondence that an acknowledgement email suffices where a CoA has not yet been issued.

226. We would like to see the **charging regs guidance** updated to reflect this change in definition of proof of an application having been made.

227. We are seeing evidence of an additional problem around the 30 June deadline. There is such a backlog within the backlog in terms of paper applications which have not even been opened, that people are not receiving even an AoA even weeks after the deadline. It is imperative that such delays do not continue to occur around late applications. In the case of NHS charging and treatment decisions these delays, and lack of legal clarity around definitions, could have severe indeed life-changing consequences.

Those without pending application or status

228. We welcome that people with pending late applications are to be considered as non-chargeable. However, due to the often time-critical nature of treatment combined with the obstacles in submitting an application (which are further detailed below), we are extremely concerned by the fact that treatment ***before*** a late application is submitted is chargeable and non-refundable[88]:

> *"An individual who is eligible to apply to the EUSS but who has not submitted an application by 30 June 2021, who is therefore in the UK without immigration status, will be chargeable. If they receive and pay for relevant services, and then later make a late application which is granted,* ***they should not be refunded for the earlier treatment****. They should be considered against the ordinarily resident test when accessing services after the date on which they are granted EUSS status."*

229. Many organisations have written about which people are likely to have missed the EU Settlement Scheme deadline, including Migration Observatory in their report 'Unsettled Status – 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit'[89]. They list groups which include people who did not realise they needed to apply such as very long-term residents and people with permanent residence, people who are fearful that they are not eligible such as those who were previously rejected for permanent residence, or those with past criminal convictions, and those who are isolated without a good social network.

230. The Law Centres Network recently published research[90] which set out a vulnerability framework around four, often overlapping, categories of vulnerability characteristics: **perception**, **autonomy**, **capacity** and **evidence**. These reinforce the Migration Observatory groups.

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[88] Section 9.19 of **charging regs guidance** https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations

[89] https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/

[90] https://www.lawcentres.org.uk/policy/news/news/better-support-for-vulnerable-people-needed-in-eu-settlement-scheme-new-report

231. The most recent EUSS quarterly statistics[91] at time of writing show that just 2% of EUSS applications by 31 March 2021 had come from over-65s. Many in the over-65s who have not applied are likely to fall into the categories of long term residents, perhaps with language barriers, low digital literacy and lacking valid ID documents. An example of exactly such a person is Rosa as described by Greater Manchester Immigration Aid Unit [GMIAU]:

> *"Rosa is in her 90s, and has been in the UK since she came from Italy as a young woman. She lives alone in Oldham, with support from her family members who visit to help her daily. Rosa's daughter Mary and the rest of the family didn't realise she needed to apply to the EU Settlement Scheme until the day of the deadline, when they saw the son of an elderly man – also Italian – who was in the same situation on TV speaking about it. 'It's been a nightmare', said Mary. 'I made myself quite ill because I was panicking, and Mum was panicking, thinking she's going to be kicked out at 92.'*
>
> *Neither Rosa nor her family had realised that the Scheme had anything to do with her. Rosa has lived in the UK for decades, worked here all her life, and raised a large family.*
>
> *'She's Italian but she thinks of herself as English. She watched the football (the Euro 2020 final against Italy), she was willing England to win.'*
>
> *Rosa had had no correspondence from the Home Office telling her to apply, and she doesn't watch the news. When Mary heard about the deadline, she assumed –as many would – it applied to people who had arrived far more recently.*
>
> *When Mary realised that her mum needed to apply, she was still in time to meet the deadline, but it wasn't an easy process. With no plans to travel, Rosa only had an expired passport, so the online application didn't work when Mary tried to enter her passport number, and she didn't understand why. By 11pm on the day of the deadline Mary was stuck. She couldn't get through on the EU Settlement Scheme phone line. 'I phoned everybody and got nowhere', she said, until a friend recommended GMIAU.*
>
> *With the help of our caseworkers Mary has made a late application for Rosa, but only after more than a week of worry. 'My mum was absolutely petrified. And you don't need that in your 90s. She's had a stroke, she's had a heart attack, and she doesn't need that in the last years of her life, to be so scared. That panic - you could see her going downhill. She didn't want to move off her chair. She's never cold, and she kept saying 'I'm really cold'."*

232. Rosa's case clearly shows the overlapping vulnerability characteristics – **perception** (she did not realise she needed to apply), **capacity** (she needed help by both her daughter and a charity to make an application on her behalf) and **evidence** (lacking a valid passport and therefore needing to make a much more complex paper application).

233. In cases where **autonomy** factors also play a part, such as children, care leavers, victims of domestic violence and abuse, victims of modern slavery and citizens with mental capacity issues or serious health conditions, it will be even more difficult to initiate and submit an EUSS application.

234. Given all the above, it is important to then focus on the likely point in someone's life where they might first realise they should have, but had not, applied for status under the EU Settlement Scheme.

235. Taking just the example of an elderly long-term resident who no longer travels abroad, who did not realise the EUSS scheme applied to them. Then considering all the points of interaction with the

[91] https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-march-2021/eu-settlement-scheme-quarterly-statistics-march-2021

state where proof of immigration status is required (applying for new employment, moving house, accessing NHS treatment, applying for new benefits or homelessness assistance, opening a new bank account or applying for a driving licence, getting married, accessing student fees). It is clear that the most likely first point of realisation of lack of status might be when they need hospital care – either by a referral from their GP, or by admission to the ward after A&E treatment.

236. Therefore, it is not at all an unlikely scenario to have an elderly person in A&E (where treatment services are exempt from charging) who then needs to be admitted and need further treatment – which would now be chargeable until an application to the EUSS could be admitted.

237. In these circumstances – in poor health, time pressured and likely to be in a heightened state of stress and anxiety – the factors of **autonomy**, **capacity** and **evidence** will play a huge role in being able to successfully and swiftly submit an application to the EU Settlement Scheme. Not to mention that the **perception** issue must first be overcome with an overseas visitor manager [OVM] needing to establish the facts and then persuade the patient that they should be eligible for application to the EU Settlement Scheme (even more difficult when dealing with non-EU citizens who may have derived rights from an EU citizen).

238. Equally, it is important that people understand the risk of the charges should they be ultimately refused status. OVMs are not immigration advisers, however more must be done to ensure that vulnerable people without status and facing chargeable treatment are helped to gain access to advice.

239. We are therefore likely to see cases where treatment needs to be delayed until an application can be successfully submitted – which for many especially vulnerable people can take a lot of time and effort requiring legal or other help, as in Rosa's case above. This is a direct comparison with the case of Albert Thompson (real name Sylvester Marshall)[92], who, because he had arrived in the UK after 1973, was indeed subject to charging by the letter of the law. See the comment at the time from the Royal Marsden NHS Foundation Trust:

> *"Staff have acted in accordance with their legal obligations to assess eligibility in advance of any treatment."*

240. The concept of 'immediately necessary or urgent' treatment makes this still more egregious – see 8.5 and 8.10 of the **charging regs guidance**:

> *"Relevant bodies must always provide treatment which is classed as immediately necessary by the treating clinician irrespective of whether or not the patient has been informed of, or agreed to pay, charges, and it must not be delayed or withheld to establish the patient's chargeable status or seek payment. It must be provided even when the patient has indicated that they cannot afford to pay."*
>
> *"Treatment is not made free of charge by virtue of being provided on an immediately necessary or urgent basis. Charges found to apply cannot be waived and if payment is not obtained before treatment then every effort must be made to recover it after treatment has been provided."*

241. This therefore creates the potential scenario where someone, perhaps even unconscious at the time, is given urgent (and expensive – 150% of the cost) treatment. Once they recover from their treatment they make a late application to the EUSS, but are left with a large non-refundable bill

[92] https://www.theguardian.com/politics/2018/mar/14/theresa-may-promises-to-look-into-mans-54000-nhs-cancer-bill

(which may only be possibly written off if the patient is genuinely not in a position to pay). It begs the question of whether, if such a patient died, the estate would be chargeable. This would be a deeply unfair situation for someone who was clearly eligible for the EUSS but had simply not realised their need to apply and had therefore missed the deadline.

Backdating of status: inconsistency of ministerial statements vs guidance

242. The fact that charges, incurred before a late application can be submitted (in cases where there are 'reasonable grounds' for submitting such a late application and status is ultimately granted), are not refundable once status is granted, is widely considered to be unjust and not in keeping with the principles of the Withdrawal Agreement.

243. The minister, Kevin Foster MP, said in November 2020[93] when questioned by the Home Affairs Select Committee on exactly such a scenario:

> *"if someone has been found to have a reasonable ground for a late application, it would be hard to then hold against them a penalty in the form of not getting access to treatment or being deemed an overstayer. That would seem a bizarre outcome that I cannot imagine any court would uphold. I would expect that if, for example, they had been doing activities in the UK, it would be covered by the fact that they had made a reasonable late application."*

244. The Home Secretary, Rt Hon Priti Patel, said in July 2021[94] again questioned by the Home Affairs Select Committee on the same point:

> *"The fact of the matter is that any claim will be backdated if there is any example such as you have outlined. It is perfectly true, as we all know, that GP services and primary care are free of charge in the NHS and rightly so. If there is any example of someone being charged, when that application comes in, that individual will be supported and anything else will be backdated. There are ways and processes in government that are joined up across the NHS and the Home Office. This is about how we treat individual applicants."*

245. However, the law, in the form of the charging regulations and guidance, makes very clear that such backdating is not the case. We of course feel it is imperative that in this area of all areas, the law is changed such that there is a backdating of lawful status upon ultimate successful grant of EUSS state after a late application. The enormous amount of debt that can be built up after someone has for example a heart attack, or suffers an accident, simply by not being able in practice to submit an application for a status that they are ultimately entitled to, is grossly disproportionate and we feel cannot have been the intention of this government.

[93] https://committees.parliament.uk/oralevidence/1135/html/ - q71
[94] https://committees.parliament.uk/oralevidence/2602/html/ - q187

Recommendations (The right to NHS healthcare)

- Amend legislation such that anyone with a pending EU Settlement Scheme application – regardless of whether the date of application was before or after 30 June 2021 or whether they were exercising EEA rights on 31 December 2021 – is entitled to access all NHS services without charge while their application is being considered.
- The definition of pending application must be from the point in time of the person submitting their application, rather than from the date of receiving a CoA or even an AoA, in the light of the delays to both certificates and acknowledgements being issued.
- Urgently amend legislation such that someone who is granted EUSS status after a late application, has their lawful status backdated to 1 July 2021, such that any period of unlawfulness, and therefore liability for NHS charges, is erased.
- As EU citizens and their family members are required to possess an immigration status and can no longer simply rely on their passports they are more at risk of discrimination and refusal of healthcare. The NHS charging regime has long raised problems for patients seeking healthcare especially when it comes to accessing and proving rights. The IMA should work with the Department for Health and Social Care, related bodies and trusts to establish what practices are being implemented to prevent discrimination and to understand how performance of the charging regime is monitored.

Chapter 12. The right to study

Legislation and guidance

246. The right to home fees, tuition fee support and maintenance support for the academic year 2021 to 2022 is legislated for in a series of regulations amendments:

- The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021[95]
- The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021[96]
- The Education (Student Fees and Support) (Amendment) (No.2) Regulations (Northern Ireland) 2021[97]
- The Further Education (Student Support) (Eligibility) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2021[98]
- The Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021[99]

247. The only guidance available is a policy paper[100] published in December 2020. This page, until recently, had two policy papers, namely

- New eligibility rules for home fee status and student finance for the 2021 to 2022 academic year [**eligibility paper**]
- EU Settlement Scheme grace period [**grace period paper**]

248. The Gov.UK page[101] shows it was last updated on 19 March 2021 (and again on 11 August 2021 with additional information for Irish citizens living in the EEA and Switzerland), but in fact it has been updated in the interim because the 'EU Settlement Scheme grace period' paper is no longer available. We have uploaded a saved copy to our website[102] for reference in this report.

249. The regulation amendments are not suitable for lay people to find or understand.

250. The **eligibility paper** is only applicable to Student Finance England students, and summarises eligibility only in the simplest terms, taking no account of pending or late applications. It uses language such as "*In **practice**, the Student Loans Company will accept…", "We **anticipate** that providers will take the same approach", "will **generally** be awarded tuition fee support".*

251. Eligibility is summarised as those with settled status are entitled to home fee status, tuition fee and maintenance support if they have been ordinarily resident in the UK and Islands for at least 3 years.

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[95] https://www.legislation.gov.uk/uksi/2021/127/contents/made
[96] https://www.legislation.gov.uk/wsi/2021/481/made
[97] https://www.legislation.gov.uk/nisr/2021/85/note/made
[98] https://www.legislation.gov.uk/nisr/2021/202/made
[99] https://www.legislation.gov.uk/ssi/2021/28/contents/made
[100] https://www.gov.uk/government/publications/student-finance-eligibility-2021-to-2022-academic-year
[101] Ibid.
[102] https://cd54e371-cab3-4887-826a-0feff2e25a2c.usrfiles.com/ugd/cd54e3_7626f3dd5087410b93da5689330afe57.pdf

Those with pre-settled status are entitled to home fee status and tuition fee support if they have been resident in the UK, Gibraltar, EEA, Switzerland or the British/EU overseas territories for three years. They are further eligible for maintenance support if they can supply financial evidence to confirm worker, retained worker or jobseeker status.

252. We are very concerned about the lack of guidance for Wales, Scotland and Northern Island. We have been directing people instead at the UKCISA website[103], however this is extremely complex and should not be the sole place of information in the absence of clear Government guidance.

Pending status and late applications

253. The **grace period paper** which has been removed (possibly in error as it may have been thought to no longer be relevant) had more helpful information on pending applications and late applications.

254. On pending applications, it stated: "*There may also be some applicants who, when they apply for student finance, have already made an in-time EUSS application but are still waiting a final decision on their status from the Home Office after the end of the grace period, including those that have lodged an appeal. Under article 18(2) and 18(3) of the Withdrawal Agreement1, these persons (provided they are within scope) are deemed to have the rights provided for in Part 2 (citizens' rights) of the Agreement during the grace period and pending a final decision on their status by the Home Office. This will be reflected in the Student Loans Company (SLC)'s approach to assessing eligibility for the 2021/22 academic year."*

255. It went on to explain that assessments of eligibility will be made, but that they will make contact with students prior to the start of the academic year to request a share code if they have not been able to supply it at an earlier date. If the application is still pending at that stage, the SLC will treat them as eligible for at least that academic year.

256. On late applications, it stated: *"Where an applicant to the EU Settlement Scheme applies after the cut-off date of 30 June 2021 and the Home Office applies their discretion and grants the application, any period of unlawful residence in the UK from 1 July 2021 until the date of award of pre-settled or settled status can be disregarded for the purposes of considering the three-year ordinary residence requirement. In effect, SLC will treat the period as lawful residence in the UK and it can therefore form part of the required three year lawful residence period. The Home Office can also exercise its discretion to accept an application after the pre-settled status expiry date – in that case, any period of unlawful residence in the UK following the date of expiry of pre-settled status until the date of award of settled status can be disregarded."*

257. We very much welcome the 'benefit of the doubt' and 'backdating lawful status' approach evidenced in this paper both on pending applications and late applications. However, we are obviously alarmed that this document is no longer publicly available. The amending regulations do not appear to have legislated for these concessions.

[103] https://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Home-or-Overseas-fees-the-basics

Residence requirements for those with settled status based on earlier residence

258. We note that for those with settled status, home fee status requires three years' residence in the UK immediately before the first day of the academic year, whereas for those with pre-settled status, the three years' residence can be in the UK, Gibraltar, EEA or Switzerland.

259. It is possible for someone to be granted settled status based on a five year continuous residence which is not the **last** five years of continuous residence, as long as they have not left the UK for more than five years since those five years continuous residence. For example, someone who was born in the UK 18 years ago, lived in the UK all their lives but spent the last year in an EU country, would be eligible for settled status.

260. Such a person would then not be eligible for home fee status because they had not spent the last three years in the UK. We would hope this is an oversight in the regulations and policy paper and would request the Government to look at this again. Before the UK left the EU, all EU students had to show a three-year residence in the EU (not in the UK) in order to be eligible for home fee status.

Implementation of home fee status and student finance decisions

261. We have had some reports of universities not applying the rules correctly, and causing applicants to remain in limbo around their future education.

> *"I applied to Newcastle University to do a PhD. On the application form they only asked for nationality, country of residence, and length of residence. The admissions team has instantly assigned me to the international fee paying student category without first asking for proof of settled status. I raised this issue by sending them the digital status with the code and my date of birth. They responded by requesting an immigration form to be filled in (which did not have settled status as an option), a copy of my passport, and the letter I got from the Home Office upon receiving settled status. The university has not responded yet, which is leaving me in a limbo. This and the university's attitude and handling of the situation have caused me significant anxiety as I also applied for funding which will only cover my tuition fees if I pay home fees. The funding body had reassured me that settled status qualifies for Home fees, otherwise I wouldn't have spend months preparing this PhD application. The university's application procedure cannot deal with the consequences of Brexit, and they put the blame on the students." – February 2021*

> *"My prospective university can't decide whether to offer me home fee or international fee as I was unable to provide physical proof of my settled status. It is causing me anxiety and a possible loss of university place" – February 2021*

> *"After having applied for student finance for a PGCE in French, I have been struggling to prove my status to the student finance services. Firstly, there is no mention anywhere on the student finance website or the Government website about the type of share code needed to prove my status as a future student. I have called the student finance customer service team twice and on each occasion, the staff were not trained about this issue and did not know which code was needed. One customer service agent even wrongly advised me that home office would have sent me a letter proving my status. At present, and after uploading a different share code four times and having my evidence being rejected twice, I am still waiting for them to approve my share code and be able to proceed with my application. It is extremely stressful and I am very anxious that I will not be able to get my student loans whereas my course starts in only two months!" – July 2021*

Recommendations (The right to study)

- Urgently provide much more comprehensive guidance of eligibility for home fee status, tuition fee and maintenance support, which must include pending applications and late applications, and which must cover all four nations of the UK rather than only England.
- Change the rules of three-year residence for those with settled status, such that this residence can be in the UK, Gibraltar, EEA, Switzerland or the British/EU overseas territories, rather than just the UK and Islands.

Chapter 13. The right to family reunion

EEA Family Permit

262. Article 10(2) of the Withdrawal Agreement allows extended family members (e.g. durable partners or dependent relatives other than direct ascendants/descendants) who were resident in the UK before the end of the transition period, and whose residence was facilitated by the UK before the end of the transition period, to retain their right of residence.

263. Appendix EU of the Immigration Rules specifies that durable partners and dependent relatives must have a 'relevant document', which takes the form of an EEA Residence Card or EEA Family Permit.

264. We have had many reports from people who applied for an EEA Family Permit before 31 December 2020, were refused, went on to appeal the refusal, and were informed ***after*** 1 July 2021 that their appeal was successful. The decision letter informing the applicants of their successful appeal goes on to say that because "*the EEA family permit route ended on 30 June 2021*", an EEA Family Permit will not be issued. It then goes on to consider whether they may be "*eligible to apply for the EU Settlement Scheme family permit*" and concludes they are not, because they are extended family members rather than a "*family member as defined by Appendix EU*".

265. This would appear to be a clear breach of the Withdrawal Agreement, since the successful appeal should mean that these people should be considered to have had the right to apply to the EU Settlement Scheme if it were not for the initial refusal and the delay introduced by the appeal.

266. Similar cases have been reported where people applied before 30 December 2020, but the Home Office simply delayed their decision until after 1 July 2021.

267. Lawyers have assisted with launching a legal action challenging these UK Home Office decisions.[104]

Marriages prevented by COVID-19

268. For EU / non-EU couples who were not married / civil partners before 31 December 2020, the non-EU person could only be eligible to apply for status under the EU Settlement Scheme if they:

- were durable partners by 31 December 2020 and applied for a relevant document (EEA Residence Card or EEA Family Permit) before 31 December 2020 to prove they were durable partners
- got married or become civil partners before 31 December 2020

269. For those who did not fulfil the requirements to be considered 'durable partners', their only option to remain eligible for the EU Settlement Scheme was therefore to get married before 31 December 2020. We have had reports of people who went ahead and planned their wedding accordingly, only to come up against the unprecedented across-the-board restriction of marriages due to the Covid-

[104] https://www.politico.eu/article/u-k-home-office-to-be-taken-to-court-over-family-permit-refusals/

19 pandemic. (Under tier 4 guidelines, weddings and civil partnerships were only allowed under 'exceptional circumstances' such as if one partner is seriously ill and not expected to recover).

270. We have seen reports of applications to the EU Settlement Scheme refused for not having been married before 31 December 2020. While we acknowledge that such a refusal is in accordance with Appendix EU, there would appear to be legitimate proportionality arguments to nevertheless grant status if evidence is provided of the genuine intention to be married before 31 December 2020, given the unforeseen and unprecedented restrictions imposed by the COVID-19 pandemic.

Loss of family reunion rights for some who naturalise as British citizens

271. EU citizens with settled status, who were in the UK before 31 December 2020, have the right to be joined at a future date by certain family members (children under 21, dependent children over 21, dependent direct ascendants, and spouses, civil and durable partners if the relationship existed before 31 December 2020). This right is set out in the Withdrawal Agreement.

272. However, if EU citizens go on to naturalise as British citizens and become dual EU-British nationals known as 'Lounes' dual nationals, some of them lose this family reunion right. People affected by this loss of rights are those who had a period in their past where they were self-sufficient or students and did not have Comprehensive Sickness Insurance [CSI].

273. People who needed CSI but did not have it, can nevertheless apply to naturalise as British citizens, in the hope that a caseworker 'discretion'[105] is applied.

274. However, there is no similar discretion applied to the definition of 'relevant naturalised British citizen', and as such this group of people lose their family reunion rights – even if they had a short gap without CSI and were exercising treaty rights for the remainder of the time. The Withdrawal Agreement expressly protects the rights of 'Lounes' dual nationals[106] who were exercising free movement rights by the end of the transition period.

Recommendations (The right to family reunion)

- Provide a solution to the legal inconsistency which is locking out durable partners and extended family members from the EU Settlement Scheme, due to delays around applications and appeals for EEA Family Permits.
- Extend the generosity applied to the COVID-19 related absences to other situations such as the forced cancellation of marriage ceremonies.
- Change legislation such that people with settled status who go on to naturalise as dual EU-British citizens cannot lose their family reunion rights as protected by the Withdrawal Agreement.

[105] https://www.gov.uk/government/publications/naturalisation-as-a-british-citizen-by-discretion-nationality-policy-guidance - see page 30 '*Applicants who have been studying or self-sufficient and did not have comprehensive sickness insurance (CSI)*'

[106] See section 1.2.1 of the EC Guidance Note https://ec.europa.eu/info/publications/guidance-note-citizens-rights_en

Chapter 14. The right to data protection

Immigration exemption case

275. Together with Open Rights Group, the3million launched a legal challenge against the Government's immigration exemption in the Data Protection Act 2018. In May 2021, the court of appeal unanimously found that the UK immigration exemption is incompatible with Article 23 of the GDPR.

276. The Immigration exemption allows the Government and private sector to circumvent data protection obligations under the vague purpose of "***the effective maintenance of immigration control***".

277. It is in effect a blanket power to refuse information and use it secretly. Millions of people are potentially affected by this restriction of their data. The Home Office has already relied on it in as many as 72% subject access requests for personal information.

278. Although the GDPR allows for restrictions on data protection rights it requires any exemptions to be narrow and have proper safeguards to protect individuals. The importance of such safeguards and limits is obvious from Windrush. The UK has created a hostile environment where private citizens and public servants must check the immigration status of other citizens when offering jobs, when renting accommodation, when visiting a GP or hospital, when opening a bank account, when getting married and more. All these groups count as "data controllers" who could use this new exemption to withhold information they have about a person.

279. Safeguards have to be in writing and set out in legislation. However, the Government decided to simply ignore this requirement and did not introduce any special safeguards or limits. The Court of Appeal has found the Government acted unlawfully. How this unlawfulness should be fixed will be determined at a hearing later in the year.

Data gathered on individuals who apply to the EU Settlement Scheme

280. When someone applies to the EU Settlement Scheme[107], the applicant is told "*The Home Office will use the personal information you provide to decide whether to grant your application. Find out how the Home Office will process your personal information.*"

281. The user is provided a link to a webpage "*EU Settlement Scheme: how we use your personal information*"[108] [**summary privacy notice**].

282. The **summary privacy notice** contains within it "*This is set out in more detail in the Borders, Immigration and Citizenship System (BICS) privacy information notice. The BICS privacy information notice also sets out how you can request a copy of your personal information, and how you can complain. You should be aware that the information set out in this note is intended to supplement the BICS privacy information notice, not to replace it.*"

[107] https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status
[108] https://www.gov.uk/guidance/eu-settlement-scheme-how-we-use-your-personal-information

283. The user is provided a link to the "*Borders, Immigration and Citizenship System: privacy information notice*"[109] [**BICS privacy notice**].

284. When the user presses '***Start Now***' to start an application from the *Apply to the EU Settlement Scheme (settled and pre-settled status)* page[110], they are taken to a page[111] which repeats the information on the **summary privacy notice**, and also contains a link to the **BICS privacy notice.**

285. The **summary privacy notice** is almost entirely framed around making the EUSS application (namely identity checks, criminal and security checks, National Insurance checks with HMRC / DWP to look for residence evidence and checking authenticity of residence evidence documents. It then goes on to include potential future uses of data such as applying for citizenship, if evidence of major crime or sham marriage is found, and for safeguarding duties.

286. The **summary privacy notice** does not contain anything which summarises the collection of further data when people use their status throughout their continued life in the UK after obtaining EUSS status.

287. The **BICS privacy notice** however, contains a far wider range of data use purposes, in several cases framed very broadly, e.g. "*for immigration related research purposes*". In combination with the immigration exemption discussed earlier, this is concerning.

288. The **BICS privacy notice** also includes (under the header "*How we gather and use your personal information"*): "*Examples of how we may use your data: to enforce right to work legislation; to maintain the compliant environment; to develop risk and fraud profiles*".

289. The "*How we gather and use your personal information"* also contains information about the legislative basis for doing so (our emphasis): "*The legal basis for the processing of your data will, in most cases, be Article 6(1)(e) of the (UK GDPR) – that is, that the processing is **necessary** for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.*"

290. We contend that the most that would be **necessary** to enforce right to work legislation and to maintain the compliant environment is a simple Yes / No answer to the questions "is this person allowed to work for me", "is this person allowed to rent a flat" etc, together with a length of time for which they have that right.

291. However, when employers use View and Prove to do a right to work check, they are asked for their company name. The check (with all the information provided) can then be printed or downloaded. A link to the employers' code or practice is provided. The employer is informed "*We'll use this to keep a record of your right to work check for audit purposes*".

292. We note that the citizen is *not* informed that a record of their right to work check is retained by the Home Office.

[109] https://www.gov.uk/government/publications/personal-information-use-in-borders-immigration-and-citizenship
[110] https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status
[111] https://apply-to-visit-or-stay-in-the-uk.homeoffice.gov.uk/euss

293. Can this data (the records of right to work checks retained by the Home Office) be shared with anyone? If so, in which circumstances and what data sharing arrangements are in place?

294. When landlords use View and Prove to do a right to rent check, they are asked whether they are a landlord or an agent and asked to provide their name. The check (with all the information provided) can then be printed or downloaded. A link to the landlords' code or practice is provided[112]. The checking landlord or agent is *not* informed that a record of the check is kept by the Government. The landlords' code of practice does not state that a record of the check is kept.

295. When other organisations use View and Prove to do a 'Something else' check, they are asked first for their job title and organisation or company name, and next they are asked for the reason for performing the check. They are given the options: benefits or tax credits, homelessness assistance or council housing, hospital treatment, a new bank or building society account, a new loan or credit card, or another reason (which then needs to be specified). The check (with all the information) can then be printed or downloaded. The checking agent is *not* informed that a record of the check is kept by the Home Office.

296. When British citizens prove their right to work to an employer, the employer merely needs to take a copy of the British passport, record the date they made the check, and destroy the copy two years after the employee leaves their employment. The employer is not asked to send a copy of the check to the Home Office. In our view, it is not necessary, proportionate or in compliance with, in particular, Article 6(1)(e) of the UK GDPR for the Home Office to keep a record of the online right to work check, and we would argue that this difference in treatment of EU citizens and British citizens is not compliant with the Withdrawal Agreement.

297. We have not been able to find out whether any data is retained by the Home Office when people provide share codes to landlords, or to other organisations. In our view such data retention would not be necessary or compliant with the Withdrawal Agreement, and in any case neither the citizen nor checking agents are not informed that a record is retained. We want to see confirmation that such data is not retained, and that these checks are not contributing to a track and trace data profile of the citizen with EUSS status.

298. The **BICS privacy notice** states that personal data is typically retained for 25 years after a decision to grant settlement or naturalisation. We believe the maximum data **necessary** to perform immigration control, once someone is granted EUSS status or naturalisation, is the fact that the status is granted. This is especially so since when someone with pre-settled status applies for settled status they are requested to provide residence evidence all over again and are told that they cannot rely on any evidence supplied when they applied for pre-settled status.

299. The **BICS privacy notice** also states that people can withdraw their consent: "*If we have asked you to provide your consent in order to process your personal data, you also have the right to withdraw your consent at any time. When we ask for your consent, we will tell you how we will process your data, how long we will keep it for and the steps we will take to delete it. We will also outline the steps we will take if you decide to withdraw consent and explain your data protection rights.*"

[112] https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice

300. Despite the fact that everyone who has applied to the EU Settlement ***has*** been asked to provide their consent, we cannot find the information on what happens if people choose to withdraw their consent or whether they had their data protection rights explained to them. Both the application process, and the status decision letter, simply refer to the same summary and BICS privacy notices described above. What would happen if someone decided to withdraw their consent? Would withdrawing their consent mean that they were no longer able to pass right to work, right to rent or other immigration related checks?

Home Office, HMRC, DWP and other datasets

301. On 2 July 2021, DWP wrote a letter[113] to all Revenues and Benefit managers, which included references to three data matching and letter writing exercises:

- *In March 2021, the Home Office ran a **scan of current HB claimants against Home Office data** to identify any EEA and Swiss nationals who do not have an EUSS status. Letters were then issued through automatic mailing between 14 May 2021 to 28 May 2021 to those claimants informing them of the need to apply for a status before the end of the Grace Period.*
- *On 1 July 2021, a **further data match exercise was conducted by the Home Office**. The Home Office will now write to all EEA and Swiss nationals who have still not applied for their EUSS status and prompt the customer to urgently contact the Home Office and apply or risk their benefit payments being stopped. The data matching letters are due to be issued mid-July 2021 by automatic mailing to **all DWP and HB claimants** who have not applied to EUSS.*
- *DWP will issue a final letter to **all DWP and HB claimants** in September 2021 to ensure that they understand the requirement to make a late application for EUSS. The claimant will also be advised that their benefit will be disallowed where no EUSS application is made.*

302. On 6 August 2021, we wrote[114] to the Secretary of State for Work and Pensions about our concerns with this approach and asked a series of questions. Several of these questions relate to data protection rights – not just of EU/non-EU citizens but also of British citizens – and we reproduce them here:

- *Q5. What data sharing arrangements have you put in place between the Home Office and DWP to ensure compliance with GDPR and other obligations? Is there a data sharing agreement and can you send us this?*
- *Q11. What measures are in place to ensure that there are no people included in the data set who should not be? We understand that there have been cases where people have received letters who should not have.*

[113] https://www.rightsnet.org.uk/pdfs/DWP_EUSS_letter_to_local_auths_2_July_2021.pdf
[114] See August 2021, https://www.the3million.org.uk/library

Recommendations (The right to data protection)

- Records should not be kept by the Home Office of online right to work checks, as this is beyond what is necessary (Article 6(1)(e) of UK GDPR) and the resulting difference in treatment of British citizens and EU citizens is in breach of equal treatment provisions of the Withdrawal Agreement. Moreover, the citizen is not informed that a record of their right to work check is retained by the Home Office.
- The Government must provide confirmation that no data whatsoever is retained by any Government departments or other third-party organisations when citizens provide share codes to a landlord for right to rent checks or to another organisation for 'something else' checks.
- The Government should provide data sharing agreements between the Home Office and DWP and HMRC to create datasets which may lead to termination of individuals' benefits.
- Once citizens have been granted status or naturalisation, the period of time for which personal data can be retained must be substantially shortened from 25 years. There should be no need to retain any personal data beyond the time limit during which an administrative review or appeal can be initiated.
- The Government must provide clear information on what happens if someone withdraws their consent, implicitly required to be given when making an EUSS application, and what their data protection rights are. Would withdrawing consent mean that a person is no longer able to pass right to work, right to rent or other immigration related checks?

Chapter 15. Other rights

Bank accounts

303. We have had many reports from people struggling to obtain mortgages or open bank accounts across the range of banks and building societies. The foremost issue was one of ignorance on the part of the financial institutions of the EU Settlement Scheme and its digital-only status.

304. It has become clear that most financial institutions were not prepared for this change, and that a digital-only status does not easily fit into the various automated systems they have for uploading supporting documents to an account or mortgage application. It has been a case of EU citizens having to educate their banks, often taking weeks. One citizen emailed us asking:

> *"My husband and I are selling our old and buying a new house, with the same mortgage provider. Underwriters are requesting a proof of my status. They struggle with online proof. Have you had any similar situations or have you any advice please?*
>
> *Underwriters are requesting either of the following:*
>
> *- Biometric Residence Permit (BRP)*
> *- Residency Permit Sticker (in Passport)*
> *- Endorsement Visa (Stamp in Passport)*
> *- Prove Your Status Document (EUSS Only)*
>
> *As we know there is online proof only. Does that mean I won't be able to buy a house? I find it highly discriminatory. I hope you have advice for me."*
>
> *After we replied with suggested information to send to the bank, they informed us several weeks later that:*
>
> *"First of all our broker wanted to receive settled status document. Upon providing her with explanation for nature of a settled status "documentation" she agreed to send verification code to underwriters. It took several assertive emails to convince her to pass it on." – July 2021*

305. The Immigration Act 2014[115] states that banks and building societies must not open a current account without doing a status check which indicates that the person is not a disqualified person. This status check involves checking with a specified anti-fraud organisation or data-matching authority (specified as CIFAS in a statement of intent[116]) whether, according to information supplied to that organisation or authority by the Secretary of State, the person is a disqualified person.

306. The Act does not therefore specify that banks and building societies need to check immigration documents in the same way that employers and landlords do, instead they need to check the applicant against a 'blacklist' provided by the Secretary of State.

307. The Immigration Act 2016[117] goes further by amending the Immigration Act 2014 to require banks and building societies to perform checks against all their existing current accounts with a certain

[115] https://www.legislation.gov.uk/ukpga/2014/22/part/3/chapter/2/crossheading/bank-accounts

[116] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/283962/statement_of_intent_bank_accounts.pdf

[117] https://www.legislation.gov.uk/ukpga/2016/19/schedule/7

regularity, again by checking against a 'blacklist' provided by the Secretary of State. For any checks that fail, the bank or building society has a duty to notify the Secretary of State. The Secretary of State then may apply for a freezing order.

308. Guidance for banks and building societies on immigration checks is available at https://www.gov.uk/government/publications/immigration-status-checks-guidance-for-banks. This was published in December 2014 and was last updated on 30 October 2017.

309. A code of practice was published in December 2017 at https://www.gov.uk/government/publications/immigration-act-2014-code-of-practice-freezing-orders-bank-accounts-measures. It specifies the process of checks and how these can lead to freezing orders and specifies that banks and building societies must perform these checks at least quarterly.

310. Following an outcry over incorrectly suspended bank accounts during the Windrush scandal, the scope of these checks was reported in May 2018[118] to be temporarily reduced. The legislation, code of practice and guidance still stand unchanged, however.

311. The published guidance is woefully inadequate. It is entirely biased in the direction of complying with the Immigration Acts and makes no mention whatsoever of complying with the Equalities Act and ensuring individuals are not discriminated against. It goes so far as saying that if there is only a ***partial*** match of data (name, address and date of birth) then the bank or building society is ***not obliged*** to refuse the application.

> *"**Data that should be checked**: A person is considered to have been matched under the provisions of the Immigration Act 2014 if the individual's name; their address; and their date of birth match with Home Office data on known illegal migrants. As far as applications for new current accounts are concerned, if all of these result in a match then the firm must refuse to open a current account for that individual. If some, but not all of these result in a match, the bank or building society **is not obliged to refuse the application**. In this scenario the bank or building society can make **further enquiries** of the applicant and they **could still refuse the application based on their commercial risk tolerance and policies**."*

312. There is no explanation of 'further enquiries', and no guidance is available as to what documents prove someone's immigration status. Needless to say, since the guidance remains unamended, there is no explanation of the EU Settlement Scheme or the digital nature of the View and Prove scheme. Banks and building societies will naturally be wary of breaking legislation, especially given commercial risk, and without guidance will make their own policies as to what constitutes 'further enquiries' which will likely err on the side of caution, resulting in frequent discrimination.

313. As discussed above, banks and building societies are not required by law to demand proof of immigration status from people. However, given the nature of guidance, this is not reflected in daily practice. We list below a small sample of experiences that people have had with their banks and building societies:

> *"RBS digidocs system for mortgage application requires uploading the "front and back of your residence permit". This is obviously impossible when all the Home Office provides is an access code for checking immigration status." – June 2021*

[118] https://www.theguardian.com/uk-news/2018/may/17/home-office-suspends-immigration-checks-on-uk-bank-accounts

"Trying to apply for a remortgage. Nationwide bank does not accept the online link and code I sent them as proof of residency and now require to see a work visa. I've been in the UK for 9 years, never needed a visa before!"- May 2021

"As I'm currently in a process of buying a house, I have needed to provide evidence of my status to Santander, my mortgage provider. This is when I realised that the 'share code' function doesn't work on my site, giving me an error ' This service is currently unavailable, please try again later'. I reported the issue to the EU Settlement Scheme Resolution centre and have phoned them again last week. They say it seems to be a technical issue with my status which they have flagged with the tech team. However, they don't give any indication how long it takes to fix, nor any other form of evidence. I am now in limbo when I have been told to wait without having no other evidence to prove my status. I am getting concerned how long it will take. I have not been able to provide proof to mortgage provider or solicitor and house purchasing process is delayed."- May 2021

"My partner (British citizen) and I (EU citizen with settled status) are currently applying for a mortgage in order to buy a house. We sent a share code to the mortgage officers to provide my status and they wouldn't accept that. We then printed the preview, the original letter that said I have been granted settled status but all of these documents reference that they are no proof of status. Nationwide then said that they would need to see a vignette in my passport (which obviously doesn't exist) or any other official visa document. We are still in debate with them about this as I cannot be the first EU citizen with settled status who applied for a mortgage in this country." – May 2021

"Me and my partner are applying for a mortgage with NatWest. I asked whether I need to prove my settled status to them, they said yes. I tried to send them the code but they said they were not allowed to log in themselves. Instead, I had to log in for them (using the code I generated) and download the PDF and submit it through their online system. Plus I has to submit the pdf that comes attached to the email confirming settled status (but which says it is not proof). This clearly shows that banks are struggling to use the system as intended." – March 2021

"NatWest didn't know that the only way to prove my status was to send them a link, they would then use to access my profile. They asked for a physical proof. I explained what the procedure is. I was questioned and felt like a criminal. The staff member went back and forward to his manager and ended up asking for my original letter of awarded status. I emailed it to them, but left a very strong comment that they should train their staff. This was ridiculous." – March 2021

"We applied to re-mortgage with Barclays through the Mortgage Advice Bureau and I was told that it was not accepted because the Mortgage Advice Bureau was told by Barclays that "the residence information […] is not acceptable." and that "they need proof of permanent right to reside in the form of either a letter from the home office or a stamp on the passport." – March 2021

"HSBC bank doesn't accept my partner's pre-settled status. They require settled status for a mortgage. The mortgage adviser stated in an email "Without settled status, they will deem him as a Foreign National and different rules apply". Mentally we feel discriminated and heartbroken." – August 2021

"I've applied for a mortgage with Nationwide. My mortgage advisor asked for a document proving indefinite leave to remain. I replied with the code, link and date of birth, as instructed by the home office. They replied saying they are unable to use a website for this and asked for the letter. I sent the letter, highlighting that the letter itself says it's not proof of status. They replied saying I need some more proof since the letter says it's no proof. My mortgage application is now on hold until I can provide proof of my status somehow, or convince them to read the home office website instructions." – August 2021

314. The above sample covers a wide range of banks and building societies – HSBC, NatWest, Nationwide, Santander, RBS and Barclays. It shows that the Home Office, in rolling out its digital-only status, has focused solely on employers and landlords. Its interest lies only in ensuring the upholding of the hostile environment. As cited in the Code of Practice mentioned above: "*These are intended to make it difficult for persons who are unlawfully present to carry out functions which*

will enable them to establish a life in the UK when they do not have a right to do so. The overall intention is that the cumulative effect of these provisions will discourage illegal immigration and deter overstaying."

315. the3million has written to all major UK banks and building societies asking them what training they have undertaken to ensure their staff understand EU citizens' right to live in the UK from 1 July 2021, how to access proof of that right, and asking in what circumstance they would require to see proof of status. We received a reply only from two banks. One reply stated they were in the process of issuing updated internal guidance, they required proof of (pre-)settled status as part of the account opening process and 'any other regulatory reasons as needed'. The other reply merely stated they did not offer current accounts.

316. The Government's focus must urgently switch from considering the success of its hostile environment barriers, to instead ensuring the success of people's ability to access their full rights. The Wendy Williams Windrush Lessons Learned Review[119] also makes this clear in its Recommendation 7:

> *"The Home Secretary should commission officials to undertake a full review and evaluation of the hostile/ compliant environment policy and measures – individually and cumulatively. This should include assessing whether they are effective and proportionate in meeting their stated aim, given the risks inherent in the policy set out in this report, and its impact on British citizens and migrants with status, with reference to equality law and particularly the public sector equality duty. This review must be carried out scrupulously, designed in partnership with external experts and published in a timely way."*

317. It is simply reckless to, from one day to the next, pitch six million people into a society that has for years been pushed by hostile environment policies and legislation to distrust anyone with a different name, accent or skin colour, armed only with a digital status (at times inaccessible!) which that society has not been educated on. Instead, individuals are having to try to educate banks and building societies themselves. Most will fail, a few will succeed having turned to the3million for information to strengthen their position.

DVLA licences

318. Information around applying for, renewing, or swapping EU driving licences for a UK licence is very confusing.

319. The website for applying for a first provisional licence[120] has a link to "identity document"[121] which is worded rather confusingly around whether or not a passport must be sent in. This webpage does mention a share code for EUSS status. It does not make allowances for those with pending EU Settlement Scheme applications and does not mention CoAs. It says original documents must be sent. At this stage it is not clear whether just sending the share code is sufficient, and whether a passport must be sent ***alongside*** the share code.

320. The page has an online form and does not say this is restricted to those with UK passports. However, after stepping through the form and answering that the applicant does not have a UK

[119] https://www.gov.uk/government/publications/windrush-lessons-learned-review
[120] https://www.gov.uk/apply-first-provisional-driving-licence
[121] https://www.gov.uk/id-for-driving-licence

passport, it says "*You can only get a GB licence if you are normally and lawfully resident in Great Britain. To be normally resident you must usually live in Great Britain for 185 days in each calendar year. Applicants who are not UK or Irish citizens will not be considered normally and lawfully resident if they: do not have leave to remain in the UK, or are in the country on a temporary basis without leave to remain either while awaiting a decision to stay in the UK or following a decision refusing such an application."* This wording excludes people who have submitted an in-time application to the EU Settlement Scheme, which is unlawful because the Government has repeatedly stated all rights are protected for those with pending in-time applications. (And since 6 August 2021[122] it has stated its intention to also protect the rights of those with pending late applications).

321. The form only asks the user to self-declare that they have lived in the UK for the last 12 months (this does not properly relate to the eligibility described above this self-declaration checkbox). The form then proceeds to ask for payment but does not request a share code or immigration status anywhere.

322. In order to renew[123] or replace[124] a British driving licence, or swap a foreign licence for a British licence[125], this can only be done online if the driver is in possession of a British passport. Without a British passport, people need to renew either at a Post Office (if they received a reminder letter), or by post using a D1 form. This form is not available to download from the Post Office[126] or Government website[127], but can be ordered to be sent to a UK address. The examples we have seen online do not make reference to the EU Settlement Scheme or its digital nature.

323. There is therefore a lot of confusion about the correct process to follow, and the results appear to be somewhat random:

> *"I sent my EU driving licence to the DVLA to exchange on 19 March. I did not include my SS code as there was no information in any of the guidance documents nor the website that I had to include this.*
>
> *I posted here a couple of weeks back and was told the SS code needed to be included, so I contacted the DVLA and was told it cannot be added to my application and it will be rejected and returned to me.*
>
> *Well, shockingly, I received a UK driving licence today! The fee has yet to be taken out of my account and I have not received my ID back, but fingers crossed it's on its way." – April 2021*

324. For those that do send a share code, we have had reports of the share code expiring, because it is taking DVLA longer than 30 days to process applications:

> *"I have pre-settled status, sent the application with the share code 5th of May, was waiting for 7 weeks, got the application back with everything returned saying the sharecode has expired and that I can apply again within 30 days with a new sharecode." – June 2021*

[122] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme
[123] https://www.gov.uk/renew-driving-licence
[124] https://www.gov.uk/apply-online-to-replace-a-driving-licence
[125] https://www.gov.uk/exchange-foreign-driving-licence
[126] https://www.postoffice.co.uk/identity/uk-driving-licence-application
[127] https://forms.dft.gov.uk/order-dvla-forms/

Marriages

325. In order to 'give notice'[128] of intention to get married or form a civil partnership, those with status under the EU Settlement Scheme need to either bring a share code, or a CoA.

326. We have had many reports of people who have been unable to access their share code for a long time, and struggle to get this resolved with the EU Settlement Resolution Centre. Some of these reports have also been from people who are trying to arrange their marriage:

> *"I have the settled status granted since 2 years ago. I used to be able to access my status. Suddenly, after updating my details (my passport expired and I moved to a new house), I could no longer access it. I need to prove my immigration status when doing the marriage intent appointment to be able to get married. I might not be permitted to get married on the date it's planned due to this." – July 2021*

327. Once again, there is the problem of many amongst the 570,000 backlog of applications as at 30 June 2021, who still do not have a CoA.

328. From 1 July 2021, anyone without status, or pending in-time application, will be referred to the Home Office for investigation to establish if the proposed marriage is a 'sham'.[129] We would hope that people with pending late applications will now also remain exempt from the sham marriage referral and investigation scheme following the Government's announcement[130] of protecting the rights of those who apply late to the EU Settlement Scheme, in accordance with Article 18(3) of the Withdrawal Agreement.

[128] https://www.gov.uk/marriages-civil-partnerships/documents-youll-need-to-give-notice
[129] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992952/marriage-investigations-v5.0-gov-uk.pdf
[130] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme

Recommendations (Other rights)

- The Government must urgently create far clearer guidance on the digital nature of EU Settlement Scheme, which is not focused only on employers and landlords.
- The digital nature of the EU Settlement Scheme must be communicated far more widely, as it has been left to individuals to try to educate private actors such as banks and other organisations.
- Clear guidance must be provided on how to prove identity to the DVLA for application of first licence, renewal, or swapping EU licences for those who do not hold UK passports, which clearly takes the EU Settlement Scheme into account.
- DVLA processing must ensure that those with pending in-time or late applications to the EU Settlement Scheme are also able to apply for, renew, replace and swap driving licences.
- Solve the problem of expiring share codes combined with the delayed processing of DVLA applications.
- Ensure that pending late applicants to the EU Settlement Scheme are exempted from the sham marriage process.
- A full assessment of where EU citizens are required to prove their status is required followed by a clear end-to-end analysis of whether discrimination is arising in those systems. The emerging picture is that, in practice, Government policies appear to be leading to discrimination. The IMA should undertake this analysis with the Government but also agencies / decision makers to establish to what extent these mechanics are breaching obligations under the Withdrawal Agreement.

Chapter 16. Access to help

EU Settlement Resolution Centre [EUSRC]

329. Access to support with EUSS applications and the subsequent need to prove status (in particular via the View and Prove service) are a key component for the success of EU citizens acquiring and accessing their rights. Indeed, they are essential to removing barriers to administrative hurdles and preventing discrimination (as required by the principles set out within the Withdrawal Agreement, in particular Articles 12, 18(1) and 23). Indeed, during a legal challenge assessment of whether the View and Prove service was compliant with equalities law, the availability of support via a telephone line was central[131]. Assessing the quality and effectiveness of this is vital to the success of Withdrawal Agreement implementation.

330. Since the EU Settlement Scheme commenced in March 2019, we have often been told that EUSRC staff are friendly and helpful. However, since the launch of our Report-It tool, we have been repeatedly told that the biggest frustration with the EUSS is the difficulty in getting through to the EUSRC. This became very acute in the lead-up to the 30 June 2021 deadline.

331. In an April 2021 High Court permission hearing[132] (of the judicial review of the 'digital-only status' brought by the3million) the Home Office said "*waiting times are expected to drop substantially after 30 June 2021*".

332. On 27 July 2021, a stakeholders user group was told by the Home Office that the EUSRC wait times were now down to around six minutes. However, this is in stark contrast to what we are hearing from the people we represent – see a sample of comments from 27 and 28 July 2021:

> *"I've been calling every day, several times a day for the past 2 weeks and can't talk with any advisor. Tried the contact form on the application as well and no reply."*
>
> *"I kept calling them. Never answered. Until one day when I called them 19 times within one hour, then finally my call was put in the queue call and I finally could speak with someone. This was few days ago."*
>
> *"I managed to talk to them when I called at 8.00am sharp which is when the lines opened. I still had to wait over an hour in the queue, but when I called at any other time it was impossible to get through."*
>
> *"The only time I got through them was on Friday last week at 730 pm - I was on the line for half an hour and then I heard a voice saying "we are not able to answer you query now because they we are closing at 8pm". I know they are extremely busy I believe this is extremely frustrating for some us who need urgent help related to employment, housing, livelihood etc."*
>
> *"I called them 4 times on Monday 26/7 and 19 times on Tuesday 27/7. I cannot even get in the queue – I hear the message "no free spaces in the queue"".*

333. In December 2019, a Freedom of Information request[133] was made to the Home Office on call centre performance metrics routinely monitored and recorded for inbound and outbound calls to and from the EU Settlement Resolution Centre. The response (January 2020) confirmed that these metrics are held, but that they are exempt from disclosure since they are intended for future

[131] https://www.bailii.org/ew/cases/EWHC/Admin/2021/1159.html
[132] ibid.
[133] https://www.whatdotheyknow.com/request/eu_settlement_resolution_centre_5

publication. An internal review was immediately requested but not responded to. In April 2020 the request was referred to the ICO, but no response has been received from the ICO.

334. On 22 July 2021, a renewed Freedom of Information request[134] was made for exactly the same information. This time a response was published on 9 August 2021, stating that the EU Settlement Resolution Centre does not operate on a call centre model and therefore the requested data cannot be provided.

335. We consider it unacceptable that these metrics are unavailable, that the same FOI is first refused on the basis of imminent publication of data which exists, and is later refused on the basis of the data not existing. We argue that this lack of transparency and monitoring prevents scrutiny and improvement of the EU Settlement Resolution Centre.

336. We have had some reports of 'gatekeeping' by the EUSRC when it comes to issuing paper application forms for those without ID, joining family members, and those with Surinder Singh and derivative rights applications.

337. Individuals and other organisations within the migration sector have also reported inconsistent information given by different members of staff on the EUSRC. Furthermore, some of this information amounted to immigration advice, such as advice around whether to withdraw an application and submit a new application, or whether to appeal a refusal. A feedback reporting mechanism should be put in place to allow reporting instances of incorrect information such that this can be monitored and evaluated.

338. The EUSRC does not provide assistance in languages other than English or offer translation services. Instead, the Home Office expects individuals to rely on a friend or carer to participate in a call to the EUSRC or nominate a trusted individual to make the call on their behalf[135]. In the absence of physical proof of status, we argue that it is important that as many people as possible should be able to have autonomy in proving their status. Therefore, the EUSRC should be widely advertised in all European languages and should provide caseworkers or translation services for each of these languages.

View and Prove guidance

339. On 7 June 2021, 'View and Prove guidance' was published[136] ("Information for EU, EEA and Swiss citizens on viewing and proving your immigration status"). It contains a section entitled "Help accessing your immigration status", directing people to the UKVI Resolution Centre, stating 7-day availability. The UKVIRC telephone number is distinct to the EUSRC telephone number.

340. It has become apparent that either the View and Prove guidance is incorrect, or there are multiple problems with the UKVIRC. The UKVIRC option was charging 69p / minute (on top of users' own call charges) and was demanding an upfront authorisation of £5 on a credit or debit card. We wrote to

[134] https://www.whatdotheyknow.com/request/eu_settlement_resolution_centre_7
[135] Paragraphs 17(iii) and 20 of https://www.bailii.org/ew/cases/EWHC/Admin/2021/1159.pdf
[136] https://www.gov.uk/government/publications/view-and-prove-your-immigration-status-evisa

the Home Office about this on 16 July. A newspaper article[137] prompted the Home Office to remove the charge.

341. However, the UKVIRC is not open 7-days a week as advertised, but instead only 5 days a week for significantly shorter hours than advertised. The helpline is also extremely busy, suffering the same issues as the EUSRC, namely difficult to get a connection and then long wait times (at least half an hour, up to an hour) before being able to speak to a member of staff. Most problematically however, members of staff then say that the UKVIRC is not able to help with any EUSS-related issues (including View and Prove of EUSS) and direct people to ring the EUSRC instead.

342. We wrote a follow-on letter to the Home Office on 22 July, but at the time of writing have not received a reply to either letter. The guidance remains unchanged and still directs people to the UKVIRC.

Support for vulnerable persons beyond September 2021

343. The Home Office is currently funding 72 organisations[138] working with vulnerable or hard-to-reach individuals until 30 September 2021.

344. Law Centres network have published new research[139] on vulnerability. The report provides a very helpful vulnerability framework under four, often overlapping, categories of perception, autonomy, capacity and evidence. This is a far more informative way of considering vulnerability than simply tagging particular groups such as Roma, elderly, young.

345. Amongst many other concerns, the report highlights how the lack of face-to-face appointments during the Covid pandemic has compounded the effects of vulnerability and affected support provision for those with complex needs. The report quotes a Law Centres adviser in the run-up to the EU Settlement Scheme deadline:

> *"Remote communication makes it much more difficult and undermines trust. It's not a coincidence that a lot of vulnerable clients are coming forward now, in the final three months."*

346. The EU Settlement Scheme will still receive many applicants going forward:

- From those making late applications. The EUSS caseworker guidance[140] makes clear that there remains scope "indefinitely" for eligible people to make late applications to the EUSS where there are "reasonable grounds" for their failure to meet the deadline. Late applicants are highly likely to include many vulnerable citizens.

- From those who currently have pre-settled status and wish to upgrade to settled status. Over two million people have been granted pre-settled status, so it can be anticipated that there will be a great many applications for settled status within the next four and a half years. Some of these applicants may well be vulnerable and require help, as they may have already been in the UK for over five years but struggled to evidence it and therefore accepted pre-settled status

[137] https://www.theguardian.com/politics/2021/jul/19/ministers-under-fire-over-69p-minute-helpline-eu-citizens
[138] https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens
[139] https://www.lawcentres.org.uk/policy/news/news/better-support-for-vulnerable-people-needed-in-eu-settlement-scheme-new-report
[140] https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance

despite being eligible for settled status. These people are likely to struggle again when their pre-settled status is due to expire.

- From those making late pre-settled to settled 'upgrade' applications. Once again, this is likely to disproportionately include vulnerable citizens.
- From those making joining family member applications. These are invariably complex.

Recommendations (Access to help)

- Urgently publish historical performance metrics of the EU Settlement Resolution Centre.
- Publish expected waiting times to contact EU Settlement Resolution Centre.
- Urgently increase resources of the EU Settlement Resolution Centre, given its unique role in attempting to mitigate issues of proving a digital-only immigration status in the UK.
- Put in place a feedback reporting mechanism on the EUSRC.
- Widely advertise the EUSRC in all European languages and provide caseworkers / translation services for each of these languages.
- Ensure View and Prove guidance is correct in its description of how to obtain help, and ideally provide a dedicated helpline just for View and Prove to ensure there is no capacity conflict with people trying to access help in applying for status.
- Continue to fund organisations helping vulnerable citizens beyond September 2021.

Chapter 17. Loss of EU Settlement Scheme status

Pre-settled status holders not applying for settled status in time

347. If someone with pre-settled status remains in the UK but does not apply for settled status before their pre-settled status expires, they lose their residence rights overnight. This has the same effect as the 30 June 2021 deadline, but now applying to millions of individual deadlines.

348. Many organisations have raised concern around this loss of status, including various select committees, the EU, Migration Observatory and the EU Rights and Brexit Hub. See also the recently published House of Lords European Affairs Committee Citizens' Rights report[141]. We raised this in section 5.2 of our February report to the IMA, and we will not repeat the detail of our concern here, save to reiterate that we consider the Withdrawal Agreement does not allow for loss of rights (once obtained and established by being granted pre-settled status) for merely the administrative error of not applying for a new settled status.

Uncertainty around 'resetting settled status absence clock'

349. EEA citizens and their family members with settled status are able to leave the UK for five years without losing their settled status. Swiss citizens and their family members with settled status are able to leave the UK for four years without losing their settled status.

350. We get a large number of inquiries from people with settled status who want to move abroad for a period of time, for example to study or work, and who want to know how long they need to come back to the UK for to maintain their settled status.

351. There is no official guidance or Home Office clarity on this. The only information we have is a reply to some written evidence[142] by Seraphus Solicitors to the Committee on the Future Relationship with the European Union. In their evidence, question 'Settled Status grant Absences allowance', asks 'If an ILR holder returns to the UK for 1 day within the 5 / 4 year allowance and leaves again, does the absence clock reset for another 5 /4 years?' We have seen a scanned document which shows that the Home Office replied to this question simply with 'Yes'. However, we would appreciate a more public statement of this.

Recommendations (Loss of EU Settlement Scheme status)

- Change legislation such that people with pre-settled status do not lose their residence rights on expiry of their status if they have not applied for settled status.
- Provide clear guidance on how long people with settled status need to return to the UK to reset their 'absence clock', and what evidence they should retain.

[141] https://committees.parliament.uk/publications/6900/documents/72571/default/ paragraphs 165 – 177.
[142] https://committees.parliament.uk/writtenevidence/4769/default/

Chapter 18. Detention

352. The IMA will be aware of stories earlier this year involving the detention of certain EU nationals at the border owing to confusion around their immigration status and entitlement to enter the UK. The experiences of these people were reported to us and the wider media[143]. At the time, this was reported as though it were a novelty. However, the number of EU nationals entering detention had significantly increased from 768 in 2009 to 3,942 in 2019[144]. Despite the pandemic, the number of EU citizens entering detention between 2020 Q2 and 2021 Q1 was approximately 2,400[145]. Amongst the top ten nationalities in detention, two are EU nationalities.

353. We have had reports of people being detained for prolonged periods and during their detention they have experienced poor treatment. This has ranged from bullying, harassment, refusal of access to medication, incidents of isolation and other bad treatment. We are very concerned about the conditions reported to us from those in detention and their experiences. These experiences are consistent with what is understood of people's time in UK detention facilities that has been long reported to organisations and those monitoring this area[146].

354. The lack of legal advice and support for detainees has been raised as a repeated concern to us[147]. Language barriers have prevented people from fully understanding their circumstances. As such there is a real disadvantage for those who cannot navigate the English language competently. We have had reported to us that this has left many EU citizens in detention cut off from support. There appears to be a distinct lack of awareness of rights and availability to support on navigating their options in detention facilities.

355. A key area of concern for the3million and other organisations in the migration sector has been ensuring those in detention are able to apply to the EUSS. Most of the population entering detention since the scheme went live are eligible to apply to it. Not every person entering detention will have their application to the EUSS refused. We have had reported to us that those in detention have not been encouraged to pursue applications to the EUSS, despite appearing eligible for status under the scheme.

356. Those in detention facilities can only apply using paper forms and our concerns with this are set out above in ***Paper applications*** in ***Chapter 3***.

[143] https://www.theguardian.com/politics/2021/may/21/uk-like-an-enemy-state-to-eu-nationals-detained-by-border-force
[144] https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/
[145] https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2021/how-many-people-are-detained-or-returned
[146] For example BiD, Detention Action and the ICIBI
[147] This is consistent with research and reports relating to legal advice to charities such as BiD: https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/890/190523_legal_advice_survey_spring_2019.pdf

Recommendations (Detention)

- The IMA should work with the Home Office and other agencies to identify what support and advice is being given to EU citizens in detention with respects to rights and accessing those rights.
- More needs to be done to identify and support eligible applicants to apply for their status under the EUSS. Now that the deadline has passed, this is even more vital. Whilst the Home Office has a policy on giving a 28-day notice to those suspected of eligibility, more needs to be done within the detention system.
- The IMA should work with the Home Office and other agencies to identify abuses of people's rights to equal treatment and freedom from discrimination in detention facilities.

Appendix A. Recommendations from our February 2021 IMA report

Appendix C of our February 2021 submission to the Independent Monitoring Authority[148], we listed all the recommendations made throughout the report.

Below, we look at each of these in turn and assess whether it has been addressed, still stands, or has become moot due to the end of the grace period having passed.

This table contains many references to the Citizens' Rights report[149] published by the House of Lords European Affairs Committee on 23 July 2021, having taken evidence from both campaign groups and the Home Office and Foreign, Commonwealth and Development Office. We will refer to this report as the HoLCR report for brevity.

Those who do not know they need to apply	
The Government should be required to publish the guidance on 'reasonable grounds' as soon as possible.	**Addressed** Updated guidance containing reasonable grounds[150] was published on 1 April 2021 and we were pleased to see that the grounds are fairly generous and that we had been able to input into consultation on reasonable grounds. We published a reflection[151] on the substance of the reasonable grounds.
Funding to organisations helping vulnerable groups apply to the EU Settlement Scheme should be extended to well beyond the 30 June 2021 deadline.	**Partly addressed** Funding has been extended to 30 September 2021, but we join other organisations in calling for this to be extended further – as mentioned in para 103 of the HoLCR report.

[148] http://www.t3m.org.uk/IMA_report
[149] https://committees.parliament.uk/publications/6900/documents/72571/default/
[150] https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance
[151] https://the3million.org.uk/reasonable-grounds

The communication efforts to those who need to apply to the scheme need to be ramped up considerably. Alongside other strategies of active research and targeting, the Government should be required to write a letter to every single household in the UK.	**Partly addressed** Letters were not written to every household, but instead the Home Office wrote, in May 2021, to all relevant citizens known to HMRC and DWP.[152] The dataset had not been checked against citizens who had naturalised as British or had already been granted status, so it caused alarm to many who received it unnecessarily. In August 2021 a second letter was written, again including many who received it in error, but this time the onus is on the recipient to correct the Home Office's database or face potential termination of benefits. We also know that there were those who should have been known to DWP who did not get the May 2021 letter, which is very concerning in the light of future communication plans with the intention of terminating benefits. We are obviously very concerned about those not known to HMRC or DWP, which is why we had suggested writing to every household.
Given that Grant Funded Organisations [GFOs] and various other organisations assisting people with applications are unable to perform to full capacity, the lack of guidance in key areas, the continuing delay in understanding the numbers / types of groups who are still to apply, and the reasons highlighted in this chapter, the grace period should be extended to accommodate.	**Not addressed** The grace period was not extended, and we believe this will have caused unnecessary damage to people's lives. Another compelling reason to extend was the fact that the EU Settlement Scheme resources were clearly not able to cope with the number of applications in the final months, leaving over half a million citizens without a decision – many of whom without a CoA, and many even without an AoA.
Ensure the Voluntary Return Scheme and other Border Force / Enforcement Home Office framework includes stringent safeguards to check that citizens are fully informed of their potential rights to apply to the EU Settlement Scheme.	**Unknown** The implementation and guidance provided to staff is not fully available for security reasons. Based on the feedback we have had from the public to date via our various tools/points of contact, it is apparent that there is still a great deal of confusion around accessing rights and entry to the UK at the border and by enforcement agents.

[152] https://www.theguardian.com/uk-news/2021/may/17/immigration-letter-sent-to-long-term-british-citizens-causes-alarm

Those who know they need to apply but are struggling to do so

Extend the 30 June 2021 deadline for at least six to twelve months to allow for COVID-19 restrictions to lessen and GFO/advice agencies to restart their vital services assisting people with applications.	**Not addressed** Although we acknowledge that a deadline is useful to encourage people to apply, and that an extension would never have solved the problems of a constitutive system, we feel that Covid-19 created unique problems which would definitely have benefited from an extension to the deadline. See also paragraph 105 of the HoLCR report.
It should be easier to obtain paper applications where people cannot get a renewed passport or identity card in time (paper applications should be freely available rather than only on agreement from an EU Settlement Resolution Centre caseworker), and it should be easier for voluntary organisations to help people complete paper applications (currently OISC EUSS Level 1 advisors are not able to do so where there is no valid identity document)[153].	**Partly addressed but then removed** Between 15 June and 6 July, those with expired or no identity documentation were able to download paper applications forms. Between 24 June and 6 July, those with Surinder Singh and derivative rights were able to download paper application forms. This has now reverted back to having to contact the EUSRC, and we have written to the Home Office to express our concern about gatekeeping practices, incorrect forms being issued, and additional hurdles causing delays to grant of late applications.
Promote the simplification of Appendix EU and Appendix EU(FM) by the 'Simplification of the Immigration Rules Review Committee'[154].	**Not addressed** It is instructive to read this FreeMovement article[155] which explains how the EU Settlement Scheme is "*procedurally simple, but legally complex.*" They say that "*Underneath the slick app and quick process is an almost incomprehensible mess of legal provisions – Appendix EU and Appendix EU (Family Member). As a result, people are misled. They do not seek legal advice when they ought to. They do not appreciate the significance of being granted pre-settled rather than settled status. They do not realise there are additional hurdles for unmarried partners.*"

[153] https://www.gov.uk/government/publications/guidance-for-euss-advisers
[154] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/914010/24-03-2020_-_Response_to_Law_Commission_for_publication.pdf
[155] https://www.freemovement.org.uk/the-problem-with-simplifying-immigration-law/

Both the rolling absence calculation and the suitability requirements should be updated to reduce complexity of the absence calculation and the risk of individuals being penalised for unknowingly doing something wrong.	**Not addressed** Especially in the light of the updated Covid-19 absence guidance[156], we have received lots of questions from people who are unsure how to calculate their absences, and how long they have to stay in the UK after a long Covid-related absence before they are able to leave to visit family without inadvertently breaking their continuity of absence.

Those who want to apply but are not allowed to

Change legislation such that pre-settled status constitutes a right to reside for benefits purposes.	**Not addressed** This is still subject to legal review – see https://cpag.org.uk/welfare-rights/legal-test-cases/current-test-cases/eu-pre-settled-status.
Ensure every citizen who is within personal scope of the Withdrawal Agreement can obtain proof of their rights, include those with right of abode (British citizens) or those holding other immigration status (e.g. DLTR).	**Not addressed** The House of Lords European Affairs Committee recognised also this problem and invites the Government to set out who it intends to address it, at paragraph 85 of the HoLCR report.
Ensure Appendix EU(FM) Immigration Rules are changed such that after 1 July 2021, family members are able to apply for a Family Permit, join their family member in the UK and apply to the EU Settlement Scheme even if their sponsoring EEA citizen has not yet been granted (or has not submitted an application for) status under the EU Settlement Scheme.	**Addressed** This was changed by HC1248[157] on 4 March 2021 – see point 7.13 of the explanatory memorandum which says "*To enable a person applying to the EUSS on or after 1 July 2021 as the joining family member of a relevant sponsor, who is a relevant EEA citizen continuously resident in the UK before the end of the Transition Period, to rely on that prior residence of the relevant sponsor (regardless of whether that relevant sponsor has EUSS status or, but for the fact they are a British citizen where they are one, could have qualified for it)*".

[156] https://www.gov.uk/guidance/coronavirus-covid-19-eu-settlement-scheme-guidance-for-applicants
[157] https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1248-4-march-2021

Consider whether it is possible to change the rules such that an in-country switch from visitor visa to pre-settled status is allowable, as Article 18(1)(e) states "*the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided*".	**Partly addressed** This appears to have been partly addressed by the Home Office when they published updated EUSS caseworker guidance[158] on 20th July. However, it is only addressed for those whose visitor visa expires on or before 30 December 2021 – which means those arriving before 30 June 2021, or for those who arrive after but know to obtain a shorter visitor visa. We are not aware of any routine way of obtaining a visitor visa of less than six months.
Create an exemption for EU students who started a course in, but did not travel to, the UK before 31 December 2020 where they can evidence that they would have taken up residence in the UK but for COVID-19.	**Not addressed** We continue to find it disappointing how little account was taken of Covid-19 when it came to the EU Settlement Scheme. During one meeting on this subject a Home Office member of staff said "the Withdrawal Agreement was not written with Covid-19 in mind" – which is self-evidently true and which is precisely why concessions (unilateral if necessary) were called for.

Legal protection for those awaiting grant of status

Simplify the 'saving' regulations such that they cover everyone who is eligible for status under the EU Settlement Scheme.	**Not addressed** Instead, as we see throughout this report, the Home Office has informally said that the Employer / Landlord Verification Checking service will "in practice" not distinguish between those covered by the saving regulations and those not. This leaves people in a very vulnerable legal position, and does not address rights other than the right to work or the right to rent.
Extend the 30 June 2021 deadline for at least six to twelve months in order to reduce the application backlog (which currently stands at 390,000).	**Not addressed** The deadline was not extended, and the backlog grew to 569,100 at 30 June 2021. It grew so rapidly that a new problem arose namely that many people were not even receiving acknowledgement of in-time applications, let alone certificates of in-time application.

[158] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004627/main-euss-guidance-v13.0ext.pdf - p98

Breach of Article 18(3) of the Withdrawal Agreement

Pressure the Government to change its legislation to ensure that every citizen who has applied for status under the EU Settlement Scheme, whether an in-time or late application, is fully protected by the Withdrawal Agreement from the moment the application is submitted, as required by Article 18(3) of the Withdrawal Agreement.	**Addressed (to be confirmed)** On 6 August 2021, the Government announced that rights would be protected from the time of submitting an application, including late applications. https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme

The hostile environment and those awaiting grant of status

Ensure that the Government changes its guidance, and incorporates into its communication as soon as possible that a Certificate of Application is fully recognised as proof of entitlement to work, rent, access healthcare etc. without requiring any checks on date of application or examination of historical exercise of treaty rights.	**Partly addressed** The right to work and right to rent guidance include references to CoAs, including delays to their issuance. However, there is no public assurance that the historical check of exercising treaty rights will not be required, we are relying solely on a comment made at a Safeguarding User Group.

Late applications	
Ensure that the Government changes its process, so that a Certificate of Application is issued immediately on receipt of a paper application, rather than requiring the applicant to have first completed biometrics.	**Partly addressed** This is partly addressed by the fact that the Home Office is now stating that an AoA will suffice when still waiting for a CoA. However, this is not backed by legislation, and does not address delayed AoAs.
Ensure that policy is changed such that for late applications, the applicant is deemed to have had lawful status from 1 July 2021, as soon as the Certificate of Application is issued.	**Not addressed** The only area in which is this is somewhat addressed is the amendment of the British Nationality Act 1981[159] such that children born after 1 July 2021 can gain British citizenship if a parent would have had settled status at the time of birth, once they are later granted that settled status even through a late application. See also paragraph 144 of the HoLCR report.

[159] https://www.legislation.gov.uk/uksi/2021/743/contents/made

Those who have been granted pre-settled status	
Ensure the Government changes legislation so that expiry of pre-settled status cannot result in loss of rights for any reasons other than those specified in Article 20 of the Withdrawal Agreement. An administrative penalty should be the only allowable consequence.	**Not addressed** See also paragraphs 167-170 of the HoLCR report.
Ensure the Government changes legislation so that EU citizens, who were in the UK before 31 December 2020 and therefore within scope of the Withdrawal Agreement, are allowed to apply for settled status even if their five years of continuous residence start after 1 January 2021. This is to comply with Articles 15, 16 and 20 of the Withdrawal Agreement.	**Partly addressed** Strictly speaking not addressed, however the updated Covid EUSS Absence guidance[160] does allow for continuous residence to be 'paused' in certain circumstances, and allows people to apply for new pre-settled status to extend their status to reach five years' continuous residence.
In the absence of changing this legislation, at a minimum improve the clarity of information sent to those granted pre-settled status, to clearly indicate the consequences of leaving the UK for more than six months. Ensure the Government changes legislation to give pre-settled status holders equal treatment with British citizens as conferred by an Withdrawal Agreement Article 18(1) document.	**Not addressed** The communication given to people when granted pre-settled status has not changed.
Strengthen the EUSS process to make sure that applicants who are entitled to settled status do not accept pre-settled status.	**Not addressed** We are not aware of any changes having been made to the EUSS process.

[160] https://www.gov.uk/guidance/coronavirus-covid-19-eu-settlement-scheme-guidance-for-applicants

Those who have been granted settled status

The UK should accept that access to the NHS - bearing in mind this is funded by general taxation, including e.g. VAT and not just income tax - satisfies the Comprehensive Sickness Insurance requirement.	**Not addressed** This is still subject to ongoing European Commission infringement proceedings.

Applying for National Insurance numbers

To obtain National Insurance Numbers, citizens should be able to use something like the online service[161] to verify identity (which has been in place since April 2020). It was created for universal credit applications, and should be used for National Insurance Number applications. Alternatively - a regular zoom call between the DWP and the NINo applicant should be sufficient.	**Not addressed** It is still not possible to apply for a national insurance number until EU Settement Scheme status has been granted, or until a digital CoA is issued. This is problematic for people still waiting for status or a digital CoA, and also for people who enter the UK on an EUSS Family Permit and have the right to work but cannot obtain a NiNo because they cannot generate a share code.

[161] https://dwpdigital.blog.gov.uk/2020/10/15/confirm-your-identity-a-new-way-to-verify-online

Lack of physical proof of EU Settlement Scheme status	
The Government should communicate much more widely and clearly what a 'share code' is.	**Partly addressed** On 7 June 2021, the Home Office finally published 'View and Prove' guidance[162]. However, we have found it very problematic that the section on providing help with View and Prove directs people to a telephone number which was chargeable, is not open during the advertised hours, and does not deal with EUSS View and Prove queries.
The Home Office should urgently engage with the3million and other stakeholders on examining alternatives to the current digital status implementation of the EU Settlement Scheme.	**Partly addressed** The Home Office met with the3million on Friday 25th June, and expressed detailed interest in our 'Fixing the digital status' proposal[163]. At the time of writing, we are concerned at the lack of further engagement and have requested a follow-on meeting.

[162] https://www.gov.uk/government/publications/view-and-prove-your-immigration-status-evisa
[163] http://t3m.org.uk/t3m-SecurePrintedEUSS

Appendix B. Consolidated list of recommendations

The EU Settlement Scheme backlog

- Make legislative change such that anyone who has proof of submitting an in-time application to the EU Settlement Scheme has their rights protected in law.
- Ensure everyone with a pending application can not only ***view*** their status online but also generate a share code to ***prove*** their status. This is essential because it appears the Home Office has only made provision for employers and landlords to check pending status via the Employer / Landlord checking services, but there is no clarity or guidance around how other organisations who need to check status can do so with pending applications.
- Substantially improved communication with those who have applied for EUSS family permits of status and are awaiting a decision, giving clear timeframes for concluding their application.
- Increase resources to process the backlog of applications, and urgently prioritise at least those people who:
  - are awaiting permission to travel
  - are trying to finalise study places for the 2021/2022 academic year
  - are awaiting Certificates of Application
  - have sent in ID documentation
- Provide at least the level of statistics for post-deadline applications as were published for pre-deadline applications; namely a breakdown of grants of settled and pre-settled status and number of refused, withdrawn / void and invalid applications.
- Provide extra statistics around the breakdown of applications between late applications, upgrades from pre-settled to settled status, and joining family member applications.
- Provide data and statistics around the types of cases in the backlog, the time it is taking to process EUSS applications and targets / key performance indicators.

EU Settlement Scheme applications

- Improve monitoring and scrutiny of EU Settlement Resolution Centre – what indicators and performance measurements are relied on? How is success measured?
- Reinstate the policy to download all paper applications forms from a website.
- Review whether prisoners and prison staff had sufficient timely guidance for ensuring anyone eligible to the EU Settlement Scheme was able to submit an application. The Home Office needs to undertake a specific focus on those in detention and prisons and support them to apply to the EUSS.
- Allow citizens to restart continuous residence after 1 January 2021 if it was broken solely due to imprisonment and conduct which did not meet the relevant threshold for restriction of residence rights.

- Given that several million people are beginning to apply for settled status and this trend will continue, the IMA should work with the Home Office to establish what can be put in place early and improve on in the application process. We are particularly concerned about issues for people to prove five years' residence and how the scheme will be able to accommodate people such as those in detention and prison for example.

"View and Prove" digital-only status

- Ensure the View and Prove service correctly shows the rights that an individual has. If they have pre-settled status, this must be shown even if they are currently applying for settled status. If they were refused before but are appealing or have another pending application, the pending application must be shown.
- Ensure the View and Prove service shows the status holder all the identity documents that are linked to their status, so that they have the information required to travel with a particular document. A history of linked documents should be shown, providing an audit trail of when updates were made.
- Allow the EUSS account to show an additional name, such as 'spouse of' or 'changed by deed poll to' alongside the name obtained from the machine-readable zone of the applicant's identity document.
- Address technical issues especially around updating status contact details. Commit to short timeframes (two working days maximum) in which these can be addressed in order to reunite people with rightful proof of their status.
- Provide a solution to the problem where a government department is not processing applications within 30 days yet is requiring share codes which expire after 30 days.
- Reduce the number of circumstances where people must send in their identity document by post, and commit to clear, short timeframes for securely returning identity documents where people do have to send them in. The expense of secure delivery should be borne by the Home Office and not by the applicant. A tracked return service should be used so that the applicant can check the status themselves rather than having to phone the EUSRC for updates. This would also benefit the Home Office by reducing pressure on the EUSRC.
- Publish a statement about the known issues with certain cohorts of status holders who were previously able to see their status but are no longer able to and commit publicly to a timeframe within which these are fixed proactively by the Home Office rather than relying on status holders to contact the Home Office.
- Publish statistics on the availability of the View and Prove web service.
- Provide updates on the consideration of the secure QR proposal for physical documentation.
- Provide the option for EU citizens to apply for a biometric residence document.

- The IMA should work with the Home Office to establish an evidence base of impact and performance of the View and Prove system to ensure that EU citizens can prove their status in the most effective and safe way.

Proving status for non-EU citizens

- Issue all non-EU holders of EU Settlement Scheme status with EUSS biometric residence cards as soon as possible.
- Improve the UK.Gov webpages to provide very clear and unambiguous information around the use of existing EEA biometric residence cards and EUSS biometric residence cards.

The right to enter the UK

- Provide accurate, detailed information on who has the right to enter the UK, which takes into account pending applications for EU Settlement Scheme status (for both those who were in the UK before 31 December 2020 and those who are applying as joining family members) and pending applications for EU Family Permits.
- Change the rules such that an in-country switch from visitor visa to pre-settled status is allowable permanently, rather than only for those whose visitor visa expires on or before 30 December 2021, as Article 18(1)(e) states "the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided".
- Information must be published that explains how Border Force officers will determine whether anyone entering the UK without status, who informs Border Force officers that they live in the UK, is potentially eligible for status under the EU Settlement Scheme, and signposts them accordingly giving them 28 days to apply for status.
- Sufficient training must be given to UK Border Force officials, and performance must be monitored to ensure that people with the right to enter the UK are treated properly. Evidence of this must be provided.
- Inform non-EU family members with (pre-) settled status that they may (depending on their nationality) now require visas to accompany their EU family members to travel to the EU.
- An end-to-end review of border control procedures to ensure that there are no other areas where EU citizens' rights are compromised. The IMA should work with the Home Office on how best to report problems at the border and how to identify them effectively.

The right to work

- Create a clear legislative basis for anyone who has submitted a valid application to the EU Settlement Scheme to have a right to work, regardless of whether this application was submitted before or after 1 July 2021.
- Ensure this legislation clearly applies from the point at which an acknowledgement of an application is received, rather than from when a Certificate of Application is finally received.
- Ensure employers' guidance and code of practice, and communications to applicants correctly states that applicants have their rights protected while their application is determined, in line with the Government's statement of 6 August 2021[164].
- Ensure an AoA, both for an online and for a paper application, is issued promptly and certainly within two working days of an application being submitted by the applicant. Provide clear time frames within which CoAs should be issued.
- All transitional measures – such as the 28-day notice period which an employer should give to an existing employee – must be specifically aimed at both EEA and non-EEA citizens.
- Create a strong public communication campaign that is aimed at ensuring no-one eligible for status is left behind and is instead given every opportunity to be reunited with their lawful status. This must include both EU citizens and non-EU citizens.
- The IMA should work with the Home Office to establish an evidence base on how well Right to Work checks are performing with respect to Withdrawal Agreement rights. It is not clear on what basis the Home Office monitor performance of this policy and we have serious concerns that issues of discrimination and breaches of rights are going unreported.

The right to rent

- Create a clear legislative basis for anyone who has submitted a valid application to the EU Settlement Scheme to have a right to rent, regardless of whether this application was submitted before or after 1 July 2021.
- Ensure this legislation clearly applies from the point at which an acknowledgement of an application is received, rather than from when a Certificate of Application is finally received.
- Ensure landlords' guidance and code of practice, and communications to applicants correctly states that applicants have their rights protected while their application is determined, in line with the Government's statement of 6 August 2021[165].
- Ensure an AoA is issued promptly and certainly within two working days of an application being submitted by the applicant. Provide clear time frames within which CoAs should be issued.

[164] https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme
[165] Ibid.

- All transitional measures – such as the 28-day notice period which a landlord should give to an existing tenant – must be specifically aimed at both EEA and non-EEA citizens.
- Create a strong public communication campaign that is aimed at ensuring no-one eligible for status is left behind and is instead given every opportunity to be re-united with their lawful status. This must include both EU citizens and non-EU citizens.
- The IMA should work with the Home Office to establish an evidence base on how well Right to Rent checks are performing with respect to Withdrawal Agreement rights and what improvements can be made. There has been previous evidence and serious issues identified with this policy relating to discrimination (in particular the work of JCWI[166] and others[167] [168] [169]in their legal challenge). It is not clear on what basis the Home Office monitor performance of this policy and we have serious concerns that issues of discrimination and breaches of rights are going unreported.

The right to benefits

- Regardless of the outcome of legal action, reconsider the decision that pre-settled status is not a right to reside for benefits purposes, especially in the light of the WA/EUSS scope mismatch and the fact that the number of affected people is limited and shrinking over time.
- Provide extra resources to clear the number of unprocessed EUSS applications as quickly as possible and in any case within two months.
- Publish clear guidance for all decision makers on benefit claims.
- Create clear legislation to provide an unambiguous legal basis to protect people from having their benefits stopped without clear measures to support them towards obtaining status under the EU Settlement Scheme.
- When DWP and HMRC encounter individuals without immigration status applying for social security assistance, they should have a statutory duty to signpost them to the EU Settlement Scheme if these individuals are potentially eligible for EUSS status.
- Provide more clarity and transparency over the systems in place whereby DWP can access the immigration status of benefit claimants who are unable to provide a share code, and particularly the circumstances in which they nevertheless require a share code.
- Comply with Article 18(3) of the Withdrawal Agreement, and give people access to social security assistance as soon as they submit a late application to the EU Settlement Scheme.

[166] https://www.jcwi.org.uk/right-to-rent
[167] https://research.rla.org.uk/wp-content/uploads/right-to-rent-impact-private-renting-2018.pdf
[168] https://www.equalityhumanrights.com/en/our-work/news/equality-commission-seeks-reverse-%E2%80%98right-rent%E2%80%99-scotland-and-wales
[169] https://www.libertyhumanrights.org.uk/issue/legal-intervention-right-to-rent-scheme/

- Grant an interim declaratory status to people in receipt of existing benefits as they are, by definition, eligible for the EU Settlement Scheme and work closely with them to ensure a successful application for and grant of EUSS status.
- The Government must ensure no-one has their benefits terminated who has lawful status, whether as someone with EUSS status, someone with another immigration status or a dual British national, regardless of whether those individuals succeed in contacting the Home Office to inform them their records are incorrect.
- More generally, the IMA should work with the DWP/HMRC to identify what measures they have put in place to prevent discrimination in practice and policy and how they monitor it. Given the complexities in the current policies and the risks they carry, a clear strategy needs to be identified as to how the Government and decision makers are ensuring rights are upheld.

The right to social housing and homelessness assistance

- Urgently put in place provisions to protect people who are in receipt of homelessness assistance and who are eligible for, but have not applied for, status under the EU Settlement Scheme.
- The IMA should work with local authorities to identify how rights are being championed rather than undermined – especially in areas of rights to equal treatment and discrimination around support / homelessness provision.
- The IMA should, if not already, be working closely with civil society specialising in homelessness support (in particular CRISIS and PILC) to identify key areas and work with local authorities to drive forward an agenda for improving the implementation and championing of rights for EU citizens.

The right to NHS healthcare

- Amend legislation such that anyone with a pending EU Settlement Scheme application – regardless of whether the date of application was before or after 30 June 2021 or whether they were exercising EEA rights on 31 December 2021 – is entitled to access all NHS services without charge while their application is being considered.
- The definition of pending application must be from the point in time of the person submitting their application, rather than from the date of receiving a CoA or even an AoA, in the light of the delays to both certificates and acknowledgements being issued.
- Urgently amend legislation such that someone who is granted EUSS status after a late application, has their lawful status backdated to 1 July 2021, such that any period of unlawfulness, and therefore liability for NHS charges, is erased.
- As EU citizens and their family members are required to possess an immigration status and can no longer simply rely on their passports they are more at risk of discrimination and refusal of healthcare. The NHS charging regime has long raised problems for patients seeking healthcare

especially when it comes to accessing and proving rights. The IMA should work with the Department for Health and Social Care, related bodies and trusts to establish what practices are being implemented to prevent discrimination and to understand how performance of the charging regime is monitored.

The right to study

- Urgently provide much more comprehensive guidance of eligibility for home fee status, tuition fee and maintenance support, which must include pending applications and late applications, and which must cover all four nations of the UK rather than only England.
- Change the rules of three-year residence for those with settled status, such that this residence can be in the UK, Gibraltar, EEA, Switzerland or the British/EU overseas territories, rather than just the UK and Islands.

The right to family reunion

- Provide a solution to the legal inconsistency which is locking out durable partners and extended family members from the EU Settlement Scheme, due to delays around applications and appeals for EEA Family Permits.
- Extend the generosity applied to the COVID-19 related absences to other situations such as the forced cancellation of marriage ceremonies.
- Change legislation such that people with settled status who go on to naturalise as dual EU-British citizens cannot lose their family reunion rights as protected by the Withdrawal Agreement.

The right to data protection

- Records should not be kept by the Home Office of online right to work checks, as this is beyond what is necessary (Article 6(1)(e) of UK GDPR) and the resulting difference in treatment of British citizens and EU citizens is in breach of equal treatment provisions of the Withdrawal Agreement. Moreover, the citizen is not informed that a record of their right to work check is retained by the Home Office.
- The Government must provide confirmation that no data whatsoever is retained by any Government departments or other third-party organisations when citizens provide share codes to a landlord for right to rent checks or to another organisation for ‘something else’ checks.
- The Government should provide data sharing agreements between the Home Office and DWP and HMRC to create datasets which may lead to termination of individuals’ benefits.
- Once citizens have been granted status or naturalisation, the period of time for which personal data can be retained must be substantially shortened from 25 years. There should be no need to retain any personal data beyond the time limit during which an administrative review or appeal can be initiated.

- The Government must provide clear information on what happens if someone withdraws their consent, implicitly required to be given when making an EUSS application, and what their data protection rights are. Would withdrawing consent mean that a person is no longer able to pass right to work, right to rent or other immigration related checks?

Other rights

- The Government must urgently create far clearer guidance on the digital nature of EU Settlement Scheme, which is not focused only on employers and landlords.
- The digital nature of the EU Settlement Scheme must be communicated far more widely, as it has been left to individuals to try to educate private actors such as banks and other organisations.
- Clear guidance must be provided on how to prove identity to the DVLA for application of first licence, renewal, or swapping EU licences for those who do not hold UK passports, which clearly takes the EU Settlement Scheme into account.
- DVLA processing must ensure that those with pending in-time or late applications to the EU Settlement Scheme are also able to apply for, renew, replace and swap driving licences.
- Solve the problem of expiring share codes combined with the delayed processing of DVLA applications.
- Ensure that pending late applicants to the EU Settlement Scheme are exempted from the sham marriage process.
- A full assessment of where EU citizens are required to prove their status is required followed by a clear end-to-end analysis of whether discrimination is arising in those systems. The emerging picture is that, in practice, Government policies appear to be leading to discrimination. The IMA should undertake this analysis with the Government but also agencies / decision makers to establish to what extent these mechanics are breaching obligations under the Withdrawal Agreement.

Access to help

- Urgently publish historical performance metrics of the EU Settlement Resolution Centre.
- Publish expected waiting times to contact EU Settlement Resolution Centre.
- Urgently increase resources of the EU Settlement Resolution Centre, given its unique role in attempting to mitigate issues of proving a digital-only immigration status in the UK.
- Put in place a feedback reporting mechanism on the EUSRC.
- Widely advertise the EUSRC in all European languages and provide caseworkers / translation services for each of these languages.

- Ensure View and Prove guidance is correct in its description of how to obtain help, and ideally provide a dedicated helpline just for View and Prove to ensure there is no capacity conflict with people trying to access help in applying for status.
- Continue to fund organisations helping vulnerable citizens beyond September 2021.

Loss of EU Settlement Scheme status

- Change legislation such that people with pre-settled status do not lose their residence rights on expiry of their status if they have not applied for settled status.
- Provide clear guidance on how long people with settled status need to return to the UK to reset their 'absence clock', and what evidence they should retain.

Detention

- The IMA should work with the Home Office and other agencies to identify what support and advice is being given to EU citizens in detention with respects to rights and accessing those rights.
- More needs to be done to identify and support eligible applicants to apply for their status under the EUSS. Now that the deadline has passed, this is even more vital. Whilst the Home Office has a policy on giving a 28-day notice to those suspected of eligibility, more needs to be done within the detention system.
- The IMA should work with the Home Office and other agencies to identify abuses of people's rights to equal treatment and freedom from discrimination in detention facilities.

Appendix C. A Note on Methodology

As with our previous report, our analysis and feedback is based on a number of sources as well as our own expertise. The core team continues to include academics specialising in EU law as well as practitioners in the relevant field of free movement and immigration. They have been closely involved with the negotiations and development of the Withdrawal Agreement and its implementation. Crucially, the team has developed a unique perspective by being directly affected by the UK's decision to leave the EU - most of us are EU citizens living in the UK.

This report is not intended as an academic piece - it is not conclusive. We have attempted to map trends and identify pitfalls within the UK's current implementation, in particular legal shortcomings. The key sources of information are:

- Feedback from the public via questions, requests for information, reporting tools, surveys, and various social media forums - including the3million's closed forum which has over 45k members;
- Intelligence from various civil society organisations and advice services working with EU citizens;
- Intelligence from experts and representatives of industry / business across multiple sectors;
- Research based on papers in the public domain and polling.

It will be noted that there are regular references to case studies and reports within the report. These in the large derive from our 'report-it' tool as well as other feedback and intelligence we receive and collate. There are also references to other case studies and reports identified by other groups and actors in the advice sector. Should the IMA wish for further information on a case study or an issue, they are very much encouraged to reach out to the policy/advocacy team for further information.

The report's fundamental purpose is to continue to bring together the concerns and shortcomings of the UK's implementation of the Withdrawal Agreement. Crucially identifying areas that, in our opinion, should be a focus for the IMA. We hope other organisations will find its contents helpful in their own work and we welcome feedback and contributions from others.

The IMA previously reported that they found our report helpful and continue to welcome our constructive feedback. The IMA has had several months now to establish itself and begin its work. We look forward to them responding to the specific concerns we have raised in this report and how, if at all, they are going to address them.