

ICIBI submission - EU Settlement Scheme

August 2020

Introduction and related submissions

1. This submission to the Independent Chief Inspector of Borders and Immigration has been drafted by the3million, a civil society campaign run by and for EU citizens resident in the UK. Since July 2016 we have been campaigning to guarantee existing rights for EU/EEA/Swiss citizens and family members after Brexit. We argue this can only be achieved through a [declaratory](#)¹ system enshrined in primary legislation, and through a digital status backed up by an optional [physical](#)² document. The EU Settled Status (EUSS) scheme in its current form falls short of both these requirements. While we still campaign for it to be changed to a declaratory system with a physical document ring-fenced in primary legislation, we also monitor the implementation of the scheme in its current format to identify emergent problems. We provided [written](#)³ evidence related to the EUSS to the Home Affairs Select Committee - HO preparedness Covid-19 We also recently provided evidence on the operation of the EUSS to the House of Commons Future Relationship with the EU Select Committee. Our written evidence is available [here](#)⁴ and oral evidence is available [here](#)⁵. We ask you to consider the observations and recommendations made there as part of your report.
2. These submissions will address the points in the call for evidence dated 3 July 2020 relating to a planned inspection of the EUSS.

¹ <https://www.the3million.org.uk/automatic-rights>

² <https://www.the3million.org.uk/physical-proof>

³ http://t3m.org.uk/HASC_submission_2020420

⁴ http://t3m.org.uk/FREU_submission_20200626

⁵ <http://committees.parliament.uk/oralevidence/651/html/>

What is working well and why, with examples (“success stories”)

3. Since the launch of the EUSS, the Home Office repeatedly stressed the high volume of applications to the Scheme as the mark of its success. Before the end of January 2020 it also stressed the low number of [refusals](#)⁶ overall and the lack of refusal on eligibility grounds as another success story. Given the latter is no longer the case (see point 16 on refusals) the high volume of applications processed stands as the key marker of the scheme’s success in the Home Office communications.
4. We welcome the high number of applications from EU/EEA/Swiss citizens and family members received under the EUSS (3.71 million at end June 2020) and the high number of concluded applications (3.46 million). This is a significant achievement of the Home Office. However, we are alarmed that these numbers are used as meaningful benchmarks of the scheme’s performance given the double-counting of applicants in the EUSS statistics (see point 20) and the [lack of clarity](#)⁷ about the overall number of EU/EEA/Swiss citizens eligible for it. This lack of clarity is perhaps best evidenced by the fact the Home Office’s Impact Assessment for EU Settlement Scheme ([HO0333](#)⁸) from the March 2019 forecast it would be between 3.5 million and 4.1 million at the end of December 2020. This is a wide range, but even if there was clarity around that number, it is not clear how many status holders there are because the headline figure refers to the number of applications granted status, and not the number of applications. Further, it is not possible to establish how many EUSS status holders are still in the country given no entry or exit checks are conducted on them. All this makes the headline figures of applications received and status granted not suitable as a benchmark of success.
5. We have had repeated reports of people finding the support team via the EU Settlement Scheme Resolution Centre helpful and supportive to a point. Where cases enter a level of complexity those working at the centre become less helpful. Indeed, there have been instances where incorrect advice has been given, which has led to very concerning results. These will be expanded on below.
6. Lawyers and other practitioners supporting people with their applications have been able to acquire help from the Home Office via senior members of the management team at the resolution centre. But this is only accessible to those who have the contact details of these senior members. Campaigners have also been able to overturn decisions by the Home Office where applicants to the EUSS agreed to go public with their cases, as illustrated e.g. in point 60 of this submission. However, such opportunities are not available to everyone, and applicants who come forward or go public typically have well above average levels of formal education and language fluency.

We recommend a standardised approach to complex cases and enquiries being dealt with that does not require exclusive or media contacts.

⁶ <https://www.theguardian.com/politics/2019/aug/30/eu-citizens-uk-settled-status-alarm>

⁷ <https://migrationobservatory.ox.ac.uk/resources/reports/not-settled-yet-understanding-the-eu-settlement-scheme-using-the-available-data/>

⁸ https://www.legislation.gov.uk/ukia/2019/74/pdfs/ukia_20190074_en.pdf

7. We turn specifically now to lessons learned since the last report to note the successes (b, d) or improvement (a, c):
 - a) A facility to upgrade status from pre-settled to settled was introduced during August 2019. This has enabled repeat applications to the EUSS and thus addressed the problem highlighted in point 17 of our previous [evidence⁹](#) to the ICIBI. However, it also generated new problems in the EUSS statistical reporting which we highlighted with the Home Office in October 2019, but it remains unresolved - see point 20 of this submission.
 - b) An iPhone version of the app was introduced during October 2019. This has enabled many more people to be able to use the app for the purposes of identity check stage of the EUSS.
 - c) The way the EUSS system asks whether an applicant is satisfied with the outcome of the automated check was changed in December 2019. This change made the distinction between pre-settled and settled status slightly clearer to the applicant, though we are still concerned that the process does not start with asking applicants whether they have lived in the UK for more or less than 5 years. This would frame the eligibility criteria much more clearly and allow the Home Office to identify those at risk of being granted a lesser status than they are eligible for.
 - d) There has been an example of good practice where the Home Office has listened to the advice sector, and Rights of Women in particular, to amend a policy relating to EUSS applicants who are survivors of domestic violence and abuse. However, there are many other areas where sensible, needed policy changes have been dismissed or not acted upon without comprehensive feedback. These are set out in our submissions below and in our recent evidence submitted with the Home Affairs Select Committee and the Committee on the Future Relationship with the EU, which was highlighted in point 1 of this submission.
8. We have had reports of cases where the Home Office staff persistently pursue applicants for evidence to complete their applications and have been patient with what has been provided. This has often resulted in the correct grant of settled status where a grant of pre-settled status could have been provided. However, there are some practices which have caused alarm which are expanded on below.

⁹ https://bit.ly/t3m_ICIBI_Submission

What is not working, practical difficulties, concerns and recommendations

9. There are a number of continuing areas of concern which will be expanded on here and have been previously reflected in submissions to the ICIBI and other organisations. We know that a number of organisations will be contributing specific concerns about practical barriers, we will focus more on broader, strategic concerns but draw attention to some recent systemic issues.

Monitoring of the scheme

10. Key issues here relate to the lack of clarity and transparency. The Home Office have still not disclosed Key Performance Indicators (KPI) for the EUSS. It is therefore not clear what success is meant to look like or how it is measured.
11. There is a similar lack of clarity and transparency about compliance with equalities legislation, and about the Policy Equality Statement (PES) for the EUSS in particular. The Home Office were asked in Parliament to disclose it, first in [June 2019](#)¹⁰ and again in [July 2020](#)¹¹, and in each case the relevant Minister replied it “will be published shortly.” We also note the ICIBI asked for the PES to be published in Recommendation 3 of the last EUSS inspection report. Despite the Home Office committed to publishing it “[by Spring 2020](#)”¹² the PES remains secret. This delay also ignores repeated requests from a number of civil society actors, including the3million, who have been asking the Home Office to disclose the PES since November 2018. The PES was also a subject of multiple FOI requests, one of which was [refused](#)¹³ in August 2019 on the grounds the document was “to be published shortly”. We are concerned about this delay, which is now measured in years rather than months, and the overall lack of transparency and disregard to due process this delay demonstrates.
12. Freedom of Information (FOI) requests fail to yield further information about the EUSS even where the information requested appears to be available on the Home Office’s systems. For example, to quantify the number of applicants who sought settled status but were granted pre-settled instead, in November 2019 the3million submitted an FOI request (ref. 56255) asking about this data broken down by month. The Home Office cited the cost exemption, i.e. section 12(1) of the Act and refused the request. However, point 6.146 of the ICIBI inspection report published in February shows these data is available in a reportable format and indeed the report cites the figures we asked for in the refused FOI.

We recommend that the ICIBI scrutinise the number of applicants who sought settled status but were granted pre-settled status instead since the last inspection of the EUSS.

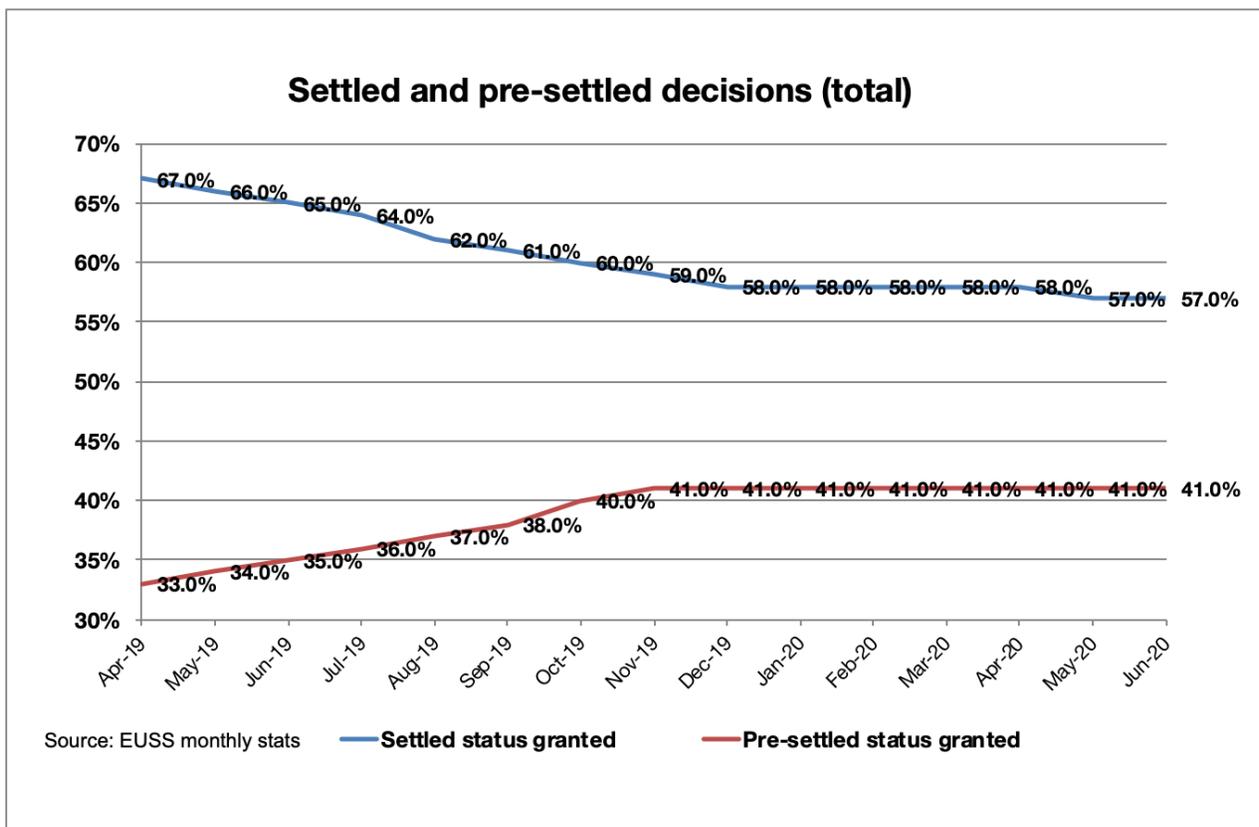
¹⁰ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-06-06/261207/>

¹¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-07-20/76759/>

¹² <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-eu-settlement-scheme-april-to-august-2019/the-home-office-response-to-the-icibi-report-an-inspection-of-the-eu-settlement-scheme>

¹³ <https://www.whatdotheyknow.com/request/600411/response/1430966/attach/html/3/FOI%2055263%20Response.pdf.html>

13. The above FOI request related to a trend we and others identified in the monthly and quarterly EUSS statistics. The ratio of settled to pre-settled status grants dropped substantially from 67:33 at the public launch of the EUSS to around 57:41, as shown in the table below. This shows both the drop in the proportion of grants of settled status, and the rise in refusals and other outcomes which now account for around 2% of all decisions made under the EUSS. We also note with concern that the number of pre-settled status grants, which reached 1,423,300 in the EUSS [statistics](#)¹⁴ for June 2020, now exceeds the high estimate of 1.4 million and vastly exceeds the low estimate of 0.9 million pre-settled status grants anticipated in the Home Office’s Impact Assessment for EU Settlement Scheme ([HO0333](#)¹⁵). We also have had multiple reports from EUSS users who were granted pre-settled status but were eligible for settled status. Two such cases are cited in points 59 and 60 below. All this raises questions over the quality and generosity of decision-making under the EUSS.



¹⁴ <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

¹⁵ https://www.legislation.gov.uk/ukia/2019/74/pdfs/ukia_20190074_en.pdf

14. Another FOI request (ref. 56477) refused under the cost exemption, that is section 12(1) of the Act, asked for a breakdown on applications and outcomes by gender. The refusal stated that ‘due to gender not being a mandatory field on EU Settlement Scheme applications (...) any request involving the gender breakdown of EUSS applications is likely to exceed the cost limit.’ However, we note latest ICIBI inspection report in point 6.83 states the EUSS casework system ‘reports data on a daily basis’ and ‘provides “snapshots” showing, for example, a breakdown of applicants by age range, and by nationality and *gender*, and the number of days taken to complete cases.’

We recommend that the ICIBI investigate whether it is possible to produce a partial or full breakdown of applications and outcomes by gender, and identify any discrepancies between men and women in applications received and application outcomes.

15. Until Brexit day on 31 January 2020 there were no refusals on eligibility grounds under the EUSS. However, between February and May 2020 there were around 900 such [refusals](#)¹⁶ despite the number of all decisions under the EUSS decreasing substantially during the same period. In June 2020, there were 1,400 [refusals](#)¹⁷ in a single month, a rise of 600% on May. We were contacted by an applicant who had been refused on eligibility grounds in March 2019. The details of their case show that, despite being in regular contact with the Home Office, they were kept waiting for seven months for a negative decision. They also received incorrect advice while the case was pending.

We recommend that the ICIBI investigates what policy changes meant that cases previously on hold were then refused from 31st January onwards.

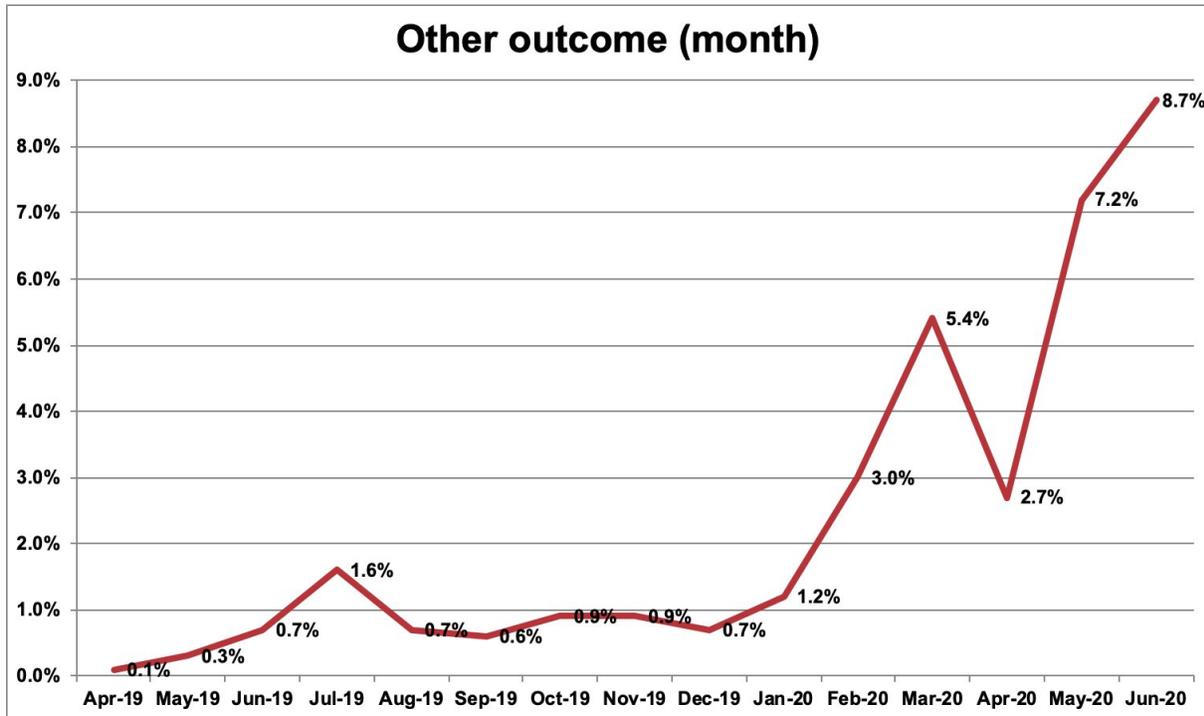
We also recommend the ICIBI reviews a sample of cases refused on eligibility grounds to establish whether decisions on these cases were made (a) correctly, (b) consistently, (c) timely, and whether (d) correct advice was provided to applicants at risk of refusal.

We finally recommend that the ICIBI investigates the ratio of EU/EEA/Swiss citizens and non-EEA citizens amongst those refused on eligibility grounds.

¹⁶ <https://www.gov.uk/government/statistics/eu-settlement-scheme-statistics-may-2020>

¹⁷ <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

16. We are similarly concerned about the numbers of “other outcomes” under the EUSS. In June, one in 10 applications decided under the EUSS was granted no status (was either refused, or received another outcome) which represents a steep increase. The increase in other outcomes is presented below.



We recommend that the ICIBI investigates what drives the increase in ‘other outcomes’.

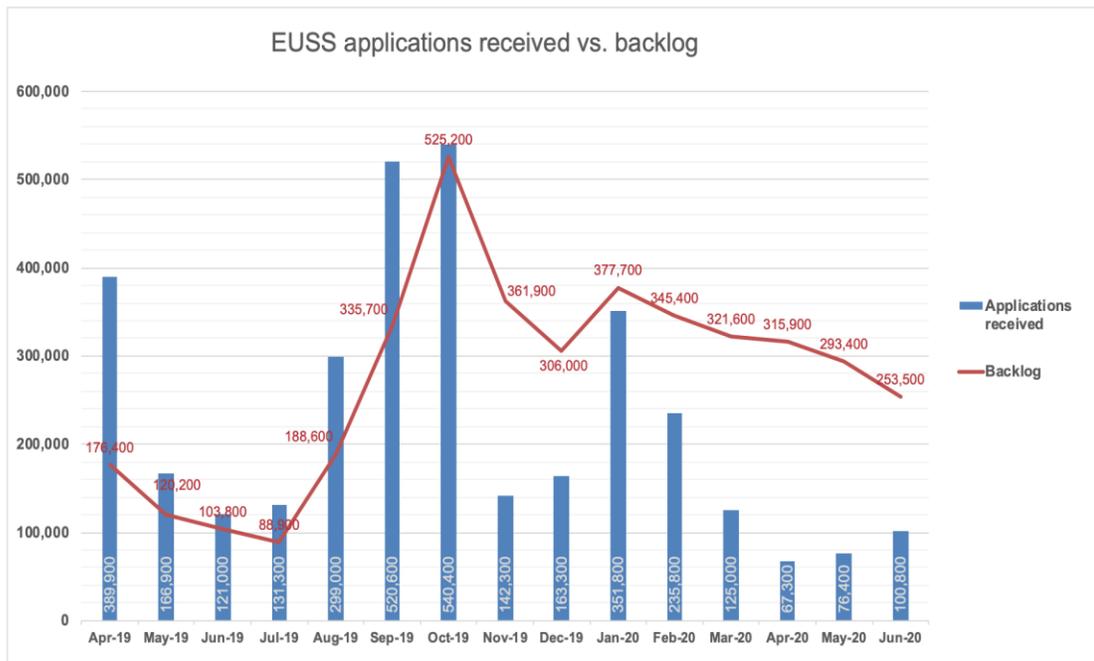
We also recommend that the ICIBI investigates the ratio of EU/EEA/Swiss citizens and non-EEA citizens amongst those whose applications fall into the other outcomes category.

17. The Home Office’s reporting and messaging about waiting times also lacks clarity and transparency which in our view falls short of meeting Recommendation 4.2 of the last ICIBI report. As of 5th August 2020, applicants are informed via the Home Office [website](#)¹⁸ that “it usually takes around 5 working days for complete applications to be processed” however we receive multiple reports of delays in processing applications. We note the latest ICIBI inspection report states in point 6.32 that in July 2019 the Home Office maintained that most applications using the “chip checker” for ID verification would be processed within 1 to 4 days. However, it also notes in the week commencing 8th July 2019 “the overall average processing time for all types of EUSS applications” was approximately 23 days. It therefore appears the reporting of processing times is either built around the best-case scenario and a specific sub-group of EUSS applicants (those with a biometric ID document and where no additional documents are required following the automated checks), or is using the wording of “complete applications” in a way that is counterintuitive

¹⁸ <https://www.gov.uk/government/publications/eu-settlement-scheme-application-processing-times/eu-settlement-scheme-pilot-current-expected-processing-times-for-applications>

to users. This manner of reporting and messaging on processing times inflates expectations and limits transparency of the Home Office reporting on the time it takes to process EUSS applications.

18. Despite the Home Office’s assurances that EUSS applications are processed efficiently, the number of cases waiting to be completed remained at around 300,000 at the end of each month since September 2019 until July 2020, when it dropped somewhat. Although until February 2020 this number corresponded with relatively high volumes of applications, the backlog has not been cleared when the volume of applications dropped substantially. This trend is shown on the graph below, which was produced using the EUSS monthly statistics.



19. All the concerns made in points 10-18 have been raised with the Home Office. In December 2019 civil society organisations engaged through the EUSS User Groups were promised a meeting to discuss these concerns, but no meeting (either in person or online) took place as of August 2020. None of the information requested was released either. Instead, in July 2020 the Home Office changed the way information is published and now include less data in its monthly releases. As of July, the EUSS uptake by nationality and reasons for refusal are no longer published as part of the monthly releases. Applications received by month and application outcomes by month are no longer published either. While it is still possible to independently calculate those, it is now harder to track the ratio of settled and pre-settled status grants by month. The Home Office [claimed](#)¹⁹ this change meant to “allow for timelier releases of high-level figures.” However, this goes against multiple requests from civil society organisations asking for additional detail, rather than quick releases of high-level figures.

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893070/eu-settlement-scheme-statistics-may-2020.pdf

20. Indeed, those high-level figures were described by [experts](#)²⁰ as increasingly meaningless, due to double-counting of repeat applications. After we [identified](#)²¹ this issue in October 2019, the Home Office admitted repeat applications are included in the high-level figure of applications received. Such applications are typically, but not exclusively, made by users granted pre-settled status seeking an upgrade to settled status. Including these applications distorts the statistics in the following ways:

- the overall number of users who applied to the EUSS is unknown, as two or more applications from one applicant are counted towards the high-level figure (hence ‘double-counting’);
- the outcomes of upgrade applications are not separated out from the overall figures, and therefore unclear; given these typically come from applicants seeking full settled status, any grants of pre-settled status on repeat application should be scrutinised;
- the ratio of settled to pre-settled grants is distorted given decisions for the same applicant are counted more than once; this means it is now impossible to know what the ratio is on the first application.

We recommend the ICIBI investigates the actual number of repeat applications.

We also recommend the ICIBI reviews outcomes of repeated applications with particular attention to those repeatedly granted pre-settled status, should such cases be identified.

Communications of the scheme

21. Given the consequences for those who do not apply to the scheme in time, it is imperative that effective communication is performed. Many of the media communications have been in English and, understandably owing to COVID-19 and the end of the transition period looming, have been less frequent. Where communications have been prepared in other languages, they have been found to refer to translations of old materials and contain language which does not reflect the mandatory need to apply to the scheme.²²

We recommend that the ICIBI look into whether adequate provisions have been made to provide information about the settlement scheme in all the European languages, and recommend that the greatest care is taken to represent the scheme accurately in translated material.

22. Large numbers of people have applied to the scheme. However, it is not clear what methods have been adopted to establish who is still to apply and what demographics they fall within. It is broadly accepted that those marginalised and vulnerable are most at risk. As are those who are unaware of their need to apply because they already possess a Permanent Residence document representing their status under soon to be discontinued EU freedom of movement law.

²⁰ <https://www.ft.com/content/46616b84-f74e-11e9-a79c-bc9acae3b654>

²¹ <https://www.freemovement.org.uk/do-the-eu-settlement-scheme-statistics-add-up/>

²² <https://twitter.com/monlouhawk/status/1278198577685291008?s=21>

23. A striking piece of feedback we have received from those who host sessions with people in their respective communities is the continuing high levels of ignorance about the scheme. One of our colleagues has said that at least a few people in every online information session she has hosted in recent months have confessed to have never heard about the scheme and the need to apply before attending the meeting.
24. The strategy of which audiences / groups are to be targeted and how they will be communicated to about the scheme is unclear. There are of course existing charities and organisations who have taken it upon themselves to communicate about the scheme with communities, local authorities such as the Greater London Authority and some employers have taken the initiative, but the substance of the Home Office's strategy remains unclear.

We recommend the ICIBI pursue the communications strategy of the Home Office for the EUSS with particular focus on work undertaken beyond a media strategy.

Engagement with organisations about the scheme

25. There have been two types of groups established with the advice/support section in relation to the scheme. A user group and vulnerable user or "safeguarding" group. We understand that there is a group that works with embassy officials. The frequency of these meetings has reduced. The first of this year's vulnerable group meetings took place a couple of weeks ago - the first and only of this year. Whilst lasting a couple of hours, the feedback in those meetings is limited to the session and there is no consistent progression of issues / ideas raised during the meetings. An issue / idea will be raised and (if not rejected) will be taken away by a Home Office official and rarely reported back on. A successful example has been the amendment to the domestic violence provisions of the scheme. Unfortunately, concerns in other areas, even points that do not stretch into policy concerns that could be considered insurmountable, are not substantively engaged with.
26. Beyond the user group meetings, engagement by the Home Office's EU Settlement Scheme team with organisations is generally good on specific concerns and cases. Where complexities have arisen, they have in the large been dealt with.
27. We have concerns though that individuals unrepresented by these connected organisations or organisations that do not have that level of connection are not getting this same level of support. We have heard of numerous cases where people have been left in very difficult situations that could have been resolved. See below regarding observations of advice from the Home Office.
28. the3million have written to the Immigration Minister - Kevin Foster - on a number of occasions.²³ He and his department have attempted to reply to our questions in correspondence. Unfortunately, the answers in some cases don't engage with the substance of the concerns raised. As such, we have requested a meeting with the Minister and his colleagues to explore concerns in a dialogue. The current Minister has held his position since the beginning of the year and we are yet to meet him. We met the previous Immigration

²³ <https://www.the3million.org.uk/library>

Minister a number of times. We had frank and at times constructive conversations on numerous occasions. We continue to hope for similar meetings with the Minister and his team.

29. We understand that as part of the Windrush Lessons Learned Review recommendations (in particular 8 - 10 on this issue), there will be a review of engagement with communities policies impact. We look forward to seeing how this will take effect as the recommendations are implemented.

We recommend the ICIBI establish how the Home Office undertakes community engagement in the context of the EU Settlement Scheme and how it is monitored, evaluated and developed.

The consistency and usefulness of advice received from the Home Office

30. Prior to the establishment of the EU Settlement Scheme Resolution Helpline, meaningful communication with the Home Office was very rare. The introduction of a helpline has helped with basic issues and access to information. There are limits however. When cases become complex or involve an issue beyond the application process, the service provided becomes restricted.
31. This issue has manifested in a number of instances we have come across. For example:
- We've had repeated reports of resistance from Home Office staff to issue physical forms without clear reasons being provided. Much of the reports have come from those who are advisers/professionals and are concerned that similar barriers may be introduced to individuals without representation;
 - A non-EU partner of an EU national applied for pre-settled status with the scheme. The non-EU national was not married to the EU national and would need to acquire a document under the current EU regulations to be eligible for leave under the EU Settlement Scheme. Rather than being told this from the outset, the non-EU national waited 6 months until her application to the scheme was refused. She was, however, told in the reasons for refusal letter that she would need to apply for a document via the EU regulations. The non-EU national's leave in the UK was due to expire and she was given conflicting advice on how to ensure she could remain in the UK without overstaying. She had to seek help from a solicitor to finalise the approach she should take;
 - A non-EU national submitted an application for pre-settled status as the spouse of an EU national. The non-EU national prior to the application being submitted was in the UK with leave to remain under the points based system. Rather than being told their right to stay in the UK was protected until a decision was made, the non-EU national was told that she would need to acquire leave to remain in another category of the rules. Her and her employer, paid further money for leave to remain under Tier 2 (general) which attracted very high fees;
 - A non-EU national submitted an application for pre-settled status as a spouse of an EU national. They had previously been recognised as the spouse of an EU citizen and held a document confirming this. Despite having a certificate of application and an expired residence document, the non-EU national was told that she did not have a right to work in the UK.

Whilst these instances involved non-EU nationals, these issues will replicate for EU nationals when the new immigration system is implemented and the ability to prove right to work/rent with a status/confirmation from the Home Office will be vital.

We recommend that the ICIBI pursue publication / a review of the Home Office's helpline and how its staff are monitored and trained for performance purposes around issues of advice, particularly right to work.

The lived experiences of vulnerable individuals and groups

32. We continue to be concerned about the most vulnerable EU citizens - in particular older people, children in care, those with mental illness (such as dementia) and victims of trafficking or domestic violence.

Older people

33. With a new digital-only system introduced for the EU Settlement Scheme, we are particularly concerned about groups at risk of digital exclusion. Online services and support are less accessible for the over-75s, as over 60% in this group do not use the internet and 50% have never used it, according to Age UK²⁴. Concerns about the digital-only scheme are frequently brought up by EU citizens: 87 year old Danish citizen Tove McDonald is getting help from her daughter, but says applying for settled status “will be a difficult process for our age group”²⁵
34. Older EU citizens also face specific technical barriers, as in the case of a 101-year old Italian citizen who was told on applying that his parents had to confirm his identity, after an apparent bug in the system set his birth date to 2019 instead of 1919²⁶.
35. Degenerative aging conditions and memory loss may mean that older residents have limited information on their immigration status - including whether they have become a UK citizen already, whether they have a passport and whether they previously held another status such as ILR. We have seen no substantive guidance relating especially to occupants of care homes and other support facilities.
36. Even if older people are able to access support and successfully apply for settled status, the new digital system requires holders of settled or pre-settled status to keep their contact details and passport information up to date so that they can continue to access their status. The change of an email address coinciding with a loss of mobile phone/change of telephone number could result in someone losing access to their status, presenting an extra barrier for older people. Providing the option of physical proof of settled status would remove a source of anxiety for many older EU citizens.

We recommend that the ICIBI review whether older people have easy access to reliable advice and support in a format appropriate to their digital skill level, particularly given the limits imposed on face to face support by the Covid-19 crisis.

We also recommend that the Home Office review the decision to make the EU settlement scheme digital-only, and provide the option of physical proof of status for those EU citizens who want it.

Children in care

37. While the UK Government has published guidance in some areas for how local authorities are to help children in care, we are concerned that not enough children in care are securing their status as they rely on others to apply on their behalf. We refer to figures from the Children's Society estimating that only 11% of

²⁴ https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/rb_july16_older_people_and_internet_use_stats.pdf

²⁵ <https://news.stv.tv/politics/1436008-eu-citizens-brand-registration-insulting-ahead-of-brexite?top>

²⁶ <https://www.theguardian.com/uk-news/2020/feb/12/home-office-tells-man-101-his-parents-must-confirm-id>

the estimated 9,000 eligible children in or leaving care have secured their status through the settlement scheme²⁷.

38. During the Immigration and Social Security Coordination Bill debates, Immigration Minister Kevin Foster conceded that the Government will conduct a survey of local authorities to provide assurance that they have identified all the children in care that need to apply for settled status, and will share this information with civil society organisations via the Home Office safeguarding user group²⁸. We hope this will progress without further delay.
39. Digital-only status also presents a problem for children in care, as they often lack valid ID or evidence of residence due to e.g. an uncooperative parent or other circumstances beyond their control. Providing physical proof of status would offer a backup in case the digital code is lost or unavailable.

Disability and mental illness

40. EU citizens who lack mental capacity, such as dementia sufferers, may need a guardian to apply for them. There is a lack of clear guidance on how to lawfully and responsibly ensure that this group of vulnerable people secure their immigration status. As an example, disability rights activist Jennifer Lauruol has a severely disabled adult French national daughter who would be unable to apply without her family's assistance²⁹. We are concerned that other EU citizens who are in care or have mental health issues will not get the support they need to apply, and refer to Public Law Project's work on this issue³⁰.

We recommend that the ICIBI review whether adult social services, private care providers and guardians are receiving clear guidance on the EU settlement scheme, particularly on how to responsibly secure the status of those unable to apply for themselves.

Victims of domestic violence

41. Non-EEA women are especially at risk of a relationship breakdown jeopardising their immigration status, because they are not able to access the settlement scheme in their own right, but have to prove residence plus a connection to their EU citizen partner. If a non-EEA victim of abuse or domestic violence depends for their status on their relationship with an EU citizen, but the relationship has broken down and they are living in a shelter, they may not have access to their records or ID documents if these are controlled by the abusive current or ex-partner. We agree with the Home Affairs Select Committee, which recommended that the Home Office "consider special circumstances and make exceptions to the process when circumstances dictate" after hearing evidence from the Rights of Women group on the barriers to settled status facing some of their clients³¹.

²⁷ <https://twitter.com/RAMPproject/status/1262743595401932802>

²⁸ [https://hansard.parliament.uk/commons/2020-06-30/debates/581DFFF9-B3ED-4B76-9F51-A1F2325334A6/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill](https://hansard.parliament.uk/commons/2020-06-30/debates/581DFFF9-B3ED-4B76-9F51-A1F2325334A6/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill)

²⁹ <https://www.theyworkforyou.com/debates/?id=2019-10-14a.43.0>

³⁰ <https://publiclawproject.org.uk/latest/new-support-hub-for-charities-working-with-eu-citizens/>

³¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1945/1945.pdf>

Factors preventing individuals from applying or delaying the progress of applications

42. Based on the experiences of people approaching the3million with their concerns in recent months, the Covid-19 pandemic has added a number of barriers to achieving settled status for EU citizens and their family members. The3million has submitted evidence to the Home Affairs Select Committee on the overall effects of the pandemic on EU citizens and family members including access to social security, although in this context we will address only the effects on the administration of the EU settlement scheme³².
43. Although the Home Office EU Settlement Resolution Centre closed in the last week of March, we are pleased to note the helpline promptly reopened and provides support by telephone and email seven days a week. The postal route for submitting identity evidence is also open for applicants who are unable to use the app to verify their identity.
44. However, the Home Office has provided no guidance specific to the EU Settlement Scheme on measures to alleviate the effects of the pandemic. A response from the European Migration and Citizens' Rights Unit dated 30th July to the Brexit Civil Society Alliance, a coalition of organisations that support and represent EU citizens, suggested that the Home Office is still "working through" a number of issues³³. We remain concerned that the Government has not taken appropriate steps or made adjustments to facilitate securing status in the following key areas:

Continuity of residence

45. In recent months, many countries have introduced unprecedented travel restrictions due to the Covid-19 crisis. For EU citizens who are currently out of the UK, when they eventually return, many will inadvertently have been absent from the UK for more than six months. An absence of more than six months in any twelve-month period breaks a citizen's continuity of residence for the purposes of applying for status under the EU Settlement Scheme. This will affect both those with pre-settled status, those who have yet to apply and those who intend to apply for UK citizenship³⁴.
46. One EU citizen who contacted us lost her job in the UK cruise ship industry and cannot return to the UK from Germany because of the pandemic. She explained: "It appears I will have a gap of more than 6 months in UK residency evidence, even though my PAYE record would have meant I could have qualified for settled status this autumn."³⁵

Accessing documents from national embassies

47. Accessing the necessary identity documents was already an issue for many EU citizens before the pandemic, but has been exacerbated by social distancing measures resulting in fewer staff, reduced opening hours and delays in re-documenting nationality due to people being unable to safely travel to embassies. Although the Home Office relies on national embassies to work efficiently, many of them are

³² http://0d385427-9722-4ee6-86fe-3905bdf5e6e.usrfiles.com/ugd/0d3854_416e097a0ec04d71bd4fb18f3cb4d592.pdf

³³ <https://www.brexitcivilsocietyalliance.org/news-indexpage/the-brexit-civil-society-alliance-have-coordinated-a-letter-to-the-home-secretary-asking-her-to-make-adjustments-to-the-eu-settlement-scheme-to-protect-eu-citizens-and-family-members-from-covid-19>

³⁴ http://www.t3m.org.uk/t3m_letter_HO_EUSS_WA

³⁵ http://0d385427-9722-4ee6-86fe-3905bdf5e6e.usrfiles.com/ugd/0d3854_416e097a0ec04d71bd4fb18f3cb4d592.pdf

not sufficiently resourced to deal with Brexit and there is no clear plan in place or evidence of Government leadership and coordination with embassies around this issue.

Registry office closures

48. Many registry offices are closed or operating at reduced capacity for marriages and civil partnerships, so some non-EU citizens may be unable to apply for pre-settled status before their existing immigration status expires. It is also not possible to register births, which prevents parents from applying for pre-settled status for their new-born babies.

We recommend that the Government provide concessions for those who have inadvertently broken their continuity of residence or had to delay their application to the EUSS scheme through no fault of their own, and that the Home Office confirm the measures they are taking in published guidance.

We also recommend that the Government engage in dialogue with civil society organisations on how they intend to plan for future related issues arising from the Covid-19 crisis.

Lack of in-person support

49. Digital exclusion of older people will be exacerbated with the Covid-19 crisis, as scanning centres have closed and in-person support is much less available: the outreach team to support elderly people in their homes has been curtailed, as have voluntary sector efforts. As older people are more likely to be shielding due to Covid-19 and are being advised to take particular care observing social distancing, options for in-person support may also be curtailed.

Procedural changes to mitigate risk

50. Since postal application routes have reopened, applicants who use a paper form or cannot scan their identity documents at home must go to the post office to submit their documents, increasing their risk of contracting and transmitting the virus. For example, non-EU family members are expected to post their Biometric Residence Cards (BRCs) to the Home Office - an unnecessary measure since the Home Office holds the information on file from when it first issued the BRC.

We recommend that the Home Office spell out which measures are being taken to ensure vulnerable people follow the public health advice on quarantine, but are also supported to apply for settled status.

51. At the level of individual choice, one of the main barriers to EU citizens applying for settled status is ignorance - either assuming they do not have to apply to the scheme or that they have a secure immigration status already. Around 150,000 EU citizens have lived in the UK for 30 or more years (2017 figures)³⁶ - as they already feel highly integrated, they refuse to believe they must apply for a new immigration status to continue their life here. Others have obtained a Permanent Residence document before the introduction of the settlement scheme and do not know this will not be valid proof of status.

³⁶ <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>

52. At the other end of the spectrum, we have anecdotal evidence that students do not think the scheme applies to them because “settled status” suggests long term residence to them, and they have no intention to “settle” in the UK after their studies.

Criminal records

53. We have had numerous reports of those with a criminal record are discouraged from applying for fear of reprisals. We have seen cases where some with minor offending history are concerned about repercussions and have delayed or not applied.

Data privacy concerns

54. There is also a significant minority who have not applied for settled status because of concerns about privacy and lack of transparency about Home Office sharing of personal data. In the largest survey so far on EU citizens’ experience of the settlement scheme, over a third (35.5%) of respondents to the question “why have you not applied for settled status” gave concerns about data protection as their reason for not applying³⁷.

The ICIBI should examine the need for greater transparency around how EU citizens’ personal data is handled, and whether the UK Government is on track to fulfil its commitment under the Withdrawal Agreement to ensure that “administrative procedures for applications are smooth, transparent and simple”.³⁸

Barriers to achieving the correct status under the EUSS scheme

55. Although we have raised concerns about specific groups at risk of not applying by the deadline, it is important to note that people who would not usually be classified as vulnerable can easily end up with pre-settled status where they should rightfully have been granted settled status. Pre-settled status is a form of limited leave to remain, so pre-settled status holders will need to reapply to secure their status in the long term.
56. The importance of the difference between pre-settled and settled status has come into sharp focus during the Covid-19 crisis, as the Government insists that pre-settled status is not a ‘right to reside’ for the purposes of accessing benefits - a view the3million disputes³⁹.
57. As an example of how the wrong status can be granted, the tax accountant and Dutch national Bina Gayadin was rejected three times for settled status by the system, despite repeatedly submitting evidence that she had lived in the UK for twenty years⁴⁰. Unless correct advice and reliable support is provided, many people will find their applications are delayed or they are granted a lesser, more insecure status than they are entitled to.
58. Another such example is the case of Adam Horvath, a Hungarian citizen who had lived in Britain for eight years at the time of his EUSS application. He mistakenly accepted pre-settled status in June 2019. When he

³⁷ t3m.org.uk/SettledStatusSurvey

³⁸ Article 18(1)(e)

³⁹ t3m.org.uk/PreSettledStatus_UniversalCredit

⁴⁰ <https://www.itv.com/news/2019-09-12/applications-for-eu-settlement-scheme-top-1-5m-says-home-office>

contacted the Home Office he was advised to wait 70 days when his inactive application would be deleted automatically. After three months he contacted the Home Office again and was then told to withdraw his application. He then was in contact again and advised to submit additional documents instead, which he did only to be still granted pre-settled status. In October 2019, his case was [publicised⁴¹](#) by the media. Within three days of the publication Mr Horvath received a call from the Home Office advising him his status was upgraded to settled with no requirement to supply additional evidence.

In addition to the information gathering mentioned earlier, we recommend that the ICIBI review whether EU citizens are given accurate and reliable information about the criteria for settled status, with the goal of ensuring all who are entitled to a secure immigration status achieve it.

⁴¹<https://www.theatlantic.com/international/archive/2019/10/britain-eu-nationals-brexit/600721/>