

***“We reject utterly that we are criminalised  
by the lack of an insurance we weren’t asked for and didn’t know we needed”***

**What is the problem?**

EU citizens<sup>1</sup>, holding settled status under the EU Settlement Scheme, who have applied to naturalise as British citizens, are at risk of having those applications refused for not having had an obscure insurance policy - a requirement to possess Comprehensive Sickness Insurance - for certain periods in their past.

A refusal of naturalisation, including loss of substantial fees, is devastating for anyone.

However, the most serious aspect of this issue is that the effect of the Home Office’s policy is to conclude that the applicant was **not lawfully resident** in the UK for those past periods.

**What is Comprehensive Sickness Insurance and who came up with this requirement?**

Before the Comprehensive Sickness Insurance (CSI) ‘scandal’<sup>2</sup> broke in early 2017, CSI was in the large unheard of by anyone who had not had dealings with the Home Office.

It was never required in daily life nor ever requested when accessing the National Health Service.

However, when EU citizens wanted to apply for Permanent Residence (PR - *a residence status under EU free movement law, before the EU Settlement Scheme existed*), they were confronted with the need to show evidence of possessing CSI for any periods where they were either self-sufficient or studying (in other words, not economically active). This was not shown on any of the relevant Home Office web pages<sup>3</sup>, but buried in the small print of the accompanying guidance<sup>4</sup>.

The requirement for studying and self-sufficient EU citizens to have CSI stems from the EU’s Free Movement Directive<sup>5</sup>. It applies across all the EU member states, most of which have insurance-based healthcare systems, requiring *both* nationals of the member state *and* immigrants to hold insurance policies to access healthcare.

Unlike other EU countries, the UK’s NHS is funded from general taxation (not only employment taxation but also for example Value Added Tax paid by everyone), and EU citizens living in the UK can use the NHS on an equal footing with British citizens. Despite this, the UK has historically not considered access to the NHS as Comprehensive Sickness Insurance. The EU Commission however considers this a breach of EU law and started infringement proceedings<sup>6</sup> against the UK in 2012.

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<sup>1</sup> We use EU citizens to include EU, EEA and Swiss citizens and their family members

<sup>2</sup> [blogs.lse.ac.uk/brexit/2017/03/17/disheartened-and-disappointed-the-government-and-universities-have-failed-eu-citizens-over-comprehensive-sickness-insurance/](https://blogs.lse.ac.uk/brexit/2017/03/17/disheartened-and-disappointed-the-government-and-universities-have-failed-eu-citizens-over-comprehensive-sickness-insurance/)

<sup>3</sup> [www.gov.uk/permanent-residence-document-eu-eea](https://www.gov.uk/permanent-residence-document-eu-eea)

<sup>4</sup> First mentioned on page 13 of [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/864756/Form-EEA-PR-guidance-notes-v5.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864756/Form-EEA-PR-guidance-notes-v5.pdf)

<sup>5</sup> Article 7 of [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF)

<sup>6</sup> [ec.europa.eu/commission/presscorner/detail/en/IP\\_12\\_417](https://ec.europa.eu/commission/presscorner/detail/en/IP_12_417)

## What does the EU Settlement Scheme say about CSI?

The obstacle of CSI became more widely known in 2017 due to the immense anxiety it was causing EU citizens trying to secure their status in the only way available to them at the time – applying for PR.

Around 30% of PR applications were being refused, often due to lack of CSI. Due to media attention<sup>7</sup>, many more became aware of the requirement and did not even apply, fearing rejection.

The issue was raised many times in Parliamentary debates, and the House of Commons Exiting the European Union Committee report<sup>8</sup> on the rights of UK and EU citizens (1st March 2017) states as one of its conclusions "*The Government should state that access to the NHS is considered sufficient to fulfil the requirements for CSI, and that it will introduce legislation to that effect if necessary.*"

Finally, in October 2017 the Prime Minister Theresa May wrote an open letter<sup>9</sup> to all EU citizens living in the UK in which she said of the new settlement scheme: "*People applying [...] will no longer have to demonstrate Comprehensive Sickness Insurance*".

In June 2018, Theresa May's very welcome removal of this unfair and obscure requirement was confirmed by the Home Office's 'EU Settlement Scheme: Statement of Intent'<sup>10</sup>.

## So why is CSI a problem again now?

Many EU citizens, having lived in the UK for decades yet experiencing over two years of deep frustration and anxiety, were relieved to be able to apply for settled status. Of these, many went on to apply for British citizenship.

However, the British Nationality Act 1981 requires applicants not to have been in breach of immigration laws<sup>11</sup> for any period relied on in the application. Because pre-settled and settled status legally **only take effect from the date they are granted**, we have been concerned about how the Home Office would treat historical periods where EU citizens were not economically active and did not have CSI.

We made repeated enquiries of the Home Office, but the issue was only clarified on 15 May 2020, by updated policy guidance<sup>12</sup>.

The Home Office could and should have taken this opportunity to rectify this unfairness.

Instead, the guidance re-iterates the need for CSI and only allows caseworkers to consider whether there are 'compelling grounds to exercise discretion'. It is not known what constitutes compelling grounds.

## What can be done?

Ask the Home Secretary to change the legislation. The following amendment to the Immigration and Social Security Coordination Bill would also achieve this end:

*Any period of residence inside the UK by those with residence status, as described under article 18(1) of the withdrawal agreement, shall not have been, for any period relied on, in breach of immigration laws for the purposes of section 50A of the British Nationality Act 1981.*

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<sup>7</sup> [www.theguardian.com/politics/2017/jan/14/dutchwoman-resident-in-uk-for-30-years-may-have-to-leave-after-brexit](http://www.theguardian.com/politics/2017/jan/14/dutchwoman-resident-in-uk-for-30-years-may-have-to-leave-after-brexit)

<sup>8</sup> [publications.parliament.uk/pa/cm201617/cmselect/cmexeu/1071/1071.pdf](http://publications.parliament.uk/pa/cm201617/cmselect/cmexeu/1071/1071.pdf)

<sup>9</sup> [www.gov.uk/government/news/pms-open-letter-to-eu-citizens-in-the-uk](http://www.gov.uk/government/news/pms-open-letter-to-eu-citizens-in-the-uk)

<sup>10</sup> [www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent](http://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent)

<sup>11</sup> [www.legislation.gov.uk/ukpga/1981/61/section/50A](http://www.legislation.gov.uk/ukpga/1981/61/section/50A) paragraph (4)(e)

<sup>12</sup> [www.gov.uk/government/publications/naturalisation-as-a-british-citizen-by-discretion-nationality-policy-guidance](http://www.gov.uk/government/publications/naturalisation-as-a-british-citizen-by-discretion-nationality-policy-guidance)