HOUSE OF LORDS

Select Committee on the European Union

Sub-Committee on Justice

Corrected oral evidence: Brexit: citizens' rights

Tuesday 4 February 2020

10.40 am

Watch the meeting

Members present: Lord Morris of Aberavon (The Chair); Lord Anderson of Ipswich; Lord Anderson of Swansea; Lord Dholakia; Baroness Goudie; Baroness Hamwee; Lord Polak; Lord Rowlands.

Evidence Session No. 7 Heard in Public Questions 59 - 67

Witnesses

I: Matt Downie, Director of Policy and External Affairs, Crisis; Marianne Lagrue, Refugee and Migrant Children's Consortium; Nicole Masri, Senior Legal Officer, Rights of Women.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Matt Downie, Marianne Lagrue and Nicole Masri.

Q59 **The Chair:** I welcome all our witnesses. We are starting a shade early but there is no harm in that at all; it will give you a little more time. Formally I have to say that a transcript will be taken and made public. Witnesses will have a chance to review it before it is published. The session is being broadcast live and will be made available subsequently via the parliamentary website. At this juncture, if Members have any particular proper interests to declare, please do that now.

Baroness Hamwee: I am advised that I have to declare that I am the Liberal Democrat spokesperson on immigration. I do not see that as an interest but there you go.

The Chair: I am not sure it is declarable.

Baroness Hamwee: Apparently it is. When the relevant clerk and I have time we are going to sort it out.

The Chair: Thank you very much in any event.

Baroness Goudie: I declare my interests as I am on the board of a number of NGOs which have campaigns on these issues and other issues. I do not get any remuneration for it.

Q60 **The Chair:** Perhaps I could invite the witnesses to formally introduce themselves to the Committee. All the Members of the Committee here have signs in front of them, so I do not think we need to repeat what is obvious, but we would all be delighted to hear who you are.

Marianne Lagrue: I am policy manager at the Migrant Children's Project, which is based at Coram Children's Legal Centre. I am here today as a representative of the Refugee and Migrant Children's Consortium, a group of 50 charities that work with migrant and refugee children and engage in policy advocacy on their behalf. Coram Children's Legal Centre has grant funding from the Home Office to make applications on behalf of children and young people and vulnerable families to the EU Settlement Scheme.

Nicole Masri: Good morning, everyone. I am an immigration solicitor and the Senior Legal Officer at the women's rights charity Rights of Women. Rights of Women provides legal advice to women. We deliver training to professionals on different areas of the law. We also engage with government on law and policy issues affecting women. Since 2018 Rights of Women has been engaged in a Home Office external stakeholder forum known as the safeguarding user group, which was established to address issues affecting vulnerable people through the EU Settlement Scheme. We were also one of seven community organisations which participated in the second testing phase of the EU Settlement Scheme, which happened in late 2018. Like Coram, we have received grant funding from the Home Office to provide

advice and assistance to vulnerable migrant women to apply to the EU Settlement Scheme, and that project has been operational for us since June of last year.

Matt Downie: I am Director of Policy and External Affairs at Crisis, the homelessness charity. We provide services to people who are homeless, regardless of their immigration status. We do so in 11 centres across England, Scotland and Wales. We are involved in the Settlement Scheme and are part of a consortium which receives grant funding from the Home Office, particularly in London, but we deliver support for people regardless of Home Office funding in centres across Great Britain as well. I will be really pleased to tell you a bit more about that today.

Q61 **The Chair:** That is very helpful. We have allocated questions and we will come to them now. The procedures of the House regarding our field of endeavour are about to change and it is very important that we take into account what you have to say this morning. It is very important because for the most vulnerable people—as I know from being a constituency MP for far too many years—and what we have been dealing with week by week, or fortnight by fortnight, it is about where the shoe pinches. With the people you are dealing with, you will be able to say where the generality of the scheme does not cover the kinds of interests that you have. That is very important so far as our preparations for the future are concerned.

I will ask the first question. How well is the EU Settlement Scheme working for the people you and your organisations support? Perhaps you could explain and give examples of where there are any failings. We are concerned with the failings. Who would like to speak first?

Marianne Lagrue: I can speak on behalf of child and young person applicants supported by Coram and by other members of the Refugee and Migrant Children's Consortium. We believe that the scheme is not working well. The most concrete example of the way it is not working well is the fact that not very many children have applied. By the most accurate estimates that we have there are between 727,000 and 900,000 EU national children in the UK. They make up approximately 20% to 25% of the EU nationals, EEA nationals and Swiss nationals who are expected to apply to the EU Settlement Scheme. Just over 13% of the applications that the Home Office had in September 2019 were from children, so there is a substantial gap. We fear that there are between 450,000 and 650,000 EU, EEA and Swiss national children who have not applied to the Settlement Scheme and we cannot explain the gap.

The Chair: Do either of the others wish to comment?

Nicole Masri: From our point of view it is a really mixed picture for the people we are working with. The people who come into contact with our services are getting the status that they are entitled to, generally. As we know from the published information, there has been a very small number of refusals, and the women who get our support are able to realise their rights and access the status they are entitled to. That does not mean that the process is simple for them—far from it. There are lots and varied complexities in the types of applications we deal with. A

lot of them we will go on to talk about, about people who lack identity documents to enable them to apply to the scheme, and how it works for them if they do not have those. We have people who are not able to provide a full paper trail of evidence that the Government want and we have examples of how the Home Office reacts to that in its decision-making process.

What has been made clear to us is the absolute necessity for those types of applicants to have support—to assist them to understand their eligibility for the scheme in the first place and to access the status they are entitled to. We are able to provide that specialist legal support and we often work in tandem with non-legal specialists—support workers, perhaps domestic violence professionals working in a refuge, or key workers working with homeless people—and that is often integral to getting people through the scheme.

Another thing we have noticed is that the applications are taking a lot longer than we anticipated. In particular, it is vulnerable people who are often more affected by the delays in the scheme. A lot of the women we work with are non-EU national family members who are prejudiced by the scheme following relationship breakdown and their applications are taking months and months. One of the first ones we did back in June took five months to conclude. The longest took eight months before the individual got a decision. That is not to say that everyone is able to apply. There are some people who are not in a position yet to apply. Some women we work with are still trying to get the identity documents they need for themselves and for their dependent children.

Finally, one thing that we have been warning about a lot, and that we are seeing, is non-EU national family members of EU citizens who are not able to qualify under the scheme following relationship breakdown. The rules of the scheme are such that EU nationals will always be able to apply based on their own residence, but non-EU national family members are tied to the EU citizen in order to be eligible, and often in cases where there is relationship breakdown, even where that is because of domestic abuse, they cease to be eligible under the scheme, or the status they have becomes vulnerable to revocation, which is a real problem for a lot of the women we work with.

Matt Downie: By way of context it is useful to set the scene in relation to homelessness and say that for EU nationals who experience homelessness in the UK, the Settlement Scheme is probably one of the only things in recent years that has begun to offer some hope. It does so because everything up until this point, particularly over the last seven or eight years, has steadily withdrawn entitlements to the sorts of things that would resolve homelessness—housing, social security, access to the private rented sector and the health service, et cetera. For us the Settlement Scheme is a bit of a godsend when it comes to working directly on the front line with people. It enables us to find an avenue for people to access the state in a way that can resolve their homelessness, which, frankly, has been impossible over the past few years. Working with 4,000 people and doing applications with

1,500 people is quite an extraordinary opportunity, but I want to talk a bit about what would really help make that opportunity real for people.

Imagine for a second that you are street homeless and destitute, you are 15 or 16 times more likely to be a victim of crime than anybody else. The likelihood of you having access to the documentation and proof of ID that is necessary to successfully navigate this process—let alone digital access, which is near impossible for people in that situation—means that you need dedicated, thoughtful and persistent help over quite a long period to make this work. Pre-settled status is no good because that does not give you access to the housing and social security needed to resolve your situation. You need to be successful through this scheme.

What has been great is the ability to help people. Teams up and down the country will refer to this as almost like an investigative journalism process, whereby through things such as subject access requests they are having to find documentation that can prove that people have been here when they have obviously been here. People have been here for more than a decade in many cases. It is a very good thing but there are significant barriers.

Because of the digital nature of the scheme, both in terms of the application process and when you are successful in the scheme, if you are experiencing homelessness, you not only have the issues around digital exclusion but when it comes to accessing services, a lot of the places where you would go and say, “I have achieved this status”, want to see something physical from you. If you are a private landlord asked to prove the immigration status of your potential tenant, you want something physically in front of you, and you are not going to let to somebody who does not have it. Similarly, there are plenty of public agencies, such as the NHS and local authority and housing services which do not seem to understand yet what settled status means. That really matters.

There are also the obvious difficulties in obtaining documentation and proof. There are countless examples now of people where it has nearly happened, where four out of the five years has been achieved, but the flexibility is not there in the scheme to ensure that the experience of homelessness is a good enough reason for the Home Office to make a common-sense judgment as to gaps in people’s documentation. I might say a bit more later, but, in summary, it is a very good thing for a lot of the people we work with, but, with some tweaks, could be much better.

Baroness Hamwee: May I follow up on a couple of things? On the length of time that applications are taking, is it that the Home Office is coming back to your clients, if that is the right term for them, asking more questions or is it that applications go into a black hole?

Nicole Masri: It is both. I am afraid there are lots of different and varied experiences. Sometimes delays are a consequence of the Home Office identifying that there are gaps in evidence and writing out to applicants, inviting them to provide more evidence. Sometimes those delays are unexplained but we think they might be the more complex applications. They might be applications that have gone

down the paper route, for example, when often much more complex EU law principles apply as to the eligibility of the applicant. We also suspect that it might be because the Home Office is undertaking its own checks. For example, for some non-EU individuals who do not provide evidence relating to their family member, it might be that, unknown to us, the Home Office is trying to identify that evidence.

There are other types of cases that we think get stuck at the stage of suitability checks. One of the early checks that an application undergoes is the so-called suitability check, where the Police National Computer is checked, and a person's criminal background is assessed. We think there are delays with some cases where there might be convictions or matters that have arisen on the Police National Computer and cases might be being sent to Immigration Enforcement for consideration. None of that is notified, of course, to the applicant unless the Home Office proactively writes out and asks for information. When we are chasing, the response is very much, "Your application is still in process and we will get back to you as soon as possible," and very little beyond that is given to the applicant.

Baroness Hamwee: Are applicants getting pre-settled status when you would have expected them to get settled status?

Matt Downie: Yes, that is happening. Pre-settled status kicks in another set of support that is required to appeal. We have seen some successful appeals, but I guess for us there is also quite a long time span necessary before you even start submitting an application. Getting to a point of being ready, having proof of ID and of being in the country for long enough, takes a very long time. The length of time needed, matched with the vulnerability of some of the people we are talking about, particularly if they are homeless or street homeless, means that staying in touch with somebody is extremely difficult, let alone finding ongoing proof of all these things. It is fraught with pitfalls and, as I said before, some additional flexibility on some common-sense matters that are the difference between pre-settled status and settled status make all the difference, because if you can access housing it means you can go on to rebuild your life and will probably prove everything that you needed to prove to start with.

To echo Nicole's point about the police, this is a real issue for us as well. It is not clear the extent to which the Police National Computer database system is working, and in what circumstances an applicant will be refused because of criminality or previous criminality. We have had instances where charges have been dropped and still it is not clear whether that is impacting on somebody's status. It is quite hard for people giving advice to know what to say, and I think that needs clearing up.

Marianne Lagrue: I would like to pick up both of your points, Lady Hamwee. On people being granted the wrong status, we are finding at Coram that we are receiving high numbers of referrals from care leavers, or other vulnerable young people such as young people experiencing homelessness, who have tried to apply by themselves, but due to their short period in the labour market, because they are only 18 or 19 years old, their National Insurance record does not give the full picture

of their residence in the UK and they do not understand that they need to provide supplementary evidence. The application system is not leading them down that path and they are being granted the wrong status. Our grant funding is then being used to correct mistakes that individuals have made by themselves because they were left to apply unsupported. This is a particular problem for young people.

On the length of time it is taking to process applications, I would echo the sentiments that have already been expressed and note also that Coram is a grant-funded organisation. It is grant funded, as are the other organisations, until the end of the financial year, the end of March, but we now know that the length of lead-in time to process applications is longer than the time we have left of our grant funding. As of January we have had to close referrals to our project, so we are not able to assist new vulnerable children, young people and families because we have no security as to whether we are going to be able to continue to do the work we have been funded to do so far.

The Chair: With your experience of the working of the scheme, what is your view: are things getting better, worse, or are they about the same?

Nicole Masri: The delays have been creeping up since the full launch of the scheme in March. The longest delay we experienced, the eight-month case, submitted her application pretty much on opening day. It has probably been consistent, but of course there are peaks and troughs of application numbers. Home Office data indicates where it has surges of applicants, and I expect that has an impact on decision-making timescales.

Lord Anderson of Swansea: Presumably a non-EU citizen in a relationship with an EU citizen depends on that person totally for their status and their hope of obtaining settled status and, if there were to be a breakdown in that relationship, they would be wholly adrift. Is that correct?

Nicole Masri: It is not as complete as that. It is much more blurry and complex, unfortunately, and it depends on the type of relationship. For example, if you are a spouse, separation in and of itself does not have an impact, and you can still qualify. What matters is whether your EU citizen ex-partner is still in the country. The departure of the EU citizen will mean that you cease to be eligible. Another thing that can affect your eligibility is divorce. At the point of divorce it may be that you drop out of eligibility to the scheme. There are limited provisions whereby spouses can retain rights on divorce.

The bigger risk is for unmarried partners who have residence rights. At the point of separation they will lose their entitlement. Children—young people who apply while they are under 20—do not have to cohabit or be in in a relationship with their parent or step-parent, but if they reach 21 they have to be dependent on them to be eligible, and of course in situations of abuse or other issues, that factor will not be present. We have non-EU parents—sole carers of children, for example—and the criteria that bring them into the scope of the scheme are very narrow. You might be

a non-EU sole carer of an EU citizen child, the child being entitled to settled status, and you might be entitled to nothing under the scheme.

Lord Anderson of Swansea: In such cases how sympathetic has the Home Office been to a non-EU parent of an EU citizen?

Nicole Masri: In cases where they just do not meet the eligibility criteria there is no wriggle room. The Government is not granting leave outside the rules. I attempted this in one application very early on and it was quite clear that they were not going to grant leave to a person who does not meet the rules of the EU Settlement Scheme. We have been trying to influence Government to bring into scope more categories of non-EU citizens, particularly women who are fleeing abusive relationships so they do not feel compelled to be trapped in abusive relationships to secure status. There has been some sign of a sympathetic response. Last summer we received an indication from Home Office policy officials that they may change the Immigration Rules for one category—unmarried partners—but since then we have heard nothing, and there have been changes to the Immigration Rules, none of which has sought to address these issues. At the moment we have little confidence that the Government intend to change the rules to bring these categories into scope, but of course we will continue to urge them to do so.

The Chair: Before we move on to the next question, Lord Rowlands has a supplementary.

Lord Rowlands: May I ask about the numbers we are talking about? We had some figures from Ms Lagrue. How many applicants are in those groups of non-EU citizens?

Nicole Masri: It is impossible to say. Nobody knows how many people need to apply to the EU Settlement Scheme. There are estimates, of course, but none of us knows. For the non-EU cohort there are estimates out there of the number of non-EU national family members in the UK, and we are talking in the hundreds of thousands rather than the millions of non-EU citizens. For people affected by domestic abuse, again, there is no accurate figure. The most reliable estimated data was produced by the Migration Observatory at Oxford University. It published a table of data with estimated figures, but I am afraid it is very difficult for us to say.

Matt Downie: Something about the nature of this means we will never have accurate figures. What is of great concern to us—and this speaks to the continued funding issue—is that the people we will have worked with and supported to apply to this point will be those who are the easiest to help. If you think about the way in which, over a number of years now, vulnerable and homeless individuals particularly have sought to avoid the Home Office, and for quite good reasons, it is quite sensible to assume that there is a large number of people for whom really quite intensive work is needed, first to find them and then to support them to try to achieve the status. That is not because they would have less likelihood of achieving it. It is simply because there is a precarious nature to the way people are living,

quite often tied up with issues around exploitation and modern slavery. I do not know the numbers, but there are certainly a lot more than have applied already.

Lord Rowlands: Have you identified any problems with particular nationalities?

Matt Downie: One issue I wanted to flag is that for a lot of people part of the delay, even before the application processes start, is finding national identity proof. Some individuals are having to either physically go back to, or find a power of attorney in, the countries where they were born to try to attain some proof of identification. That is a particular issue with Romanian nationals. It may well be to do with the cost, or the way in which that system works in Romania, but there is also a disproportionate amount of people who are street homeless from EU countries in our cities. It needs more careful attention than simply broad-brush rules. We know that the Home Office takes a dim view of spending grant funding on assisting people achieve their identification requirements. There is some flexibility needed there as well.

Lord Polak: Marianne, you gave us some figures and I would like some clarification. You said that about 13% of children had applied up until September 2019, and from those figures it suggests that about 750,000 have not. Are all these children vulnerable or are they part of families? Do you break that up, because from the headline it could sound as if there are 750,000 vulnerable children out there, and I am not sure that is what you are suggesting?

Marianne Lagrue: The figure was 13% of applicants were children, so we are seeing that proportionally not as many children are applying as would be expected.

Lord Polak: Generally, are they part of families?

Marianne Lagrue: Generally, they are part of families. May I clarify? Coram Children's Legal Centre would argue that by virtue of being a child you have an inherent vulnerability when engaging with the state. There are particular categories of children for whom it will be more of a struggle. Some children are within families and their parents will be granted settled status and will apply on their behalf, and those children will be granted settled status. There are probably hundreds of thousands children in that situation.

The remainder, which could also be hundreds of thousands of children, might be made up of the following: children whose parents do not apply themselves, for whatever reason; children whose parents apply but who do not realise that their children need to apply because, historically, when applying for permanent residence it was not a mandatory application system, and very few people made applications for their children in that circumstance, even if they applied for themselves; and children whose parents believe mistakenly that because the child was born in the UK they are automatically British. There is considerable confusion about which children are British and which are not, and that is a really serious problem with the scheme. There are also children who are living separately from their parents. That includes an estimated 5,000 children in local authority care, an unknown number of

children in private fostering arrangements and children across the juvenile justice estate and in secure mental health settings. There are children whose parents choose not to apply on their behalf, or who withhold documents or necessary information because of an abusive relationship. We have had cases of that kind referred to Coram. Lastly, there are children who are not EU citizens themselves, but who are the child or the grandchild of an EU national or the stepchild or the step-grandchild of an EU national, who may not be eligible to apply because of something their parent did; for example, leaving the UK or being in prison in the UK. There are so many different ways in which a child might become vulnerable as well as the inherent vulnerability because of their age.

Baroness Goudie: I have to say it is quite disgraceful. I feel very strongly about this issue. The question I was going to ask is about vulnerable individuals, including teenagers, who are in difficulties until age 16 or 18. What is the cut-off age for vulnerable children before becoming an adult?

Marianne Lagrue: Under the EU Settlement Scheme you are considered a child until you are 21, except in the suitability requirements, where you are treated as a child until you are 18.

Q62 **Baroness Goudie:** What exceptions are made for vulnerable children, such as those in children's homes or children who are mentally unwell or other vulnerable young people?

Marianne Lagrue: The word "exception" would suggest that the Home Office was simply going to wave people through, or perhaps not require an application from someone in a circumstance that made them extraordinarily vulnerable. That is not the case. Every person who needs status under the EU Settlement Scheme needs to make an application, and that application needs to be decided favourably by the Home Office. There are no broad-brush exceptions to that rule. There is evidential flexibility, which I think there are questions about later and which touches upon all the categories of people we work with, but the biggest move the Home Office has made towards assisting people and children in that circumstance is that it introduced grant funding, which will end because, ultimately, perhaps more so than all other vulnerable categories, young children are not able to apply by themselves and they need concrete help from someone.

Baroness Goudie: Are the appeals still all done by IT or are there person-to-person appeals, because I find it bad that appeals can be done only by IT and so on?

Nicole Masri: Appeals have only just been introduced at the beginning of this month.

Baroness Goudie: That is why I asked the question.

Nicole Masri: To lodge an appeal with the First-tier Tribunal you can do so online. I think you can still send a fax, but, predominantly, it will be online. At the appeal stage people are going to need legal support. This raises another issue of real concern, which is that these matters are not within the scope of legal aid. A long

time ago our organisations were saying to the Government that vulnerable people would need support to apply and the Home Office response was to create a grant-funding scheme that community organisations could apply to. These were not necessarily legal charities that were applying. Although they included organisations such as Rights of Woman and Coram, which have a legal specialism, other organisations within that grant-funded network do not.

What is needed at the appeal stage, of course, is a legal specialist to undertake the case. In our view, it is absolutely critical that, at the very least for appeal stage, EU Settlement Scheme cases are brought within the scope of legal aid. The Government anticipate a very low number needing to appeal, and say they have refused only six so far, so it should be of no concern to the Government to at the very least introduce legal aid for appeals against settled scheme refusals.

Q63 **The Chair:** Before we move on, may I ask you to deal briefly with the issue of how difficult it is for people to apply if they do not have the standard of proof of identity and residence documents? Could you give some brief and precise comments on that? Time is moving on.

Matt Downie: That is the main point. It is not just about the difficulty of applying; it is the people who will not apply for that reason. We have a real concern about this. As I say, the overhang of the hostile environment issues in relation to homelessness means that if you are uncertain about being successful through this scheme, as a support provider it is difficult to get people to do this. There is an awful lot of work we have to do beforehand to ensure that we can give somebody the confidence that they have anywhere near the amount of documentation needed, particularly for people who over many years will have lost or had their documentation stolen anyway. Before we go into what forms of identification and documentation are accepted, there is a mountain to climb.

As has been said already, a hell of a lot is lumped into this idea that grant funding to support people is the answer. That is fine and we are very happy to have it, and it has really helped a lot of people, as I have said, but underneath that there needs to be the flexibility to say, "Okay, you have proof for four out of five years, but you have been working with a homelessness agency for all of those five years, or even longer," and that should be significant enough to get somebody over the line, but time and again it is not. Your question is so fundamental that I would not want to get into too many specifics about the type of documentation.

Lord Dholakia: We have the lowest age of criminal responsibility in this country for children as young as 10. How much has that been an obstacle in terms of granting them settled status? Are there any statistics available and is discretion used in dealing with young people with convictions for low-level crime?

Marianne Lagrue: In short, Lord Dholakia, we do not know yet because the Home Office is taking a very long time indeed to decide cases where there is any kind of criminal record for children and for adults. We know—and it took a long time for the Home Office to clarify this—that all applications are subject to automatic checks

against the Police National Computer where a person is over the age of 10. Applicants under 18 do not have to declare their convictions. That is the main difference. We have submitted lots of applications for children with criminal convictions, often with mitigating circumstances, such as a care history or mental health issues, but that does not matter. What matters is that we have no idea yet how the Home Office is treating them.

Lord Anderson of Swansea: Presumably some of the applicants in all categories would be in hostile environments in their home country. I think of the Roma community in central and eastern Europe, for example, where they are very marginalised, and where an embassy would find it difficult, even with the best will, to provide documentation.

Nicole Masri: The redocumentation process that Matt has referred to is really tricky. We know that the application process requires an individual to prove their identity and nationality, and the general way to do this if you are an EU citizen is to produce a valid passport or identity document. We have an exception built into the scheme. The Home Office obviously recognised the issue, having talked to groups like us, and built in an exception to enable it to accept alternative evidence of identity and nationality where it thinks the circumstances require it. The threshold is that you would have to demonstrate circumstances beyond your control or other compassionate or practical reasons why you cannot obtain a document. The Home Office has produced guidance to its caseworkers on how to apply this discretion.

Of course applicants are put off from applying in the first place, and this is where a support organisation makes the difference. We can assess whether this is the type of application where we should focus on trying to renew the passport or go ahead and apply without one and seek to persuade the Home Office that the reason is sufficient. We have had countless examples of where this is the case. I think Matt referenced Romania, where the national authorities say that people either have to return to Romania to redocument themselves or seek a power of attorney for someone to do that on their behalf. After a lot of back and forth, we established a third route that was available to individuals in country, but that third route meant a significantly longer lead-in where the individual would have to work with the embassy in the UK for up to six months to get redocumented. That was a route that we identified.

There are other problems. For example, we had an undocumented homeless German woman and the German authorities required proof that she had not acquired British citizenship before they would redocument her. They said to our client they would redocument her but first she needed to obtain a letter from the Home Office to confirm that she was not a British citizen. That letter cost £250, which this person did not have. When we met, a support worker from a homelessness organisation was busy applying for grant funding to try to cover this £250.

We were able to intervene with the Home Office. The Home Office is receptive to communications from organisations such as ours to see whether we can find a solution. The Home Office worked with us. It met the German consulate officials and it is trying to create a solution so that this woman does not have this barrier in place. We have yet to see whether this solution is going to be effective, but it is amenable to trying to resolve these issues. The problem is that I have yet to receive a decision for an applicant who has applied without a valid identity document. These paper applications go into the system and I have yet to see a response from the Home Office.

We see the Home Office asking these people for evidence: "Prove why you cannot give us this valid document." The most common scenario we deal with—and Marianne will have a lot of experience of this—is where we have single mums of children and the children are undocumented because the national authority requires the father's consent for a passport. The national authority says, "Either the father consents to issuing this document or you obtain a court order from the UK family courts giving you permission to obtain the passport". That is often the only route through which a child can get documented. Of course, this is a barrier that you would expect the Home Office to automatically accept as a reason for granting status without documents. We have yet to see the decisions on those applications that we have submitted, and I expect the same is the case for Coram.

Marianne Lagrue: It is.

The Chair: The question I have is about it being extremely labour intensive.

Baroness Hamwee: Indeed, and I think the Home Office should be jolly grateful to all your organisations for identifying the gaps in the system. Before I come to a question on IT, may I follow up your comments, Marianne? You said the Home Office is not very happy when you do work which seems to be outside the scope of what it was expecting you to do, although I do not know if I have got that right. There were also comments about the need for legal advice. As well as needing to know that the funding will be continued, are there conditions attached to what you can do? Lord Chairman, having asked that, because we had not thought we would ask it, if our witnesses would like to write to us on that, it might speed things along, but it seems to me that should be on the table.

The Chair: Yes, thank you.

Q64 **Baroness Hamwee:** I am supposed to be asking you about lack of access to, and I guess facility with, IT. Is that is significant barrier? You have hinted at that, or more than hinted.

Matt Downie: People do not tend to be carrying around laptops and smartphones while homeless. It is an obvious barrier in relation to the application process. It is a barrier in terms of being able to access documentation to prepare for an application. Somebody who springs to mind who works for us up in Liverpool, their whole job now is to work alongside applicants to do everything they can with the GP

and employers, for example, to find any way in which to gather documentation, in ways that would have been absolutely impossible for applicants without that support. It can be a tireless search through a never-ending web to find this documentation.

Of course, as I mentioned earlier, if it is successful, the person in question is still not carrying around a laptop or a mobile phone. When the benefits of achieving settled status can be realised, but there is nothing physical to demonstrate you have achieved that, that digital divide is there once again. For us, as I have said, that is the moment—where the outcome that we are all seeking whereby the person's status is regularised so that they can get on with their lives and get away from the nightmare they are living—at which they really need that hard copy. There are plenty of organisations, such as Jobcentre Plus, which are worried about the way in which the Home Office will view their activities if they are giving access to services or housing if the person has not resolutely proven their immigration status and right to be here. There is a lot that needs to link up here and relying on a completely digital system is a nightmare.

Q65 **Lord Anderson of Ipswich:** I have a question for Marianne Lagrue specifically about children in care. Starting with the responsibility for making applications, you say in your very helpful note that if a child is under a care order, it is the duty of the local authority to ensure that the application is made, either by making it itself or by supporting the child in making their own application. The first part of my question is: how is that going? Do we have figures for what proportion of the 5,000 EU children have had applications made for them?

Secondly, you mentioned that children who are not on care orders, which is about a quarter of the total, do not have a similar right, so who takes responsibility for them? Are people making applications for them? The third part of my question relates to the funding. You credit the Government and the Ministry of Justice for deciding to reintroduce legal aid for separated children with immigration issues. You also mentioned that your charities receive funding from the Home Office to make applications. Are there funding gaps and where do they come? Are we just looking at care leavers? Where there are gaps is the answer to try to extend legal aid or to try to extend the Home Office funding? Where is the need and what is the feasible solution?

Marianne Lagrue: On the proportion of children who are under care orders and how that is working, I am afraid I can speak only to the experiences of the organisations represented by the Refugee and Migrant Children's Consortium. We were promised figures by the Department for Education, which in summer 2019 undertook a data-gathering exercise across all local authorities in the UK to find out exactly how many children in care there were. The 5,000 figure was based on an extrapolation of the ONS statistics, which were also used by the Migration Observatory for its own estimate of how many EU national children there are in the UK, and they are quite flawed numbers.

We were supposed to meet the Home Office, the Ministry of Justice and the Department for Education to discuss the overall figure after the data-collection exercise was completed, but when that meeting was eventually held in October last year the Department for Education declined to share the number with us, without giving a reason, so we are not able to speak to how many children there are. We are operating in a bit of a void with the grant funding we have because we have no idea how proactive we need to be with local authorities to identify children. We are still getting a steady stream of referrals, which turns into a torrent every time a new deadline appears; for example, 31 October and 31 January. We are having to operate blind. I can write to you on the figures in more detail.

The answer to who is responsible for children who are not under full care orders is that the parent retains responsibility in a lot of cases. A child might be accommodated by a local authority by consent from their parent. The parent is unable to care for them, for whatever reason, and it might be abandonment, and that is the reason that the child is accommodated, but somehow the parent still retains the responsibility for making the child's application. In those cases, local authorities are not submitting applications for children. They do not have the right to do so. The legally thorough response would be to make a referral. What we are seeing is that for these children who are not under full care orders, and for care leavers, for whom the local authority also does not have parental responsibility as they are over 18, they are just being signposted towards the GOV.UK website and told to apply by themselves. That is where mistakes happen and that is where children under 18 and young people are getting an inferior form of status that will not safeguard them in the future. I went through the cases and found 10 examples since August. In all 10 cases those young people had no idea that they were going to have to make another application in the future. They thought they had "sorted their papers", as they put it. We think that we are storing up a huge problem in those kinds of groups and across all people who are granted pre-settled status four or five years down the line.

The Chair: The question that worries me is whether local authorities should have a statutory duty to support the applications of children in their care.

Marianne Lagrue: We are firmly of the opinion that local authorities should have a statutory duty to facilitate the resolving of immigration and nationality issues of any child in care. There are lots of non-EU children who are undocumented in care who need similar levels of support, but it is not for the local authority to take the action, because they are not specialists. These children are often quite complex cases.

The solution as we pitched it was legal aid, which you kindly raised. The issue we are seeing with legal aid is a very familiar one, where, in theory, it is there for this group now, and that is really something to celebrate, but the sector as a whole has been so cut to the bone that there are now very few providers left, so it is very difficult to refer those cases. Even though the solution is there in theory, in practice it is very hard to realise.

Lord Anderson of Ipswich: You referred to the Home Office funding at the start but one of you indicated later on that a dim view is taken of using that funding to support applications. Can you help me with what you use the funding for? If we write to Ministers making recommendations, what would be most practical and helpful from your point of view in terms of funding?

Marianne Lagrue: It was Mr Downie who raised the point that the Home Office does not look with a kind eye on using that funding for anything other than supporting people to make applications to the Settlement Scheme. Any costs involved in getting together the documents you might need to apply in the first place, which might run to hundreds of pounds—or more if you have to travel to a different country to get your passport—is not seen as a suitable use for the grant funding.

The question of whether it is the solution for that particular group of young people is a difficult one, because, ultimately, any support that is time-limited ignores the fact that the issues faced by these vulnerable groups are going to continue to be issues for a very long time. The scheme ends on 30 June 2021 and at that point a huge number of people will not have applied. I think we can all be fairly certain of that. They are going to need support in the long run. That grant funding is going to be long gone from all our memories when people will still require support, so the solution should be much longer term, such as legal aid.

Q66 **Lord Rowlands:** You have answered my question about what support has been available. There is a deadline of 30 June 2021. How in the name of heaven are they going to meet this deadline with all these applications outstanding? What else needs to be done?

Matt Downie: It is clear that it is insufficient—in two ways. We have talked about the limitations of the funding itself. We have talked about the deadline and, clearly, there are now people who, if the deadline was longer, would be eligible for application support if the grant funding was there. I wanted to raise something else, which is, if it were the case that funding was continued—and we very much hope it will be—there is something about the nature of this scheme which is quite different from the way in which the Home Office has operated in the past. The constant reference to the burden of proof being upon the applicant to show that they qualify and should be allowed to stay in this country is, in some ways, slightly positively changed by this scheme, where there is proactive grant funding to help people provide that evidence. That is incredibly helpful.

If you go back a couple of years, there was a Home Office scheme which was challenged and stopped in the courts, where EU nationals who were seen sleeping rough could be arrested, detained and deported simply because they were sleeping rough. When challenged, that scheme was upheld before the court by the Home Office with the line that it is up to people to prove they should not be arrested and they should not be detained and deported. This scheme allows for a slightly more humane approach. If it is funded for a longer period, if the grant funding is able to be as flexible as it needs to be, and if the slightly more reflective approach by the

Home Office works, it could be continued, because the burden of proof is slightly more open. I am not a lawyer and I use these terms in quite—

Lord Rowlands: Should be it be case that the Government have to disprove the case rather the applicant prove it?

Matt Downie: We would very much like it to be the case that Immigration Enforcement could not and should not start until a Settlement Scheme application has been tried and exhausted, and exhausted in a way that is legitimate, because, as I said before, this is helping people who previously had nothing, and all they were doing was trying to escape the Home Office. There are principles to this which, if continued and expanded, could be really helpful.

Nicole Masri: May I add to that around this burden of proof? This is a mandatory application scheme. Everyone has to apply and it is your responsibility to prove that you meet the eligibility criteria the Government have set. While the Government have made broad statements about their grant-focused flexible approach to applications, and we have seen that in practice, they have not really built this flexibility into the rules of the scheme. One thing that we have always pushed for is for the state to accept a shared responsibility in proving an individual's eligibility, because there are some vulnerable people who simply will not be able to prove their own eligibility.

This affects particularly non-EU national family members. For the women we support, for example, the Government are saying, "You prove your own identity and residence and prove the identity and residence of the perpetrator of the abuse". The women who are fleeing domestic violence are being asked to produce documents that are under the control of the perpetrator of the abuse and, naturally, they cannot do that.

We need the Government to say, "We are going to share responsibility with you to prove that you are eligible. We will do these checks. We will check our own records to see if we have seen your spouse's passport or evidence of residence in the UK. We have the power and will check his or her HMRC records and DWP records," but they do not say they will do that.

In practice, and in private, I have had Home Office officials say to me, "Of course we will do that," and I have seen in my cases evidence that they do, but they still refuse to commit to that in any public-facing guidance, and the question I would pose to them is: "Why? If you say to me in private that you will do it, and I see in my cases evidence that you are flexible and might do it, why won't you commit and let everybody know that you will provide the support when they apply?"

The women who reach our door and get our assistance are able to access this flexible approach because we are able to advocate on their behalf. We will submit letters of support in their application, so they will get the status they are entitled to. Of course, the bigger problem is all those people who will not get support. Matt made reference to individuals who have been here for five years but do not have

evidence for one year. That is not a problem for our clients because we make the necessary arguments to ask the Home Office to exercise the power it has already to overlook gaps in evidence. While there is no specific guidance that I can point to mandating them to do so, I know they have the power to do it and they do it where necessary representations are made. The concern of course is if people do not access the specialist support to do this advocacy on their behalf, which is probably the majority of people.

Lord Rowlands: So it should be shared responsibility.

Nicole Masri: Shared responsibility is absolutely critical.

Matt Downie: Thank you to Nicole for making these points much more eloquently than I could. I think the point is that if this funding is not continued, we are going to see a large number of people for whom their future in this country is extremely precarious, where people go further underground into really quite dark places in terms of exploitation and living circumstances, and the last thing they will want to do is make applications to the Home Office. This is an opportunity to reconsider a shared state responsibility for a bunch of people who are extremely vulnerable to everything that the worst excesses of criminality can throw at them in this country.

Q67 **Lord Polak:** Part of my question has been answered. We have been discussing what happens on 30 June 2021 when some people have not applied. I am encouraged by what you say, partly because of the work you are doing and partly because the Government have listened. This is a new game for everybody. It is not as if there is a whole precedent for it. If the Government are funding operations such as yours, and others, that is encouraging. Your last comment, Nicole, was very helpful for our letter because this shared responsibility is very important. But what will happen practically to those people who fall off the edge on 1 July 2021?

Nicole Masri: The Government have made it clear that people who fail to apply by the deadline will be unlawfully present. The consequences that flow from that are all the ones that we know face undocumented migrants in the UK—ineligibility to work, ineligibility for housing, ineligibility for benefits, ineligibility for healthcare and social care—and so that means job losses, evictions, refusals of benefit, destitution, denial of healthcare and denial of other care and, ultimately, if the Government chose to, detention and removal from the United Kingdom.

We know as organisations working with vulnerable people that people will miss the deadline. When you have a mandatory application scheme on a very tight deadline in which to apply, people will fall through the gaps. The question is: what do we do to protect them? Organisations such as Rights of Women would advocate, if not the conferring of status on these people automatically, which would be preferable, extending the deadline significantly, and ensuring, in addition to that, that you are clear how you will treat applicants who approach you out of time. The Withdrawal Agreement has provision within it for the Government to accept out-of-time applications where there are reasonable grounds to do so. We have been asking the Government for a long time to engage with stakeholders in producing guidance as

to what those reasonable grounds would be. The Government have told us that they do not want to consult us.

Lord Polak: Turn it round: what are your reasonable grounds? If you are not getting it from them you have to initiate it.

Nicole Masri: The bar needs to be low—absolutely. Certainly we would expect being the victim of domestic abuse to be reasonable grounds, being a child, being homeless, facing any of those kinds of extreme vulnerabilities, but even beyond that, if you simply demonstrate a reason—you did not know about it or you could not do it for X, Y, Z reason—it should be sufficient not to turn someone into an unlawful migrant in the UK.

Lord Polak: What do the Government or your agencies have to do to alert people should there be people who do not know?

Nicole Masri: Oh my gosh, there are loads of people who do not know.

Lord Polak: What is the practicality? Should there be adverts? Previously in this Committee we talked of all different ways—going to Citizens Advice or whatever it may be—but how do you get to people?

Nicole Masri: There are ways. The Government have a communications strategy and we are obviously working with people, but underlying that you need to accept that you will not get 100% coverage and therefore we need to protect the people who will not engage with it.

Lord Polak: Of course the danger if you do that is those people who might well do it up until that date will know that there is a sort of, dare I use the word, backstop and they can carry on. It is important to have dates because that focuses people.

Matt Downie: I would challenge that slightly to say if we are entering into a new era of the ending of freedom of movement, why do we need a deadline? If this was turned on its head and it was a registration scheme where, as we have talked about before, there was shared responsibility rather than an impossible-to-imagine scenario where people with extreme vulnerabilities are somehow meant to know about something that may not be in their language, in papers they do not read because they do not read papers, or whatever it might be, it is not credible to imagine that everybody who needs this will get it. Any arbitrary deadline will mean that people will fall foul of it.

Lord Polak: Most people who are not vulnerable who have to apply should apply and so you give them that date. I agree with you all that where there are vulnerabilities, and the way you are dealing with them, there has to be a bit of slack here, and it can go on. The danger is if you announce the slack, the people who could do it might not do it.

Nicole Masri: Most people are applying. We have seen the statistics. The Government announced most recently that they have received 2.7 million

applications. Of course we do not know how many people that is, but we know the number of applications. I think we can say that most people will apply. However, we are not concerned with the "most" and we have to protect the group that will not be able to engage in time. Not only do we need to ensure that they can apply out of time but that their status is protected in the intervening period, because it is no good if you can apply two months, three months, a year after the deadline, but in the intervening period you have lost your job, been evicted, become destitute, which is of course what happened to those of the Windrush generation when the Government provided solutions very late to their circumstances. We need to ensure that legislation protects the status of people who apply out of time before they get the status they are entitled to.

Lord Polak: Why not ask for that from the Government now?

Nicole Masri: We are asking.

Lord Polak: But you are not getting the replies that you want.

Marianne Lagrue: May I also feed in and say that there are plenty of other incentives for people to apply, beyond the fact of the deadline? Every time they want to move house or go to hospital or register with a GP even, every time they want to going to the Jobcentre, travel in and out of the country, they are being asked to produce evidence that they have made an application. There is no shortage of reminders. The deadline will cause a great many problems. The answer is: is it genuinely as much of an incentive in itself beyond all these others to justify the harm that will be caused, especially if the Home Office does not take action to protect the status of those people who do not make applications by the deadline because of their vulnerability?

I can give you a concrete example of a young person approaching leaving school who is a child at the time of the deadline. You miss it. Your parents do not make an application for you. You do not know, and there is no child-specific communication yet. You realise down the line that you ought to have done this and so you submit an application at age 18. You have a period of perhaps six months where you are beyond the deadline and you do not have any status under the EU Settlement Scheme. If that period means you are undocumented, not only can you not work in that period, and all the other things that we have said, you are also not going to be able to go to university. It is going to cause so many trickle-down problems having a period of being undocumented, even if there was a perfectly valid reason. The Home Office has already stated that if you are a child it will not be a problem to apply late because it cannot be your fault, but the period of being undocumented is still enough to cause major disruption and serious problems in your life, and that is difficult to justify.

Nicole Masri: May I add one final point? The deadline is not just for people to get into the scheme. There will be many deadlines for individuals with pre-settled status to apply for settled status before it expires, and, of course, those who need support

are a big risk group, because pre-settled status is temporary, it will expire, and if you do not get settled status you will find yourself undocumented as well.

***Marianne Lagrue*:** By that time there may be no grant funding either.

The Chair: Having a deadline is a double-edged sword. It concentrates the mind but it is the most vulnerable who are likely to fall off the cliff.

Baroness Hamwee: I was going to ask about the hundreds and thousands of individual deadlines which you have just referred to for people who have been given pre-settled status and will have to apply by a whole series of dates when the five years expire. Can you confirm that, apart from them being undocumented, if they do not apply, they cannot get benefits and so on, so they are completely without support? Have you had discussions about a period of grace beyond the point when they have to reapply, and that sort of thing, or is that still on the back burner?

Nicole Masri: Not from pre-settled status to settled status. There is a grace period within the Withdrawal Agreement to make your initial application, and we have chosen the minimum grace period.

Baroness Hamwee: The Home Office has not suggested that there might be a grace period.

Nicole Masri: There will not be. There is a potential risk that they simply will not be eligible to apply for settled status. Of course it is not just the people who do not apply in time we need to worry about. It is the fact there will be some people who will not be eligible for settled status: EU citizens because, for example, they have broken the continuity of their residence, or non-EU citizens because of change of circumstances like family breakdown. We really need to apply our minds to that. EU citizens who have pre-settled status, who perhaps need to leave the country to care for an ill or elderly relative for 13 months, and come back, will not get settled status, and they face having their pre-settled status revoked because they no longer meet the eligibility criteria. We really need the Government to refocus on amending the rules of the scheme, to allow these situations where discretion needs to be applied to people, to ensure that anyone with pre-settled status is able to get settled status, regardless of their circumstances.

The Chair: I am sure the Committee will want to explore this because it is a crucial issue. Lord Anderson.

Lord Anderson of Swansea: The consulates in the UK have the prime responsibility for the well-being of their nationals here. How helpful have you found the consulates in your contact with them?

Marianne Lagrue: It is a very mixed picture but, ultimately, consulates are mouthpieces for their national policy. To give an example, if you are a Polish child you need, as Nicole mentioned earlier, the consent and active participation of both of your parents to get a passport. That is what Polish nationality law says. For

children in single-parent families or children who are separated from both parents that is going to be impossible and they will not be able to get a passport. The Polish Government is not necessarily going to be aware of the issue or think to change their whole nationality policy and law to support a small number of their nationals who live in a different country where the UK Government has chosen to create a scheme that creates a problem.

Lots of consulates are doing useful things. The Bulgarian embassy is issuing emergency travel documents for people. They will last for perhaps one month or two months but can then be used to make an application to the scheme. They are not a long-term solution, but it is what it can do within the framework of its nationality laws. The UK's nationality law is complex and inflexible, and that is true of a great many other places around the world. Why should they change their policy? In any case, the consulates have no power to do so.

Lord Dholakia: May I pursue a matter relating to the lack of available statistics? We had a Question in the House yesterday about net migration figures. I have been in this country for more than 60 years. Every time I have come in I have had to go through immigration, so there is a record, but never in those 60 years have I ever been questioned when I am going out of this country. How are statistics produced on which we can rely in the type of evidence the Government continue to produce? I know it is much wider than that, but it has always bothered me, and I wonder whether you have a view on that.

Nicole Masri: It bothers me too, but I am afraid I cannot help you with it. Perhaps that is a question for the Migration Observatory. It might be able to answer that but I cannot.

Marianne Lagrue: There is something called the International Passenger Survey, which surveys a fraction of the number of people who travel in and out of the UK, a few per cent maximum. Those people are asked about their intentions and those numbers are scaled up, so these things are crude estimates, but I would suggest that if you want a concrete answer on that the Migration Observatory will be able to write to you in detail.

The Chair: We have covered a great deal of ground and we are very grateful to you for the detailed examples you have given of where there are failings or may be failings in the scheme. Is there anything that we have not covered in the very broad range of questions or you would wish to add very briefly to what you have already given to us?

Matt Downie: There is just one point that I wanted to raise in relation to the habitual residency test, because people who are homeless face all sorts of eligibility nightmares. In relation to Universal Credit and local authority housing assistance, the first thing is the habitual residence test, and it is becoming a growing frustration that people who have achieved their settled status are still not granted their habitual residence test. Proof of the five years is not counting as proof for access to other bits of the state. That is a real problem because part of the reason we are

working with people is so that they can access these things. It would be very useful for the Committee to note that.

Nicole Masri: I would add two brief points. Matt mentioned earlier the fact that people who received pre-settled status are not eligible for means-tested benefits or housing. This is a real cause of concern for us. They cannot rely on that status to access those benefits. It means the women we are supporting to get through the scheme who get that status cannot access a refuge when they are fleeing domestic abuse because they cannot use that status to access Universal Credit or housing benefit. The Government implemented that by statutory instrument last May, issuing new law to say that pre-settled status will not qualify you for housing or other benefits. We would like to see that looked at again.

The other issue is the hidden costs of the scheme. You will all recall that the application fees were scrapped for individuals to the EU Settlement Scheme, but for non-EU citizens there is a hidden cost, which if you do not meet you simply cannot access it. That is because non-EU citizens who do not already have a biometric document—which many do not—are asked to enrol their biometrics as a compulsory part of the application scheme. There are only three places in England where you can do that for free—Croydon, Manchester and Birmingham—and one in each devolved nation. Everywhere else you will have to pay to enrol your biometrics, at a minimum cost of £70. There is no fee waiver. There is no discretion. If you cannot meet this cost, you cannot apply to the scheme. This is the only procedural barrier in the scheme which has no flexibility whatever. People who cannot provide identity documents can apply on paper without them. There are all sorts of other concessions made, but for non-EU citizens who need to enrol biometrics, the Government has consistently failed to implement a solution if you are unable to pay that fee. We have talked to them about this for a very long time and there has been no change on that. We would ask for that to be remedied.

The Chair: Thank you very much for your attendance and for your expert evidence. We are very grateful to you. Obviously the Committee will have to consider it and see what further steps we take. Thank you to you and members of the public for being here for a very interesting morning.