



European Affairs Committee

Uncorrected oral evidence: Citizens' rights

Tuesday 16 May 2023

4 pm

Watch the meeting

Members present: Lord Wood of Anfield (The Chair); Baroness Anelay of St Johns; Baroness Blackstone; Lord Jay of Ewelme; Lord Lamont of Lerwick; Lord Liddle; Baroness Ludford; Baroness Scott of Needham Market; Viscount Trenchard.

Evidence Session No. 1

Heard in Public

Questions 1 - 12

Witnesses

I: Dr Kathryn Chamberlain, Chief Executive, Independent Monitoring Authority for the Citizens' Rights Agreements; Jane Golding OBE, Co-Chair, British in Europe; Monique Hawkins, Interim Co-CEO and Policy and Research Officer, the3million.

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Examination of witnesses

Dr Kathryn Chamberlain, Jane Golding and Monique Hawkins.

Q1 The Chair: Welcome to this one-off evidence session of the European Affairs Committee, a follow-up to the committee's 2021 report on citizens' rights. It will help to inform a letter that the committee will write to the Government. We are delighted to have three witnesses today: Monique Hawkins, from the 3million, who is here in person; Jane Golding, from British in Europe, who is joining online; and Dr Kathryn Chamberlain, from the Independent Monitoring Authority for the Citizens' Rights Agreements. Welcome to you all.

I should explain for information that the session is being broadcast, and once the transcript is available the witnesses will have an opportunity to correct it. I will ask members present to declare any interests relevant to the session the first time they speak or ask a question.

It is my prerogative, I guess, to start the discussion with a general question for the three witnesses. How do you characterise the current state of affairs regarding the rights of EU citizens in the UK and of UK citizens in the EU?

Monique Hawkins: Good afternoon. Thank you very much for having me. I would like to acknowledge the success of the EU settlement scheme and how the Home Office developed a new system and got so many applications through in a relatively short time, but if asked to characterise the current state I would call it somewhat stuck.

The EUSS seems to be considered done and dusted, and it appears to us that resources have been taken away from processing applications. There is a very steady backlog that does not appear to be cleared; there were over 180,000 applications at the last statistics. We think that at the current rate of processing it would take about six years to clear that. People are stuck in limbo. There are a lot of people who have been waiting for a considerable length of time, and I can give some statistics on that later.

We had some engagement with the Home Office about the problems of digital-only, and we feel that that engagement is also completely stuck. We tried to have constructive engagement. We were promised a forum, but nothing has happened and the Government seem to be in a bit of denial that there is a wholesale problem that is not just individual glitches. So "stuck" is what I would say.

Jane Golding: Thank you for inviting us. Considering that the residence application systems have been implemented in 27 different countries and there are two different types of systems, things generally have gone relatively smoothly in some countries. As for the current situation, however, in general we feel that resources allocated to the rights of UK citizens in the EU are being reduced drastically at the same time as we are now seeing a rise in serious and complex cases. We are seeing communication and support being reduced at UK and EU member state

level. On the ground it is a bit of a lottery now as to whether British citizens get any real help from their local embassy, because dedicated funding has ceased. So it rather depends on the approach of each embassy post.

I will refer to a comment that a commentator in the UK made and repeated in the European Parliament briefing published in February that UK citizens in the EU are living in a gilded cage. We do not see it as gilded. I suspect we are seen as a bit privileged for having maintained at least some free movement rights, but the fact remains that like everyone else in the UK we have lost our rights to live, work and study across the EU and we have rights only in the country where we live.

There is crossover with this committee's recent report on the UK-EU future relationship regarding mobility rights and recognition of qualifications. Those issues apply equally to us. An issue that was not raised in your report is inbound mobility for family reunification. We additionally face problems returning to the UK for non-UK family members due to the minimum income requirement now applying to us.

I am speaking here on behalf of the grass-roots population and as someone who, as a self-employed lawyer, is directly affected by these very issues. However, the issues that I have had to deal with pale in comparison to some of the specific cases that I would like to talk about later. Thank you.

Dr Kathryn Chamberlain: I will start at the same place as the others in recognising the scale of the challenge there has been. Given that the number of EU citizens in the UK was so many more than expected, getting to where we are now has been a significant achievement. The other side of that, of course, is that given the number of EU citizens in the UK, if there are any problems, even those affecting a small number of that constituency, they can none the less relate to a relatively larger number of individuals than we might want.

The experience we have had since we have been operating is that there has been a general commitment and a willingness among public bodies to work with us to try to resolve the issues. We have undertaken monitoring for legislation and had resolutions for that, and we have had quite a number of early case resolutions in relation to the issues we have raised. Having said that, I echo some of the observations from the other witnesses that a number of the cases that we have seen have been particularly complex. It is in those complex cases that we are seeing the greatest challenges in achieving some sort of resolution.

Having said that we have worked to achieve early case resolution, we will encounter more complex issues. You will be aware that we have opened an inquiry into the delays in issuing certificates of application to enable individuals to exercise their rights. That is due to report soon. There are a number of slightly more intransigent issues in which it takes a lot more work to get to the bottom of the root causes of the difficulties. We will

come to judicial review later, but there are also challenges in interpreting new legislation and what it means in practice.

Overall, to characterise the situation, we experience very constructive working relationships with the public bodies concerned and with organisations such as the 3million and those representing the interests of EU citizens. So although it is fair to say that we have not had a high number of individual complaints to us as an organisation, the intelligence that we have been receiving from others has pointed to a number of issues that we are looking into further, and you will see those on our website. As others have said, we will get the chance to explore some of this later in the session.

The Chair: Thank you to all three of you for very helpful opening remarks. I will turn to my colleagues now for more detailed questions.

Q2 Baroness Ludford: I want to ask about the move from pre-settled to settled status in the UK. First, I will ask Dr Chamberlain about the High Court ruling last December as a result of an application by the Independent Monitoring Authority that the UK's EU settlement scheme had been operating unlawfully as failure to upgrade from pre-settled to settled status could, but should not, cause right of residence to be lost. What steps do you think the Home Office should now take following this judgment? Also, is the IMA content with what the Government are doing so far to implement—or not to do much about implementing yet—the High Court judgment?

Dr Kathryn Chamberlain: As you say, we were particularly concerned by the thought that citizens might automatically lose their rights because of the failure to take an administrative step to convert from pre-settled status to settled status. We were very pleased with the outcome of the court case. Ultimately, the decision on how the judgment of the court should be implemented is a matter for the Home Office. It is not for us to tell the Home Office specifically what it should do.

Having said that, we do not yet have the formal outcome from the Home Office's own considerations about how it will respond to the judgment. We are working with the Home Office to ensure that we can have early discussions about the proposals that emerge. We are keen, as part of that, not to be an adviser to the Home Office per se. We have to retain the right to disagree with the ultimate outcome if that is where we end up, but we would like to try to pre-empt that and to do as much as we can to make sure that we are satisfied that whatever comes out at the end is consistent with the withdrawal agreement, so we are working with it.

In the meantime, the first individuals who may have been at risk of losing their rights will come to that point in August. We are happy that there is a way to avoid that happening automatically while a final solution is arrived at. For the time being, we would encourage individuals to apply for settled status, because it provides them with certainty. None the less,

we will continue to work with the Home Office to try to get a resolution that we think is consistent with the agreement as drafted.

Baroness Ludford: My next question was going to be how you would respond to the fact that, in recent correspondence with this committee, a Home Office Minister said that those with pre-settled status would be encouraged to apply for settled status when eligible, but you have already answered that question by saying that that would be your advice as well. I will say, perhaps slightly provocatively, that we are five months on from the High Court judgment, so is it good enough for the Home Office to say, "The onus is on the EU citizens to still apply for settled status, because we haven't got round to doing anything about the situation"?

Dr Kathryn Chamberlain: I think the important thing is that individuals who do not get around to doing that do not automatically lose their rights. That was the judgment of the court. Part of the reason for encouraging them to do so is because we are keen that individuals take steps as much as possible to get the certainty they need to be able to live their lives. I think any of us would say that the sooner we can get these things done, the better. That is why, as a general principle, we have gone for early resolution rather than long-term resolution. Whatever solution we arrive at, it is important that it is robust, it is consistent with the legislation, it sticks, and it provides long-term certainty.

On balance, I would prefer that we took the time to get this right rather than rush something that does not fully solve the problem. It is a balance between taking the time necessary to get to the correct solution and, in the meantime, making sure that protections are in place.

Monique Hawkins: I can understand the benefits of having proof of permanent residence or settled status under the withdrawal agreement, but there is nothing to stop the Home Office building on its success in automating the EUSS and granting that automatically. The withdrawal agreement allows loss of status only for reasons of conduct or excessive absence, and it should have data on both. I feel that it should be able to grant settled status automatically, and in cases where it thinks that somebody has fallen foul of those it should invite people to submit evidence to explain their absence—for example, as part of the Covid exemptions for long absence, or whatever.

That would greatly simplify the evidence side and the process side. Currently the process side is very confusing. We have seen lots of people directed by the website to add evidence to their closed pre-settled status application as opposed to starting a brand new application from scratch. We have written to the Home Office about it and we have kind of been ignored.

Also, with regard to the evidence burden, you should simply be able to declare that you have not had excessive absences rather than being asked to go all the way back for those five years. After all, the Home Office granted you pre-settled status in the first place, and a lot of people

who came in during 2020 struggled with a digital footprint because of Covid. Lots of people's boarding passes were not accepted. Asking people to go through all that again would be unacceptable. A lot can be done to make it easier.

Q3 **Baroness Blackstone:** My questions are directed in particular to Dr Chamberlain and Ms Hawkins. Could you tell the committee a bit about the impact of these very long delays in the application process on EU citizens in the UK? If you could give us some illustrations, and put some flesh on the issue, that would be very helpful.

Dr Kathryn Chamberlain: We are aware of delays in certain stages in processing applications. We have received complaints and intelligence about individuals' experiences, and I will give you a specific example of one of those in a moment just to give you a flavour of it.

We are particularly receiving complaints about delays in administrative reviews or delays with applications for joining family members. Clearly, a lot of this impacts on people's ability to live their lives. It creates uncertainty and delays in individuals being able to make decisions about what they do next. One might argue that the fact that they have a certificate of application protects them and means that they can get on, but it is that uncertainty that causes such difficulty for so many.

A specific example concerns a citizen who made an in-time application to the EU settlement scheme in November 2020. The application was paused due to a pending prosecution, which was resolved with a not guilty outcome in 2021, so potentially the reason for pausing has been resolved. The complainant had not received any further communication from the Home Office, and when they contacted the settlement resolution centre they were given no further information on timescales for an outcome.

There are a number of issues to unpack there, such as the role of the settlement resolution centre and how it works, but in this case the complainant explained to us that it had made it difficult for them to apply for jobs, college, benefits—particular issues. They reported in this case other than that other family members were already residing in the UK and had a status under the EU settlement scheme.

What we come back to in all this is that the fundamental impact of these delays is the uncertainty and the impact it has on individuals' ability to make the fundamental decisions they may need to make to live their lives. In this case, the complainant referred to feeling confused, stressed and just not clear about where they could go next. It can often feel as if issues of delays in processing can be quite dry, procedural and bureaucratic. At the very heart of your question is that these delays impact on the experience of individuals and their ability to move on.

Monique Hawkins: I agree completely about the anxiety. The Government's official expectation management does not help here. There is a page that says how long applications should take, which is between

five days and a month, unless there are strong complicating factors. That page has not been updated since May 2020 despite us and the ICIBI repeatedly asking them to. Over 1.5 million applications took longer than three months, and 60,000 have taken longer than a year, and those are just from the ones that are already concluded. We got these figures from freedom of information requests. That is a concrete measurable disadvantage when it comes to the right to work and the right to rent. The University of York recently published a piece of research that it did together with a survey done with YouGov which showed that having a share code for a pending application was a significant disadvantage when it came to landlords choosing.

There are other issues that we have recently summarised in a letter to the Home Office and copied in the IMA. For example, you cannot exchange a driving licence while you have a pending application. You cannot apply for a provisional licence. You cannot apply for an EHIC card. It looks like you cannot apply for a national insurance number, and you struggle to get universal credit. You cannot update your UKVI account with a new identity document. Unless you have evidence of living here before 2020 and you live here, you are advised not to travel out because you would struggle to come back in over the border, so you are effectively imprisoned here. People who have applied from outside either to the settlement scheme or to the precursor to that, the family permit, are told they cannot travel here, so families are split up for a very long time, and family permits take on average over eight months to be processed.

Baroness Blackstone: Thank you. Can you both say a bit about the Home Office's response to criticisms that must be made about these inordinate delays and their impact on applicants? How does it explain the total failure to deal with this in a reasonable time?

Monique Hawkins: It tells us that people have their rights. In every newspaper article or letter, its line is that people have their rights with a certificate of application. It is just in practice—.

We hope to get a response to the recent letter where we have summarised all these issues and asked lots of questions, but very often it takes months to get a response and often we do not get a response to our letters.

Dr Kathryn Chamberlain: It is interesting that you raise this one. This is an active area of investigation for us with the Home Office at the moment, so we are keen to get to the root cause of some of these delays. The specific example I gave you seems to have started at the point of a pending prosecution. Understanding what causes a specific application to get paused or delayed or not get reactivated is fundamental to being able to get some resolution.

We are talking actively to the Home Office about this at the moment to try to get a better understanding of how we resolve it. It is not always simply a matter of resources, although of course resources help.

Sometimes it can be about policies, bureaucracy, the nature of decision-making. If we are going to get things to move on, we need to get to the core of what is happening here.

Monique Hawkins: We recently helped somebody who had been waiting for two years. We asked another organisation to approach the Home Office and their application was resolved overnight. There was no prosecution pending. There was nothing there at all. It seemed like the application had fallen behind a sofa. There was no explanation.

Lord Jay of Ewelme: Have these delays caused any hardship to people or are they just a nuisance?

Monique Hawkins: They have undoubtedly caused hardship. There will be people who have lost jobs and job opportunities, and it spirals. If you do not get work, you struggle to pay your rent. You try to move somewhere cheaper and the landlord does not take you. It is Windrush-type scenarios. You start off okay and you spiral into potentially destitution.

Lord Jay of Ewelme: Do you agree with that, Dr Chamberlain?

Dr Kathryn Chamberlain: I would refer you back to the example I gave. That particular individual talked about being unable to apply for jobs and for college, and the personal impact on them from the anxiety and their inability simply to live their lives. It is clear that there are very real individual impacts arising from what might be perceived as simple administrative processes.

Q4 **Lord Lamont of Lerwick:** My question is to Jane Golding. It is the other side of the coin, although I imagine the problems may be similar. How effectively has the process of applying to residence schemes in individual EU states operated for UK citizens there? We have heard evidence of the difficulty of proving residence rights and delays in processing. What impact have any issues had on UK citizens?

Jane Golding: I will sum it up by saying that the experience has been very varied, so perhaps I could start by talking about the variations across member states. First, do you need me to explain the difference between the two systems—the constitutive and the declaratory—which EU member states could choose to implement?

Lord Lamont of Lerwick: No, I think we know that.

The Chair: Yes, that is understood, thank you.

Jane Golding: Okay, fine. I will give some examples based on constitutive systems and declaratory systems in member states. We have seen that, in constitutive systems, applications for residence have been relatively smooth in some countries such as France, the Netherlands, Luxembourg, Hungary and Austria, but in others they have not. A big example is Sweden, where there have been a number of serious refusal cases and the rate of refusals is statistically higher than in other

comparable countries at around 11% to 16%. We have seen cases like a family of four with young children facing an order to leave, and the recent well-publicised case in the media of a 74 year-old lady with Alzheimer's living in a care home who also faced an order to leave. In these cases, a volunteer from the Brits in Sweden group has been helping and we have been giving background support.

I will highlight the case of Denmark, where the experience was initially good in the lead-up to the deadline with the application system, but then serious issues came up in autumn 2022 with late applications. A large number of those who arrived in 2020 did not receive a final instruction from the Danish authorities to apply for their status. Some applied only a few days late and nevertheless received refusals and orders to leave. In that case, following advocacy from British in Denmark, with our support and political and media pressure, plus follow-up from the UK embassy and the Commission, it now appears that there is a political solution, but it is yet to be fully implemented and British in Denmark is still monitoring the situation.

The same issue has now arisen and become serious in Sweden, with more than 900 late applications and a current refusal rate of around 60%. Sweden appears typically not to be accepting the reasons given by UK citizens as being valid justification for missing the deadline.

As for declaratory countries, I will compare Spain and Portugal. In Spain, existing residents' documents that were previously held as EU citizens were open ended. Those in Portugal were not. Spain rapidly rolled out a system for securing documents showing that the holder was withdrawal agreement-protected, although the old documents in parallel still remain valid, and the process worked relatively seamlessly given the large numbers of UK citizens in Spain.

Portugal compounded the issue of old documents expiring by having a late and not-fit-for-purpose application process. Issuance of cards is now proceeding, but there are still problems related to payments for cards, officials incorrectly issuing five-year instead of 10-year cards and family members of British citizens are only now, in the last few weeks, able to apply for their cards. There again, the volunteer group, British in Portugal, has worked hard to highlight this and to support British citizens in Portugal, while we raise the issue consistently at UK and EU level, especially at the specialised committee.

Very recently, in the last week or so, we have seen a potentially serious issue arise in constitutive Malta relating to young people. There were already many problems back in 2021 with the deadline concerning the status of children. There was conflicting advice about how and whether they had to apply. Those who obtained residence permits have to renew them at age 18. We are now hearing reports of young people who renewed late and have been told that their cards cannot be renewed, either because their status is unclear and they are being told they may have overstayed or because they have been asked to provide documentation from scratch to prove their status. This is similar to the

case in the UK concerning EU citizens with pre-settled status moving to settled status. In fact, in this case, if there were to be any consequences at all, it should really be whatever consequences a Maltese teenager faces for failing renew on time, because the principle of equal treatment applies to withdrawal agreement beneficiaries.

I will take the opportunity to say something about the principle of equal treatment, if I may. We have seen a lot of confusion about how this applies to withdrawal agreement beneficiaries, even in countries where the residence system is proceeding smoothly—for example, Austria. We think that more clarity and follow-up from the Commission is needed there.

Q5 Lord Jay of Ewelme: How effectively do you think the Home Office's digital-only system for EU settlement scheme applicants and status holders has operated? This committee in the past has been a bit critical of the focus on digital systems only. Were we right there? Have issues arisen as a result of the use of a digital-only system? Have any particular population groups been particularly impacted by the use of a digital-only system, as we thought might have been the case?

Monique Hawkins: Do you mean the application system or the status that you get at the end of it?

Lord Jay of Ewelme: I was thinking of both, really.

Monique Hawkins: Okay. The application system is mostly digital, but there are paper forms as well and there are back-ups. It has enabled a lot of applications to be made quickly. One problem is that the system can be updated very regularly and there is very little transparency over those changes. When you had application forms, there was an audit trail of when the forms were updated. There are videos in circulation showing people how to go through the process, but they often go out of date very quickly, and I have seen refusals of children, for example, simply because one question was ticked earlier on that took you on a different path, and it is very difficult to reconstruct that. There is a drawback there.

The digital-only status is problematic, for two reasons. One is that there is a group of people who are digitally excluded and who would always struggle with a digital-only system. Another is that even for people who are perfectly comfortable with digital systems, there have been too many technical issues. The withdrawal agreement allows for a digital document, but we would argue very strongly that this is not a digital document. It is, instead, a repeated interaction with a Home Office website giving you a temporary share code. It is very fragmented and fragile and it does not belong to the status holder.

I will deal with all those separately. When I say "fragmented", you do not log in and get a simple record from a database. It is not stable. Instead, it is drawn from lots of different databases on the fly. If you will allow me a visual prop, imagine that instead of having a passport to show your right to work you have to log in. The system gets lots of different bits of

the puzzle together, and you have to hope that they fit together properly and turn up on time. We generally see cases where one piece, like a photograph, is missing, which means that it is not fit for purpose for proof of right to work, because the employer has a statutory duty to check that the photograph matches.

What is even worse—we have seen this, and we call it entangled status—is where someone logs in and sees their own photograph but somebody's else name and status. We wrote to the Home Office about that and got the explanation that it is very rare and is only usually with twins where there is close data. But we have recently seen a new form of this where someone logs in and sees the correct data, but when they go to generate a share code for right to work, they get shown a preview of that right to work and it shows somebody else's status.

There have been so many gaps and problems. What makes it much worse is the length of time to fix these problems. The only mitigation is the settlement resolution centre, and it can take weeks or months. We spoke to somebody this morning who has been waiting for six weeks and there is still no update. They get a weekly text message saying, "We're terribly sorry, but—", and it is just a standard message.

When I say it is fragile, the problem is that it can work one day and not the next. It just stops working without anything having happened in the meantime, from the user's point of view. The Home Office has always said to us, when we say that we want a physical back-up, that physical status can be lost, stolen and tampered with. Our contention is that this status is getting lost and tampered with, but not by the owner. It is being done outside somebody's control.

I would contrast it with something like the Covid pass that was rolled out. That sits on your phone and belongs to you. You can show it when you want. This is something that you have to repeatedly try to get from a database. Also, the Covid pass allows for physical back-ups; you can print it out yourself if you are travelling. People who did not have smartphones were able to contact the Government and get a letter sent to them.

Lord Jay of Ewelme: So it is not just a question of being digitally incompetent. It is a question that however competent you are you can still find the system not working work in your favour.

Monique Hawkins: Yes, and it takes a long time.

Lord Jay of Ewelme: Thank you. Dr Chamberlain, could you comment on this, too?

Dr Kathryn Chamberlain: Certainly. Very much as Monique says, in most cases the scheme has operated effectively, but that certainly does not mean that it has for everybody. There is a complex raft of responsibilities here. Some of the issues that we receive are about individuals themselves not maintaining the information on the system. In other cases we are hearing complaints from individuals who believe they

have updated their information on the system, yet the system is not showing the updated information that they believe they have submitted. You are also right that issues exist for people who may simply lack the digital skills, awareness or capability to interact with a system of this sort.

Interestingly on the question of population groups that have been particularly affected, one of the Home Office's own defined vulnerable groups is vulnerable children, those who may be looked after by the local authority. We have been asking ourselves far more about this. It is not just the difficulties arising that we hear about that are important. The fact that we may not hear of a problem does not mean that there is no problem. We have recently been working with local authorities to seek positive assurance that they are doing what is necessary for the children in their care to enable them to access their rights in the future. There is quite a complex environment sitting around this that requires the individual themselves to do what is required of them, the individuals in the Home Office to do what is required to make sure that the information is up to date, and other public bodies to make sure that they are looking after the needs and interests of the most vulnerable and those who find it difficult to do it for themselves.

Going back to the issues that Monique raised, we are talking about a very large, complex, novel system here. I think we all understand that technology does not always work. The fundamental issue here is that where we have a digital status and a digital system of this sort, it is most important that it is maintained and audited and has the right information in it and works. Raising and reflecting those issues back and making sure that system fragility is being tackled is the key issue here.

Viscount Trenchard: As a supplementary to Lord Jay's question, when you are filling in the form to get your proof and you cannot complete it because you are missing some information, can you save what you have input so far when you exit, or do you have to start all over again once you have exited?

Monique Hawkins: This is when you are applying for status in the first place.

Viscount Trenchard: Yes.

Monique Hawkins: The3million does not do casework. We do not sit with people doing the applications, although I did at the beginning, so I cannot say with much authority, but I believe that it does save the application and you can go back to it.

Q6 **Viscount Trenchard:** Thank you. Going further from Lord Jay's question, I would like to get a sense from you, Dr Chamberlain, of how much trouble and concern the lack of physical proof of status is causing those with settled status and those with pre-settled status. Would the problems that people have going about their daily lives without any such physical proof be relieved if they had it?

Dr Kathryn Chamberlain: To a degree, it is not an issue for the Independent Monitoring Authority. We are here to make sure that the withdrawal agreement is properly implemented, and under the withdrawal agreement it is legitimate for the UK to be operating a digital-only system. To that extent, we do not necessarily have a view on whether there should be more physical proof of that. As I think I said, we have an interest in the extent to which that system is functioning effectively to enable people to exercise their rights. Where that is not the case, we raise those issues with the Home Office. You will see from our website that we have an issues log that lists the issues we are talking to the Home Office about, and we ask the Home Office how it seeks to resolve the challenges that individuals are facing.

It is interesting that Monique points to new technologies, which may not even be new technologies these days—the codes and type of apps that you can have on your phone. I am sure that transitioning to new technologies will be on the agenda with the Home Office. But, going back to your original question, it is not for us to tell the Home Office that physical proof is necessarily a solution to the challenges that individuals face.

Viscount Trenchard: Thank you. Do you think there are any other viable alternatives to the current system of digital-only proof of status? For example, in the case of a passport you can have a certified copy of the physical document. Could you not have a certified physical copy of a digital document?

Dr Kathryn Chamberlain: I would almost refer you to my previous answer, in that it is not the role of the Independent Monitoring Authority to tell the Home Office what steps it should take. It is our role to require it to take steps to address the issues so that we can look at its proposals in the context of the legislation.

Viscount Trenchard: Okay. Monique, could you comment on that?

Monique Hawkins: We did a lot of work in developing an alternative implementation of digital status. We ran that past various technology companies and the organisation that was involved in developing the application system for EUSS. They all endorsed it. It is based on similar technology to the Covid pass, and it is exactly as you say: it uses a secure QR code that validates the data that you see in the rest of it, which proves that it has not been tampered with. We have a little flyer. It could be an app on a phone or a sticker on a passport. It could be issued as a card and you could print it out yourself. This code verifies the rest of the information. It is a simple scan that shows that the code cannot be tampered with.

The Home Office very briefly engaged with us on this just after I gave evidence here two years ago. When people wrote to their constituency MPs and contacted the Home Office, the Home Office said, “Yes, we are engaging with the 3 million on this proposal”, but it went very quiet. It was only a House of Lords debate that eventually triggered an official

response where it rejected the proposal on a lot of grounds that I would consider spurious. We wrote back within a few days with a very detailed rebuttal of every point it raised. All we ask for is engagement, because we genuinely have a good proposal. There may be other alternative proposals, but we just want to talk about it. It has gone quiet.

Viscount Trenchard: Thank you. Jane, do you have a view as to whether there are any lessons that can be learned from arrangements for proof of status for UK citizens in EU member states?

Jane Golding: The only comment I can make is that the system is completely different across the 27 EU member states. The Commission adopted an implementing decision in February 2020, which provided for a standard-format physical biometric card for withdrawal agreement beneficiaries and was to be implemented by all member states, which it has been. That means that all UK citizens in the EU who apply for a residence permit or register for a residence card receive a physical card in that format and do not have to rely on a digital-only status.

Viscount Trenchard: Thank you.

Q7 **Lord Liddle:** It is a very interesting discussion so far. I want to shift it now on to a slightly different issue, which is the problems that people have in crossing the border. There are clearly a lot of changes under way. Let us just consider the present situation at the moment for British citizens in the EU and the 3 million or 5 million EU citizens resident in Britain. What issues have there been at the border? Are these problems serious and extensive?

Monique Hawkins: We have had a lot more problems reported to us of people boarding an aeroplane abroad than at the UK border, but when there is a glitch on somebody's status we have seen moderate delays getting to the border, where a Border Force officer perhaps has to go to a back office to check somebody's status.

We have seen a number of people who have had what we are calling a flag on their passports that is sometimes linked to a previous refusal of status, even if they were subsequently granted status. These flags appear to be incredibly persistent. We have had a few people say that they travel a lot for work and every time they enter the country they are subject to a delay of about an hour. They keep being promised that this flag will be lifted and it is not. For security reasons, the Home Office will not explain very much about these flags and nobody seems to know how to get them lifted.

Lord Liddle: Is there a mechanism by which people can complain to the Home Office about this and try to get it done?

Monique Hawkins: Yes. We have directed people to that complaints mechanism. In fact, one person I spoke to was assured that it would not happen again, and then one evening I was travelling back from London and she phoned me and said, "I'm here at Heathrow again and I'm stuck again. I do not know what to do."

Lord Liddle: Is it a problem of the system or is it a problem of passport officers simply not being sure what the rules are?

Monique Hawkins: In one of our reports to the Independent Monitoring Authority we analysed the problems of maintaining a digital system and posited that there is a bit of a design flaw in that there is no single log-in that stays permanent for your whole lifetime, in the way the Australian system works, for example. You log in with your passport number, and if that passport number is linked to different applications, including a past refusal and a present grant, you cannot determine easily which one pops up. We think there are potential design issues with having multiple applications against a passport.

Lord Liddle: Jane, what has the situation of Britons living in the EU and their experience been in travelling?

Jane Golding: There have been a large number of travel issues, especially transit problems, and sometimes some very serious cases, particularly last year. The biggest issue so far, we think, is misunderstandings by Schengen border officials and associated police forces of the different types of residence documents for different member states. That is in addition to continuing unnecessary passport stamping, which sometimes exacerbates the problem. This creates a lot of emotional stress, because not all British citizens understand the rules or are confident enough when they face challenges by border officials on these issues.

In one particularly distressing case, there were a number of serious cases involving Portuguese residents who did not yet have their new withdrawal agreement cards—I have mentioned the delays in issuing them in Portugal—and Spanish residents who were still carrying valid, at least in Spain, green EU citizen resident cards. Last year, one Spanish resident who still held an EU citizen card, which is still valid in Spain, was removed from a bus after transiting the border in Germany, detained, charged with an immigration offence that carried a criminal penalty, and given an order to leave. It took several months, support from both the Spain and Germany national groups, legal advice, plus the British embassy, to have all the charges dropped and personal details, including photo and fingerprints, removed from the record, which would have caused this Spanish resident problems if they had travelled around Schengen afterwards. Those are serious problems.

Lord Liddle: Yes, but are they fairly occasional ones?

Jane Golding: They were not fairly occasional, certainly not for the Portuguese residents who were scared to leave the country because they did not have EU withdrawal agreement cards. Once we raised these issues with the Commission, it went back and made sure that countries had properly notified documentation, so that annexes 22 and 43 of the Schengen border guards handbook could be updated. That solved a lot of the problems, but it is not just a problem of updating the border guards handbook. It is also a problem of clear instructions being given nationally

to border guards, so we also asked the Commission to follow up with member states to make sure that proper instructions and clear instructions were given to border guards and border police.

Lord Liddle: Dr Chamberlain, do these border issues fall within the IMA's remit in any way, and what view, if any, does it have of them?

Dr Kathryn Chamberlain: They do to a degree. We have certainly been made aware of citizens who have status or pending status experiencing difficulty at the borders, and we have 25 cases on our system at the moment of individuals who have raised with us problems that they have had. We have not identified specific vulnerable cohorts, but I echo what Monique said in that some citizens who were initially refused and subsequently successful have experienced challenges.

One challenge is that we are concerned specifically with public bodies, but issues were raised with us about airline carriers not accepting relevant forms of ID for travel. We wrote an open letter to airline carriers reminding them of the ID people that were required to have to travel to the UK. A lot of this is about awareness raising with carriers but, as Jane rightly said, it is also about the guidance and training that is provided to people at the border.

The main issues reported to us are citizens with status not being able to travel using their national ID card, citizens with pending applications or certificates of application not being able to enter the UK, or citizens with previous refusals being flagged for further checks, as I have said. We want to get behind some of this, so we visited Stansted Airport so that we could talk to those on the border and observe what was happening. We saw a few people with settled or pre-settled status needing further checks. Typically it took 10 to 20 minutes for those checks to be undertaken. Admittedly this was Stansted. There is quite a high volume of throughput there, and you would expect a high level of awareness of these issues.

We continue to monitor this to see if there are clusters or areas that indicate that there might be patterns of problems. In the meantime, we will continue to monitor it. We will share information on social media channels to encourage individuals to make sure that they are travelling on the correct documents, but also that those who are performing the checks know exactly what is permissible and what they should be looking for.

Lord Liddle: Do you regard these things as occasional or significant?

Dr Kathryn Chamberlain: "Occasional or significant" is a bit of a blunt phrase to use. They are not necessarily common and widespread but, as I say, we spent a day observing at Stansted and we saw a number of additional checks. It is not as though everybody was going through entirely smoothly, but we did not feel that it was a significant issue particularly on that day.

Q8 Baroness Anelay of St Johns: At this stage, I should declare a very ancient interest. Six years ago, my job at the Foreign Office and then at DExEU was to travel around Europe at the very early stages of negotiation meeting EU-resident UK citizens. I have maintained an interest in the barriers that have existed since then. Thank you for the evidence that we are hearing today.

I will pick up on details relating to the digital and cross-bordering questions and ask Monique Hawkins and Jane Golding for their responses first, but then I will go to you, Dr Chamberlain, to see whether you want to add anything that you feel is relevant. I know you have said on more than one occasion that it is not for your organisation to tell the Home Office what to do, but there may be some issues that you would like to add.

The Home Office has announced plans to roll out a range of changes to our border agreements by the end of next year, including the use of additional digital systems. Also, the EU has announced its much delayed plans to introduce a new ETIAS—European Travel Information and Authorisation System—next year. It seems to be put back and put back. Perhaps they are sorting out some of their digital problems.

We would like to know your view on the impact these changes will have or may have on EU citizens entering and leaving the UK and UK citizens entering and leaving the EU. We want to know what the problems are and how the UK and the EU should proceed to minimise any difficulties.

Monique Hawkins: For our cohort, the UK's implementation of ETA is more relevant than the EU's implementation of ETIAS, because with the ETA—the electronic travel authorisation—visitors will need to apply for it, but our cohort are not visitors, so they cannot apply for it. When they have gone abroad and are trying to come back, they need somehow to convince the airline that they do not need an ETA. Their proof to do so comes from a brand new system, which does not get talked about very much, where, at the point of them trying to check in online, a message will be sent to the UK that will ping back, "Yes, this person is allowed to travel, because we know about their digital status".

The problems we have seen so far with travelling with identity cards and at the border are like a canary in a coalmine, because they will now be pushed further upstream at the point of trying to board abroad. If the system returns a "computer says no" for an individual, the individual will be very hard pressed to convince a boarding or checking agent to let them board the plane. If they had that problem here in the UK, they could have that 10 or 20-minute delay and eventually be let in, because Border Force will check its back-office systems. We have made some freedom of information requests. This new system has been trialled on just a handful of routes and airlines. We now know that it is not ready for the start of the ETA rollout. It is not due to come live until next summer and so will not even be ready for the small ETA cohorts that are starting this year.

We have been told that the fallback is the “view and prove”—log in, get a share code. Airlines have already said that they do not engage with the view and prove; they are not interested in trying to interact with a UK-specific website. This will be exacerbated, because all biometric residence cards and permits currently in circulation are expiring at the end of 2024, so it will not just be our cohort but all migrants who are resident here. We feel that there should be more international co-operation. We think that our proposal is a more internationally interoperable system than this UK-specific system, which we do not think will work at small airports for small airlines. We think it could be disastrous and embarrassing for the UK.

Baroness Anelay of St Johns: Ms Golding, is that your expectation as well? Do you have any other views that you wish to add?

Jane Golding: My expectation is the normal expectation one has when a new system comes into force. Inevitably there will be teething problems, which is what we saw at the end of the transition. At the beginning of 2021, we spent a lot of time dealing with problems with people travelling at that point, because officials were not yet up to speed with the new rules. People faced stamping issues and were prevented from travelling. Under the new system, if a border guard were to refuse an old EU card from a declaratory country such as Spain, that Spanish resident, a withdrawal agreement beneficiary, may well go into the system as a simple third-country national and the flag will be raised 90 days later.

We want to see the same solutions we have suggested in the cases we saw in 2022, which is good, clear, precise information about who needs to do what and when, and clear information to border guards on withdrawal agreement beneficiaries.

Baroness Anelay of St Johns: Do you also see a role for better international co-operation, as Ms Hawkins has mentioned?

Jane Golding: Most definitely. I endorse that.

Baroness Anelay of St Johns: Have you seen work already carried out that way, or is this still a job to do?

Jane Golding: It is still a job to do, because we are still waiting for the system to come into force. It will not just apply to UK citizens living in the EU, obviously.

Baroness Anelay of St Johns: Exactly. Dr Chamberlain, you said that it is not for you to tell the Home Office what to do, but do you have some views to offer on this question?

Dr Kathryn Chamberlain: We talk to the 3million about its concerns. There is not a lot in the public domain about this at the moment, but when what is going to happen and when becomes clearer, we will have a keen interest in looking at the proposals in detail to make sure that they do not undermine the effective implements of rights under the withdrawal agreement. We will maintain a watching brief.

Baroness Anelay of St Johns: At least one can see that, because UK citizens who are holidaying and visiting their families are concerned, the press are taking quite a big interest at the moment. Let us hope that we can maintain that in a constructive way.

Q9 **Baroness Scott of Needham Market:** My questions are for Dr Chamberlain and Ms Hawkins, because they relate to the Home Office specifically and the discovery in January this year that the settlement scheme database was incorrect in something like 140,000 cases. It was showing the status as "pending" where it ought to have been "refused". Could you each describe what sort of problems that causes? Equally significant is your understanding of the steps that are being taken by the Home Office to put the situation right.

Dr Kathryn Chamberlain: We were informed of this issue by the Home Office. Certainly it is important that the digital status that is shown is correct. Our understanding is that approximately 146,000 individuals are affected, so in much the same ballpark as the one you referred to. It is also our understanding that many of those will have received a letter saying that their status has been refused and will potentially have moved on, so the impact on them will be minimal. However, we understand that a number of people may continue to receive benefits and those benefits may be sought to be recovered.

We are looking very closely at the extent to which all the actions that are being taken and the way this is being taken forward are consistent with the withdrawal agreement and the rights. That is the first question: is what is being taken entirely consistent with the law? If so, as far as our remit under the withdrawal agreement is concerned, it is not a matter for us. However, and I think this goes back to some of the discussions we have already had in this committee, a fundamental question is the extent to which reliance can be placed on there being an accurate and correct representation of the status of an individual on the digital system.

For me, the issue is about getting a good understanding of the extent to which we can rely on that status and the time taken to get identification resolution—how long the incorrect status was there for. It raises a lot of very complex issues about quality assurance and audit of the system, which all relates back to maintaining the integrity of the system and thinking about how you take it into the future and keep it up to date.

That is quite a long way of saying that the immediate issue that we simply want to get to the bottom of is whether we are satisfied that there are no withdrawal agreement issues relevant to the IMA here. We will continue to have discussions about the maintenance and integrity of the data that is shown when you log into that system.

Baroness Scott of Needham Market: How would you characterise your engagement with the Home Office? You have just outlined a range of questions to which you would like answers. Is the Home Office engaging with you in the way you would wish?

Dr Kathryn Chamberlain: We have very positive engagement with the Home Office. We speak weekly and monthly. We have regular, high-level meetings. Some of these issues are more technical and challenging than others and take longer to resolve. I started by saying that I think our engagement with public bodies has been very positive. I often say that I would like to see things resolved more quickly, but conversations continue and we have very useful discussions.

Monique Hawkins: A lot of people report that the decision letters quite often end up in people's spam folders, so they do not necessarily receive the decision.

I echo what Dr Chamberlain said about the status being accurate. We understand that the intended design is that when somebody is refused, their status continues to show as pending for about 40 days to allow them to submit an administrative review or an appeal. However, we think it should say straightaway that you have had a refusal and that you have until this date to submit an administrative review and until this date to submit an appeal. It should also make it very clear that people's rights continue until those dates and should make it clear to the person and to any employers that their rights continue until an appeal is finally determined. To simply say "pending" for 40 days when a person does not receive the letter because it has gone into a spam folder and then falls off the cliff, having missed all the deadlines for submitting an appeal, is very serious.

Q10 **Baroness Anelay of St Johns:** So far, we have heard expert information about some of the complexities that clearly exist in the system, and about work by your organisations and the Home Office to try to resolve them. My question goes to the basis of how people get support when they find themselves in difficulties. You have given us some examples already. In this case, I am interested to hear about what support there is, and whether it is sufficient, for UK citizens in the EU who want to know about their rights, and for the EU citizens who are here in the UK who want to know about their rights.

Jane Golding: My simple answer is no, there is not enough support. I mentioned in my answer to the first question that resources are decreasing at both UK and EU national levels. In the past, there was a network of systems rights officers in place at embassy posts across the EU, but we understand that the funding allocated for it finished at the end of March 2023. We are concerned about the loss of institutional memory, and, in any event, embassy posts are not set up to take on individual cases.

At EU level, we have the EU Commission, which has a good but small team with limited resources. It is an expert team, but its resources are limited. We have the outsourced Commission advice service, Your Europe Advice, which is generally good but it is only an advice service. It is not a support organisation and it is not going to help individuals through the process of enforcing their rights if they have problems.

We also see a lack of specialised lawyers at a national level, even where applicants can afford them. Critically, there are no funded support organisations available to assist UK citizens to enforce their rights, only volunteer groups such as British in Europe, and national groups. As I mentioned at the beginning, recognition by in-country embassy posts varies. There is no longer any dedicated funding, yet at the same time embassy posts are relying on voluntary organisations to provide evidence of what is going on on the ground. I hope that gives an overview.

Monique Hawkins: I want to make it clear that we are primarily an advocacy organisation. We take in information and we advocate. We do not help people on the ground but refer to other organisations.

I know there is a list of organisations that are funded by the Home Office. A problem there is that funding is continually very short term—six months or a year—with a cliff edge at the end and organisations not being told until right at the end whether there will be any further funding. The latest round of funding, which was announced just a couple of weeks ago, seems to us to be almost designed to fail. It is like a PR exercise to say, “Yes, we’re supporting vulnerable citizens”.

That is because the eligibility criteria are incredibly complex. There are two lots. In lot A, an organisation has to cover an entire nation, so one organisation has to cover the four nations of the UK. At the moment, lots of different organisations cater for different vulnerabilities. There is a bit of a show-stopper eligibility question that says, “Can you support all vulnerabilities?” There will be an organisation that supports victims of domestic abuse, for example, that will not be able to say that it supports all vulnerabilities. Then there is lot B, where organisations are only given up to £50,000 and have to give higher-level immigration advice, and for that £50,000 they can barely employ one higher-level adviser. A lot of the existing organisations will therefore not be able to continue, and there is much concern about transferring cases out because people will have been looking after cases that are ongoing and will have to be transferred to a new organisation.

The sector is saying that it does not understand the separation between lot A and lot B. Lot A is for lower-level, easy applications—OISC level 1 registered—and lot B is for the higher levels. Organisations are saying that it does not make sense to split them like that, because a lot of applications start simple and become complicated when there are refusals. There is a lot of concern about this very latest thing and there is a very short deadline—I think it is 6 June—and organisations have to be up and running very shortly thereafter. If consortiums want to be formed, there is not enough time to create them with all the due diligence that would go with that.

Baroness Anelay of St Johns: Thank you. Selfishly, I should say that you have just explained some of the difficulties I faced over the last few days when I was trying to work out some of the issues involved.

Reflecting on what you said, what do you think about the funding that

has been available—for example, to Citizens Advice? I have not been involved with Citizens Advice for 13 years now, but I was involved for 30 years before that. In England, Citizens Advice has funding, and in Wales I understand that the Welsh Government have been very structured about the way the organisation has been able to provide advice. Is that now in question because of the change in approach?

Monique Hawkins: There is some concern that there is insufficient funding to allow for building capacity to work with local authorities. It is now so geared towards just having a single organisation do all the advice but on a shoestring. I am probably not best placed to answer that question because we are not applying for this funding, because that is not what we do, but I am hearing a lot of concern and we are planning to research this quite thoroughly and write to the Government about it very shortly.

Baroness Anelay of St Johns: Thank you for your explanation about the potential impact of the recent changes. Finally, can I go to Dr Chamberlain in case there is something that you wish to add?

Dr Kathryn Chamberlain: I echo that the type of advice that will be needed will become increasingly more complex the further we move from the deadline and people have to secure the status they need. The concern is about the entirety of support and advice that is available, not just that that is funded by the Government externally. For example, getting organisations such as the Settlement Resolution Centre operating well, providing consistent advice, advising people in a timely way one might hope would divert some of the challenges that might be going into the mailboxes of elected representatives or through Citizens Advice. Part of the challenge here is making sure that all sources of advice are operating effectively together.

Q11 **Lord Jay of Ewelme:** My question follows on from Baroness Anelay's question and is for Jane Golding first. We are conscious that there is no independent body equivalent to the Independent Monitoring Authority to support UK citizens in the EU. Is that all right, or are you worried about that? If you are, what do you think might be done about it?

Jane Golding: Yes, we are worried about it, because there are a number of problems with the current monitoring systems. The EU Commission is responsible for monitoring the implementation of the withdrawal agreement for UK citizens in the EU. I have already mentioned that the Commission's team is small but expert and shows great willingness to follow up on cases that we raise, but it has limited resources, staff and budgets, so there are concerns about whether, if key members of that small team were to move on, the institutional memory would be retained.

There are also other issues with not having an independent body, because immigration in the EU and third-country immigration are an area of mixed competence between EU member states and the EU. That means that there is no clear delineation of competence, and this comes into play wherever the Commission is monitoring the implementation of

third-country immigration and can create political delicacy. This is in addition to our concern that sometimes the UK-EU relationship, as well as the treatment of EU citizens in the UK, could influence the approach to the implementation of the withdrawal agreement for UK citizens in the EU.

Ideally, of course, there would be an EU equivalent to the IMA, but this will not happen, so the next best step that we can see is for the EU Commission to increase the resources devoted to the rights of UK citizens and to the team dealing with that, perhaps a bigger team with more resources. We also think that a properly constituted and funded citizens organisation could make a valuable contribution.

A side point is that we would also like to see more data, and more timely data, on the current position with applications for residence permits and registrations for residence cards in the EU, so that we can understand what sorts of problems lie ahead. We have not had any up-to-date data since the end of 2021.

Lord Jay of Ewelme: Thank you, that is helpful. Monique Hawkins.

Monique Hawkins: The signatories to the withdrawal agreement were the UK Government and the EU. We have the IMA here, which is independently monitoring the UK Government. In one sense, you could argue that the EU Commission is marking its own homework. I can see that it would be advantageous to have an independent body.

Lord Jay of Ewelme: Dr Chamberlain, do you think it should be replicated?

Dr Kathryn Chamberlain: Cloned. I could not possibly answer that question. That may be a question for you.

The Chair: A very wise answer. I have two quick questions in conclusion. One is a general question, but before I get to that one, I have a small, specific follow-up question that I will put to Dr Chamberlain. It is a follow-up to Baroness Scott's question about the 140,000 people who were embroiled in the database confusion between pending and refused status. There has been some discussion about the Home Office, or government in general, asking for medical, social and other benefits that were drawn in that period to be repaid. Do we have any further information about whether that is the case?

Dr Kathryn Chamberlain: I have nothing in front of me at the moment about the current position. I am sure that the Government could update you, but if you wish us to give you anything further in the future, we would be happy to write to you.

Q12 **The Chair:** That would be helpful. Thank you very much. My last question for all three of you is a specific question about the whole topic. If there was one thing you would urge the Government to introduce in response to your concerns, what would it be?

Monique Hawkins: My one thing would be resolving the digital-only status issue. We think this will be a bigger problem post-2024 when all BRPs are terminated. There would be an opportunity for the UK to set a very successful precedent and we would like the Government to engage with us genuinely on this.

Jane Golding: My one thing would be to maintain support for citizens' rights rather than reduce it, whether that is at FCDO level in London or in embassy posts, and complement that with funding for the voluntary groups on the ground supporting UK citizens in EU. Instead of pretending that things are going okay and downscaling support, the UK Government need to realise that around 1.32 million are also their responsibility and that they need to step up support to afford these citizens the protections they deserve.

If I might be permitted to say a second thing, it is to bring forward the secondary legislation needed to implement our overseas voting rights so that we all at least have a dedicated MP in Westminster with whom we can raise our issues. Thank you.

The Chair: Thank you. We will forgive you for having two things rather than one. Dr Chamberlain, you may not feel that it is your place to answer this question, but is there anything that you would like to add?

Dr Kathryn Chamberlain: Yes, I encourage the Home Office to ensure that changes to the EUSS, following the judicial review judgment, are implemented in a timely way. I think that ending that uncertainty for citizens will be important.

The Chair: Thank you very much. Thank you so much for your contributions. Thank you to our witnesses. I think Dr Chamberlain volunteered to send in anything further about the paying back of benefits, but with that exception none of you has to give us any more information because you have been so comprehensive. Thank you again for your time.