



## European Affairs Committee

### Uncorrected oral evidence: Citizens' rights

Tuesday 25 May 2021

4 pm

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Members present: Earl of Kinnoull (The Chair); Baroness Couttie; Lord Faulkner of Worcester; Lord Foulkes of Cumnock; Lord Hannay of Chiswick; Lord Jay of Ewelme; Baroness Jolly; Lord Lamont of Lerwick; Lord Liddle; Lord Purvis of Tweed; Viscount Trenchard; Lord Tugendhat; Lord Wood of Anfield.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 8

### Witnesses

**I:** Fiona Costello, Research Associate, University of Cambridge; Kate Smart, Chief Executive Officer, Settled; Monique Hawkins, Policy and Research Officer, the3million.

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## Examination of witnesses

Fiona Costello, Kate Smart and Monique Hawkins.

Q1 **The Chair:** Welcome to the virtual House of Lords, to the European Affairs Committee and to this public evidence session. Thank you very much, Fiona Costello, Monique Hawkins and Kate Smart for coming along today. A transcript will be taken and sent on to you. I would be grateful if you could check it and notify us of any corrections that are needed.

We have only an hour for this panel, so I would be very grateful if both questions and answers were succinct so that we can get through the wide-ranging list of questions that we want to pose to you. In each question area, a lead member of the committee will ask a question, and there may be one or two supplementals that come after that, depending on the length of your answers. I will then move us on to the next question area by calling another Member.

Perhaps you could introduce yourselves briefly when you speak for the first time. While we know exactly who you are, the wider audience will not.

Accordingly, I will start things off by asking you, in a general and succinct way, to give us your overall impression of the UK's EU Settlement Scheme and its implementation to date.

**Fiona Costello:** Thank you, Chair, for the opportunity to speak before the committee today. I work at the University of Cambridge on something called the EU Migrant Worker Project, which is funded through a UK in a Changing Europe programme. UK in a Changing Europe is a non-partisan think tank that works on all Brexit-related matters. I also work for a charity in Norfolk that supports migrant communities, including EU nationals who are undertaking applications to the EUSS scheme, so I come here today with two hats on: both academic and as somebody working with a charity supporting people directly.

On the implementation of the scheme to date, the numbers of applications to date are a tribute to the success of the scheme so far. To roll out a digital automated scheme to this scale in the timeframe that has been available is extraordinary. To have a resolution centre that people can call and to have an ethos of granting status, rather than not granting status, has been very much welcomed by front-line advice agencies we have spoken to.

It is important not to let the big numbers overshadow those for whom the scheme and its implementation have not worked. That includes those who are digitally excluded, those who lack evidential paperwork, those who may, so far, have found it difficult to prove their residency and who may not have a passport or ID and have been unable to get one, and those who are simply unaware of the scheme. Broadly, the implementation of the scheme has certainly been a success for many people, but it is important not to let that overshadow those for whom it may not have worked.

**The Chair:** Thank you very much for that upbeat beginning. We will dig into a number of the areas that you have mentioned during the course of the session, so I will not go there at the moment. I ask Monique Hawkins to take up the running.

**Monique Hawkins:** Good afternoon, Chair, and thank you, likewise, for inviting me. I am the policy and research officer at the3million, which is the largest campaign organisation representing EU citizens in the UK.

I mostly echo exactly what Fiona said, and I am sure we will go into some of the issues later. I would like to add a couple of concerns about some lack of transparency and monitoring, especially around equality characteristics. Specifically on data sharing, a lot of people are worried about their biometric data being shared widely and having no choice about that.

More fundamentally, although I echo Fiona's point that the scheme and the numbers are very successful, we are concerned that the EU Settlement Scheme has a fundamental design flaw at its heart. Under Article 18.1, the Withdrawal Agreement specifies that for each country choosing a constitutive system, "the purpose of the application procedure shall be to verify whether the applicant is entitled to the residence rights set out in this Title". Fundamentally, the EUSS does not actually do that. Some people who get settled status are covered by the Withdrawal Agreement; others are not. Likewise, there are people who are covered by the Withdrawal Agreement who are not able to get proof of being in scope. There is a bit of a mismatch at the heart of it.

Having said all that, as a way of granting domestic status in the UK, the numbers are impressive. I am sure we will go into the issues some more.

**The Chair:** We certainly will. Thank you for raising those issues; I know my colleagues will take up the running. Could I go to Kate Smart?

**Kate Smart:** Hello, and thank you from me, too, for the invitation. I am the chief executive of Settled, which is a new charity set up in 2019 to help Europeans living in the UK to continue their lives here. It provides multilingual information, advice and support services, mainly run by volunteers who are Europeans themselves. To give you a sense of the scale, over the past 12 months we helped more than 10,000 people directly, and we reached about 250,000 people through information.

From our perspective, we have to start off with the policy. Most Europeans would have much preferred a system that conferred an automatic right to remain so that they did not have to make an application, and they would have preferred to have a physical document at the end of that process to prove it.

That said, like the others, I would say that the Home Office has done a remarkable job in the circumstances, helping millions of people through the system, but I stress that there is so much more work to be done. We know that lots of people have not applied yet, and we know that there

will be problems coming down the line, whether they have their status or not.

**The Chair:** Thank you very much indeed. We are certainly going to come on to questions on physical proof later in the session.

That was a very good way to start. I now hand over to my colleague, Lord Liddle.

Q2 **Lord Liddle:** That was very encouraging. It is very unusual to hear the Home Office being praised in such a way. Well done, the Home Office.

I should like to focus on where you think the problems might be, accepting that the generality of the situation is very positive. There are two questions in my mind. First, is there a sort of potential Windrush-type problem for people who have been in the country a long time? When they came to the country, there was no real requirement for them to do very much, and they simply may not realise that they have to apply. How would one go about testing and trying to measure whether that is a real problem or not?

Secondly, there are vulnerable people who have problems, for one reason or another, with accessing the digital system. The Home Office has offered quite a lot of help to organisations with that. Are you satisfied that it is sufficient?

**The Chair:** Do you want to direct that question at one of the panel?

**Lord Liddle:** I am sorry. Why not do it in the same order as for the openers?

**Fiona Costello:** Going back to the question about long-term residents and the potential for a Windrush 2 type of situation, there are a large number of long-term residents living in the UK. The estimated number is about 140,000, but it is an estimated number, and we do not know how many people need to make an application to the scheme. It is very difficult to make an estimation. On the general estimated population figures of between 3.6 million and 5 million, there have been 5 million applications to date, and even if 1% of people do not apply to the scheme, that would be 30,000 to 50,000 people. Certainly, that would be a very significant group of people without status.

There are long-term residents who may have arrived a long time ago and do not know that they need to apply or that the scheme applies to them. Just after the referendum, there was a 400% increase in applications to the EEA permanent residence scheme, and that tripled the year after, with up to 150,000 people applying for EEA permanent residence. They may not realise that that permanent residency is now defunct and that they need to reapply under the EU Settlement Scheme. There is a real risk that a number of different groups may not realise that they need to make an application under the scheme.

There has been support for vulnerable people making the application; as you said, there are grant-funded organisations, and there has been

support in communities to help people make applications. Of course, that has all been impacted by Covid. If your barrier to making an application to EUSS is your digital skills, you will struggle to access in communities support that went remote and digital. In Great Yarmouth, where I do a lot of my work, there is a local library that has a suite of community computers that are the main source of access to the internet for some people. That being closed for a big chunk of last year will have impacted on people's ability to make applications to the scheme.

**Lord Liddle:** Monique, do you have anything to add?

**Monique Hawkins:** Yes. As Fiona said, by definition, we cannot know what the numbers are, but we can look at other schemes that needed a large number of people to apply. For example, when television went from analogue to digital, there was an extremely successful campaign, and 97% of people made the switchover in time. If this is as successful, 3% would still represent more than 150,000 people at the moment.

As for Windrush-type consequences for somebody who misses the deadline, the Home Office has indicated that it will take a relatively generous approach to allowing them to make a late application. However, until they make the application and the application is granted, which could be months down the line, they do not have the right to rent or the right to work. They could incur NHS charges between 1 July and when they put in their application. We are quite concerned about those areas, and we think that the Government could make relatively easy wins with legislative changes there.

You asked about digital. We have to make a distinction between the digital application process, which has been helpful, and has been a once or twice-time thing, and proving your rights on an ongoing basis, which, because it is a digital status, is highly problematic for a lot of people. There is a big difference between having rights on paper and actually being able to prove, use and access those rights in your day-to-day life. I presume we will be talking about digital status in more detail later.

**Lord Liddle:** Yes. Kate, do you have anything to add?

**Kate Smart:** I agree with everything that has been said. Your question was about how we get an indication of whether there has been an issue. At Settled, we are getting lots of emails and phone calls from people saying, "I'm really sorry to bother you, because I don't think this applies to me, but somebody said I ought to check". To me, that is a good indication of exactly what you are saying: people think that it does not apply to them because, first, if they have been here for a very long time, they think that, by length of time in the UK, family roots and so on, it is probably not for them; and, secondly, if they have a permanent resident's card, it is just that—a permanent resident's card.

The danger is that they may have been hearing the messages about the EU Settlement Scheme, and it is kind of going over their heads. It is not that they are not hearing it; they are hearing it and thinking, "Oh, but

I'm fine. That's not for me". From what we are seeing at Settled, I think there are a lot of people in that boat.

**Lord Liddle:** Is there any evidence that Covid has put up barriers to people applying? You do not all have to answer, but does anyone have any impressions about that?

**Monique Hawkins:** There is the lack of face to face that Fiona mentioned. Also, there is a specific problem that, in order to apply using the app, you need valid ID. There has been a real problem with being able to get appointments with consulates and embassies to renew passports or to get passports for children who have to make an application. It is possible to make an application without valid ID, but you have to do it by a paper application, and the paper applications are very difficult to get. You have to persuade the resolution centre that you are entitled to a paper application, and the people there will quite often say no; if you do persuade them, there is then a delay in getting those out to you.

**Lord Liddle:** Thanks. That is very positive.

**The Chair:** I regret that we have to move on. It is an interesting area, but we have to move to the next question.

Q3 **Lord Faulkner of Worcester:** This is in fact a continuation of the same area: it is about the physical versus the virtual document. I think all of you have given evidence to say that it is important to have a physical document but that, so far, you have not had any success in persuading the Home Office that it is going to happen.

This is really for Monique and Kate, I think. Can you, in a couple of sentences, say why you think a physical document is important? What experience have you had when you have been putting the case for that?

**Monique Hawkins:** I want to explain that there are differences between a digital document and this thing. Your boarding pass to get on a flight is a digital document, but you can print it out as well, whereas this is more like a process. Imagine a locked box inside a room in the Home Office. First, you have to find your way to that room. Secondly, you have to be let into the room. Thirdly, you need a key to get into the box. Then, the key needs to work. All those things relate to the complicated steps you need to access digital status. The key is in the form of needing to have the phone number or email address with which the application was originally made. Sometimes, for people who are not digitally literate, an organisation will do that for you, or a friend may have done it for you.

People who do not have smartphones or computers struggle even to get to the process. We have seen a lot of cases where somebody has been able to see their status in the past and they try again, but it is not there, or their photograph has been removed from it, or it suddenly says, "We cannot find your records". We are getting absolutely inundated now with reports of people struggling to get their status and being incredibly anxious about it. Yesterday, the service was down for more than an hour;

we have been told by the Home Office that it was down for over an hour. To say that it is there 24/7 is not true. People need it for a sense of security.

I am sorry. That was a bit more than a couple of sentences.

**Lord Faulkner of Worcester:** No, it is all very helpful and, I think, deeply worrying. Do you have to be a conspiracy theorist to believe that this is actually a form of immigration control or population control disguised as something rather different?

**Monique Hawkins:** We have concerns about the fact that every time you access the data, it is logged by the Home Office, so there is a real privacy and data-sharing issue as well. I do not think it is correct that, if you potentially want to rent a property or go for a job interview, every interaction should be logged by the state. We have a lot of concerns about that.

If I may take a moment, we think that there is an alternative that should at least be considered and discussed. If you consider vaccine passports, for example, regardless of what you think about such passports, the technology involved in that involves a document with a secure QR code that is on your phone, but you can also print it. People who struggle with technology can have a paper version. It would be very easy to use that kind of technology to provide cheap plastic cards for people, just like a National Trust card or something. It does not have to be the full biometric residence card that the Home Office is not keen on issuing because of its expense. It would be a cheap and secure alternative.

**Lord Faulkner of Worcester:** What did the Home Office say when you suggested that? It seems to be so obviously sensible.

**Monique Hawkins:** I got a letter back saying that it was not reasonable to compare a pandemic with an immigration system.

**Lord Faulkner of Worcester:** But did it explain why we are moving over to digital, apparently by default?

**Monique Hawkins:** No. I understand that the Home Office wants to move to digital by default, but other organisations across the Government, such as the Government Digital Service and the Central Digital and Data Office, make statements saying that digital by default should not mean 100% digital, and that digital by default should not mean digital by exclusion, whereas, in our view, this implementation really is digital by exclusion.

**Lord Faulkner of Worcester:** You have given us a bit of an example of how one could get round this. Are there any other ways in which we could do it that would cause less aggravation and grief for the applicants?

**Monique Hawkins:** To me, this seems like an obvious one to explore. There are already discussions about how to make vaccine passports interoperable at international level. This would tick that box, too. The

Home Office has already signalled that, within the next few years, airline carriers will have to check people's immigration status abroad before allowing them to board planes. Using this kind of technology would slot into that very well. It needs to be something that is secure and not too expensive, and this seems to fit the bill.

**Lord Faulkner of Worcester:** Kate, presumably from the standpoint of Settled, you are with Monique all the way on this.

**Kate Smart:** Yes, absolutely. The point I want to make is that proving your status is a two-way street. If you have a physical document, it is fairly straightforward: one person shows it and the other person accepts it. There are problems both ways with this system, as Monique said. It is very complicated. It is not as simple as tapping in a number, and then something comes up on a screen and you show it to somebody; there is a multiple-stage process to prove it. There is no doubt that people will struggle to access what they need to access. The problem is also that it will undoubtedly look suspicious to the person on the receiving end. There will be people who do not accept that it really is a form of valid status.

You asked about mitigations. One thing that could be done would be to have some sort of mass information programme to inform all the authorities, landlords, employers and the general public that this is the case. It will sound strange to people when they hear that Europeans will not be carrying a physical document to prove their status. We need to overcome that, at least with a communication strategy, even if we do not have the physical documents, which would be the obvious thing to do.

**Lord Faulkner of Worcester:** Do you take the view that this is potentially another Windrush scandal in the making?

**Kate Smart:** There are going to be massive problems for years to come with various aspects of this scheme; there is no doubt about that. In order to avoid that, apart from some sort of mass public information strategy that means everybody is aware of the situation Europeans are in, there need to be helplines, resolution centres and voluntary sector advice services in place for years as these situations start to unfold, in order to avoid the sorts of circumstances you describe.

**The Chair:** That is a very good point at which, I regret, we have to leap into another area of problems.

Q4 **Lord Jay of Ewelme:** I want to ask about the implications of the 30 June deadline for applying for settled status. My concern is that, by 30 June, an awful lot of people will have applied but will not have had an answer, and they are likely to be a bit worried about that. Is that the sort of problem that you are hearing about in your different organisations? Is it something that worries you, or is it something that you think can be fairly satisfactorily handled?

**Fiona Costello:** Yes, there is a significant backlog at the moment; I think it is about 320,000 people currently. There has been an increase in

applications, coming up to the deadline, as was kind of expected when people heard the communication around it, or they may have been putting off an application and suddenly realised that they needed to apply quickly. I think that is a serious concern.

People who applied before the deadline but are awaiting a decision will receive something called a certificate of application, which is proof that they have applied, although it is not proof that they have status. If a person was about to start a new job or move to a new house, an employer or landlord might be nervous about accepting their certificate of application and might err on the side of caution not to, because it is not proof of status.

The other worrying aspect is for people who are applying via the paper application route. This is normally non-EU family members who are derivative rights holders or, now, people who do not have their ID or passport and need to make a paper application. In order to make a paper application, you need to phone to request it, wait for it to arrive, submit your application and then wait for a certificate of application. That group of people will be stuck in limbo even longer than people who have made their application and received their certificate of application.

**Lord Jay of Ewelme:** What is the certificate of application? Is it a paper document, or is it something inside a magic box somewhere that you have to access? What is it, and what comes with it? Does any kind of indication come with it to show that the person has applied? Is there any reassuring commentary from the Government on it?

**Fiona Costello:** It is proof that you have made an application, but I will let Monique or Kate take that forward.

**Lord Jay of Ewelme:** Monique, you referred to it earlier. What do you think about it all?

**Monique Hawkins:** When you put in an application via the app, usually, but not always, you get an email back fairly quickly, with a pdf attached that gives you a unique reference number and says, "This is your certificate of application". Many people get that certificate quickly.

**Lord Jay of Ewelme:** Can you print that out?

**Monique Hawkins:** You can, but it has no value in itself. It is not a proof of anything. If an employer wanted to use it, they would have to call or contact the employer checking service, and a landlord would have to contact the landlord checking service. They would give a reply within, I believe, five working days. It is not straightforward. You certainly cannot wave it in front of somebody and then access rights; you have rights on paper, but in practice it is really difficult.

If you use the app as a non-EU family member, you often need to make a biometrics appointment, and you would not get the certificate of application until after that biometrics appointment. Even some EU citizens

using the app are asked further questions about their ID document. Again, there can be a delay.

We are now, I think, 34 days away from the deadline. The closer we get, the more vital the certificate of application delay will be. If somebody presses "Submit" on 30 June but does not get their certificate of application until a week later or longer, we do not actually know what their rights are. I have written to the Home Office about that, and I am awaiting its reply.

**Lord Jay of Ewelme:** Are people getting worried about it?

**Monique Hawkins:** Yes. A lot of people write to us and ask, "What on earth is going to happen? I am already struggling to persuade my bank to give me a mortgage. I am struggling about accepting this job".

The other thing to remember is that this is just the first deadline of very many individual deadlines. The same thing will happen for people who have pre-settled status but have to apply for settled status. Those are millions of individual deadlines.

**Lord Jay of Ewelme:** Thank you. That is very helpful. Is there anything you want to add, Kate?

**Kate Smart:** No, I think it is covered, thanks.

Q5 **Baroness Jolly:** Last week, the Cabinet Office Minister, Lord Frost, came to talk to us. He said that there were no plans to extend the deadline of 30 June, but that the Government would take an "extremely understanding" approach to late applications. Do you find the Minister's words reassuring?

This is for Monique, and there is another one for Kate. Monique, would a formal extension to the deadline be a preferable outcome? If so, what would be a sensible amount of time to extend it by?

**Monique Hawkins:** Let me say, first, that I understand that having a deadline is, in itself, a good thing, because you need a deadline to encourage people to take the step to make the application. If we extend the deadline, that is just kicking the same problems down the road, in a sense, because you will never ever get 100%, so it is really important that you put in place the legislative protection I was referring to earlier: someone who makes a late application, regardless of what the deadline is, should get their rights from the point at which they realise they need to make the application. They should also have an intervening period of unlawfulness later made lawful. That protection needs to be there.

Having said all that, in the unique circumstances of Covid, with all the issues with the lack of face-to-face time that there has been and the inability to get ID documents, I certainly think that an extension would be extremely sensible. The Withdrawal Agreement allows for a one-year extension. Quite a few countries in the EU have extended, some to September. I am sure that one of my colleagues at British in Europe will

give the committee more details on that later; I do not have the date in front of me. Personally, I think a six-month to one-year extension would be sensible, given that we have just had a 15-month period of Covid. That does not take away from the fact that those protective measures need to be there regardless.

**Baroness Jolly:** Kate, would a formal extension to the deadline be a preferable outcome? If so, do you go along with six months, or would you like to go for something else?

**Kate Smart:** Yes; extending the deadline would be a very good thing, and it is justifiable, because of Covid. We can pluck numbers or time periods out of the air, but 12 months would be good. As Monique said, if you have a 12-month extension, there will still be some people who miss that deadline for some of the reasons that we are already dealing with. It would give us a greater chance of mopping up some of those cases in the meantime, but there will still be some of those, and there will need to be a safety net for people.

One of the things that concerns us about the approach to late applications at the moment is that it is all very well for the Home Office to say that it is taking a sympathetic approach, but unless that is translated across other government departments people will still fall into difficulty. It needs to be joined up. We need to know that, if somebody is justified in having a late application, that will also be understood by the DWP, the department of health and so on, so that they can still access the rights that they need.

**Baroness Jolly:** I want to tease a bit more out of both of you on that. Does the Home Office's approach to "reasonable grounds" late applications after the 30 June deadline fully take account of the difficulties faced by vulnerable people?

**Monique Hawkins:** No, it does not. It allows people to make a late application. Imagine, for example, that somebody realises in September that they need to make a late application. The Home Office has indicated that it will be generous in accepting a late application. That person will put in their application in September, and they may get status granted the following January, say. In the period between 1 July and September, if, for instance, they have been charged by the NHS for some operation, as happened to Albert Thompson, also known as Sylvester Marshall, of the Windrush generation, they would incur an NHS debt, which will not be wiped away; they will be liable for that, regardless.

From September, when they put in the application, the NHS says that, from that point onwards, they will not be chargeable until they get status granted. The NHS is being more generous, whereas you do not have the right to work, you do not have the right to rent and you do not have access to benefits until you get your status in January. When you get your status in January, that period of unlawfulness between July and September will remain. There are some other cases, however. The Department for Education, for example, has said that the period of

unlawfulness should be disregarded when looking back to see whether students have been resident for three years. The Department for Education is taking account of it; the NHS is not. As I said, if there is something chargeable, it will stay.

There is a proposed change to nationality law with a statutory instrument that actually does some of that backdating. It says that a baby born after 1 July to parents who have not put in an application but it later turns out that they would have had settled status by 30 June is entitled to be British. There is a patchwork of protections, but, crucially, people do not have the right to rent, work or have benefits until their status is granted, and that can take a long time. There are people in the backlog at the moment who have been waiting for more than a year. There are about 6,000 people who have been waiting for over a year, and some people have been waiting for almost two years.

**Baroness Jolly:** Thank you. Kate, is there anything you would like to add?

**Kate Smart:** Just one point, which is that the guidance at the moment says that the authorities will look to be understanding for the time being or immediately after the deadline. It is unclear how long that might last. In some ways, it might play in our favour, in that you would hope that it would go on for some time, so perhaps it is a good thing that there is not a fixed date. Obviously, we would like that period to be extended for quite a while, because it might take some people quite a while to realise that they have missed something. You would hope that, if there is a good reason for it, they will be included in the scheme regardless.

**Baroness Jolly:** Thank you very much for making that somewhat clearer than it was before.

**The Chair:** Thank you. That was a very interesting part of the session. I note from the government website that the backlog number is about 305,000, and that applications were still coming in at the rate of 100,000 a month for the last couple of months. There is a very substantial number of people involved.

Q6 **Lord Hannay of Chiswick:** Thank you very much for your testimony so far, which has been very useful. Switching the subject a bit, how do you react to recent reports of EU nationals with job interviews being detained at the UK border? What is your view of Home Office letters being sent to those who do not need to apply for settled status? Do recent events raise real concerns about the treatment of EU citizens coming into the UK or who are in the UK? Is there any question in your mind of either the letter or the spirit of the Withdrawal Agreement or the TCA—the trade and co-operation agreement—being infringed?

**Fiona Costello:** Both of my colleagues on the call have done a lot of work around the granular detail of how EUSS will work at the border, so I will not go into too much detail about that.

I can briefly add something about research that we recently did on the treatment of EU citizens in the UK. Our research found that EU nationals are experiencing anxiety and stress because of Brexit and the EU Settlement Scheme. Many felt that they were becoming migrants in the UK, whereas previously they had been equal EU citizens living here under freedom of movement. Many spoke to us about the discrimination and hostility that they had experienced, and how it predated the referendum but was exacerbated by the referendum. That fits within the wider context of abuse experienced by many migrant communities living in the UK. There are concerns about the treatment of EU nationals, and many were raised with us by EU nationals in the research that we undertook.

**Monique Hawkins:** Regarding the detentions, it is important to realise that non-EU citizens have been treated like that for a very long time. We think that a lot of disproportionate stuff happens at the border. Often there is an option of bail rather than detention. Job interviews are allowed, in any case, so that was a misapplication of the rules.

There are other issues, too, that come back to the physical document point. One person was detained because his settled status was linked to a different document than the one he was travelling with, which can happen. You can apply for settled status on your ID document and then you can travel with your passport, or you link the settled status to a passport and then renew your passport. Even if you do the update, we have seen lots of very lengthy delays in the records being updated, so there is a mismatch.

You also asked about writing to everybody, including people who already had status or who, as British citizens, did not need to apply. We welcome the fact that the Government wrote to as many people as possible, but it would have been good if they could have sifted their databases a bit more carefully and if the content had been worded slightly differently.

I am Dutch, and my mother lives in the Netherlands. At one point, years ago, she lived in the UK with my father for a little while, so she receives a small pension. About a year ago, she received a letter from the DWP in the Netherlands telling her that she really must sort out her residence status in the Netherlands, otherwise she would lose her right to live there. She is only a Dutch national. That was a very similar thing to what has happened this month with writing to everybody. It just needed slightly better wording. We do not object to the principle of trying to write to everybody; if it means a few people knowing about it who otherwise would not know about it, we welcome that.

**Kate Smart:** I agree with Monique. While those letters were alarming and perhaps did not all go to the right people, it is better that letters went out than no letters at all.

On the point about detention, it is important to remember that we are in a situation where people have had some rights that they are now losing, and that we are in a transition, so there is going to be confusion. People will intend to comply with the rules but may fall foul of them. In those

situations, we would want them to be treated as we would want to be treated ourselves. There has to be as much sympathy for people as possible.

As Fiona was saying, it plays into a very high degree of upset among Europeans in the UK anyway. There are people who are very upset about what has happened to them and who feel that their lives have already been turned upside down. Every time something like this happens, it reinforces that feeling of insecurity and upset. For all sorts of reasons, that needs to be avoided if it can be.

**Lord Hannay of Chiswick:** I deduce from your three answers to that question that none of you thinks that there are actual infringements of the two agreements taking place, but that there is quite a lot to worry about. I think that some of the answers, at least, feed back into the issue of whether or not everyone's lives would be a lot easier if the Government were giving them at least the possibility to have a paper document with them.

I will now change completely and go over to something quite different, namely the Independent Monitoring Authority. How trusted and well known to EU citizens do you think the IMA is? Is there confidence that it will identify and investigate potential breaches of citizens' rights, and that it has the power to bring some remedies? What is the feeling about all of that?

**Kate Smart:** It is not necessarily well known among Europeans, bearing in mind that Europeans in the UK are a wide variety of people. Some are much more educated than others, and some have busier lives than others, so it is almost inevitable that it will not be very well known, like many similar bodies. People will probably go for immediate recourse to an advice agency or a voluntary sector agency, or indeed the Home Office, a local council or whatever, and those bodies will become intermediaries.

It is early days for the IMA, but, from what we see, it is making every effort to come across as accessible and transparent, and wanting to be an effective service. It is getting off to a good start.

**Monique Hawkins:** I agree with that. It is a bit early to say. A lot of people we hear from have not heard from it, but we are working with the IMA. We provided a report to it in February, which we will be updating in due course. It has taken on a large number of our issues, but, to date, we have not had a formal substantive update on what will happen to those issues.

The IMA has just issued a call for evidence, which I think was launched yesterday, and we are doing our best to disseminate that on our social media. It says not only that it acts on people reporting directly to it, but that it is intelligence led, by which I understand it means reports like ours. I hope that it will continue to accept our evidence, even if people do not complain directly. I think it has the powers, but it is a bit early to say whether it will use them.

**Fiona Costello:** I can only agree with what has been said so far. It is very early days, but progress seems very positive.

I have been thinking about the clients we work with in Norfolk and Suffolk, for example, who have very limited English language skills. I would look at how the IMA plans to reach out to the more vulnerable in communities. If your barriers are digital skills or English language skills, submitting a complaint through a website or by phoning somebody—that self-advocating role—is difficult. I would encourage the authority to look at how it reaches those groups in communities.

**Lord Hannay of Chiswick:** Thank you. I should say that I attended the IMA—

**The Chair:** Lord Hannay, I am afraid that we need to move on. We still have some questions, and our time is getting away from us.

Q7 **Baroness Couttie:** Good afternoon. I will direct my question to Monique and Fiona. The Settlement Scheme allows for two different types of status: pre-settled and settled. I understand that there can be some difficulties in switching from one status to the other, particularly if someone has applied incorrectly for pre-settled status when they were actually eligible for settled status. Is that an area of concern? If it is, how do you suggest the Government address it?

**Monique Hawkins:** We are concerned about that, for several reasons. The reason why some people have pre-settled status rather than settled status, even if they have been here for five years, is their struggle to evidence being here. There are people who have been here but who would struggle to get an evidence base—for example, if they have been working cash in hand, or if they are a victim of domestic abuse. Countless people would potentially struggle to come up with the evidence.

The second problem is that, if you have pre-settled status, you need to remember to make a brand-new application. If you let it lapse after the five-year expiry, you lose all your rights, and everything we said before about the protection of that interim status before you then manage to go on and get settled status. There should be protection.

There is a particular issue with absences. A lot of people receive pre-settled status and they read that they are allowed to be out of the country for two years before their pre-settled status becomes invalid. What they do not realise—it is mentioned in the letter, but in much more complex language—is that, if they are away for more than six months in any 12-month period, according to a rolling calculation, which is difficult to calculate, they break what is known as their continuous residence. That means that they have shot themselves in the foot and cannot ever get settled status. Many people do not realise that.

It is reckoned that, with Covid, there have been a lot of absences that were much longer than planned, with a lot of absences longer than 12 months. I know that the Government have just withdrawn their Covid absence guidance, and they are going to issue new guidance on 31 May,

which we really hope will be unprecedentedly generous, because the absence situation has been unprecedented.

**Fiona Costello:** From speaking to people in communities, I think there is some confusion around when, if they have pre-settled status, they need to make another application. Is it five years from when they entered the country, or five years from when they received their status? We are getting reports of a bit of confusion among status holders around that. Equally, there are those who might think it is an automatic upgrade, when it is in fact a new application. You are not upgrading; you are making another application and you need to reach the same kinds of eligibility requirements for settled status.

Looking at some of the figures, we see that those who are receiving EU pre-settled status are those who are also likely to be more vulnerable. For example, one in six looked-after children and care leavers have received pre-settled status, so they will need to make another application in the fullness of time. More than 60% of non-EU family members of EU nationals have received pre-settled status. Newer communities in the UK, such as the Romanian and Bulgarian communities, have a rate of about 60% pre-settled status, compared with Polish communities, who are more settled here and have been in the UK for longer; only about 18% of that group have pre-settled status. Some of the more vulnerable groups may struggle, in the fullness of time, to submit another application.

**Baroness Couttie:** It seems to me that a lot of this is about communication. Do you think that this is because, in the communications that the Government are putting out, it is not clear enough or expressed simply enough, or do you think they are using the wrong channels of communication? Is there some better way the Government could be doing this?

**Fiona Costello:** Certainly, especially with the next deadline, if you have EU pre-settled status, it will be easier in theory to put out a communication at the moment around one deadline of 30 June, but for the next one, the deadlines will be personal deadlines for different people.

The guidance says that the Government will send out a reminder to people, but that kind of hinges on people being able to update their contact details. If they have changed their email address or phone number, they will not receive that reminder. Equally, it is about ensuring that the Home Office is working from the most up-to-date database, not from original application contact details but from later ones.

I would say this, because I work in communities in a charity, but, for me, using the networks that are already there to communicate with groups—people who have the trust of communities and can get the message out, which they have done through their grant-funded organisations and other organisations that are not grant funded—is key to getting multilingual messages out there about the deadline.

**Baroness Couttie:** Do you have anything to add, Monique?

**Monique Hawkins:** No, thank you.

**Baroness Couttie:** Thank you both very much.

**The Chair:** We now come to our last question in normal time.

Q8 **Lord Foulkes of Cumnock:** This has been a really fascinating session. You started off being very upbeat about the majority. Then, as we have gone into the details of those who are facing problems, we have realised that there is a huge range of problems, and you have been really helpful in identifying them.

I now ask you to identify what steps you would recommend the Government should take arising from your experience and your representations. I have noted physical documents, which seems to be a very important one; extending the deadline, which is another one I have picked up; and, thirdly, helplines and a resolution centre. Am I right in those three? Which ones would you add?

**Kate Smart:** Yes, absolutely. Perhaps I could be cheeky and add to the last question that was asked. On that last point, given that people will be trying to transition and reapply from pre-settled to settled status for years to come on an individual basis within their own deadlines, some sort of helpline and resolution recourse will be needed for years to come.

Everything needs to be simpler. I know that the Government have tried to make a simple system, but the evidence is that it could be still simpler. There are lots of things that I could say, but I will add just one more thing. It is about informing the wider public and ensuring that, as far as possible, there are safety nets within the wider public and within the wider set of government authorities, local authorities and so on, so that when people struggle, they have a safety net.

**Fiona Costello:** I agree with everything on the list so far. The only thing I would add is looking at where support is available for people who need to make late applications; there are significant advice deserts throughout the UK. Immigration advice is no exception. It is looking at where help and support is available, and at the geographical spread of that support, so that people can access it.

**Monique Hawkins:** I would add the legislative changes that I think should be made, which can be made by secondary legislation, to grant people rights from the point of application, rather than from grant of status—which, incidentally, Article 18.3 of the Withdrawal Agreement mandates—and, once they are granted a late status, to be retrospectively deemed lawful all the way from 1 July.

I also think that positive duties should be put into legislation to refer people to the Settlement Scheme so that, when local authorities and the NHS encounter people they think might be eligible for settled status, there should be a positive duty on them to signpost them to the scheme.

There is also the thing about the absence guidance. It is about adding that legislative package to provide a safety net.

**Lord Foulkes of Cumnock:** Thank you very much. I was born in England and I live in Scotland. Heaven forbid that Scotland became independent, because I would have an interesting time trying to get my settled status, I suppose, in the same sort of way. Which organisation could get me some bumper stickers saying, "Don't blame me. I voted remain", in as many languages as possible?

**The Chair:** Thank you very much indeed. We have a supplemental question from Lord Purvis.

**Lord Purvis of Tweed:** I can tell Lord Foulkes that I was born in Berwick, and we have never had settled status, ever, on the border between England and Scotland.

Lord Chair, I would like, if I may, to ask Monique a follow-up question to Baroness Jolly's question. Monique said, very interestingly, that the legal ability to work and rent will be in question for those who are late applicants. There may be an issue, I am guessing, with that backlog of over 300,000.

My question relates to the legal duties on employers and landlords to check the status of their employees, potential employees or potential tenants. Businesses can be fined up to £20,000 if they do not check on employees. Am I right in thinking that they will have to carry out their check, and that even if there is some form of kind generosity on behalf of the Home Office to look favourably on an application, the employers, landlords or prospective employers will still have the legal duty to check, and that they will therefore not be able to employ them on that basis? If I am right about that, could the extra list of discretionary elements be on the requirements for employers and landlords when it comes to those who have applied?

**Monique Hawkins:** Yes, if I have understood you correctly. People who make a late application do not have the right to work or the right to rent in law; they simply do not have it. For anybody who got a job in the grace period, between now and 30 June, employers and landlords were told they did not have to check, that an EU passport or identity card was sufficient proof, and that they are not required to make a retrospective check after 1 July. If they employed somebody in March and just looked at their EU passport, the employer does not have to check them again after 1 July. That raises a question if they check after July and find out that the person does not have status. A lot of employers are worried about that and have been asking questions, seeking more clarity. It is an outstanding issue.

**The Chair:** Thank you very much indeed. I am afraid our hour is up.

I have one request of you, Monique. Right at the start, when you were setting the scene in response to the first question, you pointed out that,

in your view, there was a mismatch between the Withdrawal Agreement provisions and the way in which the Settlement Scheme operated. I wonder if you could write a short memo to us, to explain that point. I got the feeling that there could be something very important that we should look at.

In the meantime, thank you all very much indeed for a highly stimulating hour and for being succinct and clear in your answers, which is very helpful for us. As a formality, for this panel I declare the session over.