



Select Committee on the European Union

Home Affairs Sub-Committee

Corrected oral evidence: Brexit: Reciprocal Healthcare

Wednesday 18 October 2017

11.20 am

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Members present: Lord Jay of Ewelme (The Chairman); Lord Condon; Lord Kirkhope of Harrogate; Baroness Massey of Darwen; Lord O'Neill of Clackmannan; Baroness Pinnock; Lord Ribeiro; Lord Soley.

Evidence Session No. 6

Heard in Public

Questions 44 - 50

Witnesses

I: Samia Badani, Head of Campaigns, New Europeans; Anne-Laure Donskoy, Founding Co-Chair, the3million.

Examination of witnesses

Samia Badani and Anne-Laure Donskoy.

Q44 The Chairman: Welcome to you both. Thank you very much for coming to give evidence to us. As I said at the beginning of the previous session, it is very important for us to hear evidence from both representatives of UK citizens living in the EU and representatives of EU citizens living in the UK. It is very important to the Committee that we cover both sides of the equation, if I can put it that way. Could I ask you to introduce yourselves and say a little about the organisations that you represent?

Samia Badani: My name is Samia Badani, head of campaigns and stakeholder engagement with New Europeans. I am also a public and social policy expert. I have worked with local communities in different areas of London over a number of years on different issues around healthcare, housing and other matters. New Europeans is a not-for-profit organisation. Our membership is made up of EU nationals here in the UK but also UK citizens in the EU. We run information workshops with EU citizens. We have done this before the referendum and after, and have gone to different regions in the UK to try to understand what the expectations would be. We have done similar exercises with our UK members in the EU, running a lot of online surveys. We also act as the secretariat of the APPG on Freedom of Movement. We are now setting up the new 27 Group, which would be an organisation representing different nationalities for better representation here in Parliament.

Anne-Laure Donskoy: I am Anne-Laure Donskoy, co-founder of the3million. I am a French national and a European citizen. The3million is the largest grass-roots organisation representing the rights of EU citizens in the UK. We were set up just after the referendum in order to do this. By profession, I am a health and social care researcher. We have been lobbying in the UK but also in Brussels. We have met Michel Barnier and we are in contact with his office and his team pretty much every week. We have presented evidence in the European Parliament. We are also in touch with Didier Seeuws's team. I would like to make an opening statement, if that is allowed.

The Chairman: Please.

Anne-Laure Donskoy: I want to say a few words about why reciprocal arrangements are important to EU citizens in the UK in particular. We feel these arrangements are important for a number of reasons. First, we live in a global world where EU and UK citizens cross borders constantly to live, work, build families and businesses, go on holiday and visit friends and families. Therefore, these arrangements are essential to facilitate this. They allow citizens easily to access affordable healthcare throughout Europe, either as travellers under the EHIC scheme or as residents in other member states.

The economic and moral arguments for preserving them are, therefore, very strong and their success has been undeniable. This is another

reason why, as my colleague from British in Europe stated, the rights of EU citizens in the UK and UK citizens in the EU need to be safeguarded now, for instance in a citizens agreement, set out in the withdrawal agreement with direct effect and a clear CJEU reference procedure.

The Chairman: That is very helpful. To pick up one point you have just made, I would be interested to know whether you are confident that the rights to reciprocal healthcare of citizens from other member states will be respected by the UK Government once we leave the EU, assuming that we do, and whether that issue has been given enough attention in the negotiations. To pick up another point you have made, perhaps you could say a little about the response you have had from Monsieur Barnier and his team. Has that been helpful and forthcoming? Do you have a good relationship with him?

Anne-Laure Donskoy: Most of the responses I will make today are based on a survey I made of our members. We have 36,000 or 37,000 members. This was a very quick exercise I had to do over the last couple of days. When we asked whether our members felt confident, 85% said no; 10% were hopeful; and about 5% were confident. They had no trust in the UK Government to protect their rights as a whole. They are not confident because they are worried about a number of things. They are extremely concerned that access to healthcare in the future will be restricted, not just for future EU citizens coming to the UK but for all the 3 million to 3.2 million already settled here. They are worried that, after Brexit, the Government will make it harder for them to access health by introducing extra administrative hurdles, charging for access to services and treatment, and potentially forcing them to take out private healthcare insurance—many say they cannot afford that and, if that was the case, many said that they would leave the UK—and losing affordable and easily accessible healthcare provided under the EHIC scheme.

On extra administrative hurdles, new ID checks are being rolled out next month in full. EU citizens have been asked not only for proof of ID and residence but proof of right of residence, which the pilot scheme is not meant to be doing. This amounts to discrimination. There have been a number of reported incidents of discrimination against people with foreign names or accents. These checks, which are supposedly designed to root out health tourism, are extremely troubling. I will give you an example published in an article: “‘One of the worst cases involved a pregnant French woman who was of Asian descent’, one doctor says. ‘She arrived for a routine scan and was asked by reception staff if she was eligible for free care. She told them that she was French and had never needed to provide ID before. The receptionist told her that she did not seem French and called the paying patients department to question her further. The woman was so upset by what was happening that she had a panic attack. I was called to check her over. I had to tell the paying patients department to leave the room because she had caused her so much upset’”. This is the sort of thing we are already facing now.

The Chairman: Would you like to add to that?

Samia Badani: The position of New Europeans from the start, just after the results of the referendum were announced, was that the question of rights should never be part of the negotiations; it should have been a pre-condition to the start of the negotiations, because we are now in a difficult situation with reciprocity where in certain areas you cannot achieve a like-for-like system. I think the UK grossly underestimated the complexity of reciprocal healthcare arrangements. This is causing a lot of hardship among the 3 million EU citizens here but also among UK citizens in the EU.

Our research shows that more than 44% of EU nationals no longer feel welcome in the UK. As Anne-Laure said, we see many examples of where, even though we are still in the European Union, EU nationals are treated differently because they are European, and EU nationals, especially those from A8 countries, are quite concerned because the Government in 2013 declared that they would create a hostile environment. As part of that hostile immigration environment, the 2014 and 2016 Immigration Rules make it clear that, in a situation where a European cannot show they have a right to reside, support in terms of housing, healthcare and financial position would be withdrawn, so it is causing further anxiety to 3 million EU nationals in that sense.

Access to healthcare is crucial. I will give you an example. I am a French national. I am under the weather today. Let us imagine that today is 31 March 2019. I would have to go to my GP and would probably be stopped by the receptionist to ask whether I had the right to reside in the UK. Access to healthcare is a fundamental right. Regardless of the fact that this country is part of the European Union, the spirit of the NHS is that everybody in this country should have access to healthcare. Irrespective of the outcome of the negotiations, we would expect this Government to do the right moral thing towards EU nationals and maintain our right to healthcare here. That is what EU nationals are saying to us. They also want to preserve the right to access cross-border healthcare. Some people are not aware that this is a benefit many EU nationals here enjoy, and also access to emergency treatment on the continent.

The Chairman: Anne-Laure Donskoy, you referred earlier to relations with Monsieur Barnier and his team. Could you say a little about how good those are and how responsive his team is to your interests?

Anne-Laure Donskoy: First, I want to expand on what Samia said. Access to the NHS should not become an extension of any kind of immigration Bill. We have to separate these. As Samia said, to be able to have access to healthcare is a fundamental human right.

We met Monsieur Barnier in March of this year, so quite early on. His response and the work we have been doing with his team has been encouraging and has always been very clear. When we went there it was quite clear they had done their homework. They had read all our papers and had plenty of questions for us. They have asked us a lot of questions and we have gone back to them, so there has been a lot of exchange of

information with them. We really appreciate the fact that it has been very consistent. The message from the Commission has been extremely consistent: we want its support to protect the rights of EU citizens living in the UK, and vice versa. It is a matter of separating people's lives from the negotiations. Our lives are worth more than all of this. We are citizens who have come to live and work in different member states under EU regulations and free movement. These were life choices that are now put at risk.

The Chairman: We must now move on. That is very helpful.

Q45 **Baroness Massey of Darwen:** I am interested in what you said about fundamental rights. Sometimes that is rather difficult in political circumstances. People forget about human rights—they should not—and sometimes they get swept away. My question is: what incentive does the UK have to maintain existing reciprocal healthcare arrangements with the EU and the EU with the UK?

Samia Badani: I would remind the UK that it has a duty towards 1.2 million UK citizens in the EU and they should not be sacrificed in the process. I could tell you about the financial world. The NHS has benefited from those agreements. It has the option of being reimbursed, but the main incentive is for the country to do right by its citizens, of whom 1.2 million live in the EU. Our members in Germany have been telling us that if they do not have access to healthcare they might as well go back to the UK. I do not see a better incentive than making sure you secure the rights of your citizens.

Anne-Laure Donskoy: As I hinted in my opening statement, there is also the moral argument. This is what the members who responded to the survey said: people talked about the right and the decent thing to do; they talked about the duty of care to people who very often have been residents for a very long time in a country where they have paid taxes and national insurance contributions. They have already paid into the system on a par with UK citizens. That entitlement to access to the NHS and services and treatments should not be taken away from them.

There is also the life-saving element of the moral argument. By maintaining these healthcare arrangements, we are also helping to save lives by not turning away people who may not be able to afford to pay for healthcare services. There are also the practical and economic arguments. We no longer live in a static world or in an enclave in our own country. This is a global world, and the EU has offered the possibility of moving around and across borders. If these arrangements go, UK citizens in the EU will be faced with navigating and trying to understand 27 different healthcare systems that are quite complex.

If I may pick up one point made by my colleague from British in Europe about the French system, the top-up is quite common, except that a lot of people cannot afford it. A lot of people have to rely on universal cover, which then becomes extremely problematic, because there is a lot of very well-known discrimination. We know of GPs who will turn away these

people. We have a system that currently works well and is extremely efficient all round. Why change it? Why take it away? It makes perfect sense.

Baroness Massey of Darwen: Could you supply us with a list of the human rights conventions that are in operation in relation to healthcare—for example, the Convention on the Rights of the Child? I do not know what they are, but could you supply us with such a list?

Anne-Laure Donskoy: Certainly. There is the European Convention on Human Rights.

Baroness Massey of Darwen: Not now.

Anne-Laure Donskoy: There are a number, and there are some treaties associated with them at different levels.

Baroness Massey of Darwen: Perhaps you could let us have it.

Anne-Laure Donskoy: Yes.

The Chairman: Thank you, that would be helpful.

Q46 **Lord Soley:** For better or worse, the United Kingdom is likely to be outside the European Union. If, in the process, we get to a position where you get the rights that your two organisations are campaigning for—that is the right to reciprocal healthcare—do you take a view about the position of other family members who would come to see you here? What is the view of the two organisations on that?

Samia Badani: Going back to the issue of human rights, the right to private and family life is fundamental. We cannot even conceive of families being split, or a member being in a situation where they cannot reunite with their family because they cannot afford healthcare. We expect family members to be treated in the same way as EU nationals who are currently here.

Lord Soley: But nobody here who had a medical problem would not be treated. They would be treated under the NHS as usual and be charged for it, but they would not be left without healthcare. That would be true of any third country. If you came here from the United States, the same would apply.

Samia Badani: They would be regarded as overseas patients. I think that in this country there is rule of law. Just to put things in context, it results in the loss of rights for EU nationals. We have rights and so do our family members, whether they are here or in Europe, so the end result for us is a loss of rights, which is of great concern to EU nationals, if we were to treat them differently because they are not settled here in the UK.

Lord Soley: I can understand your argument, but the position will be that Britain will be outside the EU. That will be the same position for someone coming here from another country outside the EU. An American

citizen coming to visit a family member here would be in the same position as an EU citizen who is here now. Do you see what I mean? It is not a matter of fundamental rights. I can see your argument. You are saying we should keep it as it is and not change it, but it is not so much about fundamental rights because this applies to other countries around the world.

Samia Badani: But you do this with ex-Commonwealth citizens. There are situations in the legislation where you recognise that, because of loss of status or citizenship, categories of people in this country retain certain rights. There are more advantages than for other third-country nationals, so the same principle should be applied to EU nationals.

Lord Soley: Commonwealth citizens have always been given additional rights in the UK over and above the European Union. My view is that we ought to try to maintain the situation as it is, but I am aware that that is going to change. I am trying to find out what your organisations are saying about the right of a family member visiting a person here who needs healthcare. Are you saying, "We just want to keep it exactly as it is", or that they should be treated as third-country nationals, i.e. as though they were Americans, Canadian or whatever?

Samia Badani: They should be treated in the same way.

Anne-Laure Donskoy: I would agree with what Samia said. The point is that we came here in good faith and, all of a sudden, we are told that the rules of the game are changing—and that is just not fair or right. This is a moral argument. We have all been enjoying being able to come and live in other member states under those particular rules, and new rules should not be applied to us that will dramatically change our lives in a very unfair way.

Lord Soley: Both of your organisations would say we should keep the situation exactly as it is. That is what you are asking.

Anne-Laure Donskoy: Yes.

Baroness Massey of Darwen: When you give us the list of conventions, treaties and so on, could you tell us who has not signed them? I know that Britain has not signed the Lanzarote Convention, for example. That might be important because, if we have not signed the convention, there is a get-out.

Anne-Laure Donskoy: There is always some form of get-out. If you look, for instance, at the UN Convention on the Rights of Persons with Disabilities, which is one with which I am particularly familiar, it is signed and ratified but it has all these kinds of clauses, but people sign up to the general principle. Once they have ratified a convention, they sign up to the letter of the legislation. That is the most important bit. This is the one they can challenge in court as well.

Q47 **Lord Kirkhope of Harrogate:** You have made it very clear to us that you would have preferred these reciprocal arrangements affecting the

rights of EU citizens not to be part of the negotiations and that they should have been dealt with separately. For the moment, let us leave them as part of those negotiations, rightly or wrongly. In the event of the speculated no deal—a crashing out, or whatever—how would you expect EU citizens in this country to receive their healthcare? You have already set out some of the more worrying aspects, but, if that is the case, what are your particular concerns? What do you think would be the means of accessing healthcare that they would have to fall back on?

Anne-Laure Donskoy: When we surveyed our members, we had 40 pages of responses. I went through this quite quickly. Four main themes came through quite clearly. The majority of respondents expected all EU citizens who live permanently in the UK to continue to have full access to all healthcare services as they have now. They did not expect to be asked to pay for their access to services and treatments. They based their argument on the fact that they have been paying into the system—they have been paying taxes and national insurance contributions. Therefore, they have already paid for their free access to the NHS. This was an issue of fairness and equity with British citizens.

However, a large proportion of respondents shared their worry that the Government would start to introduce charges, such as monthly fees, or force them to take out private healthcare insurance, which quite a few of them said they could not afford, and that might lead them to leave the UK.

Lord Kirkhope of Harrogate: These are obviously fears. There is a lot of fear in the system. To what extent do you have direct evidence of these particular possibilities?

Anne-Laure Donskoy: The problem that we are facing—people have been saying this quite clearly throughout the responses to all the questions—is lack of clarity in the message. There are a lot of very contradictory messages coming from the Government, as we heard recently in the news in the last couple of days. Because of this uncertainty, a number of people have been saying, “Well, I am going to take out British citizenship because I want an end to this uncertainty”. In a way, they are taking out citizenship for the wrong reasons just to get peace in their lives, because this uncertainty has been going on now for 15 or 16 months and is rising. Over 122,000 EU citizens have left the UK to date. That is a lot of people. They are taking themselves away but also a lot of businesses. There are a number of people who are afraid that, if they are not in employment or do not have the requisite papers or access to them, such as IDs, passports, proof of permanent residence, or whatever form or shape this will take, they will not have access to the NHS.

Samia Badani: We need to look at the default position, which, should there be no deal, would be that the 3 million EU nationals would become third-country nationals. I would expect the non-discrimination laws on grounds of nationality would apply. It would be quite difficult and politically very sensitive if the UK treated EU nationals differently. That

said, there are about 1 million EU nationals who will not have lived here for more than five years by 2019. We are concerned about the type of immigration status that they would have and the restriction placed on them about access to public funds and healthcare. Those are some of the concerns we have.

From talking to EU nationals from all 27 EU countries living in Scotland, London and Birmingham, they do not have confidence in the current Government. There is no guarantee that the next Parliament will not come up with a different Bill or a further reduction in their rights. That is why people say they are living in limbo. We need guarantees enshrined in legislation so that the rights of EU nationals cannot be changed or reduced at the whim of government.

Anne-Laure Donskoy: I support what Samia has just said. The 3 million totally rejects the so-called offer of settled status that will turn us into third-country nationals. We came here under EU legislation; we should not be treated as third-country nationals once the UK leaves the EU.

Q48 **Baroness Pinnock:** What would be your top three priorities for any transitional arrangements regarding healthcare?

Anne-Laure Donskoy: There is really only one priority, which would be that any transitional agreement should be based on keeping the current system in place and allowing regulations 883 and 987 to remain, and, as a matter of legal fact, everything should continue as now so that EU citizens who are ordinarily resident here and their family members should be able to have access to the NHS. When I looked through the responses from the participants in my short survey, 95% agreed with this statement. They agreed that the status quo should be maintained and they should be able to continue accessing healthcare services and treatments as they do now. It should be free at the point of entry with no added administrative hurdles.

Samia Badani: For us, provided that anti-discrimination laws are in place and there is no threat to the Human Rights Act, if you look at the details, the main priorities are access to cross-border healthcare and emergency treatment when travelling abroad, and no restrictions whatever on family members.

The Chairman: One of the difficulties we face as a Committee is that it seems likely there will be changes. The question is: what sort of changes do we think will be the least bad for people on both sides of the channel, as it were. That is what we are wrestling with.

Q49 **Lord O'Neill of Clackmannan:** So far, we have been talking about differing degrees of what you might call soft Brexit, but let us say we have a hard Brexit, which means that basically people walk away from the negotiations and there is no transitional arrangement. If it is not possible to maintain existing reciprocal healthcare arrangements, which aspects of these arrangements would be the most important to keep? If you had to hold on to something, what would be your priority?

Anne-Laure Donskoy: When we asked that question, there was definitely a lot of unease on the part of respondents. Quite often, they felt it was not feasible to prioritise specific aspects of these arrangements or healthcare as a whole, or, as someone put it, to cut healthcare into parts. Those who did identify priorities referred to A&E; access to GPs; access to hospitals; persons with chronic illnesses; access for children; access for persons with disabilities; and access for persons with dementia. In short, it is pretty much the whole of the NHS. Therefore, it is fair to assume that there is no appetite for, or interest in, dividing up access to any part of the NHS. The questions are so varied it just did not make sense at all to start prioritising, because everybody has their own priority according to their own situation.

Lord O'Neill of Clackmannan: You see the NHS package as being seamless in effect.

Anne-Laure Donskoy: Yes; it is a whole, and it was designed to be from the start.

Samia Badani: I would place particular emphasis on EU nationals who are disabled and extremely vulnerable; those who are known to mental health services or who are currently in hospital wards. If one had to make any concession, one would have to accept that our rights would be reduced. We have to understand the position of these vulnerable EU nationals and the difficulties they would have in accessing private health insurance.

We have also had dealings with Monsieur Barnier's team and the EU Council on a regular basis. As our members are also UK nationals in the EU, we find it inconceivable that EU nationals here and UK nationals in the EU are at opposite ends of the table in a non-Brexit scenario. Even before that scenario, we made representations to the Commission, the European Council and the European Parliament. UK citizens are EU citizens and they have a duty towards them, and there is nothing stopping them from doing the moral thing and guaranteeing their rights if the negotiations break down. We expect the EU as well as the UK to do the right thing.

Anne-Laure Donskoy: I am somebody with a disability. I have a couple of chronic healthcare conditions. I am currently running some round tables to try to find out exactly what the so-called vulnerability is about. I have changed the name from vulnerable to "at risk", because a lot of people with disabilities are at risk of not being allowed to stay in the UK should they become third-country nationals and there is no deal. I am trying to define this a little better. I am talking to persons with disabilities and those who are on the margins of society, for instance sex workers and ex-offenders, to find out what the issues are, and one of them is certainly access to healthcare services. I am trying to define this. There should be a report at the end of these round tables.

At the same time, I will be involving immigration lawyers. It is also important to have their professional perspective on what those

vulnerabilities and risks are. I conducted a piece of research for the 3 million on the experiences of applying for permanent residency. I also involved lawyers from the Immigration Law Practitioners' Association to get their professional perspective on those issues. This is an important piece of work, which hopefully will continue to inform this process and these inquiries.

Q50 Lord Condon: Staying with your theme of people at risk, if there is a lesser set of reciprocal agreements, or no agreement at all, are there EU citizens living in the UK who have been here for such a long time that they have somehow lost medical entitlements in their country of origin? Is there anything you can tell us about that "at risk" group, its scope, size and how we might think about some of those challenges?

Anne-Laure Donskoy: There are two things. First, there is no such thing as "somehow lost". It is quite clear that, no matter which country it is, once you have left your country of origin for over six months, a year or sometimes two years, you have lost your entitlement to access to healthcare. Basically, you have to start from scratch and apply as if you were a foreigner coming into the country, which is ironic. A lot of countries apply a qualifying period, which in France can be three months, five months, six months or a year, plus the niceties of the French administrative system, which makes things even longer. If you have a disability or a long-term health condition, it makes things even worse for you if you cannot afford to access health services quickly and in a way that meets your needs.

Private healthcare insurance is atrociously expensive. The top-up is very expensive. As I was saying earlier, from the figures I have seen, about 40% of French nationals cannot afford the top-up. In some instances it is mandatory—for instance, if you are in care. My mother was in care; I think she was under guardianship. The family judge made it compulsory for her to acquire this top-up, so she went without food and everything on a regular basis because she could not afford it, just to meet those requirements. The French system is always portrayed as nice, easy and free. It is not: it is complex and in some instances quite expensive.

Samia Badani: If we were to lose some of our rights, I would expect the Government to conduct an equality impact assessment because that would inform Parliament as to the likely impact on EU nationals. For certain groups of EU nationals, it would be better to understand the true impact on those who are at greater risk than others. If this is the scenario that occurs, which will be quite disappointing for 3 million EU nationals, we need to use this as an opportunity to look at the charging policy of the NHS, which does not always work in the right way. I have not had examples of EU nationals losing entitlement, but many returning British citizens have accessed health services and then received a huge bill. A pregnant British lady went to a hospital to see a gynaecologist and received a bill of £3,000 or £4,000. If we were to go down this route, we would recommend that we review NHS charging policy and the rules of residency.

Anne-Laure Donskoy: Indeed. In a survey I did in Scotland, we had a few examples. Most of them are saying they are not entitled. The German example is probably worse than the French. In the survey I conducted, a lot of respondents mentioned the loss of access to healthcare services and how complex it was, not just in France but in Germany. In Germany it is extremely expensive. There are quotes of about €800 or €900 a month, which is substantial.

The Chairman: Are there any figures available, as far as you know, for the number of disabled people, or those with long-term conditions, from other member states who are here in Britain, or is that all part of the huge difficulty in getting any statistics on this?

Anne-Laure Donskoy: No. We need to separate persons with disabilities and those with long-term healthcare conditions. I do not have the figures for long-term healthcare conditions, but we know that for western Europe it applies to about 10% of the population. Therefore, quite a substantial number of people in the UK have disabilities. Some will be foreign nationals and others UK nationals. I do not have actual figures, but this is the ballpark figure in western societies. It is about 10%, so you can assume that potentially it is around 10% of EU nationals as well.

The Chairman: Thank you for the evidence you have given. The concern about the possible direction of future policies is very clear from both sessions we have had today. That has been extremely useful to us. Thank you very much indeed for coming today and the evidence you have given to us.