

Home Affairs Committee

Oral evidence: [EU Settlement Scheme](#), HC 1945

Tuesday 12 February 2019

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Members present: Yvette Cooper (Chair); Rehman Chishti; Stephen Doughty; Chris Green; Douglas Ross.

Questions 1 - 99

Witnesses

I: Abigail Adieze, Head of Service, Families and Home Directorate, Waltham Forest Borough Council; Marianne Lagrue, Policy Manager—Migrant Children's Project, Coram Children's Legal Centre; Nicole Masri, Legal Officer (Immigration and Asylum), Rights of Women; Danny Mortimer, Co-Convenor, Cavendish Coalition and Chief Executive, NHS Employers.

II: Luke Piper, Solicitor, South West Law and Adviser, the3million; Jill Rutter, Director of Strategy and Relationships, British Future; Colin Yeo, Garden Court Chambers and Founder and Editor, Free Movement; Dr Adrienne Yong, Lecturer in Law, City University of London.

Examination of witnesses

Witnesses: Abigail Adieze, Marianne Lagrue, Nicole Masri and Danny Mortimer.

Q1 Chair: I welcome our panel to this evidence session of the Home Affairs Select Committee as part of our ongoing work scrutinising the Home Office's work on Brexit and, in particular, looking today at the settled status scheme. Could I ask you each to introduce yourselves and say something about the work that you do in this area? Ms Adieze.

Abigail Adieze: My name is Abigail Adieze. I am Head of Service for Children's Services in Waltham Forest. My work entails fostering, adoption and placements for children who are looked after.

Marianne Lagrue: My name is Marianne Lagrue. I am Policy Manager at the Migrant Children's Project, part of Coram Children's Legal Centre. As an immigration adviser, I undertook to make some applications for children under PB2.

Nicole Masri: Good morning everyone. I am Nicole Masri, Legal Officer from the women's charity Rights of Women. Rights of Women has been involved in respect of the EU Settlement Scheme since about April 2018, when we started discussions with Government on the scheme and we were invited to participate in the safeguarding user group, which we have been doing since I think May 2018.

We meet on a monthly basis with Government and discuss issues affecting vulnerable women in respect of the scheme, and through that we also participated in private beta 2. We were one of the seven community organisations that supported women to apply during the second private beta testing phase, which was from 15 November to 21 December last year.

Danny Mortimer: Good morning. My name is Danny Mortimer. I am the Chief Executive of NHS Employers, and I am also the Convenor of the Cavendish Coalition, which is a group of health and social care organisations who are working together to deal with the workforce implications of Brexit.

Obviously the pilots of the system took place first in the NHS, in the north-west and then more broadly across health and social care, and we supported our various member organisations working with employers and trade unions to provide information to employees who were accessing the pilots.

Q2 Chair: Thank you. We have a series of questions we want to put to you about different aspects of the settlement scheme and different attitudes towards it. Do not feel the need to answer every question if it is not one that you have further information on, but do indicate if you want to come in at any time.



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Can I start by asking you: overall, what are your impressions of the settlement scheme as it stands at the moment? Who would like to start, Ms Adieze?

Abigail Adieze: I have had the opportunity to be part of it for children who are looked after. At the moment we have encountered a lot of difficulties in terms of making the application, but also the criteria for making the application for looked after children.

Q3 **Chair:** For example?

Abigail Adieze: The ID document that is required to make the application, a lot of our young people have no IDs at all and, for those who have, it is not cheap.

Q4 **Chair:** Is there anything that you would want the Home Office to do that could deal with that?

Abigail Adieze: When I met with Home Office staff who were involved initially, I did indicate that perhaps for looked after children there should be different criteria.

Marianne Lagrue: Like Rights of Women, Coram Legal Centre has been involved in advocating for vulnerable people throughout the development of the scheme, so since April 2018. Although there have been areas in which the Home Office has been more receptive, fundamentally it still is a scheme that is designed with the lives of someone who is working in the UK in mind. That means that for children the scheme has been adapted but isn't particularly intuitive.

For separated children, for care leavers, for non-EU step children of EU nationals, for children with any kind of vulnerability, things very quickly spiral into being immensely complex using the scheme. Therefore, I think the overall messaging about the scheme being straightforward and easy to use holds true for large groups of EU nationals, but for the particular demographic that I advocate for it doesn't hold.

Q5 **Chair:** Could you give us an example of the kind of problem that might arise?

Marianne Lagrue: For a child, when they are making an application under the scheme, we try to direct the applicant to either make an application sponsored by an EU national or to make an application in their own right.

It is good that children are able to make an application in their own right, and it wasn't always a given that that option would be there, but the list of evidence documents, which was presented in the statement of intent on 21 June 2018, are all documents that only an adult would hold, like a tenancy agreement, like bills and payslips. For children, documents might include school records, medical records, and for separated children there may be records demonstrating that they are looked after. That documentation isn't necessarily easy to find and if the onus is on the child



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in any way to produce that documentation, there is a huge discrepancy in what they are able to provide to the Home Office.

That might lead to children being granted pre-settled rather than settled status. It might lead to them not understanding their nationality law rights that, especially for looked after children, need to be advised in tandem with advice on the settlement scheme. In cases where there is any kind of criminal activity that a child has been involved in or a victim of, it could lead to refusals or complications under the scheme.

Nicole Masri: Our biggest concern about the scheme is that it is one that puts the burden on EU citizens and their family members to apply. This is not a scheme that is conferring status on eligible individuals. This is a scheme that requires an individual to take an active step and apply in order to secure their future status in the UK.

What we need to remember is that this active step needs to be taken, failing which people will become unlawfully present in the UK at some point in the future. Of course, all the consequences of being lawfully present will flow from that. They will lose the right to work if they do not secure status. They will lose entitlement to housing. They will lose access to benefits and lose entitlement to health care, and so the full force of the hostile environment will fall down upon people who fail to secure status under the scheme by the deadline.

Broadly, we are concerned about four categories: people who will have difficulty proving their eligibility under the scheme, people who cannot meet the eligibility criteria of the scheme because of the way the rules have been drafted, people who could meet the eligibility criteria but simply cannot access the scheme because of support needs that they might have and cannot overcome, and then people who simply will not know about the need to apply or will not apply in time.

Looking at those in turn, we have people who will have difficulty proving that they meet the eligibility criteria. That might be because, as Marianne said, they lack identity documents and nationality, not only to prove their own identity and nationality in the UK but, if they are a family member, to prove the identity and nationality of their family member.

For example if you are an EU citizen and you are a woman in an abusive relationship and your identity documents are being controlled by another person, you cannot overcome the first step in the application process, which is to provide your valid identity document or passport. If you are a non-EU national and you are separated from an abusive partner, and you are eligible under the scheme, you are required to provide that abusive ex-partner's identity and nationality as part of the application process as well, so that can be a barrier that some women will find difficult too.

In addition to identity and nationality, there are all sorts of problems that will flow from the residence requirement. Individuals are required to demonstrate five years of continuous residence in the UK. For many that



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will be a hurdle that they will be able to overcome, particularly with the benefit of the Government's automated data checks that they have implemented through the scheme, but some people—and many within the vulnerable cohort that we represent—will have real difficulty proving their residence in the UK.

Perhaps there will be time to talk about the experiences of our clients going through private beta 2, where those automated data checks just did not help them to prove the continuous residence and they had to provide their own evidence. We were able to support some people to obtain all the evidence they needed, but others will have gaps and the issue is: how are those gaps going to be treated by the Government?

When we look at non-EU nationals the burden is even greater because, not only do they have to provide evidence of their own continuous residence in the UK, they have to provide evidence of their ex-partner's—and perhaps for many of the women an abusive ex-partner—residence in the United Kingdom as well. That is a barrier that simply will not be overcome, and so our big call on the Government is for them to share responsibility. We ask the Government to accept a duty to undertake reasonable inquiries on behalf of some applicants where they cannot demonstrate that they meet the eligibility criteria on their own.

There is another cohort that simply cannot meet the EU settlement scheme's eligibility criteria at all. We have some concerning suitability criteria grounds for refusing applications on the basis of non-exercise of treaty rights. We have certain non-EU citizens who are not protected on relationship breakdown. We are particularly concerned about victims of violence against women and girls. When relationships break down because of domestic abuse, non-EU citizens in some categories will fail to qualify under the scheme. They can include spouses, children and unmarried partners who do not meet the eligibility criteria.

Q6 Chair: Can you give us an example of the sort of case?

Nicole Masri: An example is one woman that we could not take through the private beta 2 scheme. She was what the Government calls "a durable partner". She is an unmarried non-EU citizen and her ex-partner was an EU citizen. She had a residence card under EU law that enabled her to reside in the UK but she had not accrued five years of continuous residence in that relationship. I think her relationship had broken down because of domestic abuse four years plus, so just short of the five-year mark.

As soon as they separate, unmarried partners lose their entitlement to qualify as a family member under EU law and also under this EU Settlement Scheme. That means this woman, if she were to apply now to the scheme, would not be able to qualify solely because she left an abusive relationship. We say that is fundamentally wrong and the Government need to change the criteria of the settlement scheme to protect women, so that they do not feel that they need to stay in abusive



relationships to avoid deportation from the UK. There are a few categories like that that we have been talking to the Government about and we have yet to see substantive change on.

Members will be aware of those who hold derivative rights to reside under European law. They are predominantly primary carers, so sole carers of children, and they are predominantly non-EU citizen sole carers of children. They are excluded from the settlement scheme entirely and we still do not know what provision the Government will make for those.

Then of course there are people that will have various needs that make it difficult for them to apply to the settlement scheme unassisted. There is no legal aid available to assist people to apply to the settlement scheme, and so there is very limited free advice and support and, unfortunately, we think there is a large cohort of vulnerable people with potentially complex cases that will need advice and assistance to apply.

Q7 **Chair:** Thank you. Mr Mortimer?

Danny Mortimer: I obviously recognise that the people we represent that applied did so with many advantages: they are in employment. They have the support of their employer and their trade union often.

The experience that we had, in terms of areas of concern for people, they were often practical in terms of the information that we shared: some concern around Irish nationals and whether they needed to apply or not, some ambiguity in the communications around that; some concern around the technology, in particular, because it is android-based and not everyone had access to an android device or was willing to use someone else's device to share that.

Having said that around the concerns, the experience that we had—and obviously health and social care worked with the Home Office over a period of time around the two pilots—was that the level of engagement and communication from Home Office colleagues was good.

There was a responsiveness to comment on the communications. Members of staff used the scheme—and clearly relatively small numbers of people did access the scheme in the pilot phase—and where they encountered problems, and occasionally they did, their dealings with the response centre were good. They felt there was a response, although we are clearly aware of the fact that the people I am talking about have many advantages compared to my colleagues this morning, in terms of who they represent.

Overall, the lines of communication with the Department of Health and Social Care and with the Home Office were positive. There are some hurdles to overcome going forward, and more communication needs to be done and there are some practical concerns to resolve, but so far, on balance, the experience has been a positive one.

Q8 **Chair:** Mr Mortimer, you said you have a sense of a positive response



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from the Home Office in terms of adapting things. For the rest of you, when you have raised these concerns with the Home Office, what kind of response have you had and how far do you feel that the Home Office is listening to your concerns?

Marianne Lagrue: The colleague who sat with Ms Masri on the vulnerable group steering group throughout the period from April 2018 to January 2019 has now left Coram, but my impression was that discrete issues could be dealt with if the engagement was sustained for a period—was it six months? There were a number of issues where the Home Office did make an adjustment to the scheme.

During the actual operation of private beta 2, there were a number of practical, logistical hiccups—for example, people getting confused about the documentation that they were providing—which led to the Government making the scheme slightly more accessible. Therefore, addressing that hiccup in the application process itself, which I imagine was the point of running the private beta phases in the first place but I think Ms Masri can answer the sustained engagement question better.

Nicole Masri: The picture is really mixed, as you could expect. It is positive that the Home Office has set up stakeholder user groups. Having worked in this area for quite a while, it is not usual that the Home Office invites stakeholders in to have sustained conversations, so we certainly welcome the existence of the safeguarding user group, and the Home Office gives us opportunities to provide our input through that.

How much the Home Office is making change in response to what we are saying, that picture is slightly different. To give you an example, in respect of the identity and nationality document issue, for a lot of the vulnerable groups we are talking about there is a real concern that some people will not have the documents that they need to prove their identity and nationality. The Home Office has put a provision in place in the scheme. That enables people to provide alternative evidence of their identity and nationality if there are reasons beyond their control that they cannot provide that document or if there are other practical and compelling reasons.

That provision was not fully enforced during the testing phase because everyone has to have a valid identity document to apply. It is enforced for non-EU citizens who apply because, of course, they are using it in respect of the EU citizen for whom they have to provide valid identity and nationality documents as well.

There should be a published guidance document to confirm how exactly the Home Office is going to use that power to allow alternative evidence to be submitted. That document is in draft. We have asked to be consulted upon it, and we were in the last couple of months. We were given an opportunity to feed in to some of the material aspects of that document. It will remain to be seen whether our comments are taken on board, so that is one example.



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One issue that Rights for Women has pushed very hard is this issue around people being unable to overcome the evidential barrier. For victims of domestic violence who need to provide evidence relating to a family member after separation they are just not going to be able to. Therefore, what is the state going to do to assist those people?

That comes back to our point where we have asked for the state to take on a duty to make reasonable inquiries. The Home Office has consistently not made any comment on whether it is willing to do that or not. It talks about—and you may have heard Ministers and officials talk about—a flexible discretion-based approach in the scheme, but none of those assurances have actually materialised into the rules or the guidance yet, so that is our big concern. While the Home Office can say that and certain case workers can take that approach, unless there are rules and guidance to underpin that there is going to be uncertainty and inconsistency in how that is applied.

Q9 Chair: We can come back to some of those more detailed points but, Ms Adieze, overall, what is your sense of the Home Office's willingness to respond to any concerns that you have raised?

Abigail Adieze: It was very difficult from where we stand. We raised the issue of our young people not having the valid ID documentation that is required to make the application and, over and over, the response that I got from the Home Office was about me or the staff dealing with that, to confirm how much time we were spending in getting through that process. It wasn't about listening to what we were saying at all about the real difficulties and challenges we have in getting our young people through in the first instance.

Also, there were technical issues. Our system is not android-based so we could not even make the application in the first place because we needed to go to the IT department for them to reconfigure the system. But I did not feel that I was listened to.

Chair: Thank you.

Q10 Rehman Chishti: Just looking at the application process itself. I think you have answered a number of points that I was going to look at, but just clarifying the application process. I was just looking at a statement made by the former Home Secretary who said the application process itself was as quick and swift as online signing up to LK Bennett. Well, I have never signed up to LK Bennett, but it was a metaphor used to say it can be done quickly, speedily and effectively. From your experience, apart from the identification documents in the process for young people, does the system meet that statement of the Home Secretary as being as swift as an online account that you can make with all the different organisations that you can online? Was it as quick as that?

Abigail Adieze: I don't think so.

Q11 Rehman Chishti: You say you don't think so, but how long does it take?



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Just moving back from that, the application process being made by a young person, one that was unsuccessful and one that was successful, how long did it take to make a successful application?

Abigail Adieze: I have not made an application that is successful yet because none of our young people, other than a young mother, a care giver and her little baby from Lithuania—

Q12 **Rehman Chishti:** You haven't made that application?

Abigail Adieze: No.

Q13 **Rehman Chishti:** Can I stop you there? Can I go to somebody who has made the application? I may come back to you on that because I just want to focus on that. Organisations that have made an application, the first question is: how many applications has your organisation made and out of those how many were completed the first time round and how many were done as quickly as possible, and how long did it take? Who can answer that question? What about you, yes? Signing the application we are talking about.

Marianne Lagrue: The Coram Children's Legal Centre made 72 applications. The average time that those took was probably between one and a half to two hours per application. At the longer end of the scale, where perhaps there were documentary or technical glitches, we are looking at upwards of 10 hours—advice giving, trying to find workarounds and documentary issues—often exacerbated by technical glitches, so the system shutting down and having to start over.

Q14 **Rehman Chishti:** Just for clarification, of that 72, after the glitches and everything else that took place with the admin or with the system, how many of them were confirmed?

Marianne Lagrue: We do not know.

Q15 **Rehman Chishti:** What I mean by "confirmed", registration confirmed. You do not know?

Marianne Lagrue: The applications submitted and done?

Rehman Chishti: Yes.

Marianne Lagrue: We made a total of 72 applications. There were probably an additional 30 to 40 people who we advised who then did not make an application, either because they were too vulnerable because there were insurmountable documentary issues within the scope of the pilot or because they had an alternate route, such as making a permanent residence application or making a nationality application, which was in their best interests.

Q16 **Rehman Chishti:** Tell me, in terms of the timeline, you said you have not heard yet. What is the timeline for them to hear back in terms of whether that has been successful or not?



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Marianne Lagrue: Some applications were decided very quickly, within a day. Those were the applications submitted early in the pilot, so the volumes of decisions being made were very low compared to the threshold that will be met in April.

Q17 **Rehman Chishti:** There were some that were done on the day, is that right?

Marianne Lagrue: The following day, as I understand it. There is a person I was speaking to yesterday who still has not heard, who made an application mid-December.

Q18 **Rehman Chishti:** I am just trying to get this clear in my mind. When you say "some", "some" can be a metaphor for a number of different figures. You dealt with 72. You said 40 or so you told not to make the application, is that right?

Marianne Lagrue: Yes.

Q19 **Rehman Chishti:** Then there were some who had the application confirmed the next day. In terms of "some", 40 had already gone out so are we talking about 10, 15 that got confirmed the next day?

Marianne Lagrue: Because applicants make applications in their own name and with their own e-mail addresses, the responses also go to them. We are talking about quite a vulnerable cohort in the case of the people that we were advising. It was young people and it was young mothers and children who often did not speak English. We saw lots of problems with people thinking they had not had a response within a month, where actually they had not recognised that the e-mail that they received from the Home Office was actually a decision.

The documentation about the decision on applications is all provided in English, like the guidance, like the application process itself, so there is quite a lot of confusion about how long the process takes. Because there is no automated way for a support organisation to also be informed of the result of an application, we don't have clear figures on how long applications took to be decided.

Q20 **Rehman Chishti:** Just linked to that, the administrative review process that takes place, you can have that. Is that right?

Marianne Lagrue: There is an administrative review process through the private beta scheme and the public beta phases. There will be an appeals process come April, so long as there is an agreed withdrawal agreement.

Q21 **Rehman Chishti:** I am looking now at checks and balances, so the administrative review process. The cases that you dealt with, did any of those go through the administrative review process?

Marianne Lagrue: They did not.

Q22 **Rehman Chishti:** But you had the option to go through the administrative review process?



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Marianne Lagrue: It exists. We haven't yet found a case that that would be appropriate for.

Q23 **Rehman Chishti:** Just clarification, when you say "appropriate for", what would be appropriate to go to the administrative review process?

Marianne Lagrue: A case where we imagine the administrative review process would be useful is: where a person has accrued five years of residence but was not granted settled status and was only granted pre-settled status. We imagine that that would happen in cases where the automated checks did not provide enough information or any information and, therefore, the applicant had to submit evidence themselves.

Because we were supporting vulnerable applicants to make applications, and were doing things like writing letters to accompany applications, asking the Home Office to exercise discretion, we found that the Home Office did in the cases that we ran and, therefore, there was no need to use the administrative review process. I imagine it would be a lot more useful for individuals applying unsupported.

Q24 **Rehman Chishti:** Got it. Just clarification from others on the panel, has anybody else had experience of the administrative review process so far? You have, Ms Masri?

Nicole Masri: Yes, one application.

Q25 **Rehman Chishti:** One out of how many?

Nicole Masri: We did 16 applications on behalf of women and children.

Q26 **Rehman Chishti:** The one process that you had, what was it?

Nicole Masri: That was a very complex case, in fact. That was one application demonstrating how the rules do not adequately protect non-EU nationals. That was a non-EU national 20 year-old who was estranged from her EU citizen parent because of domestic abuse. The rules unfortunately did not allow her to obtain settled status because she wasn't applying, so children under 21 can get settled status immediately if their parent qualifies for settled status but only if they are applying at the same time and, of course, she wasn't applying at the same time as her abusive parent. Therefore, in accordance with the eligibility criteria of the scheme, she was only going to be able to get pre-settled status.

What we did was request that she get settled status or indefinite leave outside of the rules because of the circumstances of her case. That was rejected and she was granted pre-settled status. We wanted to challenge that. Unfortunately, administrative review is not an appropriate remedy for that because the administrative review that is available, in the context of the EU settlement scheme, only allows you to challenge the basis of a decision in the context of the scheme's rules and guidance, as opposed to all immigration law more generally. While we submitted the administrative review—because it was the only remedy available to her to challenge the refusal—unfortunately we know it is unlikely to be



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successful because the issue isn't one with the scheme's rules and guidance and so forth.

- Q27 **Rehman Chishti:** The point you make is quite wide. It is not with regards to the current system that is in play. The current system you applied to for administrative review says you have to meet certain criteria. You put in an appeal to the administrative review process but you know yourself that it cannot amend that because that criterion is not set so, therefore, you are not in a position to comment on the administrative review process in line with the criteria that is being applied at the moment?

Nicole Masri: Indeed.

- Q28 **Rehman Chishti:** That is correct. Do you have a case where the administrative review process has been applied?

Danny Mortimer: No.

- Q29 **Rehman Chishti:** No, you haven't, so at this point in time nobody on the panel can comment on the administrative review process being able to be applied where the criteria is set. There is a separate point where it should be looked at in a wider context but nothing in this process at the moment?

Nicole Masri: That is right. The private beta 2 report, which the Government published, gave data on the numbers of administrative reviews. I think it was a very small number—approximately 11—that were done for the whole cohort of around 30,000 applicants.

- Q30 **Rehman Chishti:** Can I ask the other question on the smart phone to you, Mr Mortimer? I have the figure here, which is 10% of applicants failed to successfully validate their identity using the smart phone app. Do any of your applicants have difficulty using the app itself and was there concern with people saying, "I have an iPhone. Why do I have to go and get smart a smart phone to do that?"

Danny Mortimer: Absolutely there was concern that the app was only available on android and not on Apple. That was an issue. Those people who were able to use the app found it easy to use, although a number reported that there were concerns that they could apply for themselves but not for family members because you had to be an employee of a health and social care organisation. That was defined in a particular way, so that limited the efficacy of the pilot.

Where they had difficulties was often because of unavailability of documentation or they applied through the app and, while they got a very quick response, their application was turned down. That did not feel right to them. They then used the remedy process and that worked fairly effectively, but again, as I stressed earlier, clearly those I represent have many advantages compared to colleagues to my right.

- Q31 **Rehman Chishti:** Can I ask a question on that? We watch what



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constituents and people put up and they tag you in there as an MP, "Why do I have to use a smart phone and not the Apple phone? This is not right". Apart from cheesing somebody off initially, in terms of actually allowing somebody to go on there and swiftly make the application, there wasn't much of a hindrance in doing that was there?

Danny Mortimer: The majority of the feedback we had was that the app worked well. If people had problems with it they could resolve the problems fairly straightforwardly.

Q32 **Rehman Chishti:** There is an alternative to the smart phone. If you have an Apple and you cannot use the Apple to make the application because you have to go through the android process, there is an alternative. Therefore, while there was some inconvenience, there was a quick alternative process where somebody could make the application, is that right?

Danny Mortimer: Yes. In our case, many employers made android devices available so that people could use the process through the app because that was the quickest way of doing it.

Rehman Chishti: Can I ask a final clarification? You made a comment earlier about the five-year scheme, so if you are an EU national and you married somebody who was not an EU national, it is affecting their rights if they separated before the end of the five-year period. I completely agree that everything should be done to support those who are vulnerable and ensuring that they get the support and assistance, but what happens, for example, in situations where you have sham marriages or sham relationships that are designed for a purpose to get somebody into the country? How do you address that?

I am not saying one way or the other, but when the Government were looking at addressing some of those situations that we know happen in the country, and we have to ensure that the system is designed to give assistance to those who genuinely need it, how do you address that?

Nicole Masri: It is not a phenomenon we come across much in our caseload. I would have to check but I do believe that in the regime for the settlement scheme, appendix EU, there is a definition of spouse or partner that addresses this issue. Someone who has engaged in a sham marriage would not be able to meet the criteria of a spouse or partner, as I understand it.

Q33 **Rehman Chishti:** You think there are sufficient checks and balances in that?

Nicole Masri: I would have to come back to you on that, but perhaps that is an issue that the next panel might be able to address in more detail.

Rehman Chishti: Sure. Thank you.

Q34 **Stephen Doughty:** I want to talk about two specific cases that I wasn't



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aware of before, to be honest. I think one of the shocking things about this Brexit process is that it is throwing up all sorts of cases that I don't think anybody realised would be a challenge. Just to acknowledge that it was Matt Foster of PoliticsHome and Charlotte O'Brien, who is a professor at York Law School, who raised these two with me. That is the case of Zambrano carers and, also, I think it is the Teixeira case. If I get that right. Apologies if I have the wording wrong.

Just for the benefit of anybody watching the Committee, I understand Zambrano carers are people whose residence is required in order to enable a child or dependent adult who are British to remain in the UK and not be removed from the UK or, indeed, the EU unnecessarily. That is derived from a right in EU law but it is not covered in the withdrawal agreement. The Teixeira case is children of EU national workers who have meaningful residence rights to continue their education, even after that person has not continued with that work, if I have those two correct.

Can you just tell me about your perspectives on those two and what issues you have come across? Have those been adequately dealt with in this process and, if not, what we need to do about them?

Marianne Lagrue: Zambrano carers have had no answer at all to what their continuing rights are going to be under the scheme. In the statement of intent, even Teixeira carers were told that provision would be made for them. Chen carers, who are self-sufficient persons, sole carer of an EU national, were told that provision would be made for them.

No provision was guaranteed for Zambrano carers and we know that approximately 1,700 applications for status of Zambrano carers have been granted in the first instance by the Home Office since 2012. These are low numbers but these are sole carers of British children where, if that person were not granted continued residence in the UK, you would effectively be asking them to leave the country and take their British children with them. That is the programme.

Q35 **Stephen Doughty:** Just to get an idea, are we talking about, for example, a child who is British, British citizenship, perhaps was orphaned by parents who were British citizens and a relative has come in to care or—

Marianne Lagrue: No. We are talking about where there was a mixed family, so you had one British citizen parent but they are not on the scene, and not providing any care, and the other parent is not from the EU and not British.

It is likely that the Home Office is going to try to make those carers make applications under other family arrangements in the immigration rules. The later it gets and the closer it gets to 29 March, without resolution being provided for those parents, the greater it looms. These parents might be suddenly forced to go from making an application under the settled status—which would have cost £65 and is now free—to the alternative, which is an application under the family migration rules. That



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costs £2033 at present and must be remade ever two and a half years. That is before legal representation fees are taken into account. You are looking at going from a free application to £10,000 in application fees, so that is quite high stakes for these sole carers of British children.

Q36 Stephen Doughty: Why has the Home Office not responded and made this clear, do you have any idea?

Marianne Lagrue: We haven't been given a rationale for that, no.

Q37 Stephen Doughty: I am assuming it has been raised with the Home Office by a range of organisations.

Marianne Lagrue: It has.

Q38 Stephen Doughty: Does anybody else have any comments on this?

Nicole Masri: Yes, around derivative rights. We call these derivative rights holders, primary carers of children in the UK, and what we need to understand here is these children have secure status in the UK. They are either going to be British children or EU citizens who will have settled status under the scheme. But the status of their non-EU primary carer, their sole carer, is not yet secure and we need to establish what that is going to be.

Some of these derivative right holders—the Teixeira, the Ibrahim and the Chen carers—are protected by the draft withdrawal agreement, so the Government will have to make provision for them to have status post-Brexit. However, the Government's policy on them is that, because their EU rights don't lead to permanent settlement, they are not going to be included in the settlement scheme that gives people permanent rights to stay.

With respect to Zambrano carers, they are not protected under the withdrawal agreement. Again, the Government say their rights do not lead to permanent settlement so they are not going to make provision under the settlement scheme for them either.

Our position is that this is just simply not acceptable. This is potentially a very vulnerable cohort of individuals. We are talking about sole carers of children. They are predominantly women. We see a high proportion that are victims of domestic abuse. We see a high proportion of financial hardship in these families. Zambrano carers are ineligible for benefits in the UK, so they are sole carers of young children who are ineligible for benefits. These are families that are really struggling and they should be protected and brought into the scope of the scheme. However, we still have not had an announcement about how the Government are going to treat them.

What is concerning here is that the Government, in the context of the settlement scheme, have chosen to offer more favourable provisions to some categories of individual. In the withdrawal agreement, it wasn't



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necessary for the Government to choose that the test for settled status would be pure residence only, because the withdrawal agreement allows the Government to choose criteria based on the EU Citizens' Rights Directive. Within the context of the scheme, the Government have offered considerably more favourable provisions to EU citizen.

There are other examples of where they have offered more favourable provisions in bringing family members of British citizens into the scope of the settlement scheme, and yet there are some categories that they have not done that for. The fact that they have not done that for this category is really concerning because it particularly does not take into account the interests of these children. Of course, it is in the interests of children who are settled in the UK for their sole carer to have a permanent settled status with them. This is something that we really want the Government to rethink about and bring them into the scope of the scheme.

Q39 Stephen Doughty: Just to be clear, the Teixeira and Chen cases are clear about what is going to happen to them?

Nicole Masri: No. Subject to the withdrawal agreement, we know that some provision will have to be made to enable them to remain in the UK.

Q40 Stephen Doughty: Just explain the Chen cases, what are those?

Nicole Masri: They are the primary carers of self-sufficient children, but the fact of the matter is, because the Government have not brought them under the scope of the settlement scheme, the suggestion is they are going to give them temporary stay in the UK, a stay that will not lead to a route to settlement and that is the key concern.

Q41 Stephen Doughty: If there was no deal then the rights of all three groups would be lost, essentially?

Nicole Masri: I would have to look again at the no deal policy notice. I cannot recall exactly what they have said about those.

Q42 Stephen Doughty: Has there been a no deal policy notice on citizens' rights?

Nicole Masri: There has been a no deal policy notice in respect of citizens' rights, where they talk about maintaining the settlement scheme with some changes.

Stephen Doughty: It would be really useful if you could send us a note or anything about the case in no deal, but even if there is a deal these three groups are left in some uncertainty—particularly the Zambrano carers—which is clearly unacceptable.

Just to be clear as well, I was told that the rights when they are exercised under these cases do not count towards the five-year residency period.

Nicole Masri: That is right.



Q43 **Stephen Doughty:** Therefore, people would not be able to use that towards settled status anyway.

Nicole Masri: Exactly, and that is the justification the Government are using to exclude them from the settlement scheme. That because their residence under EU law has never accrued a right to permanent residence, therefore, the Government are saying that they are not going to be included in the settlement scheme. Of course, that would align with the way the EU law works but, as I say, it does not align with the more favourable provisions that the Government have elected to offer other categories.

Q44 **Stephen Doughty:** Somebody, for example, in one of those roles looking after a very young child or a dependent adult, could be here for many, many years and not accruing any rights, essentially in limbo the whole time, correct?

Nicole Masri: Yes, limited stay.

Stephen Doughty: That is very helpful. Any further details you have in terms of numbers of cases and experience and stuff would be very useful to have, so thank you.

Q45 **Douglas Ross:** Good morning. We had a discussion in response to the Chair's earlier comments about the feedback from the Home Office when you raised concerns with them, but since the end of its second phase the Home Office has introduced some improvements to the system. Are you happy with them? Do you think they go far enough and do they relate to a number of the concerns you have?

For example, the communications and guidance material was updated, and the size of the file an applicant can upload in support of their application was increased. It allowed applicants to change their e-mail address should the clarification e-mail from the Home Office get blocked, introduced technical safeguards against disruption in the automated checks for HMRC or DWP data, and a new screen within the application process to help applicants check whether they hold a valid permanent residence document. These were changes that the Home Office introduced. I wonder what you felt about these changes and did they relate to some but obviously not all of your concerns.

Nicole Masri: The one that made a big difference in fact, during the progress of private beta 2, was the change to the upload limit. The others I cannot really speak to very much.

One of the issues of course in this application process is that people have to provide evidence of their residence in the UK. That is an issue that I raised at the outset, and that many will be able to rely on the automated data checks and will not have to upload evidence.

I think you will see in the Government's report of private beta 2 they say that 84% along those lines did not have to provide additional evidence of residence. I can say that figure does not reflect the experiences of our



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clients. Of the 12 main applicants, or the adult applications, 10 out of 12 of them had to provide additional evidence of their residence. In fact, the only two that did not was because they were only applying for pre-settled status. All of those that were applying for the full settled status had to upload additional evidence of residence. That is going to be the experience for many vulnerable people for whom the automated data checks just do not work.

When we came to uploading evidence, this is something that was so resource-intensive for us as an organisation. We had this limit of 10 documents. Originally it was 2 megabytes each and then the Government increased that to 6 megabytes each.

If you have to provide evidence over a five-year period—and what the Government are asking for is six months' evidence in each year—as a minimum that is 30 pieces of evidence for the five-year period and yet you have 10 uploads of a maximum 6 megabytes. A lot of our time was in that bureaucratic task of collating documents, scanning them, checking whether the file met the limit or not and uploaded them.

That was a really resource-intensive activity for us as an organisation, and we fear that individuals who will be doing it on their own—who of course will not have access to a scanning machine to make documents as small as possible, to upload a jpeg, just one document—are likely to very quickly reach that limit. Therefore, we think the limit has to be increased basically.

Q46 **Douglas Ross:** But the Government have listened to that and have increased the limit?

Nicole Masri: In the context of private beta 2, yes, but we think it needs to be increased even higher than that.

Q47 **Douglas Ross:** What other concerns do you think the Government were told about? This is a list of things and out of the list of six that I read out one of them was more relevant to the cases that you deal with. What other things have been highlighted to the Government that they could do relatively easily but they haven't done so far? The Government want this to work as well. It sometimes seems like they are putting blocks in places but they are going to get criticised if this does not work. This Committee and others will highlight that to them, so what else could they do, potentially easy wins for the Government that you have suggested that have not so far been taken on board that you think they could?

Nicole Masri: With the application process itself are you talking about?

Douglas Ross: Yes, sorry, just on that.

Marianne Lagrue: They could certainly translate some of the documents that relate to the application process, which they have committed to doing into three languages as of April. Those translations were not in



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place during private beta 2 and are not in place during the public testing phase.

Abigail Adieze: For our looked after children who do not have passports or any ID documents to start with, it is very difficult to even start the application on their behalf. Maybe the Government should look into that cohort to think about a different sort of criteria for making that application. I have young people who are looked after and they do not have any ID at all, so I cannot start making the application on their behalf.

Marianne Lagrue: Can I follow up on that point? To give an example of why this is a problem, if you are a Polish national child and you are trying to apply for a passport you need both parents to corroborate that application process.

If both parents cannot assist the application you need a court order stating that one parent has sole parental responsibility for that child. In the UK family courts there is a no order principle, meaning that courts will not issue a court order giving sole parental responsibility unless there is a contest between parents, so where only one parent is present and there is no engagement from the other parent, there is currently no workaround for that child to get a passport, and there are hundreds of Polish children in care.

As I understand it, the representation of the EU Commission in the UK has taken it upon itself to work with all EU embassies in the UK to come up with a template on how those documents can be sourced. It is the EU Commission that is funding that work. It should be the Home Office, and the Home Office certainly should be supporting it and funding it. When the work is completed and embassies have explained any difficulties that might arise in sourcing documentation, the Home Office certainly should have regard to that research in guidance later produced about the exercise of discretion.

Q48 **Douglas Ross:** Can I just ask, anyone who comes to any of your four representative bodies—and you were involved in the pilot schemes—what kind of advice would you give to people giving advice to others or people coming to you about applying for the scheme? There have been instances in Scotland of people saying they are not going to apply at all. What would you say to people who are refusing to apply because they do not think they should have to do it, and what would be your advice to people going through this process to make it as smooth as possible for them?

Nicole Masri: To the individuals or professionals supporting them?

Q49 **Douglas Ross:** Both, but probably more the professionals doing your job on a bigger scale when this gets rolled out.

Nicole Masri: We would be really encouraging all professionals to relay the message that people have to apply to this scheme, failing which—



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Q50 **Douglas Ross:** To anyone that is saying at the moment, out of principle or otherwise, that they do not want to apply you would strongly advise against that?

Nicole Masri: Of course, there remains uncertainty as to what is going to happen politically with Brexit, but assuming that the UK leaves the EU, there will be a point at which European citizens and their family members' rights will cease to apply. They will cease to have protection of those rights in the UK. If they fail to apply to this scheme they will not have rights to reside in the UK and, as I said at the outset, all the consequences that will flow from that, so unfortunately there really is an onus on them and an imperative for them to apply to the scheme.

Q51 **Douglas Ross:** It may be a principled decision for them to take because they do not agree with having to do it but, for example, an elected member in Scotland has said they will not apply for settled status. They could potentially, as a leader within their community, be encouraging others not to do that, and you would say that would be a dangerous route to go down?

Danny Mortimer: I can only speak for the advice that we would give as employers, and I know the advice that our trade union colleagues are giving. I cannot give advice about your colleague north of the border.

Douglas Ross: They are not a colleague of mine.

Danny Mortimer: Our advice is: the system is there. You have to apply, as Ms Masri said. We have a range of things in place to help people do that. We are trying to make it as easy as possible for our employees to do so. That does not appear to have been a particularly controversial approach for our organisations to take across the UK.

We are the biggest single sector in employment terms in the UK. We have not seen large numbers apply, and so there is a question about the uncertainty that perhaps people are feeling about the Brexit project as a whole, but our advice is very clear and we will help people to make the application.

Marianne Lagrue: We work with vulnerable children, young people and families who day to day face the full consequences of a hostile environment, and I think we would not wish that on any group or person.

Q52 **Douglas Ross:** Could you imagine the scenario if you were reading your local newspaper, "Here is one community leader saying they are going to take a stand and not do this"? It could lead others to think, "Well, if this person is doing it—" and almost think, "Well, it is a choice", which it is ultimately, but it is a choice that if you do not take it you could potentially lose an awful lot.

Danny Mortimer: That has not been something that we have had fed back to us. What we have had fed back to us is that the experience that the Afro-Caribbean community has had—many of whom are our



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colleagues in the NHS—the experience that they and their families have had has had a far more detrimental impact on people’s confidence in the system. I think that is the bigger issue here rather than what community leaders or elected politicians may or may not be saying.

There is an issue in terms of whether people have faith in the scheme, whether they apply to it or not. In some ways, the level of pleasant surprise with the contact they have had with the Home Office when they have had to have it—it has been responsive and it has been positive—I think reflects that concern that clearly we all became aware of last summer. I think that is a more material issue for my EU colleagues in the NHS.

Q53 Douglas Ross: Just in terms of faith in the scheme, the Government point to the fact that there have been no refusals during the pilots. What is your take on the fact that there have been no refusals?

Nicole Masri: We are certainly a little bit concerned by that narrative. There certainly have been no outright refusals of leave. Now, do not forget that for this scheme you are potentially applying for two types of status: settled status or indefinite leave to remain, pre-settled status, limited leave to remain. As far as we are aware and as the Government have reported, there have been no refusals of any type of leave. However, what we are concerned about, and what we fear, is that there are people applying to the scheme who do not get the status that they should get, so people who are eligible for settled status receiving pre-settled status instead. We fear that there is a cohort of people who are in that situation.

In the Government’s reporting of private beta 1 they did report that everybody who applied got the status they expected or wanted. In the private beta 2 reporting that measure was absent. They simply did not tell us how many people applied did not get the status they wanted. That is a figure that we are really interested to look at because we think this is an increasing problem within the system because of the way that the scheme works.

The Government do not actually ask applicants how long they have been living here. They never at any stage in the application process ask when a person arrived or when their continuous residence commenced. The whole system is built around the automated checks and, if they do not find five years’ continuous residence evidence for you, they invite you to choose to accept pre-settled status or take the step of proving your own settled status. People are not necessarily from the outset making an application based on what they are entitled to unfortunately, so we think there are a significant number that will simply tick the box and say, “Yes, I will take the pre-settled status” even though they are in fact eligible for settled status.

Q54 Douglas Ross: With the assistance that you have provided within your respective organisations, you do not have any examples of that?



Nicole Masri: That would not happen because we supported everybody to access the status they are entitled to. That is what was significant about our assistance in the scheme.

Q55 **Douglas Ross:** Have you heard that anecdotally or what makes you believe that? The first stage was just 1,000 people, so it is probably easier for the Government to say that, of that 1,000, 100% got what they were asking for. It was almost 30,000 in the second phase. What makes you so certain that that same percentage that happened in the first phase did not occur in the second phase?

Nicole Masri: I think out of our 16 applications there were 10—I would have to verify that figure—who were entitled to settled status. During the application process none of them were told they were being considered for settled status. All of them were being told that they would be considered for pre-settled status, “If you don’t want that tick this box and prove that you are eligible for settled status”.

Obviously, our assistance enabled them to challenge that and provide evidence that they were eligible for settled status. Had they not had support, we think it is inevitable that people that had that kind of experience not everyone will provide the evidence necessary to prove they are eligible for settled status.

Q56 **Douglas Ross:** Finally, the second pilot, phase 2, as I said, there were just under 30,000 applications received. Over one-third of those were in the last five days. Was there a push by the Government or organisations to do so later on in the process?

Marianne Lagrue: There wasn’t a lot of build up to the pilot happening. The timeframes were quite tight. The organisations that took part from the vulnerable groups cohort, it takes people time to gather the documentation that they need. It takes organisations time to create the kind of supportive environments needed to allow people to make applications. Certainly, everyone that we made applications for, we would advise once and then see multiple times there had been an information session followed by a follow up appointment. These things just take time and the pilot window was very tight. Could I also just quickly follow up on that point?

Q57 **Douglas Ross:** Yes, please do but I was just going to say as well, many of us would have done tax returns for 31 January and you have plenty of time to do it but you tend to put it in right at the end. I am not making that as an analogy, but it is almost a natural thing to check and double check and wait until the last minute, so are you saying in your answer that maybe it wasn’t such a big surprise that they did come in so late on because of the process that you follow through to submission?

Marianne Lagrue: I think the vulnerable cohort may not be representative in this regard because they had lots of support to make their way through the process, prepare their documents, prepare their applications and then submit them.



Q58 Douglas Ross: Do you not think they are part of that one-third? Do you think they were mainly in before or do you think they are representative because they had all that support, which meant it took a bit longer?

Nicole Masri: We had a very different experience. The reason why some of our applications were submitted on the last day, or perhaps the penultimate day, was because of endemic technical problems with those applications that prohibited us from submitting them. In fact, we were not submitting lots of applications in the last week because we suspended participation in private beta 2 a good week or so before, because of all the technical problems we were experiencing.

A lot of our applications simply could not be progressed because they were encountering technical problems in the system. We know that the Home Office technical teams were trying to resolve them but, unfortunately, they were not able to give us the reassurance necessary that those applications could be submitted by the deadline, so we felt unable to bring new applicants in. I think from 13 December we suspended taking new applicants forward through the scheme because we had no guarantees that they could be submitted.

Danny Mortimer: The one thing I would add from our perspective is that the communication effort, in terms of awareness of the scheme, is still significant. Our colleagues in the BMA surveyed their European Union members and at the end of November they found that over one-third of them were unaware of the settled status scheme and there had been a huge communication effort within the NHS, more broadly, to publicise the scheme.

Clearly, there is so much communication and content around Brexit at the moment that sometimes the existence of the scheme I think found it hard to cut through. I am sure there is a natural human tendency to wait if you are aware of the scheme, but there were significant numbers of colleagues that were not aware.

Q59 Douglas Ross: Sorry, you want to come back in on the previous point.

Marianne Lagrue: On the point about the number of applications that were refused. I would—maybe not cynically but with a healthy caution—point out that the Home Office PR effort around the end of private beta 2 stated that of the applications on which there had been a decision there had been no refusals. There were a significant number—thousands—of applications still pending several weeks after the close of the scheme. As I mentioned earlier to Mr Chishti, lots of applications were decided very quickly. Until we have the full results of all of the decisions that were made under private beta 2 we cannot comment on that.

Douglas Ross: Thank you.

Q60 Chair: Can I add a follow up? If you imagine a child, maybe a 10 or 11 year-old, who maybe thinks they are British or, for whatever reason, their parents or carers are not currently aware that they might need to



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apply under the settlement scheme. What are the safeguards in place at the moment that would make the parents or carers or the child aware that they need to do so?

Marianne Lagrue: We are working with the Home Office as part of its communications efforts, which will change over the course of the operation of the settlement scheme, specifically to target groups. We are working with them on communications to local authorities and communications to children and young people.

It is very early days on that communications strategy, so I am not sure we can accurately comment on how we think they are going to work.

- Q61 **Chair:** That sounds like sort of broadcast communications as in: let's just make lots of groups of people aware. If for whatever reason this family is not aware, not responding to communications, is there anything in the system—maybe through the NHS, maybe through DWP, maybe through the school or anything like that—that would identify that this is a child who needs a settlement status application and would directly either contact the family or put in place an application process for them?

Marianne Lagrue: The onus is on the applicant to identify themselves.

Abigail Adieze: We have done that with our social workers because every child is allocated a social worker. We are working with individual social workers to work with the families as well to help them understand the importance of this. In Waltham Forest we have a worker that is dedicated to making contact with families and working with social workers to ensure that families understand.

- Q62 **Chair:** Do you have a system that would allow you to identify every family in the borough for whom this might be an issue?

Abigail Adieze: I could not say for Waltham Forest. I am only involved for children looked after.

- Q63 **Chair:** Is there a universal system or any system area by area, or whatever, that would allow you to identify directly every family for whom this might be an issue to make sure that they know or to make sure that an application is put in?

Nicole Masri: No, we are not aware of any safeguards that are in place. Unfortunately, with the application process as well if you are a main adult applicant and have children, the application does not even ask you who your family members are. There is no way for the Home Office to monitor if your family members are subsequently applying unless they provide your application number at a later date. This is a real concern of parents that do not understand the needs of their children applying.

- Q64 **Chair:** Suppose you have parents that think their child is British maybe, for whatever reason has never applied for a passport so it has never been raised as a passport issue, maybe apply for themselves, do not apply for the child, maybe the child goes into care at some later stage, maybe not.



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At what point in that child's life will some bit of the system identify that they do not have the rights or the status that they should have been entitled to?

Marianne Lagrue: We see that applying to children, if they are in care, when they approach leaving care and they cannot be put into the mainstream benefits system.

Abigail Adieze: For us maybe earlier than that. First the carer who is planning to take them on holidays and then we discover they cannot go on holiday because they do not have any valid passport. At that point, an application is made with that thinking around how we might secure that for that individual child.

Marianne Lagrue: Can I quickly follow up on that? Children in care are a particularly vulnerable but also a particularly supported group and Coram Children's Legal Centre did some research back in 2016, not long after the referendum, speaking to all of the local authorities in England to see if they could identify how many EU national children in care that they had and over half of local authorities had a nil return, meaning they had no data for at least one age group that we requested data for. Local authority data systems, as I understand it, do not record nationality for children who are looked after. They only record ethnicity and that is a group that receives, relatively speaking, a lot of support and a lot of support from the state.

The fact that even this very supported group, who have acknowledged vulnerabilities, there are lots of children that local authorities probably have not yet, and may even now have not identified as being European nationals. This is really concerning.

Q65 **Chair:** There is currently no system in place to identify every child who should be entitled to settled status, to be able to go through the settlement scheme, and no system that would identify them before the end of the settlement scheme, before the deadline kicks in?

Marianne Lagrue: No, as I understand it.

Q66 **Chair:** Potentially under the current system you could have quite a lot of children who could pass the deadline for the settlement scheme, be completely unaware of their rights and to lose their rights?

Marianne Lagrue: Yes.

Chair: Thank you very much for your evidence today. If there are any further thoughts that you have, any further information or detail that you have for us, please do send us any further written evidence and we appreciate your evidence this morning. Thank you very much.

Examination of witnesses

Witnesses: Luke Piper, Jill Rutter, Colin Yeo and Dr Adrienne Yong.

Q67 **Chair:** I welcome our second panel. Thank you for your time this morning. Could I ask each of you to introduce yourselves and also the nature of your work in this area?

Luke Piper: My name is Luke Piper. I am a solicitor and legal adviser to the3million; the3million is a group that seeks to represent the interests of EU citizens and their family members in the UK in light of the Brexit impact.

Jill Rutter: I am Jill Rutter. I am the Director of Strategy at British Future, the independent non-partisan think-tank on immigration and integration. Before the referendum we secured the support of the official Leave campaign to guarantee the status of EU nationals. After the referendum we ran an independent inquiry on how the Government could secure the status. We sit on one of the Home Office's working groups on the EU settlement scheme. In January we published a report "Getting it right from the start" on the actions that need to be taken now to make the scheme work.

Colin Yeo: My name is Colin Yeo. I am an immigration barrister at Garden Court Chambers. I also edit and run a website called Free Movements, which, partly because of its title, follows the issues very closely. We have been doing a lot of monitoring and writing on the settled status scheme.

Dr Yong: My name is Dr Adrienne Yong. I am a lecturer in law at the City Law School, City University of London. My research is mainly in EU citizenship rights and fundamental human rights and the interplay between the two. I am currently looking a lot at the EU settlement scheme, as it is rolled out.

Q68 **Chair:** Thank you very much. Can I just ask you the same opening question, which is, if you just look at the overview: what is your impression of the settlement scheme so far? Dr Yong, would you like to start?

Dr Yong: I am sure you are aware, my university and universities more widely were involved in the PB2—private beta 2 scheme—as well. I cannot speak personally as I am not an EU citizen so I did not have to apply. As I am aware, it was in the group for universities and the individuals involved from my institution a fairly straightforward process. There were the same issues, I suppose, that the previous panel already talked about but I, in my research and in delving into a bit more deeply the criteria, not necessarily the practical barriers, I have identified a couple of different areas, different gaps, which certain people may fall through.



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Obviously, we are yet to see whether this becomes a reality. But it was, as I understand it, fairly straightforward, fairly quick and the biggest welcoming statement from the Government was to get rid of the £65 fee but these kinds of issues were not necessarily barriers for the people that I was speaking to, just more informally.

Colin Yeo: The biggest thing that strikes me about the scheme is it is a huge experiment in technology and in human behaviour. We are talking about an unknown number of people, maybe 3 or 4 million people, where the system, as it stands at the moment, is designed to be straightforward to use for most people but where 1% of people is tens of thousands, where 10% of people is hundreds of thousands of people, and it is inevitable that there is not going to be 100% take-up of this.

There is going to be a very significant number of people. It is very hard to guess at how many because this is unprecedented. There is no comparator around the world where you have a legally resident population that has been forced to apply for a new status or else become illegal. You can look for comparators where people who are illegal have had a regularisation route and, for example, the DACA system in the United States with a 65% take-up, but we cannot even guess meaningfully at what the take-up rate is going to be.

We also will not know what the take-up rate has been when it happens. When the deadline falls and the remainder who have not applied become illegal, we will not know how many of them there are because nobody knows how many EU citizens. You were asking questions of the previous panel about: is there a system where you can identify the eligible children? There is not. There is no system that identifies the eligible adults either. We simply will not know how many people have not applied and the Home Office is not doing any work, as far as we know, despite being urged to, to monitor take-up of the scheme.

It is a huge expense and the last time the UK undertook something of this scale it took a very different approach. Back in the 1970s, when Commonwealth immigration was brought to an end and the Government had to deal with the existing residents and separate them in some way from potential new entrants and say, "The people are already here, you are lawful but the people who have not come yet, you have to apply for permission", they passed a law saying, "If you are here you are lawful".

Yes, you could have problems with documents, and we have only seen that come out in the last five or six years, since 2012 when the then Home Secretary announced what was then called "the hostile environment" and you have this everyday system of citizen-on-citizen immigration checks.

These days, if you maintain that kind of system of day to day immigration checks you can see why the Home Office is requiring people to apply because otherwise their lives will be unliveable essentially. But there is another way forward, which is the way that was taken previously, which



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is you just pass a law saying, "You are lawful. We will sort out the difficulties later, as and when they arise".

Jill Rutter: The Home Office has invested a lot in the system and compared with the past there is much more of a culture of openness and consultation with user groups, but we still have some concerns. First, there seems a lack of planning in terms of a systematic information campaign, an issue that was raised in the last panel. Local authorities, employers and embassies seem three crucial ways of contacting people. We think there needs to be getting information out more systematically and perhaps to look to mandating local authorities to do that because they are public bodies.

In the absence of this information, you have unscrupulous immigration so-called advisers setting up, advertising on Facebook and Gumtree and charging people many hundreds to even thousands of pounds for something that is free.

The other thing that we are concerned about is the evidence from the private beta 2, is that 9% of the nearly 30,000 people who applied still did not get a decision by the time the evaluation had been done. If you think that the people who were in private beta 2 were perhaps in many ways less vulnerable, in that they were working and you scale that up, that is nearly 400,000 people who could potentially miss out.

There were 15,282 calls to the Settlement Resolution Centre during private beta 2, which again is indicative that some people were struggling with the process.

The other issue that concerns me from private beta 2 is that, although the Home Office has set up documentation scanning centres—I believe there are 13 scanning centres—they are not always in the most convenient location. In Scotland, there is one in Aberdeen and that is pretty much it. There is nothing in Edinburgh.

Douglas Ross: There is not one in Aberdeen.

Jill Rutter: We were told there was one in Aberdeen. Also, they have set up these documentation scanning centres at the same time as local authorities have closed down the nationality checking services where people could submit their applications for citizenship. That seems to be quite a short-sighted policy. There were nearly 160 local authority nationality checking centres in the UK with a much more convenient location.

Luke Piper: I will echo much of what has been said by my colleagues here but I will summarise perhaps the issues of the scheme, thus far, into three parts. First, there is the issue as to outreach, and I would emphasise—and it is not just identifying the audience but also engaging with them—there is real concern about that. That has been touched on by the panel and I particularly echo the concerns about adults, elderly and



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other vulnerable groups, where there does not seem to be any clear evidence of how they will be identified and engaged with.

The importance and significance of the scheme needs to be emphasised. We, here today, have been talking quite freely about the consequences of not applying and not acquiring status. I do feel that that understanding of the consequences is perhaps not laid bare by the Government. That is regrettable because the consequences are dire. As such, it seems that it is very important that this outreach engagement, there needs to be a lot of emphasis on that and it needs to be very good.

Next to that is the application process itself. Going through it and engaging with it, and we have heard of the problems that have been expressed by the previous panel. I would echo those concerns. Indeed, most of those who have communicated issues to the 3million have only been those who have had the opportunity to apply as part of the public test. There have been similar expressions of concern about the use of the app, the availability of the app, the acquiring of documents, the uploading of documents and so forth. There have been some very real concerns about that.

Finally, the outcome, the product that you receive: it is a digital code and the strongest anxiety that is felt by a lot of people is the fact that that is all it is, it is a digital code. It is not a physical document that you can present. It seems quite significant, particularly in the context of a hostile environment where this will require quite a significant change by employers, landlords and so forth, to engage with the digital system that may not always be working.

Likewise, there have been reports of errors. For example, a colleague of mine, she has a hyphen in her name. It is quite significant from a point of view that in her passport that hyphen exists but in the settled status outcome it is not there. She has tried to have this resolved and it is still an ongoing problem. Indeed a colleague of mine, her name is spelt in the Cyrillic alphabet as opposed to the English alphabet. So there are these things.

What is crucial is that the people who have been having these problems have been trying to engage with the Home Office and trying to resolve them. While the team have been very communicative and they have been told that they are very lovely and very welcoming to speak to, there have been a lot of problems with these sorts of outcome issues.

One thing I would like to close on, which is quite significant in terms of this outcome, is this offer of pre-settled status and settled status. There is a real concern that those who settle for pre-settled status will face considerable problems going down the line with remembering and getting up to date and making sure that they have the appropriate paperwork and when they need to apply. Again, it is another issue that is echoed across the board.



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Q69 Chair: Fast forward to January 2023, some future point, where the settlement scheme has supposedly closed, and you have somebody who, for whatever reason, has not completed the settlement scheme, maybe a child who was not aware, maybe a vulnerable adult or somebody who simply was not aware that they were supposed to do so. Can you give me a sense of what might be the scenario in which it becomes apparent that they do not have status and what their rights would be at that point?

Colin Yeo: It is a slightly difficult question to answer at the moment because we understand that some of the hostile environment checks are suspended. As I understand it, the right to rent, I am not sure what the status of that is at the moment. A system of checking bank accounts before they are opened was introduced by the Immigration Act 2014. Then it was amended with the 2016 Act so that existing accounts can be closed down. I think that is currently suspended at the moment but I am not completely sure about it. There has not been a lot of public communication on these issues.

After the deadline you will become unlawfully resident. The way the Act is phrased, it is not clear that immediately would be a criminal offence although certainly if you were to try to leave and you were somehow able to get back in, for example, you visited home and you came back into the UK, I think that would be an offence.

There will be a load of ancillary criminal offences, so if you were working that would be a criminal offence, whether you knew it or not. It would be an offence to be driving on the roads as well because, rather strangely, it is not just being in the UK unlawfully that is a criminal offence but a load of other offences that criminalise things that you do while you are here as well, so double criminalisation would take place.

Then there is the extent to which the automated checks come in so your employer, if they are following a good non-discriminatory human resources policy, would conduct checks on their workers every so often and if they phone this government hotline you would come up as a negative on the database and they would be effectively compelled to sack you, otherwise they would be facing a fine of up to £20,000. Your landlord would potentially face the same. They can be sent a notice from the Home Office requiring them effectively to evict you or again face a fine or even a criminal conviction. Your bank accounts could be closed down on you, which obviously would have a completely disastrous impact on your day to day life. The consequences of not complying with the scheme are disastrous.

Dr Yong: Can I pick up on that as well? Given the uncertainty, as Mr Yeo mentioned, it is not clear whether it is going to be an offence or not. But should it eventually be an offence, or whatever outcome, means that the individual is a criminal, there is a presumption in the current immigration rules, which presumes automatic deportation of these foreign criminals, which I believe would be a significant problem in terms of the fact that there is a big difference now with the EU system in which there is a high-



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level protection in favour of individuals not being deported for having criminal backgrounds, and so on. This presumption and this greater burden on an individual to leave the country, should they be considered a criminal, is a fairly significant issue in terms of human rights protection.

In particular, as this may interfere with certain aspects of their family life, should they have family members who have settled status or can reside in the UK and to be separated? The possibility of this happening, should an individual simply not apply for settled status, would be a problem that needs to be considered at least.

Jill Rutter: What our concerns are is that difficulties cases will be parked by the Home Office with pre-settled status rather than settled status. Whether it is 2023, 2025, 2030—and even there is evidence from the beta pilot—you could have a significant number of people who keep on with settled status and are in a kind of legal limbo. Therefore, it is incumbent on the Home Office to have information and processes that channel people through into settled status once they have the required residency. That is quite important and I do not see evidence of that being discussed already.

Luke Piper: If I may add to some points that Colin has made there. The reality is a few years down the line it could be that somebody who does not have the appropriate status they go into hospital and they need to have treatment or whatever, there is a good possibility that they will be denied treatment until they can pay for it. Equally, there is a risk also, depending on what law has changed and how it is changed, is access to housing support, so homelessness support and of a social welfare provision.

I spoke about consequences earlier. The situation is quite dire if you do not have status. But one thing I would add, and this feeds into what Jill was just touching on there, is that if there is a subtle change to the status that EU citizens can access it could help. That would be by introducing a more of a declaratory system. The presumption being that those EU citizens who resided before a certain date, depending on what will happen, no deal or deal, that they have this status. It is just a simple case that they need to go and get a document to confirm it.

Perhaps as an example of somebody who is in a situation of going into hospital and needing treatment saying, "Okay, look, we identify that you are a person who has settled status declaratory. You need to go get a document for that" and so forth, and move it in that way. What we need to do is take the sting out of the hostile environment and to secure and protect and limit the damage that people will feel from it.

Q70 **Chair:** Just to clarify the factual situation. At the moment, given the laws that are in place at the moment and all of the proposals that have come forward from the Home Office, if people have not completed the settlement scheme by the time we reach the deadline—even though they might have been living here all their lives, they might have been living



here 5 years, 10 years—even though they are currently legally resident and would be entitled to settled status if they went through the scheme, if they do not complete the application process by the deadline they will be here unlawfully: potentially unable to re-enter the country if they leave to visit family, potentially committing criminal offences just by working, potentially told by their landlord that they can no longer rent a property, potentially told by the NHS they are no longer entitled to urgent treatment they might need, despite the fact they may have been paying in contributions, paying taxes, for very many years. Is that accurate?

Colin Yeo: Yes. There could be hundreds of thousands of people in that position, depending on what percentage of people does not make the application that they need to make. Also, we do not know anything about how you would bring yourself back, how you would regularise your position if you have missed the deadline? Obviously, it is slightly early days for that. We are talking about something that is still a few years down the line. But so far all we know is the Home Secretary has said that you would need good reason for not having applied and we do not know any more than that.

Q71 **Chair:** The Home Secretary said you would need good reason and that they might come up with some process to deal with those cases. In terms of your legal rights, and in terms of what has been agreed either in the withdrawal agreement or anything that the Government have come forward with in terms of any Bill and so on, you would not have any rights, is that correct?

Dr Yong: It is very much subject to what happens and everything. The EU framework would most certainly be lost, as we talked about, or it has been talked about many times. The Charter of Fundamental Rights and the right to private and family life within the charter would be lost. However there is a provision under the European Convention on Human Rights, which sits outside the EU framework, which the Government are currently still committed towards. That would still exist.

Therefore, individuals would be able to claim interference to the right to private and family life, as I mentioned, if they were separated from family, if they could not access healthcare, and so on. It is a lengthy, expensive and difficult process to go to the European Court of Human Rights and bring a case before them, and therefore the question surrounding whether that is a valid reliable safeguard are very much at large.

Q72 **Chair:** Putting aside that potential long slow process, there have been no rights that they would have had secured in UK law, as we understand it, at the moment. We would be dependent on the discretion of future governments to come up with some kind of response that gave people in these circumstances any rights?

Colin Yeo: Yes.



Luke Piper: Let us be clear, there is a Bill that is being discussed this week and the function of that Bill is to bring freedom of movement to an end. What permeates from that is by the ending of free movement it means that people will end up in the situation that we are talking about unless they have a new status.

Q73 **Chair:** There is also a further choice though that the Home Office has made because, Mr Yeo, you referred to the choice that had been made when previous changes to Commonwealth status happened, so the Government have chosen not to make those legal rights based on the fact of residence, the fact of 5 years' residence, the fact of current legal status, and has chosen instead to make those rights conditional on completing a settlement scheme, is that accurate?

Colin Yeo: Yes, and it would be fair to say that the choice that was made in the 1970s about existing Commonwealth residents had problems with it. They only became severe problems in the last few years and it is not an ideal way of dealing with things. There are problems that arise but there is no ideal. If you have a population like EU citizens or Commonwealth citizens and you have to distinguish between existing residents and new entrants there is no ideal way of dealing with that situation. There are drawbacks to doing it either way, but the drawbacks that are forcing people to apply are that on the deadline day you end up with potentially a very significant number of people who immediately become unlawfully resident.

Q74 **Chair:** Given that we have raised concerns on this Committee about the Windrush crisis and Windrush cases and people who ended up falling into serious problems with the NHS, with work, and so on, but many of whom had historic rights. They simply were not being recognised. In this case we would be talking about people having no historic rights and also having the same challenges from aspects of the hostile environment, and so on. Is it fair to say that effectively the system that the Government are currently putting in place is like Windrush on steroids?

Colin Yeo: Yes.

Chair: This feels deeply damaging and potentially harmful consequences for families.

Colin Yeo: With Windrush, the problem was that you were lawfully resident but you did not have a document to prove it. But with the system the Government are introducing for settled status, you will be unlawfully resident and you will need to somehow regularise your position, assuming that there is a way of doing that, which we do not know at this point in time.

Q75 **Chair:** But there is still time for the Home Office to make changes?

Colin Yeo: Yes, and this is a key point in this. Is that under the terms of the withdrawal agreement there is a choice between a declaratory and a constitutive system. They can decide how that works and how they



approach that. They can go as light touch as they want and there is an opportunity here and a possibility that there could be a fairer and safer way to register EU citizens in the UK.

Q76 Douglas Ross: We have spoken about the importance of having this status; what are the potential impacts of people just being afraid to apply?

Jill Rutter: In our report we looked at groups who perhaps might be anxious about applying. They include people who have had perhaps previous convictions, spent convictions, who I think will delay. There is another group, and that is people who have applied for and previously been rejected permanent residence, the previous status for EU nationals, for one reason or another. The rejection rate for those who were protected permanent residence has been very high; 20%, 25%. There is a significant group of EU nationals in that position; nearly 80,000 people have been rejected permanent residence, so it creates mistrust.

Q77 Douglas Ross: What advice would all four on the panel give to people who are worried about it? Surely the advice is you may have these concerns but the biggest concern would be not applying for this. People are nodding their heads. I do not want you to agree because it would be a bit divisive. But I have to say the comment from the Chair there was very reckless because the headlines from this Committee will be, "This scheme is going to be like Windrush on steroids". If that is then picked up in the papers—and all due respect to the Chair—if people then pick that up it will be a disincentive to people to apply to the scheme and ultimately, because of headlines or comments like that, people could fail to apply for a scheme that will be to their benefit.

Colin Yeo: People need to apply for this otherwise the consequences are disastrous for them and there is a real problem with how that is communicated. On the one hand, frankly, perhaps you do need to motivate some people by fear because otherwise people will miss the deadline and they will think it does not matter and it does matter. They need to know that the consequences of not doing this are disastrous. But at the same time, you do not want to alarm people to the degree they are afraid of applying. There is no easy way of doing that other than just passing a law saying, "You are all lawfully resident, you can sort out your documents as and when", which is a very different way forward to the one the Government have chosen to follow.

Jill Rutter: The media has sometimes talked up the difficulties that will be included with the system. Most people will pass through fairly easily. It is just that we have vulnerable groups who may struggle to apply or, as you said, may be afraid of applying. The Government have made £9 million available to advice agencies to work with more vulnerable groups but I have not had a report back as to how this money was being used and whether it is getting to homeless charities, groups like the Eastern European Resource Centre, who are working with quite vulnerable EU nationals.



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The other issue is geography in that EU nationals are very widely dispersed across the UK and some of our traditional advice services tend to be concentrated in the big cities. South of Aberdeen you have the kind of Scottish fruit belt with lots of EU nationals working there. That is one of the parts of the country where there is a shortage of advice and support services.

Dr Yong: On your point about being afraid to apply. It is a lesser of two evils in that sense. If you are afraid to apply you should be more fearful of the fact that you may not get any rights afterwards. You are going to have to make that difficult choice. From what I think most of the panel are saying there is a lot to be said for applying if you can and you can get the support, and if it is scary then get the support. But it is much more scary not to have rights after whatever date is decided.

As for it being fairly easy for many people, the rhetoric and the statement of intent was, in the introductory part, the Home Secretary said that the whole process is meant to be streamlined and made very easy, hence the technology. Given the potentially significant lack of faith that some individuals may have at the Home Office, given the Windrush, it was a surprise that it was easy because of the failures in the past. As such, there is a fairly positive view on the fact it is very simple, very straightforward, but that does not prevent the fact that there are some hurdles. In fact, not hurdles just for vulnerable people.

If I am not mistaken, there is a £14 charge if you want to go to a centre and use an android phone. I am not sure if this has been scrapped but I read that that was an issue. The £65 app for the private beta scheme right now, individuals still have to pay that £65 in order to apply because the announcement of the scrap was made too late to change the system. So you must have £65 and there is no information, as I am aware from the individuals I have spoken to, about when you are going to get that refunded. How streamlined that is going to be.

It seems that given that in the last couple of days of private beta 2 there was the most number of applications. In private beta 2, in the report it was also mentioned that there are some individuals still waiting because there have been some technical issues. I am aware of an individual who is currently still waiting and does not, in my view, suffer from any of the vulnerabilities that the previous panel and we have been talking about. It is not simply the vulnerable groups but the fact that there are a number of issues still there. You are going to have to apply even if you are scared because the other option is simply much scarier.

Luke Piper: Before coming to your statement and question, I understand that the £65 has yet to be refunded and there is still to be a process put in place, from a telephone call I had with one of the people on the helpline. I understand that they are still to implement that. The intention is to do that by the end of March.



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As I said right at the beginning, we have to address the realities and those realities have to be communicated. It is incumbent upon the Home Office and the Government to do that. It is their scheme. It is their process and they need to feel an obligation to communicate the need to apply and to not only reach out but engage and encourage people through whatever means possible.

- Q78 **Douglas Ross:** Can I ask about the scanning scheme? I just want to clarify for the record there is not one in Aberdeen. Aberdeen would be 140-mile round trip for my Moray constituents. The only one is in Edinburgh, which is a 350-mile round trip and it is an issue I have raised. But I believe the 3million have also raised concerns about the scanning centres. The Government have announced what they will do post-30 March. What do you think should be the alternatives or should supplement the scanning centres, if we do not believe they are working to cover the whole of the United Kingdom?

Luke Piper: I will echo what British Future has been advocating for, which is engagement of local authorities. They will need help and they will need resources. But ultimately, they are a feature of governments and they have already had elements of Home Office functions delegated to them. It is not alien concept. I believe that that will go a long way to assisting people.

- Q79 **Douglas Ross:** Which functions are you speaking about?

Luke Piper: The ones that Jill was referring to, the nationality checking service. Indeed there are some OISC-trained people who assist with naturalisation applications, and as has been discussed, there is the European passport checking service and there is also this scanning service that has been rolled out to certain local authorities. But I would emphasise, and this is something that the 3million have been advocating for quite some time now, and the resistant that we have come up against, is a question of resources and expectation being placed on the local authority.

Given the scale and the numbers involved, there is scope and there has to be resources to be able to provide the necessary support to local authorities, if that were to work.

- Q80 **Douglas Ross:** The Government are already suggesting using postage, and such like, in a way that you post documents for passports and things like that. Would that not be a better alternative rather than going to local authorities that are under a lot of pressure at the moment cutting services? They would presumably be funded if they went down the route you were going or suggesting. But are there not alternatives to going down to the local authority level?

Dr Yong: I think you can post your passport if it does not scan, if it does not have the chip from the android device. My experience from an individual I have talked to is that there is again a bit of a feeling of mistrust, that they will not receive their passport back should they send it



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off. Or they are just simply scared of it. Also obviously sending a passport costs money, if you want to get it recorded delivery. These small things are added barriers to this smooth process. As I understand, the passport postal service has been fairly smooth but it is the pure feeling of mistrust and the lack of faith, given the issues that have happened with the Home Office over time that is the problem.

Jill Rutter: UKVI has opened scanning centres in the UK. That was tendered out and won by an Italian company called Sopra Steria, and that is for non-EU nationals to extend their visas in the UK. I understand that there have been some technical glitches but given that digitalisation, an alternative is that the non-EU and EU scanning systems marry up, are better.

But I would echo what Luke has said. Local authorities, the nationality checking services were based in the registry offices, it was there superintendent registrars who ran them. They were a very good service that if you did not have the documentation you needed for naturalisation you were sent home, you could come back, and it was provided. Given the numbers involved and the very tight deadline, it did seem very short-sighted that these services have been closed down.

- Q81 **Douglas Ross:** My final question to Jill Rutter—and if there are any other experiences—was the comment you mentioned in your opening remarks about unscrupulous agents or solicitors. How widespread do you believe that is? Has this been highlighted and have you seen any action taken against that? Is there anything that can be done because basically they are relying on people not knowing that this service is available and paying someone money to do it for them.

Jill Rutter: It has been an issue that has been raised by other groups, including the Eastern European Resource Centre. I went on Facebook and Gumtree at the weekend and within about half a minute I had pulled off 11 unscrupulous advisers from the Romanian community by just going on to Facebook groups for those particular communities. It is the OISC, the Office of the Immigration Services Commissioner, who regulates that. OISC has introduced this new Level 1 qualification specifically for the EU Settlement Scheme, which is extremely welcome, but I feel that these advisers, who are also charging people for things like getting a National Insurance number, are taking advantage of both an information gap and people's vulnerability and I will be passing on what I found to the OISC.

- Q82 **Stephen Doughty:** For a start, I am afraid I completely disagree with what Mr Ross had to say. I agree with what the Chair said, and of course it is not just the Chair who has made this point; in fact, Jill, you have made this point in comments you have made previously, so has the founder of the 3 million and so have many other people. I think this is a Windrush scandal on steroids, which is likely to build up, because every aspect that I have seen of it where it is not working the potential failings in the system lead me to believe that and it is the job of this Committee to highlight those sorts of things and raise them with the Home Office.



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I am aware of a particular case, for example you both spoke about lack of planning and a systematic information campaign. A young constituent of mine came up to me the other week from the Somaliland community. He has lived in the UK since he was quite young. For those not familiar with the history, Somaliland was attacked during the wars in Somalia in the early 1990s and many people fled to Europe. Many came to the UK where there are existing communities but also many went to the Netherlands and also to Finland, and as a result there is a strong Dutch Somaliland community. This young lad came up to me and said, "Oh, Steve, I have a Dutch passport. I have been here since I was five, but do I have to do this whole Brexit thing?" and had literally no clue. Now, obviously I advised him to find out information about the EU Settlement Scheme, and I told him that he would have to register, but that for me just highlighted in one case the lack of awareness there is among particular communities, particularly those with more complex family and immigration histories.

You have touched on them, but which groups do you think are the most vulnerable in this? Is it the BME communities, is it those with a history of refugee and asylum status, is it disabled, is it Eastern Europeans? Which are the most vulnerable groups falling foul of this process?

Jill Rutter: I think people have different vulnerabilities but you have raised the situation of a group of what we call onward migrants, people who move to one EU country and then have come to join perhaps family and community in Britain. You have Dutch, Scandinavian and German Somalis. You also have people with West African ethnicity, Latin Americans who are EU nationals but have the social networks of their home country and again I think it comes down to systematic information, using the networks in places that people go to, churches, having a poster campaign in churches' groceries in relevant languages would be something that I think would be an effective—

Q83 Stephen Doughty: Why do you think this is not going on in the systematic way that you think is required?

Jill Rutter: I think it comes down to a kind of lack of expertise within the policy section of the Home Office and a mismatch in the Home Office between policy and operation.

Q84 Stephen Doughty: They just do not get the complexity of people's histories and the different needs of different communities?

Jill Rutter: In some cases they do not. That was why we produced this report in January.

Q85 Stephen Doughty: I want to turn to some questions about the app and the experiences using it. We have heard varying evidence about how easy the app is, or is not, to use and obviously I have repeatedly raised the concerns about the fact that it is only available on Android devices. We have some examples here that the Committee has helpfully provided for us, and I will just read out a couple of them to you, sourced from



social media. One gentlemen saying, "My wife, German, loves the UK. Has been here for 30 years, two degrees, one PhD, working as a lawyer, righting wrongs for UK citizens since 1990, and three children. Today, buys Android phone, applies for settled status, rejected. Prove that you have lived here in the last six months. That went well". Another one, "This is deranged. A friend of mine from school, who has lived here since she was five but has a Dutch passport, is currently scrambling to borrow a Samsung Galaxy in order to apply for settled status". Somebody else, "EU Settlement Scheme application, can someone please tell them it's February" and below an image from the Government.UK website that says, "Provide evidence for the following years: 2019, provide evidence for any six months of this year. I mean, it is crackers. I mean, it is February 2019. How can we provide evidence?" so it seems to me that some very basics are not right here.

There is example after example after example of people either not getting clear information back when they apply and of course experiencing problems when they apply, and we are told that there were 30,000 applications in the second pilot period but there were 15,000 calls to the Settlement Resolution Centre to get advice. That is one in two of those had to call up for advice, and that required 200 staff working weekends to man that phone line. What is going wrong here? Is it just that it has not been designed properly?

Colin Yeo: This is the best informed and simplest group of people who have so far applied under the pilot scheme, people who have long-term employment, who are following the news, who know about all this. They are well-educated and able to afford to buy an Android phone or they already have one, and so on. Going back to the previous question about vulnerability, I cannot do better than point you to an excellent report by the Migration Observatory at the University of Oxford, called "Unsettled Status" that looks at this. I suggest that moving away from the idea of vulnerability is the way forward here, because a lot of people just will not know.

It is not that they are particularly vulnerable and, yes, there are vulnerable groups who have particularly big problems here, but there are a lot of people who just will not know, will not realise, will not realise how important it is and just are not going to make the applications, or put it off until the last minute and miss the deadline, or something like that.

The kind of problems that we are seeing so far, and the fact there have not been any refusals, well, you would not necessarily expect any refusals from the groups who have applied so far, and this is now going to be scaled up massively from 29 March. Possibly it will be relatively gentle to start with, because people do tend to wait until deadlines to apply, in which case there is going to be a huge rush at the very end, close to the deadline, but this is a massive experiment and the pilot has been very small and the results have not been all that encouraging.



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people have had to phone up for the help line, of any plans to increase the resourcing of that help line or its opening hours or the number of staff working on it to cope with that inevitable increase in demand?

Colin Yeo: I do not have any information on that.

Q87 **Stephen Doughty:** No, you are not aware of that. Okay. To me it is just absolutely crackers. One last thing, I met with some individuals from the Vale of Glamorgan for Europe group at the weekend, including many who have EU citizens or connections in their families. A lot of them are deeply worried. Even if you had the most perfect scheme and even if it was working perfectly, which it clearly is not, can you in any way quantify or judge the extent to which people are just now feeling unwelcome, they do not feel like they should go through these processes, they are concerned about the impacts and therefore they decide to leave the UK and go elsewhere, because they no longer feel welcome?

Dr Yong: I think there is some information on this, on departures from the UK in the last couple of years or so. I will have to find that information and send it on, if you are interested. I think as a general feeling, given the fact that the EU attempts to unite everybody and is bringing everyone together, harmonise rights and so on, this distinction between who is able to stay and who is not able to stay, for whatever reasons, I think in the Settlement Scheme itself the Government as we have discussed a little bit have chosen to value certain people. I see that choice as people who work, who are employed, and who are contributing to the economy, have something to give, have nothing to hide and that is where they have placed their value. For that reason it has been fairly straightforward for those people.

If I can just go back to your previous question about vulnerabilities, I want to pick up on something that Mr Yeo said about the refusals. Yes, there have been no refusals, except I am not sure of the number of individuals who have applied who would certainly be refused, for example, anybody who has a criminal background, perhaps a criminal who has now reintegrated into society, is trying to reintegrate into society, trying to get back on their feet. It is very clear in the statement of intent that criminal backgrounds will be a sticking point for you applying for settled status. At the same time if you are subject to an exclusion order or a deportation order, if you are even going through that process, you will also have problems.

Now, in my research it has been noticed, and there was a case a couple of years back about the individuals who were deported for rough sleeping, eventually that was found to be not lawful, but these were individuals who were removed subject to removal orders but then it was overturned, so those individuals would be in trouble in the Settlement Scheme and that would be a problem. I do not know that that has really been covered by the people trying it out yet, and that remains to be seen, and that would be a really vulnerable group, if we are talking about that.



Q88 Chris Green: If we were optimistic we might think of the population of EU nationals in the UK—3 million or 4 million—that this scheme will get the vast majority to be registered, to be recognised, other than perhaps Mr Doughty's more challenging examples and those raised on the first panel. The vast majority will be recognised. In a declaratory system, in five or 10 years' time, how many of those people do you suppose would be recognised by the system as having settled status, or perhaps if you just gave people the legal position to be in the UK how long would it take for the system, for people to declare or go through the system to be identified as settled status?

Colin Yeo: If there is no deadline then fewer people will apply for documents, but they can apply as and when they need them, as opposed to when there is a deadline and becoming unlawful.

Q89 Chris Green: Therefore, under that proposal in 10 years' time, in 20 years' time, we will still get significant numbers of people applying at that stage. In terms of the porosity of the system, more people perhaps will come from Germany, Spain or elsewhere in the EU. People could within that proposal try to claim that position. Is it more porous? Would that be fair? Or would it just be as resilient or robust as it is now or under the scheme?

Luke Piper: I think it depends on the way that you are looking at it and the starting position where we have been coming from today is the consequences and how we can manage those consequences and remove the risks or lower the risks. That is where the concept of a declaratory system would perhaps favour and mitigate those issues.

In terms of does it discourage people to apply, if you are still saying to people that they need to apply then there is still the incentive there, and I do not think we can exactly measure what that would look like and how that would work.

In terms of whether or not we would have a more porous system, you are still having border control checks. That is still happening. We are not advocating that that be removed, so I am not quite sure what you mean.

Q90 Chris Green: I am just thinking more that at the moment the expectation is people show their documentation, the proof for the settled status now, but in 20 years' time, if people have not declared, are you going to have to go back all that time to get the recognition? You are going to have far more paperwork, it is going to be a more challenging system and it would be a bit more difficult to manage, I suspect, or do you think it would be a more straightforward system and there would be no additional burdens to recognise people? I can see the current system puts a certain onus or pressure on EU nationals in the UK and a declaratory system would take that burden from them, but the declaratory system would take almost all or a far lighter burden on people in the UK but also perhaps is more susceptible to more people coming over.



Colin Yeo: There is no ideal way of dealing with this kind of issue, where you have to separate the population and divide them in two somehow. There are problems with both, and one of the problems with the declaratory system is that you end up with people who later down the line as the Windrush generation have found, who did not have documents at the time, that they later have to prove their status using historical documents of some sort. That is going to be a problem later down the line with the declaratory system, but it is the difference between being illegal, after the deadline, which is the application system the Home Office is using, and just not having the proof and being undocumented. Which is the lesser of those evils?

Luke Piper: That is what I was coming to, by talking about consequences. It is a lesser impact. I would pick up on, if I may, the vulnerable groups point. It was touched on briefly by the other panel about non-EU citizen family members and they would still have to overcome the hurdles they have to overcome now and I know from particular experience as a practitioner that I often have to assist family members of EU citizens from the Somali community who are often found, or alleged to be, in marriages of convenience when they are seeking to be reunited with their family here in the UK. I have seen a vast increase in that, just from my local little population of Bristol where I work where I have had to deal with a number of issues like that, where I have had to lodge a number of challenges. So I think even within the small, light touch ID, residence and so forth there are these big issues that are hiding behind that and that is just perhaps one of them.

I would punctuate the point that there are so many variables and layers of complexity of this vulnerable question, but it comes back to outreach and getting that message out there. It is not just the vulnerable; it is everybody.

Jill Rutter: I wanted to make the point about citizenship. Before November 2015 EU nationals could become British citizens after five years' residence. The system changed then and you had to have one-year permanent residence before becoming a citizen. I have spoken to lots of EU nationals who want to become British citizens and the citizenship application process, although rigorous, is maybe more appropriate and easier for them and also perhaps appropriate for UK-born children in care. It seems nonsensical that somebody who does want to become a British citizen has to go through two Home Office steps, rather than one process after five years and reverting back to the old rules on citizenship might both integrate, welcome, celebrate EU citizens' integration into the UK but also save on bureaucracy.

Q91 **Rehman Chishti:** Mr Yeo, you said earlier that if you do not comply with the scheme then you will have disastrous consequences. Also, Mr Piper, you were talking about the consequences of not doing so. I want to touch on a couple of points about ensuring that we get the right process in place before you get to the consequences or the disastrous impact that



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comes into play. That comes down to you, Ms Rutter, if I can ask you this.

You said quite frankly at the outset that the Government have invested heavily in this. There is more transparency and there is more openness in this process and with that being the case and equally taking into account your report, British Future, which said that 30% of EU citizens in Britain are at the risk of missing out, if we look at that and then take into account what the Government are saying where they are hiring 1,500 new case workers, with 400 in the resolution centre, with what is required and what the Government are doing and taking into account the £9 million that was allocated to target vulnerable individuals would you say the Government are doing what they need to be doing and working in the right direction to get there to ensure that individuals who need to get their status in order are able to do so?

Jill Rutter: I think it is definitely working in the right direction and having worked on immigration policy for nearly 25 years there is a very welcome cultural change in the Home Office, but there are things that are still not being done right. A systematic information campaign, for example, there are still technical glitches in the IT, Zambrano carers have not had a settlement decision on their case. It is going in the right direction, but there are loose ends to be tied up. If we do not tie up the loose ends the risk is not a few hundred people who will fall through the net. If 5% of people miss out that is 175,000 people.

Q92 **Rehman Chishti:** I am looking at the time. I am trying to push if I can on the administrative review process that we asked questions earlier on to a different panel. We have not touched on it on this panel but let me ask you this. Of the 11 decisions that were processed by the panel, 10 of the initial decisions had to be overturned, so out of 11, 10 had to be overturned. That shows obviously that there is real concern about how the process is being worked initially, but also that does say that people can have the confidence to say in the process where things go wrong you do have a check and balance to get things right. Would I be right in that? It cuts two ways. If you are in a process where you say, "If you do not like the process, it if has not worked correctly for you, then go through the administrative review process" and if on the way it identifies, as it has done now, 10 out of 11 had to be overturned then you quite clearly show that there is a process that when decisions are wrong then they do get overturned. Would that be a fair analysis or not?

Jill Rutter: I think an administrative review within the Home Office is infinitely preferable to going through the tribunal system. It is really important that that process is right. It is good to hear that it has worked for these 11 cases but I would refer back to the Independent Chief Inspector's inspection of the administrative review process for non-EU nationals, which was highly critical. He had to come back and do another inspection and it is having enough trained case workers on the ground throughout the process and a bit beyond that is really important.



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The Home Office has had some staffing crises. Its record on using agency workers with very little training is a bit of a problem and that was highlighted in the Independent Chief Inspector's report on the non-EU administrative review process.

- Q93 **Rehman Chishti:** Can I just ask the question to Mr Yeo? You said, "You have to comply with this unless there is a reasonable excuse" that that has been defined by the Government so far. Do we have any guidance on what they mean by "reasonable excuse" so that people know at the outset, "Look, you have to comply; you have to comply. It is a compliant environment but if you do not, the reasonable excuse". Do we have any guidance as to what the "reasonable excuse" is?

Colin Yeo: No, there is just nothing at the moment. Just quickly going back to the administrative review, there has been a miniscule take-up of that, so 11 cases out of 30,000 or 40,000 applications made and almost all of them turned out to be a wrong decision. As the previous panel was saying, we do not know how many people were given pre-settled status who asked for settled status, so we have no idea really at the moment, on the information we have, whether that is an effective remedy.

- Q94 **Rehman Chishti:** Why do people not take it up?

Colin Yeo: We just do not know. It is all very small scale. I have not spoken to any of those people. There is a very small sample so far.

- Q95 **Rehman Chishti:** Ms Yong, just a point on the criminal convictions where you say it is deterring some people from applying, the rules that we have at the moment, is it the case that if you have a spent conviction it is different from having another conviction? Is there a guidance applied in relation to different offences that would affect an individual's ability to apply?

Dr Yong: Not to my knowledge, unless Mr Yeo—

Colin Yeo: Yes, this is something that I was looking at just a couple of weeks ago, and I have to say I was quite surprised by, in my view, how tough the criteria are on criminality, because I think I am getting this right when I say that the criteria are that you will be considered for deportation if you have had any prison sentence at all, even an overnight, in the last five years, or any one-year prison sentence ever, basically, or at any point in the last period in the UK.

- Q96 **Rehman Chishti:** So any prison sentence within five years?

Colin Yeo: Any prison sentence at all within five years and any one-year prison sentence ever, plus also there is still leeway to consider you for deportation in lesser circumstances where you have been involved in serious deception or something of that nature. I have not seen any figures on how many EU citizens that is going to affect. It seems likely that a lot of the people who might end up being refused under that probably will not apply because they will be afraid, and that is a real



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problem.

I should say the Home Office says you will not automatically be deported in those circumstances, but you will be considered for deportation and then there will be a proportionality exercise carried out.

- Q97 **Rehman Chishti:** Would it look at: if you are a danger to the country or not? For example, if you have a certain offence and it is quite grave and sentences up to a year can still be quite grave if you are sent to prison if there is a clear danger to the country or to society then on that basis you will be deported, which many people say is a fair criteria to be applied, if applied correctly.

Colin Yeo: Yes, but if you received a one-year sentence 20 years ago it is surprising that you will be considered for deportation. If you had a one-week sentence five years ago, four years ago, again it is surprising that you will be considered for deportation.

- Q98 **Rehman Chishti:** No, I am not arguing with that. All I am saying is that the whole argument on whether it is 20 years or now, it is the point at this time that every bit gets taken into account if you still pose a danger to society. That is the point. It is making sure that all those facts are taken into account with that one key factor, which I would say is right.

Colin Yeo: It could have a higher threshold than that. It could be five years or something like that.

- Q99 **Rehman Chishti:** Can I just ask one point on that? The first point you said, there are a number of points about outreach and then there is process. On outreach we are talking about 3.5 million individuals, up to 4 million, who are affected by this. On the issue of vulnerability in that category, which are the hardest to reach individuals, out of those 3.5 million or 4 million, how many are you talking about in that one category?

Luke Piper: I do not think it is possible to say, and this touches back on what the previous panel were talking about, which is that we do not know the scale, numbers, never mind the types.

Chair: There were a couple of other issues that would be very useful to have any further thoughts that you have, if you were able to potentially send us any more written evidence—it is just unfortunate that the statement is due shortly—particularly on any reflections that you have on the position for UK citizens living in other EU countries and how far advanced the support or rights or entitlements or processes for UK citizens living abroad are; and secondly, any reflections you have on the differences to the Settlement Scheme that the Government have announced, if there is no deal, would be particularly useful, because we did not have a chance to pursue that in any detail today. Can I thank you all very much for your evidence this morning? It is very helpful. Thank you.