



Work and Pensions Committee

House of Commons | London | SW1A 0AA

Tel 020 7219 5831 Email workpencom@parliament.uk Website www.parliament.uk/workpencom

David Rutley
Minister for Welfare Delivery
Department for Work and Pensions

From the Chair

22 June 2022

Dear David,

The Committee has asked me to write to you concerning ADM memo 01-22, which updates the guidance that the Department issues to its Decision Makers on access to benefits by EEA nationals with pre-settled status.

We have been informed that updated guidance to Decision Makers is not consistent with a CJEU ruling. The CJEU held that some EEA nationals with pre-settled status—typically non-workers—have no right to equal treatment on grounds of nationality when claiming Universal Credit. However, it added a safety net: Decision Makers cannot reject a benefit claim until after they have satisfied themselves that doing so would not breach the claimant's rights under the EU Charter of Fundamental Rights. The relevant Charter provisions concern human dignity, the right to respect for private and family life, and the best interests of the child. The CJEU held that Decision Makers must ensure that an EU citizen with pre-settled status in a vulnerable situation 'may nevertheless live in dignified conditions'. The memo makes no mention of this fundamental rights test.

The EU Rights and Brexit Hub wrote to us that this omission makes the guidance 'unlawful and will lead to decision makers failing to undertake this assessment aimed at protecting the most vulnerable EEA nationals (including children and those fleeing domestic abuse) from destitution.' The CJEU judgment remains binding in its entirety on and in the UK. The Committee understands that the test it requires is not currently in guidance to Decision Makers, and therefore is not taking place, potentially depriving EEA nationals of access to Universal Credit that would otherwise be accessible to them.

I would be very grateful if you would answer the following questions:

- 1. Will the Department share how many Universal Credit claims have been rejected on the ground that an applicant with pre-settled status lacked a relevant right to reside?**

2. Is it the Department's view that Decision Makers have a duty to perform a fundamental rights test before rejecting the claims of claimants with pre-settled status? If so:
 - a. When does the Department intend to change the guidance?
 - b. What details will the guidance offer on how such duty should be performed?
 - c. What steps is the Department taking to identify those who might have been denied benefits due to this issue and ensure that they get the support to which they are entitled?

3. If the Department does not plan to change the guidance, could it set out its justification in detail?

We would be grateful for a reply by **Friday 15 July**.

Yours sincerely,

A handwritten signature in black ink that reads "Stephen Timms". The signature is written in a cursive style with a long horizontal line extending from the end.

Rt Hon Sir Stephen Timms MP
Chair