

Points to consider when questioning Kevin Foster MP

Please consider the following three areas of questioning in relation to the EU Settlement Scheme ('EUSS') for the minister's appearance before the Home Affairs Select Committee on 4 November 2020.

1. EUSS Policy Equality Statement

The Policy Equality Statement [PES] for the EU Settlement Scheme [EUSS] is confirmed to exist, since June 2019. The Home Office accepted a recommendation of the ICIBI's second EUSS Inspection by committing to publish the PES by 'Spring 2020'. The ICO ordered the Home Office to publish the PES by 26 August 2020.

Despite this, the Home Office continues to reply to questions on PES publication by stating "it will be published shortly" at regular intervals, most recently on 21 October 2020. The PES is instrumental to understanding how the Home Office aims to prevent discrimination and understand who is at risk of failing to apply to the EUSS. Such intelligence is vital to the success of the scheme. It will help those in the advice sector to identify who is most at risk of not applying to the EUSS.

We would like to know **why** the PES has not yet been published.

See Appendix A for full timeline and references.

2. Status of someone with ‘reasonable grounds’ to apply late

Someone who is considered to have ‘reasonable grounds’ to apply to the EUSS late, will not have any UK residence rights between 1 July 2021 and the date their late EUSS status is granted - which could be many years later. (See Appendix B for references).

We would like to discuss the implications of this by use of a worked example. Consider in fact the example given by Kevin Foster himself, of a child in care of a local authority who is currently eight years old. In ten years’ time they *“might discover when they go for their first job that the local council had not made the application 10 years ago. That would still be seen as a reasonable ground for a late application, because the child would not have known about it.”*

Let’s call this child Jean Dupont. Imagine if Jean, before he goes for his first job and discovers his lack of status, requires hospital treatment in 2030, costing £54,000, which is classified as ‘not urgent’. This is a similar situation as applied to Albert Thompson (real name Sylvester Marshall) in 2018 who was caught up in the Windrush scandal because he could not prove his status. He was first denied hospital treatment in November 2017 and was eventually told in April 2018 that he could have treatment. This was after a huge public petition, Prime Minister’s Questions and extensive media coverage.

Like Thompson, Jean Dupont will not actually have a legal status at time of requiring treatment.

Like Thompson, Jean Dupont is likely to be denied NHS treatment unless they pay for it.

Will Jean Dupont be denied free NHS treatment throughout the time it takes for him to become aware of what he needs to do to apply for status, and then the time it takes to be granted status?

If Jean Dupont had spent some time sleeping rough, what protection would he have from deportation from the UK?
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3. What is in place to help people prove their digital status?

On 21st October 2020, during the ping-pong stage of the Immigration and Social Security Coordination (EU Withdrawal) Bill, Baroness Williams of Trafford [said on behalf of the government](#)¹:

“We are committed to working with this House and with stakeholders to ensure that measures are in place to support those who may find the transition to digital services difficult.”

and

“I am aware that many noble Lords are worried about the impact of digital by default on the elderly and the vulnerable, but I reassure them that we are taking steps to ensure that those individuals are not disadvantaged by the move to digital services, particularly in accessing public services. System-to-system checks with other government departments and the NHS will mean service providers, such as healthcare and benefits, will check status directly with the Home Office at the point at which the person seeks to access them.”

and

*“we recognise that there are people who cannot access online services and will need additional support. We are committed to delivering a service that reflects the diverse needs of all users. Help on how to use the online service and share status information is already available through our telephone contact centre, and we provide a free-to-use **assisted digital service where those applying to the EU settlement scheme**, or others making online applications in the UK, are able to get support.”*

Our question is - how does the Government intend to fulfil its commitment to *“delivering a service that reflects the diverse needs of all users”*?

The examples given cover situations where the NHS and government departments check status - they do not cover situations where third party private individuals wish to check status (e.g. banks, accountants, solicitors, travel companies, and other potentially unforeseen private actors).

The assisted digital service as mentioned is for those **applying** to the scheme, not for those wishing to **prove their status** under the scheme.

¹ <https://bit.ly/3mGqC84>

Appendix A - Timeline and references EUSS PES

- **11 June 2019** - Caroline Nokes, then Immigration Minister, confirms that the Home Office undertook an Equality Impact assessment of the EUSS in an answer to a [written PQ 252534](#)², stating:
“In accordance with the public sector equality duty under section 149 of the Equality Act 2010, the Government has had due regard to the impacts of the EU Settlement Scheme on those who share a protected characteristic.”
- **2 July 2019** - Caroline Nokes answers [written PQ 270377](#)³ and [written PQ 270378](#)⁴ and states in both:
*“In accordance with the public sector equality duty under section 149 of the Equality Act 2010, the **Government** continues to have due regard to the impacts of the EU Settlement Scheme on those who share a protected characteristic. A Policy Equality Statement, which sets out the Government’s consideration of the impacts of the scheme on those who share such a characteristic, **will be published shortly.**”*
- **17 July 2019** - Caroline Nokes answers [written PQ 252532](#)⁵ stating:
*“As part of this process, we have had due regard, in accordance with the public sector equality duty under section 149 of the Equality Act 2010, to impacts on those who share a protected characteristic. This is reflected in the Policy Equality Statement for the EU Settlement Scheme, and a copy of this **will be placed in the Library shortly.**”*
- **29 August 2019** - [FOI request 55262](#)⁶ made to the Home Office requesting a copy of the PES
- **19 September 2019** - Home Office [denies FOI request 55262](#)⁷ (while confirming the PES exists) using section 22 of the FOIA (information can be withheld if it is intended for future publication).
- **6 November 2019** - an internal FOIA review [upholds the decision](#)⁸ to deny the FOI request.
- **15 November 2019** - a renewed review of the FOI request is made, which also cites the reasons why the PES is important:
a) The PES may assist EEA citizens and civil society groups to understand whether the EUSS (and related Home Office decision-making) is compliant with the Equality Act 2010.

² <https://questions-statements.parliament.uk/written-questions/detail/2019-05-09/252534>

³ <https://questions-statements.parliament.uk/written-questions/detail/2019-06-27/270377>

⁴ <https://questions-statements.parliament.uk/written-questions/detail/2019-06-27/270378>

⁵ <https://questions-statements.parliament.uk/written-questions/detail/2019-05-09/252532>

⁶ https://www.whatdotheyknow.com/request/policy_equality_statement_eu_set

⁷ <https://www.whatdotheyknow.com/request/600411/response/1434211/attach/html/3/FOI%2055262%20Response.pdf.html>

⁸

<https://www.whatdotheyknow.com/request/600411/response/1463794/attach/html/3/55263%20Patel%20Internal%20Review%20Final%20Response.pdf.html>

b) The EUSS is open for a limited window. If the UK leaves the EU without a deal, applications to the EUSS close on 31 December 2020. The EUSS has been fully open to the public for (potentially) more than a third of its operating time without the PES being published.

c) No clear timetable for publication of the PES has been provided as “shortly” is not being given its ordinary meaning.

- **30 October 2019** - Brandon Lewis answers [written PQ 3629](#)⁹, [written PQ 3630](#)¹⁰, [written PQ 3632](#)¹¹ and [written PQ 3633](#)¹², stating in each:

*“A policy equality statement **has been completed** for the EU Settlement Scheme ensuring the scheme is accessible to all and does not discriminate based on any protected characteristic.”*

- **15 November 2019** - Home Office states it cannot carry out a second review of the August 2019 FOIA request.
- **27 February 2020** - The Independent Chief Inspector of Borders and Immigration (ICIBI) states in its [second report on the EU Settlement Scheme](#)¹³:

Third of nine recommendations: *“In the interests of promoting the EU Settlement Scheme (EUSS) and being recognised as its “authoritative voice”, publish the department’s Policy Equality Statement (PES) for the EUSS or such parts of the PES that provide reassurance that the impacts of the EUSS have been fully considered, in particular for vulnerable and hard-to-reach individuals and groups.”*

Para 6.61: *“The Home Office has not published a Policy Equality Statement (PES) for the EUSS. According to the3million, the PES has been “repeatedly requested since at least November 2018 but still not released. The standard advice from the Home Office is that “there’s a discussion” on whether to publish these as there’s no legal duty to do so, which appears to be a tactic to appease group members and not genuine engagement.”*

Para 6.62: *“Meanwhile, internal guidance for Home Office staff on ‘Public Sector Equality Duty and Policy Equality Statements’, produced in March 2019, was clear about the purpose of a PES, leaving little doubt that the EUSS would have required one to have been produced:*

“‘Policy’ must be interpreted expansively and means any of the following: new and existing policy, strategy, services, functions, work programme, project, practice and activity – whether written, unwritten, formal or informal. It includes decisions about budgets, procurement, commissioning or de-commissioning services, allocating resources, service design and implementation.

⁹ <https://questions-statements.parliament.uk/written-questions/detail/2019-10-22/3629>

¹⁰ <https://questions-statements.parliament.uk/written-questions/detail/2019-10-22/3630>

¹¹ <https://questions-statements.parliament.uk/written-questions/detail/2019-10-22/3632>

¹² <https://questions-statements.parliament.uk/written-questions/detail/2019-10-22/3633>

¹³ <https://www.gov.uk/government/publications/an-inspection-of-the-eu-settlement-scheme-april-2019-to-august-2019>

A PES is the tool for demonstrating that due regard has been had in the exercise of our functions and delivery of our services. Evidence must be gathered as the policy is developed, so that it can inform decisions about the proposal and its future.”

Para 6.66: *“The Home Office appears resistant to calls to publish its Policy Equality Statement (PES) for the EUSS. While it may be under no legal duty to do so, this is at best unhelpful and gives rise to accusations that it has not fully considered the impacts of the EUSS. In the interest of promoting the scheme, it should reconsider its position.”*

- **27 February 2020** - the [Home Office response to the ICIBI report](#)¹⁴ accepts the recommendation to publish the PES, stating:
*“The Home Office has ensured that the equality impacts of the EU Settlement Scheme have been fully considered and is **committed to publishing the Department’s Policy Equality Statement by Spring 2020.**”*
- **22 July 2020** - the Information Commissioner’s Office (ICO) issues a [Decision Notice](#)¹⁵ relating to the August 2019 FOIA request, stating that:
“The Commissioner’s decision is that the Home Office incorrectly applied section 22 to withhold the requested information.”; and that the Home Office must disclose the PES. The ICO goes on to state:
“The Home Office must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.”

(35 calendar days from 22 July 2020 is 26 August 2020).
- **28 July 2020** - Kevin Foster answers [written PQ 76759](#)¹⁶, stating:
*“The Policy Equality Statement for the EU Settlement Scheme **will be published shortly.**”*
- **1 September 2020** - Kevin Foster answers [written PQ 78787](#)¹⁷ stating:
*“The Policy Equality Statement for the EU Settlement Scheme **will be published shortly.**”*
- **14 September 2020** - Baroness Williams of Trafford speaking for the Government to the House of Lords on the Immigration and Social Security Co-Ordination (EU Withdrawal) Bill [answers a question](#)¹⁸ about the PES:
“Finally, on the policy equality statement that the noble Lord, Lord Oates, asked about—I think the noble Baroness, Lady Lister, mentioned it as well—I am very sorry to say that I cannot add to other Ministers’

¹⁴ <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-eu-settlement-scheme-april-to-august-2019/the-home-office-response-to-the-icibi-report-an-inspection-of-the-eu-settlement-scheme>

¹⁵ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618076/fs50898337.pdf>

¹⁶ <https://questions-statements.parliament.uk/written-questions/detail/2020-07-20/76759>

¹⁷ <https://questions-statements.parliament.uk/written-questions/detail/2020-07-22/78787>

¹⁸ <https://bit.ly/3bWhIPC>

comments. The statement **will be published shortly** as outlined by them.”

- **5 October 2020** - Baroness Williams of Trafford [answers a question](#)¹⁹ about the PES:
“He asked me about the policy equality statement. I understand that it **will be published shortly.**”
- **21 October 2020** - Baroness Williams of Trafford [answers a question](#)²⁰ about the PES:
“The noble Lord, Lord Oates, also stated his dismay that the PSED has not been published. I do not have any update on my previous statement that **we intend to publish it.**”

¹⁹ <https://bit.ly/3ntPu4f>

²⁰ <https://bit.ly/37X88fj>

Appendix B - Status of late EUSS applications – Case of Albert Thompson

On 30th September in the House of Lords, the Government [confirmed](#)²¹ that “A person with reasonable grounds for missing the deadline, who subsequently applies for and obtains status under the scheme, will enjoy the same rights from the time they are granted status as someone who applied to the scheme before the deadline. However, **they will not have those rights in the period after the missed deadline and before they are granted status**”

On 14th October in the House of Commons, Kevin Foster [spoke about reasonable grounds](#)²² for late applications to the EUSS, illustrating with an example:

“I regularly cite the relevant example of a child in the care of a local authority that has the duty to make the application on their behalf. If the local authority fails to do that, and the person becomes an adult and realises that the application was not made for them, that would be seen as an eminently reasonable ground, because they were entitled to believe that the local authority would have done its duty and made the application on their behalf.”

*Moreover, there is no set time period for reasonable grounds. For example, in the case of a looked-after child, the Home Office accepts that it could be some time before they run into the problem. For the sake of argument, an eight-year-old child will become an adult in 10 years’ time **and might discover when they go for their first job that the local council had not made the application 10 years ago. That would still be seen as a reasonable ground for a late application, because the child would not have known about it.**”*

Timeline in the case of Albert Thompson, as published by Amelia Gentleman of the Guardian:

- **November 2017** - The Royal Marsden questions Albert Thompson’s immigration status and denies him cancer care due to it not being classed ‘urgent treatment’ and NHS guidance stating that they had a legal responsibility for charging overseas visitors.
- **10 March 2018**²³ - story first reported that “When Albert Thompson went for his first radiotherapy session for prostate cancer in November he says he was surprised to be taken aside by a hospital administrator and told that unless he could produce a British passport he would be charged £54,000 for the treatment.”
- **12 March 2018**²⁴ - reports outrage from politicians, doctors and cancer charities that someone was “asked to pay £54,000 for cancer treatment because he was unable to provide evidence of residency, despite having lived here for 44 years.” The Royal Marsden hospital said “We are working hard to try to resolve this as

²¹ <https://bit.ly/2GhOOON>

²² <https://bit.ly/3mJciLN>

²³ <https://www.theguardian.com/uk-news/2018/mar/10/denied-free-nhs-cancer-care-left-die-home-office-commonwealth>

²⁴ <https://www.theguardian.com/uk-news/2018/mar/12/shameful-widespread-outrage-over-man-denied-nhs-cancer-care>

quickly as possible.” They were bound by Department of Health “guidance highlighting NHS trusts’ legal responsibility for charging overseas visitors.”

- **14 March 2018**²⁵ - After being raised at Prime Minister’s Questions, Theresa May promises to look into the case of Albert Thompson.
- **22 March 2018**²⁶ - The Prime Minister refuses to intervene, leaving the responsibility for the decision with the Royal Marsden hospital. “Despite sympathising with “Mr Thompson and the worries he will be facing given his condition”, the prime minister said he needed to “evidence his settled status” in the UK.”
- **18 April 2018** - The Prime Minister [states in PMQs](#)²⁷ that “I also want to make clear that as it happens, Mr Thompson is not part of the Windrush generation.” (i.e. he was not legally entitled to status).
- **19 April 2018**²⁸ - Confirms that “a technicality means that Thompson does not qualify as a Windrush person, eligible for assistance under the government’s new schemes announced this week, as Theresa May pointed out as she responded to questions about him in the Commons on Wednesday. He arrived a few months after the 1973 Immigration Act was implemented.”
- **24 April 2018**²⁹ - Albert Thompson is given a date for his radiotherapy treatment.
- **26 April 2018**³⁰ - Albert Thompson is to be given indefinite leave to remain.
- **27 April 2018**³¹ - Sylvester Marshall (real name of Albert Thompson) receives written notice of right to remain.
- **Written evidence**³² submitted by Doctors of the World to the Home Affairs Committee in 2020 states:

“Providing proof of identity and residence in the UK is a key part of NHS entitlement checks [...] The case of Albert Thompson, a member of the Windrush generation who had cancer treatment withheld for months because he lacked paperwork, demonstrates the challenge certain patients face accessing life-saving care when unable to provide documents proving their identity and entitlement to NHS services.”

²⁵ <https://www.theguardian.com/politics/2018/mar/14/theresa-may-promises-to-look-into-mans-54000-nhs-cancer-bill>

²⁶ <https://www.theguardian.com/uk-news/2018/mar/22/theresa-may-refuses-to-intervene-over-mans-54000-nhs-cancer-bill-albert-thompson>

²⁷ <https://bit.ly/201qHVh>

²⁸ <https://www.theguardian.com/uk-news/2018/apr/19/windrush-albert-thompson-cancer-treatment-theresa-may>

²⁹ <https://www.theguardian.com/uk-news/2018/apr/24/windrush-scandal-albert-thompson-gets-cancer-treatment-date>

³⁰ <https://www.theguardian.com/uk-news/2018/apr/26/windrush-case-uk-to-settle-residency-status-of-albert-thompson>

³¹ <https://www.theguardian.com/uk-news/2018/apr/27/windrush-cancer-victim-has-uk-residency-status-confirmed>

³² <https://committees.parliament.uk/writtenevidence/4125/html/>