

Vulnerability in the EU Settlement Scheme: looking back, going forward.

A review of evidence from Law Centres' casework.



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Acknowledgements

We would like to thank Laura Chilintan and Tara Mariwany from the Law Centres Network for project management and research support. We are also grateful to Nimrod Ben Cnaan from the LCN , as well as Luke Piper and Monique Hawkins from the3million for their insightful comments on the initial draft. Above all, we are indebted to Law Centres' Advisers who participated in focus groups. They need to remain anonymous to protect confidentiality of case studies cited in the report. This research extensively draws on their knowledge and experience, and it would not be possible without them.

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Published on 21st July 2021 by Law Centres Network.

Executive summary

This report considers vulnerability of applicants with complex needs in the context of the EU Settlement Scheme (EUSS) rollout. The stated aim of the EUSS was to process large volumes of applications quickly: the Scheme launched for the public on 30 March 2019 and set a deadline for millions of EU citizens and family members to apply or lose their rights by 30 June 2021. The Scheme was designed to handle large volumes of applications; this report evaluates how it coped with complex applications from vulnerable users. It examines these vulnerabilities and suggests how they could be addressed as the EUSS enters its next phase.

The report draws on the knowledge generated through the EUSS Complex Cases project, which involved 16 Law Centres nationwide and supported over 1,000 vulnerable applicants over the course of 15 months. Research methods included: a topical literature review, quantitative analysis of demographic and vulnerability characteristics captured in case records, and thematic analysis of evidence from two focus groups with Law Centres Advisers practising in immigration and welfare law. Therefore, the report largely draws on original and unpublished empirical material.

The principles-based perspective on vulnerability presented in the report differs from the reactive approach adopted by the Home Office inasmuch as it does not approach vulnerability in the EUSS as fundamentally related to specific groups applying to the Scheme. Instead, it builds on independent research published thus far to develop a systemic approach to multiple vulnerability characteristics, which translate into the complexity of applicants' cases. In doing so, the report demonstrates that vulnerability is baked into the legal framework and technical design of the EUSS, as the Scheme does not sufficiently account for the diversity of applicants' needs and circumstances.

The framework presented in the report shows that vulnerability in the EUSS is rarely associated with singular characteristics and it often arises due to the complexity of the applicant's circumstances. These can affect (a) the *perception* of the EUSS including the Scheme's eligibility criteria and ways of proving status, (b) the applicant's *autonomy* to engage with the application process, (c) their *capacity* to navigate the system pre- and post-application, and (d) their ability to assemble *evidence* necessary to secure or upgrade status under the Scheme. All these concerns continue after the EUSS deadline of 30 June 2021 in the context of late and repeat applications, and in relation to proving online status to access employment, housing and public services.

The analysis of demographic and vulnerability characteristics recorded for over 1,000 applicants supported by the EUSS Complex Cases project confirmed existing concerns around the impacts of the EUSS on long-term residents, children, and third country (i.e. not EEA or Swiss) nationals. Comparisons of demographic characteristics between a project for EU citizens pre-dating the EUSS and the EUSS Complex Cases project show: a rise in long-term (over 20 years) EU residents needing support from 0.5% to 7.1% of all clients; and a steep rise in children needing support from 0.3% of all clients to 20.2% of the total. The proportion of third country nationals seeking advice in relation to EU rights also increased from 3.4% of clients in pre-EUSS case records to 17.8% of EUSS Complex Cases records.

The analysis of vulnerability characteristics recorded for the EUSS Complex Cases project also confirmed existing concerns about language and digital barriers generated by the Scheme. English and digital literacy were the two main sources of vulnerability in the EUSS project, and they were recorded for 30.3% and 23.7% of all clients respectively. Of note, the 23.7% ratio of clients where digital literacy was recorded as a

vulnerability characteristic represents a significant increase compared with the pre-EUSS project, where it was only flagged up for 0.5% of all service users.

However, the research also exposes concerns that have received relatively little attention to date. They relate to the intersection of multiple vulnerability characteristics and socioeconomic circumstances, as well as race and ethnicity, and mental health. First, focus group research has shown that the overlapping issues of low levels of digital, language, and general literacy were exacerbated by unstable socioeconomic circumstances, which often manifested through homelessness. These effects were further compounded by the lack of face-to-face appointments during the Covid pandemic and they affected support provision for those with complex needs.

The second emergent concern, identified in the analysis of ethnic characteristics of clients supported through the EUSS Complex Cases project, shows that Black, Asian and Minority Ethnic (BAME) clients were substantially over-represented amongst those supported by Law Centres in the context of the Scheme. BAME applicants comprised 44.3% of all clients, while 48.1% clients belonged to white groups; ethnicity data were not recorded for 7.6% of applicants. The proportion of BAME clients was even higher amongst EU14 nationals where it reached 49.3% of the total while 39.6% of clients were white. Finally, BAME clients comprised the vast majority of third country nationals accessing support and their ratio in this group reached 83.8% whereas 11.4% of applicants were white. It is difficult to explain such disproportionately high rates of BAME applicants needing Law Centres support. However, it indicates the need to urgently implement ethnicity monitoring under the EUSS as well as the need for further, crucial research into the experiences of Black, Asian and Minority Ethnic applicants in the EUSS.

The third and final emergent concern identified through the review of vulnerability characteristics and focus group research is related to the vulnerability of applicants with health needs, and mental health needs in particular. A comparison of vulnerability characteristics between a project for EU citizens pre-dating the EUSS and the EUSS Complex Cases project showed a substantial rise in clients with mental health issues: from 2.1% to 9.4% of the total. Law Centres' Advisers also flagged up difficulties in engaging applicants with mental health problems, especially as advice was provided remotely during the Covid pandemic.

For all the above reasons, one of the Advisers participating in a focus group described the EUSS as a *melting pot of potential legal problems as we go forward*. To mitigate some of those problems, the report concludes with practical recommendations. Given the issues identified here result from policy decisions, recommendations are mostly aimed at the Home Office. They call for: adopting a systemic and principled approach to vulnerability, introducing robust equalities monitoring, providing more clarity on late applications, introducing physical documents to supplement digital status, as well as changes to the processing of pre-settled status upgrades and cases where suitability flags are raised.

Recommendations for support organisations focus on improvements to intelligence gathering and reporting, assessing client vulnerability, and implementing holistic approaches to better support those with multiple and complex needs.

Introduction

The EU Settlement Scheme (EUSS) is a policy framework and an administrative process introduced in the United Kingdom (UK) under the Withdrawal Agreement (WA)¹ in the context of the country's exit from the European Union (EU). The stated purpose of the EUSS is to transfer European Union (EU), European Economic Area (EEA) and Swiss residents and family members living in the UK under the EU's free movement law into the UK's domestic immigration system. It can also be used to facilitate entry into the UK for eligible family members².

This report is focused on EU citizens who need to secure UK immigration status under the Scheme. It uses the term *EU citizens* to refer to everyone living in the UK before 31st December 2020 and eligible for EUSS status. This includes EU, EEA and Swiss nationals and family members. The report reviews evidence from casework of Law Centres across England to evaluate what types and categories of vulnerability the Scheme generated in the process of transferring EU free movement rights into the UK immigration system. It suggests how these vulnerabilities may affect the EUSS going forward and makes recommendations to mitigate some of these effects.

Law Centres have operated in the UK since the early 1970s to provide legal advice, casework and representation to individuals and groups. They are multidisciplinary and cover various areas of social welfare law including immigration, discrimination, education, housing, employment, debt, social security benefits, health, and social care. All Centres are independent, and they operate on a not-for-profit basis. Their work is coordinated through the Law Centres Network, but each Centre operates locally to protect the rights of their communities. They also have a capacity building function and provide training and support to other individuals and organisations. Through such work, Law Centres identify issues and trends which they highlight to effect policy change. Since the late 2000s, Law Centres have offered targeted services to EU citizens and family members. This work was initially focused on the issues of discrimination to protect the rights of EU citizens in the UK. These efforts were refocused immediately after the 2016 referendum to protect rights and people in the context of the UK's withdrawal from the EU. Since the EUSS was introduced, this included dedicated advice for vulnerable applicants with complex needs, for whom the EUSS was never going to be *simple and straightforward*, as Home Secretary Sajid Javid claimed at the time³.

This report draws on the knowledge generated through this work – the EUSS Complex Cases project which involved 16 Law Centres nationwide and helped over 1,000 complex cases over 15 months. This material is supplemented with insights from previous Law Centres projects engaging EU citizens. The report is released in the wake of the EUSS deadline. With few exceptions⁴, all eligible EU citizens living in the UK had to apply by 30th June 2021 – or lose their rights. However, this deadline marks not so much a closure, but rather a transformation of the EUSS and its key function. Until 30th June the Scheme mostly served to secure rights, whereas from 1st July onwards it will mostly serve to evidence these rights. In addition, late applicants, joining

¹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, and the Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom, O.J. 2019, C 66 I.

² Home Office (2021) *EU Settlement Scheme caseworker guidance: EU, other EEA and Swiss citizens and their family members*.

³ Home Office (2018) *EU Settlement Scheme: Statement of Intent*, p. 2.

⁴ Residents eligible for the Scheme who do not have to apply include all Irish nationals as well as EU, EEA and Swiss nationals and family members who already hold Indefinite Leave to Remain. Dual citizens holding UK nationality need not apply as they are not eligible for the Scheme.

family members, and pre-settled status holders will need to submit EUSS applications to secure or upgrade their immigration status, as explained below.

The report has six sections. The first section presents background on the EUSS through a brief discussion of its policy framework and its target population. The second section outlines research methodology. The third section presents key findings from a topical review of research and policy reports about vulnerable applicant groups. Based on these findings, it outlines a framework that serves as an evaluative standard of vulnerability in relation to the EUSS. The fourth section demonstrates how vulnerabilities played out in practice in Law Centres' casework. It presents quantitative analysis of demographic and vulnerability characteristics captured in case monitoring records, and qualitative analysis of insights generated in two workshops with Law Centres Advisers. The fifth section draws on these findings to point out problems ahead of the EUSS following the deadline. The final section provides a set of recommendations to mitigate these problems.

The process of applying for status is the main empirical focus of the report. Given this aspect is handled by the Home Office, the EUSS is discussed relatively narrowly, as a centralised application system. However, it is important to bear in mind that Devolved Administrations and Local Authorities also have a role to play in the implementation of the EUSS⁵ and that delegated border controllers – employers, landlords, and so on – are mostly responsible for status checks from 1st July onwards⁶. The final part engages with this decentralised operation of the EUSS going forward.

I. Background information

The EUSS is a constitutive system. This means all eligible EU residents, except for Irish nationals and Indefinite Leave to Remain (ILR) holders, must apply for EUSS status or they will lose their rights. Therefore, the act of application constitutes the acquisition of residence rights. Another option available to the UK under the WA was a declaratory system, which is fundamentally different because affected citizens “acquire settled status or pre-settled status automatically by complying with the eligibility requirements⁷” set out by the Scheme. A declaratory system can include compulsory registration with sanctions for failing to comply with it. Thus, a declaratory scheme may render affected citizens undocumented – but unlike in a constitutive system they retain their legal status which they need to regularise. Under a constitutive system, rights are lost. Under the current ‘reasonable grounds’ policy late applications can be made under the Scheme, but rights are gained only once a positive decision is issued to the late applicant. It does not apply retrospectively and hence leaves anyone who missed the deadline with no rights while their application is pending⁸.

EUSS policy

The deadline for residents to apply or lose rights was set for 30th June 2021. From this date onwards, EU citizens who lived in the UK before 31st December 2020 need to have status under the EUSS. The application process is online. To make a valid application people must evidence their identity. Then, the application is assessed against eligibility and suitability criteria to make a decision: a grant of status (settled or pre-settled), a refusal, or a rejection. There is a different process in place for EU citizens without a valid identity document and for some other categories of applicants. However, supporting organisations raised concerns over accessibility of the relevant forms and flagged this up as a problem particularly affecting vulnerable applicants.

⁵ Evemy, John (2021) *Local Authority Delivery of the EUSS*. EU Rights and Brexit Hub.

⁶ The3million (2021) *The3million Submission to Independent Monitoring Authority: February 2021*.

⁷ Smismans, Stijn (2019) *Avoiding a Brexit ‘Windrush on steroids’ for EU nationals in the UK*. LSE Brexit Blogs.

⁸ Piper, Luke (2021) *A reflection on the Home Office’s Reasonable Grounds to applying late to the EU Settlement Scheme*.

Status granted under the EUSS is digital and can be evidenced by showing a Share Code. Applicants awaiting decision on their status can evidence they applied to the Scheme by showing a Certificate of Application, or an email confirming submission of an application if they are still waiting for a Certificate of Application. At the time of writing, multiple problems were already shown to affect those with applications pending after the deadline⁹. Despite its initial deadline passed, the Scheme continues to allow:

- repeat applications for the 2,329,400 users granted pre-settled status¹⁰,
- late applications from EU citizens who missed the deadline,
- applications from joining family members,
- applications for newly born children.

There are two types of checks¹¹ to decide the outcome of an application once it is received and deemed valid:

- eligibility checks assess a continuous qualifying period of UK residence, which must have started before the end of the transition period, so before 31st December 2020; they also assess whether the applicant has a current or past relationship with a relevant EEA citizen if applying as a family member.
- suitability checks assess personal conduct in the UK and overseas, which includes an assessment of any relevant prior criminal convictions, as well as honesty in the application.

Unlike settled status, which is granted to those with a five-year continuous qualifying period of UK residence, pre-settled status is temporary. Pre-settled status holders will lose their status unless they make a follow-on application within five years of the grant, or if they leave the UK for a period of two consecutive years. This status also affords fewer socio-economic rights for some categories of status holders. However, the five-year expiry rule for pre-settled status is subject to ongoing dispute between the UK and the EU¹² and the restrictions in socio-economic rights are part of an ongoing litigation.

EUSS outcomes

In March 2019, when the EUSS opened to the public, the Home Office estimated that the population eligible for the Scheme by the end of December 2021 would range from 3.5 to 4.1 million people¹³. The exact figure remained unknown due to lack of data and movement of people¹⁴. By the end of June 2021, the EUSS received 6,015,400 applications and made 5,446,300 million decisions¹⁵ including grants of indefinite and limited leave to remain, as well as rejections and refusals. The backlog of unprocessed applications stood at 569,100 on 1st July 2021, as shown in Figure 1.

⁹ O'Brien, Charlotte and Luke Piper (2021) *Fudging the Fallout of the EUSS Deadline: The Chasm Between Law and Practice Profoundly Undermines the Rule of Law*.

¹⁰ Home Office (2021) *EU Settlement Scheme Monthly Statistics*. Published 2 July 2021.

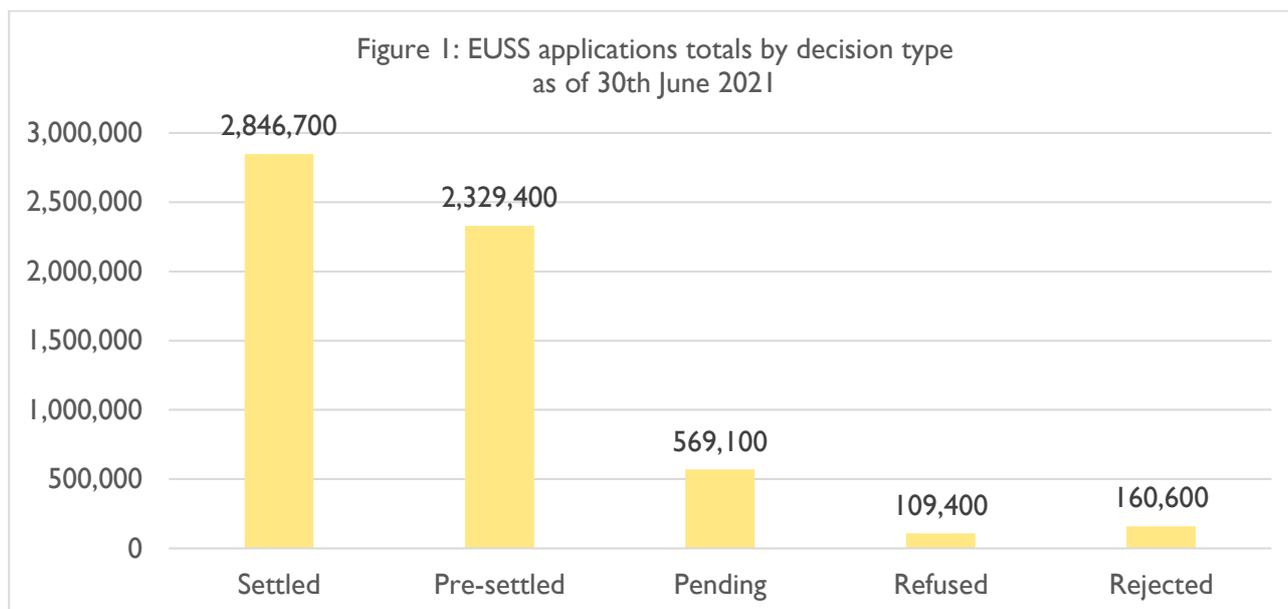
¹¹ Home Office (2021) *EU Settlement Scheme Caseworker Guidance*.

¹² Specialised Committee on Citizens' Rights (2021) *Joint statement Following the Meeting of the Specialised Committee on Citizens' Rights*. Published 17 June 2021.

¹³ Home Office (2019) *Impact Assessment for EU Settlement Scheme – Updated analysis*. IA No. HO0333.

¹⁴ Sumption, Madeleine (2020) *Not Settled Yet? Understanding the EU Settlement Scheme using the Available Data*.

¹⁵ Home Office (2021) *EU Settlement Scheme Monthly Statistics*. Published 2 July 2021.



Of note, the number of status holders is lower than the number of decisions made, for two reasons. Firstly, multiple applications from a unique user are allowed and they are counted multiple times in the statistics¹⁶. As of the end of March 2021 repeat applications stood at 311,870 so around 6% of the total¹⁷. Secondly, refusals and rejections¹⁸ do not result in grant of status but they are still counted as EUSS decisions. By the end of June, there were 270,000 such decisions made, although some of those who were refused or rejected were granted status on repeat application. Overall, around 5 million people were granted status under the Scheme before the deadline, while over 0.5 million were awaiting decision.

Grants of pre-settled status effectively generated 2,329,400 million deadlines for those who have to reapply, unless they decide to leave the UK permanently. By 31st March 2021, only 147,660 of those granted pre-settled status successfully reapplied for settled status¹⁹, which leaves over 2 million pre-settled status holders who are yet to secure indefinite leave to remain.

2. Research methodology

This report relied on mixed research methods, including a topical review of grey literature on vulnerability in the context of the EUSS, quantitative analysis of casework records collected by Law Centres, and qualitative analysis of narrative evidence from two focus groups with Law Centre Advisers held in April and May 2021. The quantitative aspect was focused on demographic profiles and vulnerability characteristics of service users included in three sets of case monitoring records from four different projects run at Law Centres in the last five years. They included:

- 1,797 case records from the Living Rights (LR) project which ended in November 2017 and was focused on welfare and residence rights before the EUSS was launched.

¹⁶ Jablonowski, Kuba (2019) *Home Office admits double counting in the EU settlement statistics*. Free Movement Blog.

¹⁷ Home Office (2021) *EU Settlement Scheme Quarterly Statistics: March 2021*.

¹⁸ These include void, invalid, and withdrawn cases. For further details see: Home Office (2021) *EU Settlement Scheme Statistics: User Guide*.

¹⁹ Home Office (2021) *EU Settlement Scheme Quarterly Statistics: March 2021*.

- 964 case records from the EU-Latin Americans Mobile and Participating (EULAMP) project and the Protecting the Rights of EEA Nationals in the Wake of Brexit (PRE-Brexit) project, which ran from early 2018 to January 2020. These projects provided immigration advice but were not focused on the EUSS.
- 1,068 case records from the Complex Cases (CC) project which focused on the EUSS and supported vulnerable EU citizens to apply under the Scheme.

EULAMP and PRE-Brexit projects targeted specific groups of EU citizens. The former aimed to improve the social, economic and civic participation of Latin Americans with an EU passport, and the latter engaged with low-waged EEA nationals and family members. The LR project provided advice to all EU citizens but two of its main delivery partners targeted East European and Polish citizens specifically. This is reflected in the demographic composition of service users, given the East European Resource Centre (EERC) accounted for 24.0% of the total caseload with 432 cases, and the Polish British Integration Centre (PBIC) accounted for 23.2% of the total with 417 cases.

In contrast, the CC project was open to all EU citizens who needed to apply to the EUSS and were at risk. Vulnerability was defined in open terms, and the project supported anyone who needed additional support to apply under the Scheme. Our analysis therefore focused on this project to investigate demographic and vulnerability characteristics of EUSS applicants. Other datasets were mostly used to compare demographic and vulnerability patterns with projects predating the EUSS. LR records were better quality than EULAMP and PRE-Brexit records, and hence they serve as a basis for any comparisons. This method has important limitations, given the projects were targeted and delivered differently which affected the demographic they reached. Any comparisons need to be approached with caution, and they are caveated accordingly in the report.

3. Vulnerability in the EU Settlement Scheme

Vulnerability is not explicitly defined in EUSS policy documents. The needs of vulnerable users were acknowledged at the point when the system was designed and tested. However, the *EUSS Statement of Intent* published in July 2018 shows the Home Office's approach to vulnerability was reactive by design. The Home Office did not adopt a principles-based approach at this stage and, instead, set up a user group comprised of "external stakeholders who represent the needs of potentially vulnerable individuals²⁰" to capture and respond to challenges as they emerged. The Department then presented its engagement with Devolved Administrations, Local Authorities, and representative organisations on the matters of vulnerability with regards to the EUSS design, development and operation as part of its strategy to comply with the Public Sector Equality Duty²¹. Therefore, the *EUSS Policy Equality Statement* neither explicitly defined vulnerability characteristics, nor fully listed vulnerable groups or categories of individuals considered as at risk. It named some categories, such as applicants with disabilities, children, and older applicants as potentially vulnerable. It also remarked that women in general are overrepresented within groups identified as vulnerable but did not consider why this is the case²².

Since the Scheme's introduction it has been monitored closely by a number of civil society organisations and research institutions. This independent research and their experiences of supporting or advocating for EU

²⁰ Home Office (2018) *EU Settlement Scheme: Statement of Intent*, p. 16.

²¹ Home Office (2020) *EU Settlement Scheme: Policy Equality Statement*, par. 288-290.

²² *Ibidem*, par. 309.

citizens, often with particular groups perceived to be vulnerable in the context of the Scheme, generated a number of reports that highlight various risks in the context of the EUSS. Many organisations that produced such reports are representative organisations, thus their expertise and focus is on the groups they work with such as ethnic minorities, older people, children in care, people in prison, and so on. In effect, the discussion of vulnerability in relation to the EUSS is often framed through the lens of particular groups at risk, rather than a principles-based review of vulnerability characteristics that put applicants at risk. This section evaluates these reports to consolidate these valuable insights into a systemic, principles-based framework for analysing and describing user vulnerability generated by the EUSS.

Vulnerabilities review

The reports we based our analysis on provide rich empirical material giving insight into a range of problems already encountered by researchers and practitioners working with EU citizens. They often operate through examples from their field of practice. In this report we approach vulnerabilities analytically, drawing on this body of grey literature published to date. The overriding goal is to develop a principles-based framework to identify particular vulnerability characteristics, which can then be used to assess vulnerability in persons not belonging to specific groups considered at risk – or to identify new groups that are at risk, given the prevalence of some of the vulnerability characteristics in these groups.

Independent reports published to date can be divided into three categories based on their methodology and scope. These categories include:

1. Research focusing on specific ethnic groups.
2. Research focusing on groups defined by shared circumstances.
3. Research highlighting vulnerability of various groups and inadequacy of available support.

Reports focusing on, or identifying, specific ethnic groups are generally produced by research or support organisations engaging with these groups or by organisations mapping specific services in the context of ethnic equalities. In such cases, although it may not always be explicitly stated, vulnerability is a product of discrimination which often translates into endemic lack of support either nationally or in particular geographical locations. Roma migrants are most often listed amongst such groups²³ but they also include, for example, Dutch citizens whose primary language is Somali and who live in London, Polish citizens living in Northamptonshire, or German citizens whose primary language is Bengali and who live in Bradford and Leeds²⁴.

Reports focusing on groups defined by shared circumstances, on the other hand, point to vulnerable populations with shared characteristics other than ethnicity. Children in care and care leavers are one such group that was researched and advocated for particularly robustly²⁵. Concern was also raised about young carers. Other groups flagged up by advocates and researchers as vulnerable include older people²⁶, people

²³ Roma Support Group (2020) *Brexit, EU Settlement Scheme and the Roma Communities in the UK*. Stalford, Helan and Dyfan Humphreys (2020) EEA *Children and British Citizenship: Why it is Important to Focus on Roma Children?* University of Liverpool: Brexit Research by Children's Rights Unit.

²⁴ Chowdhury, Tahmid (2020) *Identifying Hard-to-Reach Communities*. Here for Good presentation.

²⁵ Lagrue, Marianne, Charles Bourthoumieux, Joyinola Layonu (2020) *Children Left Out? Securing Children's Rights to Stay in the UK Beyond Brexit*. The Children's Society (2020) *Looked After Children and the EU Settlement Scheme An Update for Local Authorities*.

²⁶ McCarron, Emily (2020) *The EU Settlement Scheme and Older People*.

with a criminal record, and prisoners²⁷. In such research, specific groups are seen as vulnerable because their members share numerous characteristics that put them at risk of not applying, or not being applied for, under the Scheme. Their ability to secure appropriate status under the Scheme is also often mentioned.

The third category of research reports identified in our review took a different approach to either map out various groups and categories of vulnerable EUSS applicants, or to focus on groups not seen as inherently vulnerable to demonstrate inadequate support or socioeconomic standing may be vectors of vulnerability. For example, a report by the Joint Council for the Welfare of Immigrants (JCWI) explored a case study of EU care workers²⁸ – a group defined through the type of employment they are in, and not seen as vulnerable in its entirety. Yet the care workers interviewed for the report presented with a number of characteristics that makes them potentially vulnerable under the Scheme. Such research highlights that groups not readily tagged as vulnerable, either by the Home Office or by civil society actors, may nonetheless be at risk in the context of the EUSS.

The JCWI report was focused on a specific subset of EU migrant workers to show how complex the notion of vulnerability is in the context of the EUSS. Other reports took the opposite approach to illustrate the same problem. Most notably, the Migration Observatory's report *Unsettled Status*²⁹ developed a wide-ranging list and it organised applicants who may struggle with accessing the Scheme into four categories.

1. People unaware that the scheme exists, or that they have to apply to it. This category may include very diverse groups: from long-term resident, some of whom may have moved to the UK before it joined the EU and hence assume the Scheme does not apply to them – to EU citizens born outside the EU, or holders of Permanent Residence cards which in fact do not grant residence rights after Brexit – to children of EU citizens, some of whom may have been born in the UK and hence also assume the Scheme does not apply to them.
2. People facing social exclusion of some kind, or whose independence or autonomy is reduced. This category is similarly diverse and may include children in care and care leavers, domestic violence and abuse survivors, or those living in poverty and homelessness.
3. People facing problems with accessing or completing the EUSS application. This is also a diverse category that may include those with low language or digital literacy, people with cognitive or physical impairments, as well as people with derivative rights (who are required to use paper applications that generally have to be requested over the phone) and prisoners.
4. People lacking evidence proving their identity or eligibility. This category includes, for example, those who have no identity documents, or who struggle to evidence their relationship to a qualifying EU citizen to apply as family members, or those who have no residence evidence, for example because they have no bills in their name or no bank account³⁰.

The above categorisation of vulnerabilities helpfully outlines the contours of a principles-based framework for understanding who is at risk. However, it still mostly relies on identifying particular groups and is therefore less attuned to systemic understanding of complex vulnerabilities, where an applicant may display several different vulnerability characteristics. Therefore, in the next section, we propose an alternative framework

²⁷ Unlock (2019) *EU Nationals, Settled Status and Criminal Records*.

²⁸ Boswell, Caitlin and Chai Patel (2021) *When the Clapping Stops: EU Care Workers after Brexit*.

²⁹ Sumption, Madeleine and Mariña Fernández-Reino (2020) *Unsettled Status – 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?*

³⁰ See the *Unsettled Status* report for the full list.

for understanding vulnerability generated by the EUSS. It may also be relevant to other visa application routes as they become digitised. This framework integrates insights from the reports cited above, and the *Unsettled Status* report in particular, and feedback generated by Law Centres' Advisers in a focus group.

Vulnerability framework

Tagging particular groups as potentially vulnerable is a useful heuristic. However, it carries the risk that some applicants' needs may not be fully recognised if they do not belong to groups routinely tagged as at risk – just like care workers for the JCWI's report. In addition, a focus on group characteristics can lead to stigmatisation. A principles-based and person-centred model we present below avoids those pitfalls.

A person-centred assessment does not skim over the implications for groups. As we show below, multiple vulnerability characteristics can be particularly prevalent in specific groups and therefore manifest as elevated risk at a group level. However, operating with such a framework recognises that a person is not made vulnerable by the fact of being ethnically Roma or of young age, but due to other factors which can be ultimately traced back to the operation of the EUSS, or at least partly attributed to wider socio-economic exclusion. For example, the Scheme's digital design generates digital exclusion as a vulnerability; the fact people who already live in the country are required to apply for the right to stay generates a set of vulnerabilities around awareness, and so on. Similarly, the problems faced by domestic violence survivors are a consequence of abuse they have suffered, while problems of applicants with complex needs often stem from inadequacy of support and the lack of wraparound service models.

This underscores just how much vulnerability is generated by the immigration system itself, with its complex and inflexible rules. As *Adviser A* remarked in one of the focus groups, a sizeable category missing from discussions of vulnerability under the EUSS altogether are:

Non-EEA clients who are partners of EEA nationals. Some are entering the UK without using the permit scheme and they have been allowed to enter. They are in a grey area, where they are neither there nor here, and that is going to be another vulnerable group that we will have to deal with come the 30th June. That group is not mentioned.

We therefore assembled all vulnerability characteristics identified in the topical review into a list, and then divided this list of characteristics into four analytical categories:

1. Perception: characteristics which affect perceptions of eligibility or suitability for the EUSS, so the understanding of the entitlement and the need to apply.
2. Autonomy: characteristics which affect the ability to apply independently to the EUSS, so the capability to engage with the application process.
3. Capacity: characteristics which affect the capacity to complete the EUSS application, so language, mental and physical abilities, as well as technical skills and tools needed to successfully navigate the application process.
4. Evidence: characteristics which affect the ability to assemble application documents to prove eligibility, so identification, residence, and relationship evidence as applicable.

We then allocated each identified characteristic to one of the four categories, and tested this model with a focus group of Law Centres' Advisers. We then revised the model and added several more characteristics identified by the Advisers. The full framework is shown in Table I below.

PERCEPTION
<ul style="list-style-type: none"> • Citizens who received no information or incorrect information
<ul style="list-style-type: none"> • Children of migrant EU citizens, especially born in the UK
<ul style="list-style-type: none"> • Long term residents
<ul style="list-style-type: none"> • Citizens with a Permanent Residence Card and family members with an EEA residence card
<ul style="list-style-type: none"> • Citizens rejected for a Permanent Residence Card in the past
<ul style="list-style-type: none"> • Citizens removed in the past
<ul style="list-style-type: none"> • Citizens with past criminal convictions and pending prosecutions
<ul style="list-style-type: none"> • Citizens in prison
<ul style="list-style-type: none"> • Transient communities and seasonal workers
<ul style="list-style-type: none"> • EU citizens born outside the EU
<ul style="list-style-type: none"> • Citizens expecting to leave UK before 30 June 2021
AUTONOMY
<ul style="list-style-type: none"> • Children - anyone under 18 on 31 December 2020
<ul style="list-style-type: none"> • Children in care
<ul style="list-style-type: none"> • Care leavers
<ul style="list-style-type: none"> • Victims of domestic violence and abuse - children
<ul style="list-style-type: none"> • Victims of domestic violence and abuse - adults
<ul style="list-style-type: none"> • Victims of modern slavery
<ul style="list-style-type: none"> • Citizens with mental capacity issues
<ul style="list-style-type: none"> • Citizens with serious health conditions
CAPACITY
<ul style="list-style-type: none"> • Language barriers (EU language speakers)
<ul style="list-style-type: none"> • Language barriers (non-EU language speakers)
<ul style="list-style-type: none"> • Derivative right to reside holders, Lounes family members, and Surinder Singh cases
<ul style="list-style-type: none"> • Low literacy
<ul style="list-style-type: none"> • Low legal literacy
<ul style="list-style-type: none"> • Low digital literacy
<ul style="list-style-type: none"> • Cognitive impairment
<ul style="list-style-type: none"> • Other incapacitating mental health conditions
<ul style="list-style-type: none"> • Incapacitating physical health impairments
<ul style="list-style-type: none"> • Citizens living in poverty
<ul style="list-style-type: none"> • Homeless citizens and rough sleepers
EVIDENCE
<ul style="list-style-type: none"> • Citizens lacking ID documents
<ul style="list-style-type: none"> • Citizens lacking proof of relationship to a qualifying EU citizen
<ul style="list-style-type: none"> • Citizens who have no bank account
<ul style="list-style-type: none"> • Citizens who lack proof of address in their name
<ul style="list-style-type: none"> • Citizens in precarious or non-standard housing
<ul style="list-style-type: none"> • Citizens who arrived shortly before the cut-off date for eligibility
<ul style="list-style-type: none"> • Citizens in prison
<ul style="list-style-type: none"> • Former family members of EU citizens

Table I: Vulnerability framework.

The distinction between the four main categories is analytical rather than substantive. In particular, characteristics and issues related to autonomy and capacity may sometimes overlap. However, it is important to maintain it as it helps distinguish between broadly technical skills needed to navigate the process (capacity) and more fundamental capabilities to engage with it in the first place (autonomy). Furthermore, various characteristics can overlap, and they often do overlap in practice. This is illustrated by Figure 2, which also shows examples of applicants whose vulnerabilities will fall into several categories.

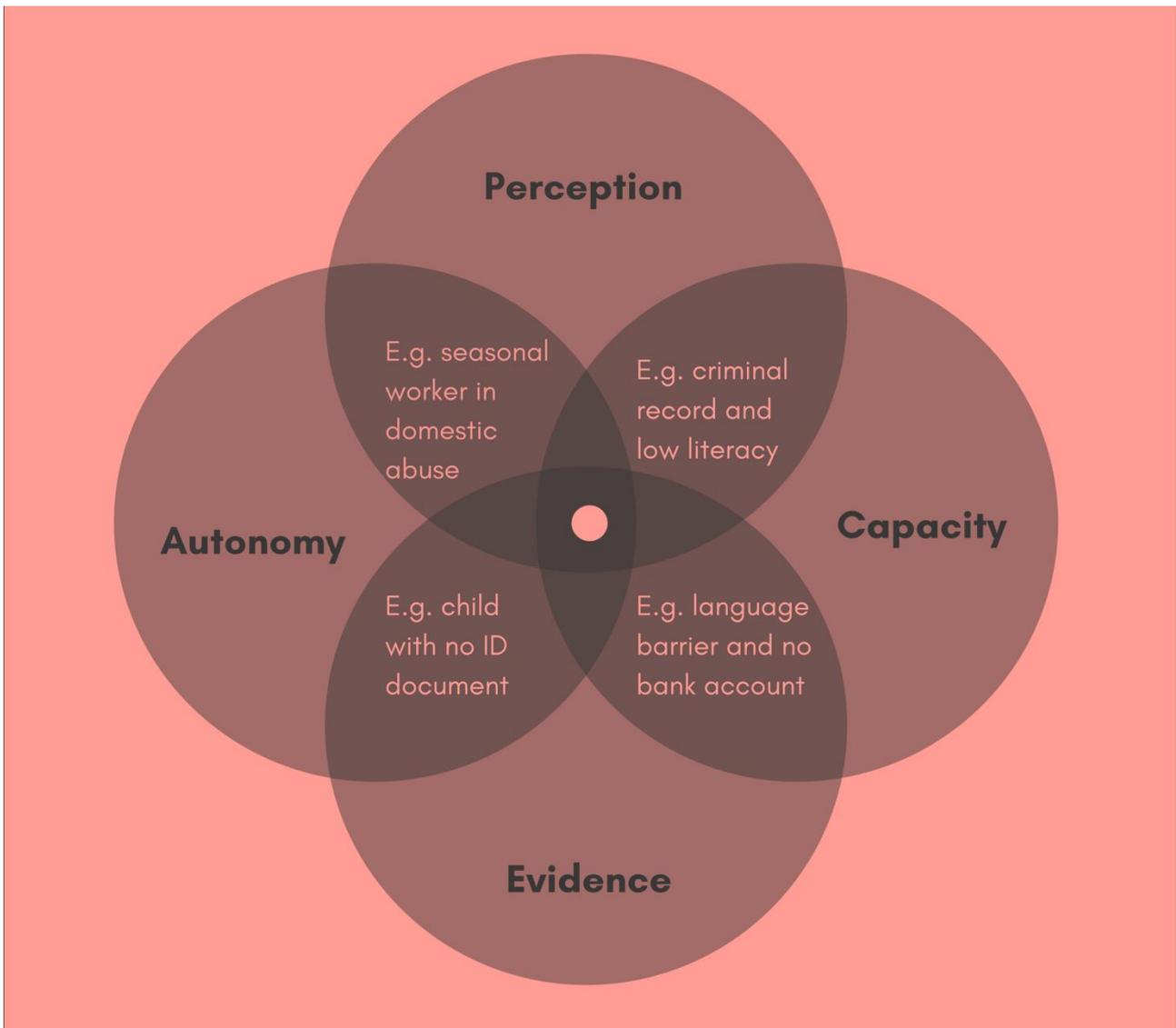


Figure 2: Overlapping vulnerabilities in the EUSS.

In addition, these characteristics have a temporal dimension. Some are one-off and once addressed, they stop putting the applicant at risk. For example, long term residents who are not aware that they need to apply to the EUSS, for example as they hold a Permanent Residence Card which they wrongly assume confers the right of permanent residence, may only be vulnerable until they receive appropriate advice. Assuming that they speak English well and have no problems proving their continuous residence in the UK, their vulnerability ends at the moment when they are advised and submit their application. Others, who also fall into the category of people unaware that they need to apply, may continue to be vulnerable if their lack of awareness is additionally associated with low language skills, low digital or legal literacy, or a disability. Their vulnerability

in relation to the EUSS does not end at the point of applying or receiving a grant of status either. They not only need support with the initial application process but also with the upgrade application to move from pre-settled to settled status. They may also need support to use their online status through the view and prove service, and to curate their status: update it with new identification documents, and so on.

For many applicants, the process of applying to secure or upgrade status under the EUSS follows a sequence: firstly, they have to understand the process (perception) to know they have to apply. Secondly, they need a degree of personal independence (autonomy) to engage with the application process. Thirdly, they need to have certain skills and abilities (capacity) to navigate this process. Finally, even if their perception, autonomy and capacity allow them to engage with the Scheme, they still need to be able to assemble evidence in support of their application. However, Advisers point out that this process is not always linear, and the wider social context also affects vulnerability categories. Caseworker B observed:

In perception, it's not just the lack of awareness but also the misunderstandings and confusion. It's something that I see a lot, and this is different to not being aware at all. I [also] think it is interesting how capacity interacts with evidence. Sometimes if someone can't get an ID document [which is required for the online process] they would need to apply for a paper application form [over the phone] and make the application in a different way. Obviously then they would need more capacity to make the application that way.

Further, the lack of identification documents may also affect one's perception of eligibility for the Scheme. Therefore, vulnerability at the final stage of the application cycle – various problems with assembling evidence – may in fact exacerbate issues around perception of the Scheme or capacity to navigate the process.

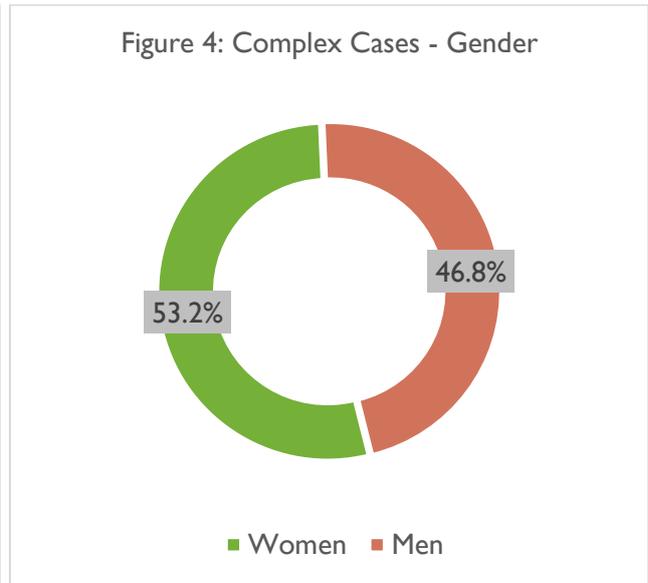
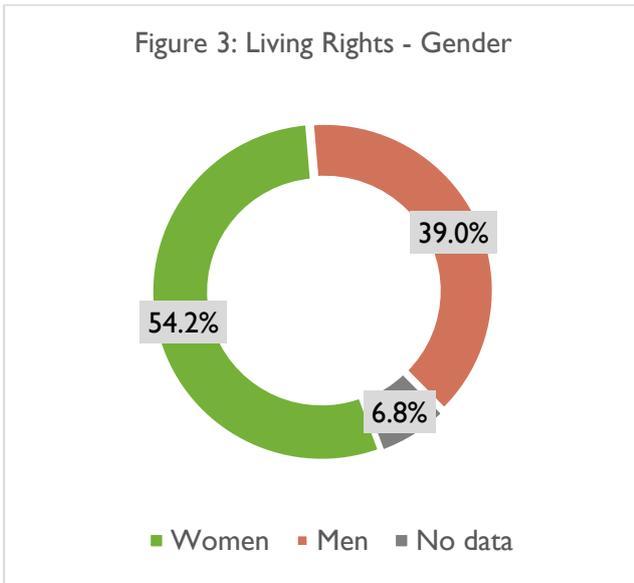
Advisers agreed that vulnerabilities do not only relate to the initial application process. They will be recurring themes of the EUSS for over two million pre-settled status holders who will need to apply to the Scheme again to secure settled status, and for all status holders when curating and using the digital status. These concerns are explored in the final sections of the report, and they translate into its policy recommendations.

4. Vulnerability in Law Centres' casework

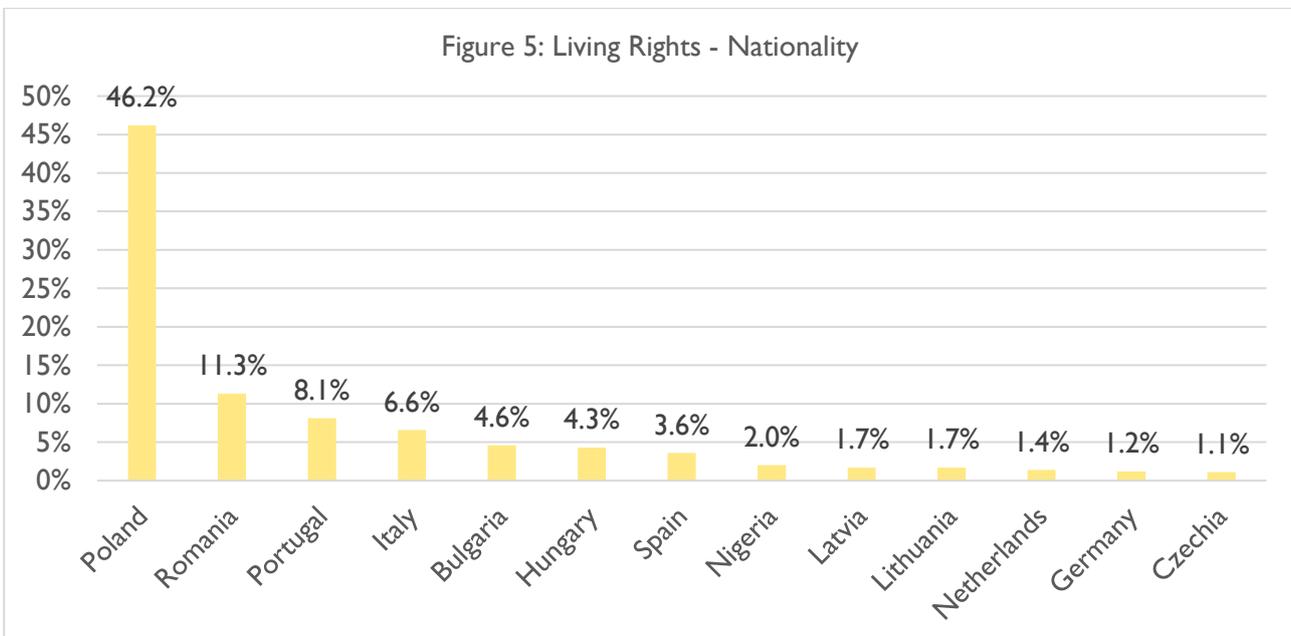
While the vulnerability characteristics described above can manifest in any applicant, this research also aimed to establish which demographic groups can be more vulnerable than others. This section draws on evidence from Law Centres casework records and Advisers' insights to illuminate these. The first subsection looks into the demographic characteristics of applicants whose cases were part of the EUSS Complex Cases (CC) project, and it makes some comparisons with the pre-EUSS Living Rights (LR) project. The second subsection reviews vulnerability characteristics captured through case monitoring records and then goes on to discuss insights generated by Law Centres' Advisers in the two focus groups held in spring 2021, in the run up to the EUSS deadline.

Demographic characteristics

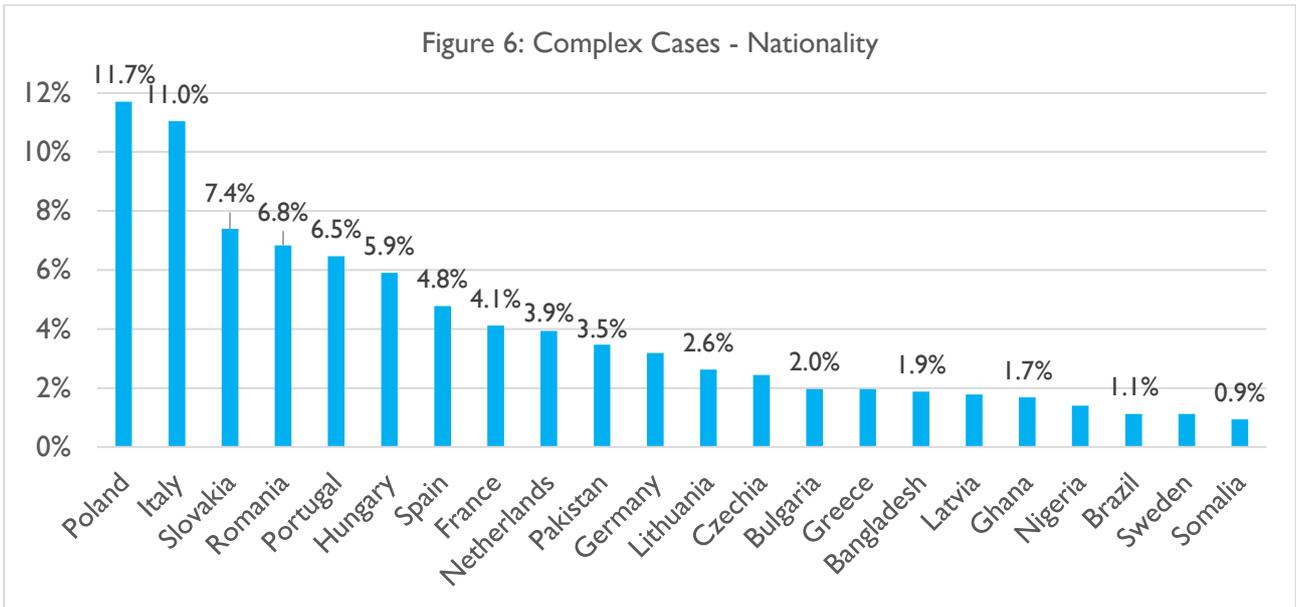
In the LR project men comprised 39.0% of those seeking advice and women were in the majority, 54.2%. Gender data were not captured for 6.8% service users. In comparison, the CC project captured data on gender for all participants, and it also displayed a more gender balanced profile with 46.8% men and 53.2% women.



When comparing demographic information for both projects, there is a striking difference in their nationality profiles. Those who accessed advice through the LR project, so before the EUSS was launched, were predominantly East European. As mentioned above, this is partly the function of delivering the project through organisations that predominantly engage Polish and East European citizens. They were assumed to be the EU citizens most in need of advice alongside 'invisible' EU communities, such as the Latin Americans wishing to exercise free movement in the UK and targeted by the EULAMP project. As a result, Poles, Romanians, Bulgarians and Hungarians made up over 66% of all service users in the LR project, as shown in Figure 5. Overall, 44 nationalities (including one British citizen) were represented amongst 1,797 clients.



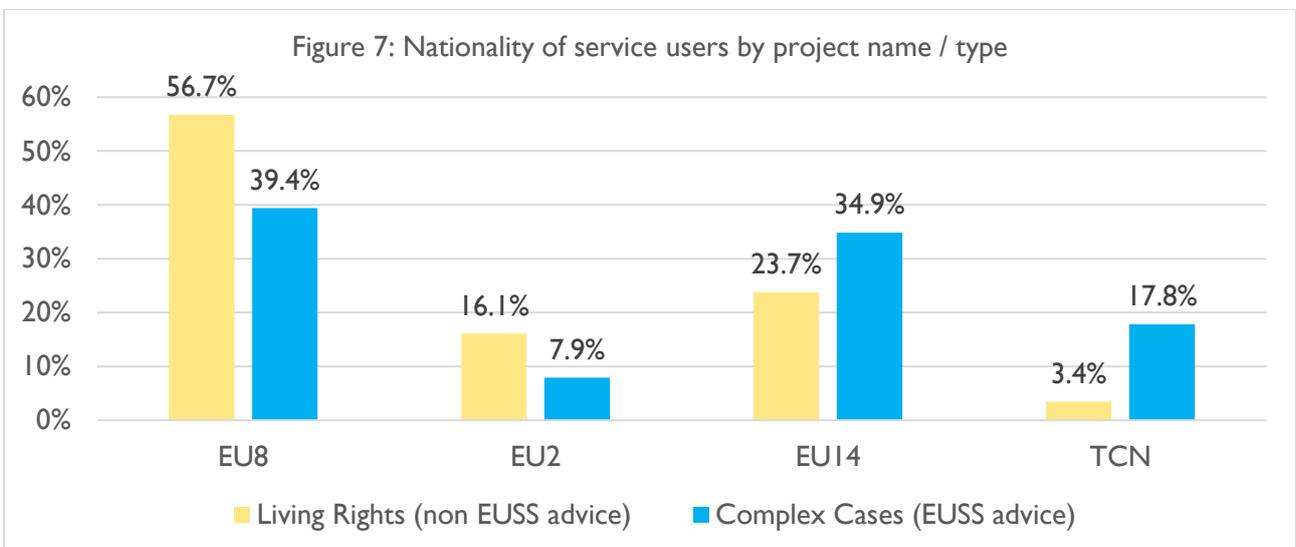
Service users in the CC project were a much more diverse group by nationality. Overall, 78 nationalities (which again include one British citizen) are represented despite this project having fewer clients: 1,068 in total. Like in the LR project, Polish citizens are the largest nationality group but they comprise just 11.7% of all service users, compared with 46.2% in the LR project. Figure 6 shows the breakdown by nationality for the 21 countries where at least 9 nationals accessed advice from the LR project.



A comparison between the two projects also shows differences between the following groups³¹:

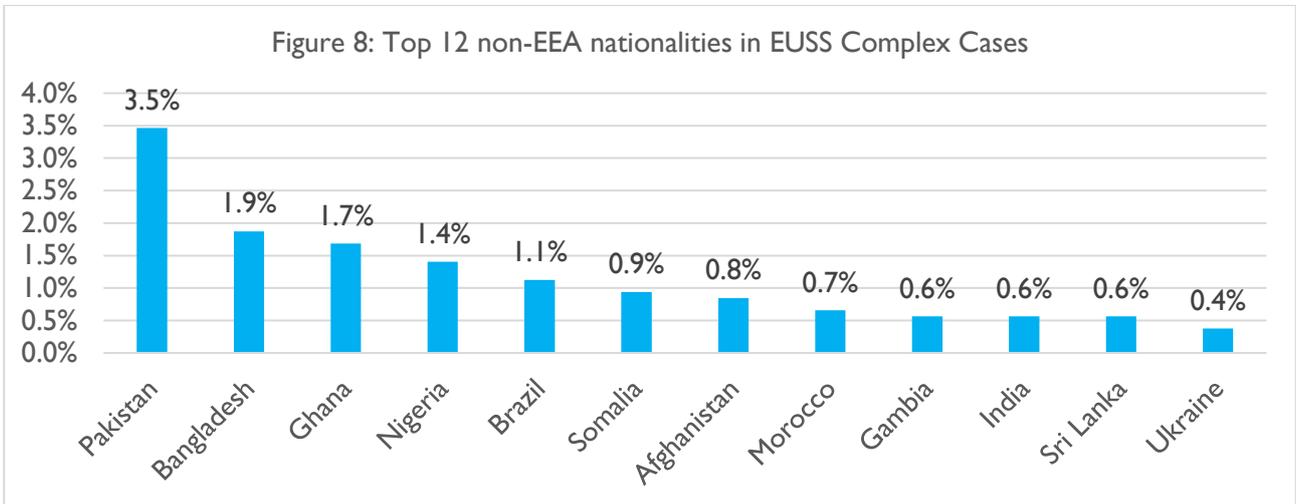
- EU14, so states that were EU members before the 2004 enlargement: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden.
- EU8, so member states that joined in 2004: Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia.
- EU2, so member states that joined in 2007: Bulgaria and Romania.
- TCN, so third country nationals who are not citizens of EEA members, and who are not Swiss.

As Figure 7 illustrates, citizens of member states that joined the EU since 2004 accounted for over 70% of all service users in the LR project. In comparison, the CC project saw a significant increase in EU14 nationals seeking advice. Citizens of those countries accounted for just 23.7% of clients in the LR project but 34.9% of clients in the CC project. The ratio of family members seeking advice increased even more and went up fivefold, from 3.4% to 17.8% of those seeking advice.

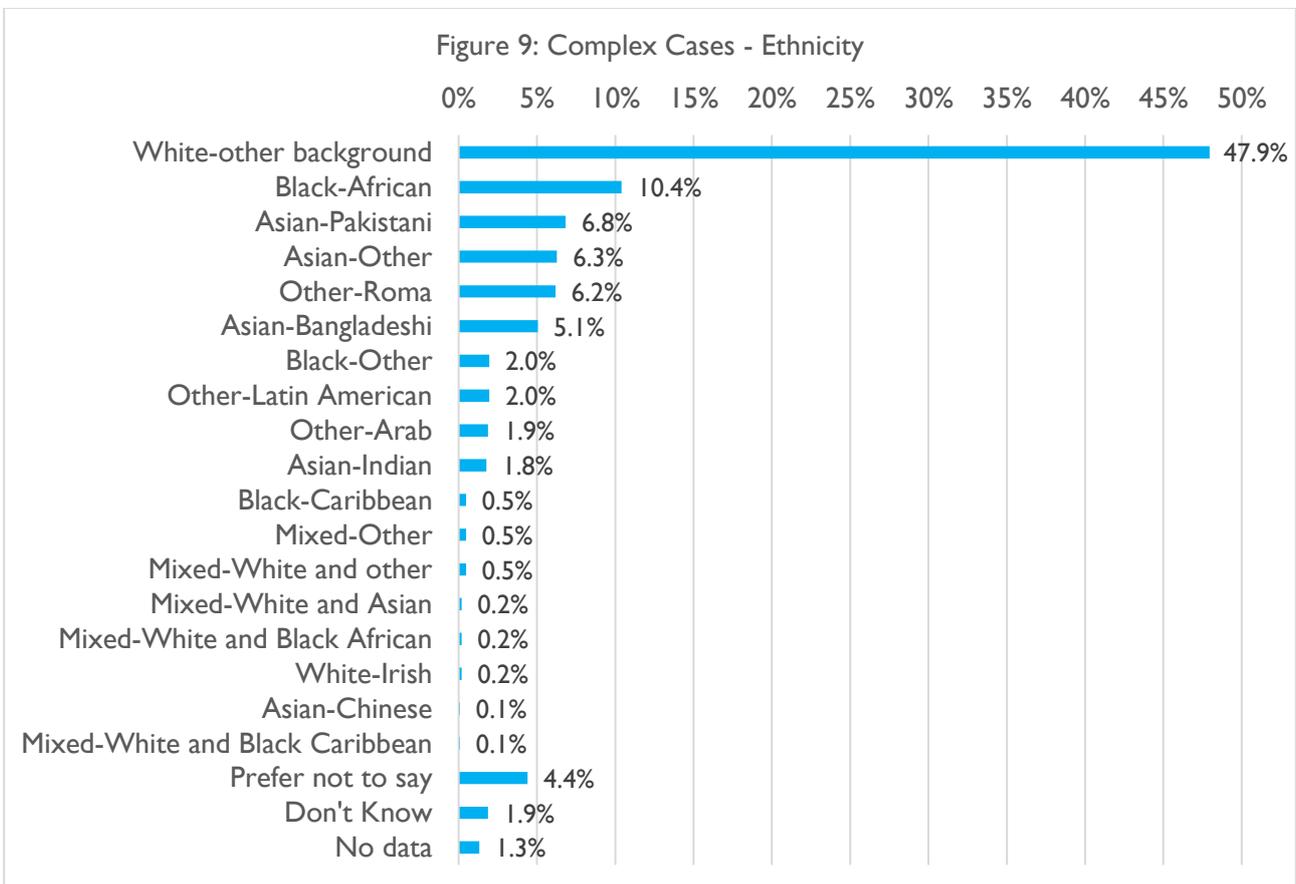


³¹ Both LR and CC projects were also accessed by one Croatian citizen each. Croatia joined the EU in 2013.

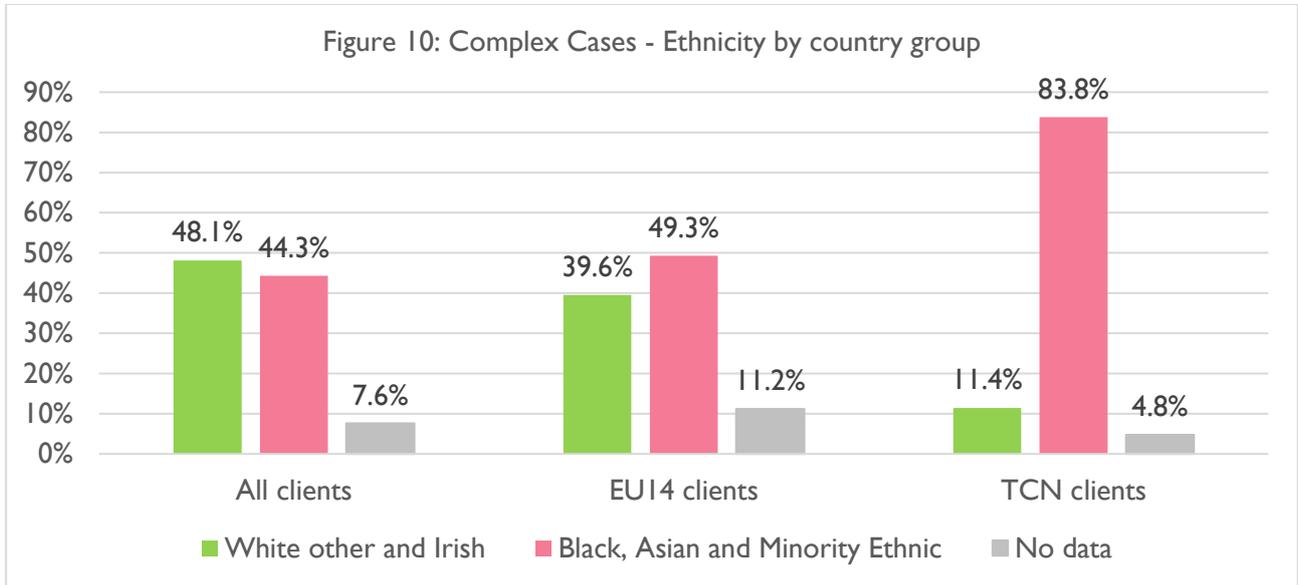
A breakdown of the top 12 third country nationalities, presented in Figure 8, shows non-EEA EUSS applicants supported by Law Centres mostly came from South Asia and Africa. Brazil was the only American, and Ukraine the only European, country in the top 12. The table shows what proportion of the CC caseload each nationality represented.



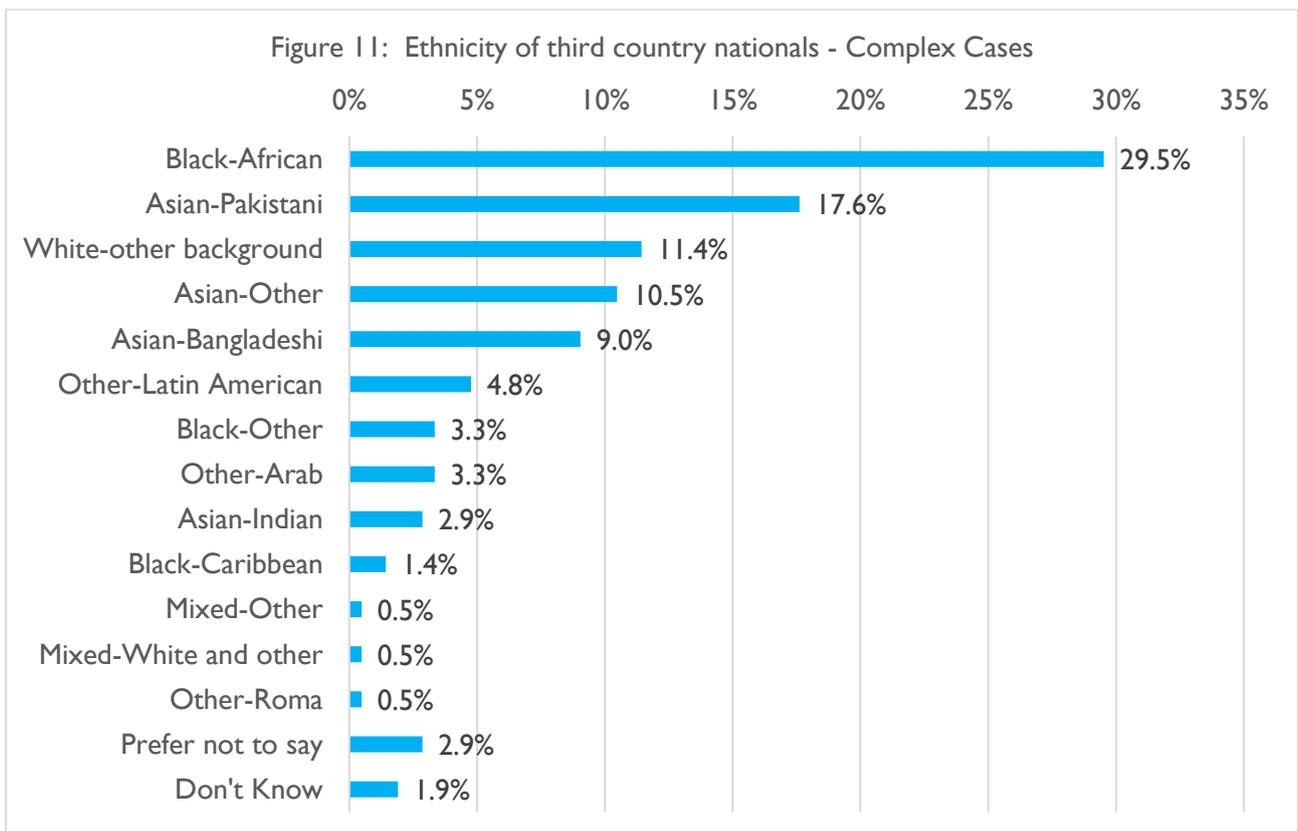
The LR project did not monitor ethnicity of service users, but these data were captured for CC clients. As shown in Figure 9, white service users accounted for less than half of the total. Black African clients were the largest ethnic minority at 10.4% while the Roma, who are often considered a particularly vulnerable group in the EUSS context, accounted for 6.2% of all CC service users.



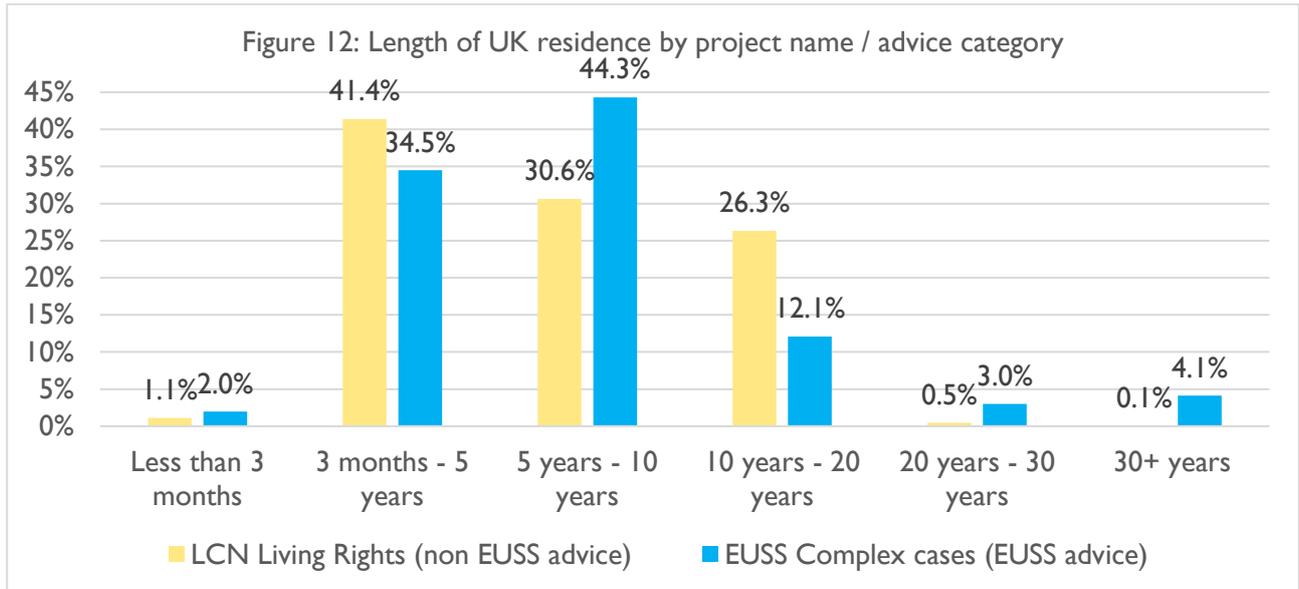
Ethnic disparities are even more profound when monitoring data is cross tabulated for EUI4 member states and for third country nationals accessing the EUSS, as shown in Figure 10. Black, Asian, and Minority Ethnic (including Roma) applicants comprise almost a half of all EUI4 clients and 83.8% of third country nationals.



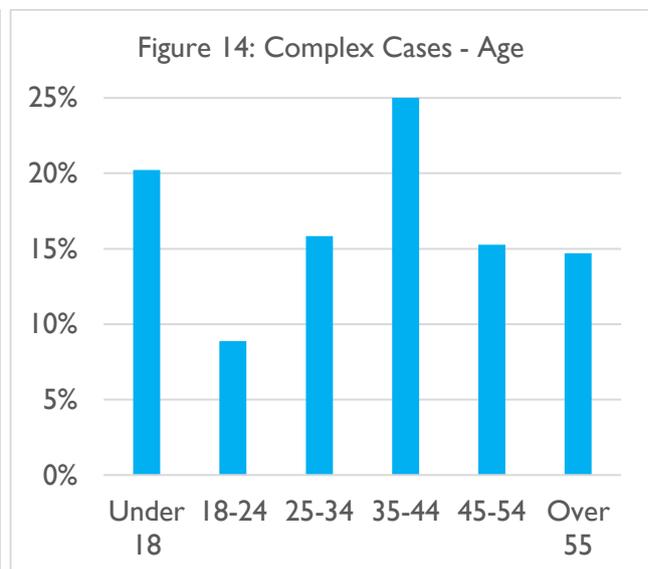
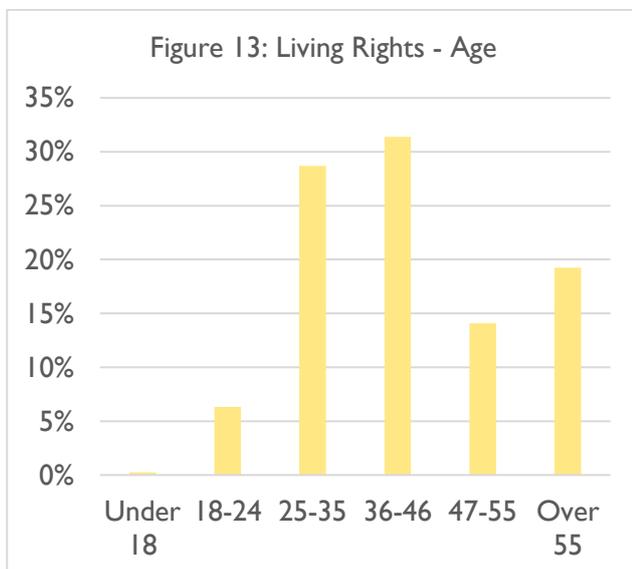
A further breakdown of third country nationals by ethnicity in Figure 11 shows Black African applicants comprised almost a third and Asian Pakistani clients comprised 17.6%. White applicants were the third largest group at 11.4% and they were closely followed by other Asian ethnic groups. Overall, Black and Asian applicants were the two largest groups.



Direct comparisons between projects need to be approached with caution, given advice and outreach before the EUSS were targeted at specific communities. This distorts data on nationality but also length of residence, given that the majority of East Europeans, so the group targeted by the LR project, arrived in the UK during the last two decades. The number of residents who lived in the UK for over 20 years and sought advice from the project was small – only 0.6% of all service users fell into this category. In the CC project long term residents were still a minority, but they represented a substantial subset of cases at 7.1% in total. A detailed breakdown is shown in Figure 12.



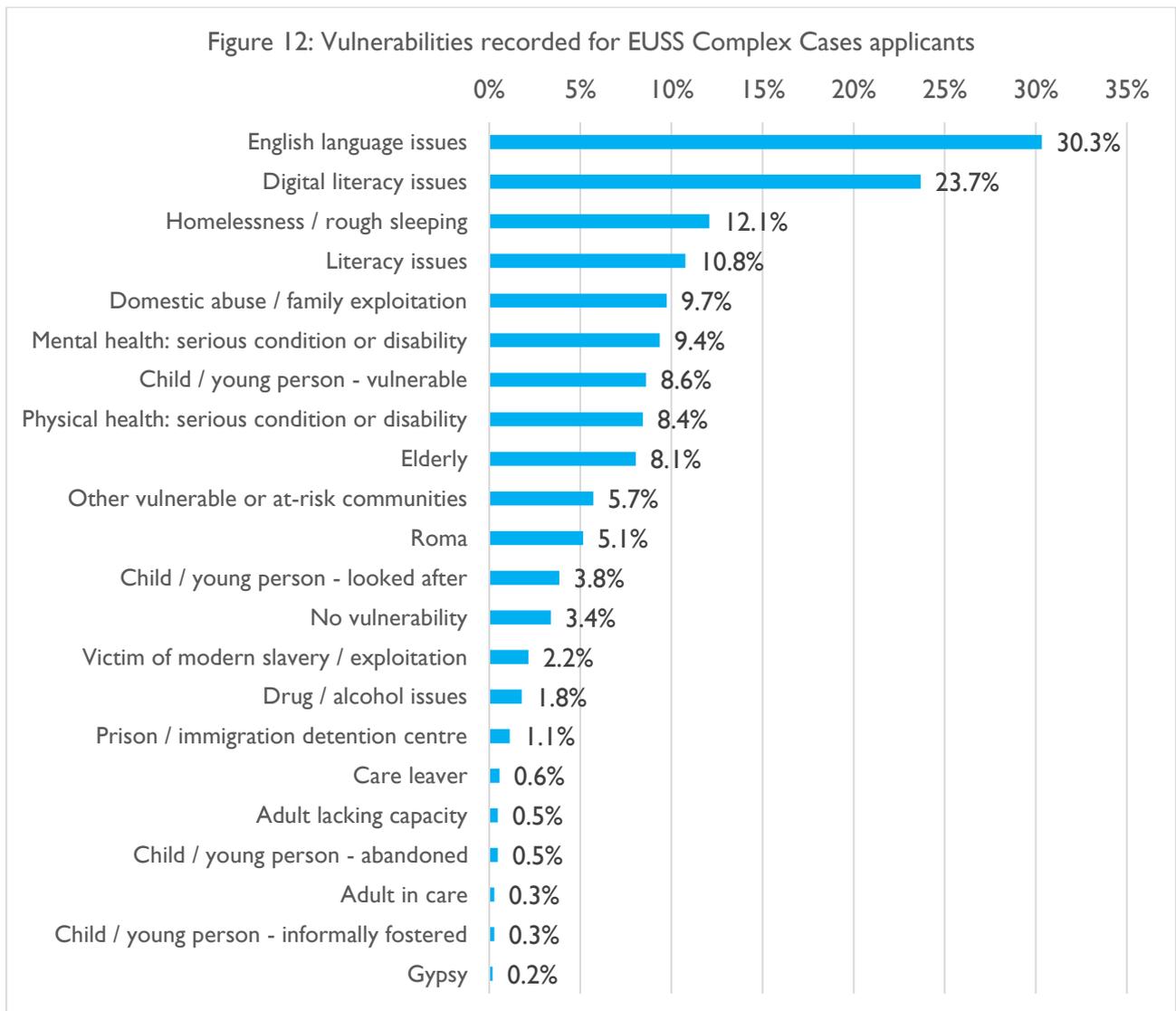
On the other hand, comparisons can be made by age given neither project was targeted based on that criterion. While age data were collected in slightly different formats, the age breakdown of all applicants is broadly similar with one notable exception. While there were only two children among the 774 service users for whom this characteristic was recorded in the LR project, so around 0.3%, the CC project saw a very significant rise in the number of EU children needing legal advice with 212 such cases out of 1,048 service users where age was captured. Hence, children represent 20.2% of all clients, as shown in Figures 13 and 14.



Vulnerability concerns

EUSS Complex Cases monitoring records show that the main vulnerabilities generated by the Scheme in Law Centres' clients included characteristics related to the lack of language or technical literacy. As shown in Figure 15, almost a third of all applicants struggled with English fluency, and almost a quarter with digital literacy. This is likely going to be a serious issue going forward as upgrading, curating, and evidencing digital status requires both language and digital literacy.

Other clear markers of vulnerability include homelessness, domestic abuse, general literacy, physical and mental health, and age for child and older applicants. Some of these characteristics may be under-reported. For example, in case records, both physical and mental health issues were recorded in two separate categories: as a 'serious condition' or as a 'disability'. Here, these separate categories are merged into one category of physical health or mental health 'condition or disability' for the ease of analysis. However, this way of recording data means that lower intensity mental health conditions were unlikely to be recorded. Furthermore, as this section shows, Advisers often commented on the 'invisibility' of mental health problems and difficulties engaging applicants with known or suspected mental health conditions, especially as support services were delivered remotely due to the Covid pandemic.



In the eyes of Law Centres' Advisers, EUSS applicants shared a number of characteristics that turned supporting them into a complicated and challenging process. The overlapping issues of low literacy or low language competences were exacerbated by unstable socioeconomic circumstances on the one hand, and on the other hand by the lack of face-to-face appointments during the Covid pandemic. This, in turn, made assessing potential mental health needs a challenge. In cases where mental health concerns were apparent, inability to offer face-to-face appointments impeded building trust. Adviser B shared the following case:

A client with mental health issues was referred by a homelessness charity. His issues were immediately apparent, but I didn't have any details or official diagnosis. He presented as extremely suspicious and easily confused, so I felt it would be a risk to ask him about his mental health. He asked the homelessness charity for help to apply to the EUSS but then when I called him and tried to introduce myself he didn't want to talk to me. It was very difficult to break through and start the relationship. The other difficulty was explaining the Scheme to him, and to persuade him that he would need to apply at all. Perhaps, if he could come to the Law Centre, he would have found it easier to trust me and understand out who I was. In the end, the most challenging part was getting him to instruct me. In the end we managed to submit the application but we don't have the outcome yet.

As the above case illustrates, in the case of many vulnerable applicants it was not enough for the client to learn about the Scheme. The Adviser's work with a client suffering from mental health issues went beyond form filling and advice provision. Instead, it required extensive liaison both with the client and the referring agency.

Complexity of working on the EUSS was exacerbated whenever the client's status was unclear to, or questioned by, other agencies. In such cases, Law Centres' Advisers were effectively becoming key workers tasked with convincing public services that the client qualifies for their support. Such support often has to be in place to make a successful EUSS application. The centrality and challenges of the Advisers' role is illustrated in a couple of case studies shared in our focus groups. Adviser E said:

I have a client who is a victim of trafficking and had a reasonable grounds decision granted by the Home Office through the National Referral Mechanism. She is a sex worker with a drug addiction, and she is homeless. I can't actually progress her case until she is in some sort of a safe house or other stable accommodation. Right now, she is around people who have negative influence over her. And people like that can't also understand the importance of applying to the EUSS and can't comprehend that they can be removed if they fail to apply in time. It just doesn't make sense to them. So at the moment I am just trying to make sure that she is moved to a safe house or given accommodation by the social services. For those who are victims of human trafficking, trying to actually deal with them, getting them all the support they need while also progressing their EUSS case... it is extremely challenging.

Similar thoughts around case complexity and the need for holistic support were expressed by Adviser C:

A client was referred by a homelessness organisation. A Polish national, he has been in the UK for about five years. He was suffering from cancer and had many other health conditions. He had been staying with a friend, doing temporary and cash in hand work. He had only a temporary passport, so we sent that off and made an EUSS application. It took ages and this homelessness organisation and social services were chasing us about the Home Office decision, and no decision was coming. Social services stopped support and the client became street homeless. Soon, he was admitted to hospital and only at that point I learned he had an outstanding offence he committed in 2017. So I wrote to the Home

Office, as according to the guidance staying an application on suitability grounds needs to be proportionate and should be balanced against any compassionate circumstances. The Home Office didn't respond so the client agreed to contact the police and ask why they hadn't progressed the case since 2017. Once we did that, the police went to the hospital and arrested him, and took him to the Magistrates' Court, and his prosecution was cleared. The Home Office was not responding so I found a solicitor to start a judicial review. They wrote a letter before action... and my client was granted settled status the next day after all that. What a waste of time is all I can say! What was most challenging was dealing with all the different bureaucracies that were involved in this.

As this case study illustrates, EUSS Advisers working with vulnerable applicants become central figures responsible for matters way beyond the clients' settled status application. Therefore, vulnerabilities are not only impacting on the client's ability to make an application, but also the Adviser's capacity to help with it while other social and health needs remain unaddressed.

The need for a holistic, wraparound service for vulnerable applicants was apparent in other case studies shared by Advisers. As the Scheme was slowly coming to its first formal deadline, Advisers pointed out that vulnerable clients will keep turning up to upgrade from pre-settled to settled status, or they will be referred back when on the receiving end of hostile environment policies. As Adviser A said:

Clients are never static. They would make an application for pre-settled status and later on they could have some mental health breakdown, some illness. You may have a client who originally was fine and then became vulnerable. So it's not just a matter of applying for the EUSS. You need to look at their benefits, their welfare, their health, so it is about trying to provide a holistic service as well.

Similarly, Adviser D shared a case that remained unresolved despite the looming deadline and hours of her work already spent on the case:

A Romanian family with a few children, including one disabled child, needed help with the EUSS. The father was serving a short, determined sentence but no legal visits were allowed last year and he wasn't literate. It was very difficult to communicate with him: he didn't keep any documents and didn't seem to know what his sentence was even. There were a number of problems getting instructions and getting information, and he had waived his right to appeal and signed up a request for an early removal and release. We applied to extend the time to appeal, but then he signed again for early removal and release. He was just fed up with being banged up – but it was unhelpful. I suppose the family will pop up again as he left his wife with children here, including the severely disabled child.

The impact of the Covid pandemic on the sector meant that advice was mostly available over the phone. As shown above, this added an additional layer of difficulty for clients, often already struggling with language competence, digital literacy, or mental health, and for Advisers, who had to navigate this new terrain and make sense of the partial information they were often given. These effects impacted different groups unevenly, and vulnerable clients were amongst the most heavily impacted. Adviser E told us:

With care leavers, it is difficult to know what their social circle is. It is very difficult to get hold of them and they don't really understand what the benefits of applying are. It is also difficult to understand if they have any other vulnerabilities, or is it just age, and what's going on. But you are not able to know that when you just speak over the phone or by using text messages.

Similarly, Adviser D remarked on the difficulties generated by the lack of face-to-face communication:

Remote communication makes it much more difficult and undermines trust. It's not a coincidence that a lot of vulnerable clients are coming forward now, in the final three months.

These comments illuminate the need for face-to-face advice and wraparound service models, and they are important in the context of the advice landscape beyond 30th June 2021. Advisers we interviewed not only expected many applicants to be contacting them only after the deadline, but also expected the proportion of complex cases to be getting higher going forward. As the advice offices are slowly opening up, clients who did not know how to approach support organisations before, or worried about making a phone call in English, may come to seek advice in person now. This takes us to the next and final section, where we discuss the potential challenges going forward.

5. EUSS going forward

This report is published in the aftermath of the EUSS deadline of 30th June 2021, yet the scheme remains open and it is entering its crucial phase. In the words of Adviser F:

After the deadline, this is when we will start seeing challenges. We will see many rushed applications just before the deadline, late applications, family members, children. Melting pot of potential legal problems as we go forward.

This final section maps out those potential problems across four key areas: late applications, advice quality, digital status, and upgrade applications. These problem areas directly translate into policy recommendations which conclude this report.

Late applications

The first set of future problems is related to those who missed the opportunity to apply to the EUSS in time. As Adviser G said:

Some Europeans don't realise that family members who are not exercising treaty rights have to apply. This means, possibly, a lot of pensioners, children, stay at home parents will realise they had to apply when doing benefits claims or accessing other services.

This was echoed by others, for example Adviser F:

Lots of people don't realise, whatever the messaging was from the Home Office or from the Government.

Adviser I added that the digital architecture of the EUSS made older applicants particularly vulnerable:

Any application that is based purely online and that issues an online share code is going to make older people fall through the cracks. I think that the Home Office tried to make it easy and they tried to make it accessible, but online is not necessarily easy and accessible. The message was: just apply to the Scheme, it's so easy. But some applicants would have run into troubles for months now and they will probably come to us couple of days before the deadline to let us know that they have been trying for a long time.

Finally, Adviser H pointed out the Reasonable Grounds guidance for late applications is very broad and more clarity was needed on how applications would be dealt with:

We don't know how it is going to work in practice. It is that kind of double-edged sword, the Home Office saying it is going to be generous and they will be looking into it case by case. But actually, there is a very real danger because it all depends on who gets to interpret that. Someone who has been homeless, we may think that this would be one of the compassionate grounds, but perhaps they had been supported by a homelessness charity before and this will be used against them? We just don't have that clarity.

Advice quality

Some of the late applications may come from those who sought support ahead of the deadline but received incorrect advice. Law Centres' Advisers highlighted cases of people who failed to engage with the application process, or failed to submit an application, due to wrong advice they received. Adviser I said:

There was an alarming number of people who came to me who had an application started and not finished, and who had thought that they had applied and who were waiting for a decision, because someone helped them in a local town hall or such like.

Adviser A raised the issue of untrustworthy solicitors and the overlap between vulnerability and getting the wrong type of advice, especially for family member applicants who are more likely to use immigration advice:

We had quite a few clients now that have been advised by dodgy solicitors. The EUSS process itself is quite simple, but because they are listening to friends who tell them to go see a solicitor they are being given wrong advice – for example to use a wrong route. Fixing that is extremely difficult. So the vulnerable communities don't understand who they should be getting advice from.

Digital status

This lack of understanding, clearly visible at the point of application, will translate into problems with digital EUSS status going forward. It is important to note, however, that it is not just the lack of understanding in applicants as they are not the only 'end users' of the Scheme³². The lack of training around and understanding of the EUSS by people who work in public services is a significant issue too. Their *general lack of knowledge adds to a general confusion*, according to Adviser C. This Adviser emphasised that public services competence was an issue during the first phase of the Scheme's operation:

people assume that when they are told something by someone official then it is correct, but they are quite often wrong. And this ends up creating extra problems.

The lack of knowledge and understanding by public services was raised in relation to people who got wrong advice and can possibly end up in the group of late applicants. It was also seen as an issue given different delegated border controllers will wrongly require proof of status that could be *printed and filed*. As Adviser H put it:

³² The3million (2021) [A Digital Status in Practice: First Report on the Findings from the3million's Digital Status Reporting Tool](#).

It is not just about the clients. It has been a pain dealing with the services. I had a client who was helped by someone from their local authority. They helped them to apply to the EUSS and they got a certificate of application printed out for them but the client didn't know how to access their proof of status, and they had no access because the phone wasn't theirs and email was someone else's. For proof of status, some local authorities would want a printed email, some want the digital code. The clients get the security code confused with the digital code, and that's not just people who have no clue about technology, it is generally confusing.

This research also raised multiple concerns about the accessibility and security of digital status for vulnerable clients. Adviser I said:

With homeless clients I have literally kept all the passwords to their emails as it's not even something they can keep track of, the password to their email. Their phone number changes every month or so. They will definitely run into trouble when it comes to proving status.

Adviser H echoed concerns about accessing status, especially given the uncertainty around EUSS advice provision going forward:

I am trying to gather those things – passwords, email addresses – but I don't know how long am I going to be in that role.

In both focus groups, Advisers were dismayed the Home Office consistently refuses to provide physical proof, which effectively prevents vulnerable users from evidencing their status autonomously.

The intangible format in which the EUSS status is issued, coupled with poor awareness of the Scheme, also means vulnerable users may not understand they have status in the first place. As Adviser I explained,

some vulnerable users may even tell you that they don't have it, or they don't have an email address, when they may have full settled status.

In this way, the Home Office is putting vulnerable applicants at further risk by *not issuing a card of some sort*. Similarly, Adviser G thought digital status would be the key concern going forward:

The lack of physical status that people could use is a huge problem for all migrants. They will not be able to get jobs or access services, just because they don't have that document. Employers are going to be looking for that document. They are scared of getting fines for employing someone who has no right to work so they just won't interview them never mind employ them.

Finally, digital status was not only shown as problematic in relation to digital literacy in status holders and delegated controllers, but also in terms of access to digital infrastructure. Adviser F pointed out:

It's quite discriminatory, arguably, to expect people to have access to simple things like a laptop or a smartphone because lots of people don't. I facilitate lots of vulnerable people not being able to access online court hearings or other online services. I let them in to the Law Centre and I book them a room so they can have their hearing. I facilitate that. And there is only a limited number of advice workers so lots of people are falling through the net.

Therefore, digital status creates four levels of exclusion for vulnerable users. Firstly, it impedes their understanding of the status they hold as no tangible proof is issued. Secondly, it makes access to housing, employment and services dependent on their digital literacy. Thirdly, it makes access to housing, employment and services dependent on access to digital technologies and infrastructures. And finally, it also makes access to housing, employment and services dependent on legal and digital literacy of delegated immigration controllers. There was consensus amongst focus groups that this will result in discrimination against the most vulnerable users, and those with complex needs in particular.

Upgrade applications

The EUSS status may be difficult to use for vulnerable status holders. Worse still, it can also be lost by those vulnerable applicants who only secured pre-settled status. Adviser G highlighted that the need to upgrade was putting family members at particularly high risk:

Situations change. We may have family members where the relationships are breaking down and people are not able to access anything. It will be very problematic over the next 5 or 6 years.

The specific concerns about family members in the context of upgrade applications was echoed by Adviser B who warned the impact of family breakdowns will increase over time. They said:

Non-EEA nationals married to EEA national may have a pre-settled status based on marriage and then this ends because of domestic violence. People in that group could have had a relatively easy application for pre-settled status but often they are very confused about whether they would be able to upgrade to settled status in time.

Adviser H added that those granted wrong status, so predominantly applicants with poor legal and language literacy who either struggled to understand or to evidence their entitlements, are vulnerable going forward:

People who already have pre-settled status but should have been granted settled status, who have been here for more than 5 years but struggled to evidence that... Whoever was advising them decided to compromise and do the easier version, or was not successful in arguing with the Home Office that they were eligible for settled status. I don't think that such people will be aware that they have to apply again.

All this shows that vulnerability in the context of the EUSS is far from being a closed chapter. The system continues to put applicants and status holders with certain characteristics at risk. Therefore, the concluding section of this report suggests practical recommendations which emerge from this research and can be productively adopted – mostly by the Home Office, but also by support organisations.

6. Recommendations

The first subsection outlines policy recommendations for the Home Office to mitigate some of the risks inherent in the EUSS. The second section makes further recommendations for support organisations so they can better assist their EUSS clients, and more effectively demonstrate and challenge the shortcomings of the Scheme.

Policy recommendations

1. Vulnerability assessment: adopt a systemic approach to vulnerability assessment within the EUSS based on general principles rather than examples of vulnerable groups.
2. Equalities monitoring: monitor repeat and late applications for ethnicity, age, gender, and disability, and investigate any disparities found.
3. Late applications: revise reasonable grounds guidance to fully account for the complexity of law and of individual circumstances. The revised guidance should have clearly defined scope and duration to ensure consistency of decision making and quality of immigration advice. This report identifies some of the areas where the scope should be extended, for example to include those who received incorrect immigration advice, applicants with undiagnosed mental health conditions, or family members of EU citizens.
4. Public services: issue guidance for public services including councils, healthcare, and police, to prioritise support rather than enforcement when encountering EU citizens who do not appear to hold EUSS status.
5. Physical document: provide an optional physical document to applicants who request it, given that digital literacy and digital accessibility is a problem for almost a quarter of applicants with complex needs in Law Centres' casework.
6. Status upgrade: in order to mitigate barriers for repeat applicants, grant settled status to pre-settled status holders who can demonstrate they reside in the UK as their limited leave to remain runs out with no requirement for continuous residence or family relationship evidence.
7. Grant funding: provide long-term guidance and funding to support organisations for the next five-year cycle of the EUSS to assist repeat and late applicants. Grant funding should include organisations providing wraparound services to support those with complex needs.
8. Suitability criteria: review the current policy and practice on cases stayed due to pending prosecution and ensure the Resolution Centre cooperates with Immigration Advisers to process such cases timely. Applicants should not be disadvantaged by delays of the law enforcement or criminal justice system.

Support organisations

9. Vulnerability assessment: undertake and record a systemic assessment of vulnerability when supporting repeat and late applicants.
10. Intelligence gathering: use a consistent and standardised monitoring framework for demographic and vulnerability characteristics.
11. Advice provision: provide face-to-face services to vulnerable clients whenever possible and seek funding for wraparound service models to support service users with complex needs.