

European affairs committee

Changes since May 2021

It may be helpful to start with an update to the [memo](#) I sent to the Select Committee in May 2021 at Lord Kinnoul's request. In the memo I raised the following issues:

Issue raised in memo May 2021	Update February 2023
<p>Not everyone who has WA rights can obtain evidence of their WA rights</p>	<p>This has not changed. Dual nationals are still unable to get proof of their WA rights.</p> <p>An extra impact has emerged, namely the inability to travel with a national identity card after October 2021 (when the UK stopped accepting national identity cards). If I were a Dutch citizen with settled status, I would be able to travel to the Netherlands on my Dutch national Identity Card. However, because I am a dual British Dutch citizen, I was unable to apply for settled status, I'm unable to prove that I am a WA beneficiary, and am therefore not able to travel with my national identity card.</p>
<p>Not everyone who has been granted EUSS status is considered to have WA rights</p>	<p>This issue of “true” and “extra cohort” is still a live , unresolved issue and remains a point of difference between the EU and the UK.</p> <p>However, the size of the extra cohort has shrunk considerably with the CJEU judgment that access to the NHS constitutes having Comprehensive Sickness Insurance. This means that people who were not economically active and did not have a separate private health insurance, who were considered as not exercising treaty rights before (and therefore extra cohort), are now treated as having exercised treaty rights (and therefore true cohort).</p>
<p>Legal certainty on scope</p>	<p>It is still the case that people who have status under the EU Settlement Scheme (EUSS) do not have any legal certainty of whether they have rights under the Withdrawal Agreement and whether they are in full personal scope or have rights as a family member only.</p>
<p>Rights pending late applications</p>	<p>At the time of writing the memo, just before the 30 June 2021 EUSS deadline, the government was still of the view that anyone who made a late application would only have any rights in the UK once their application was granted. In the memo we set out why that was wrong. On 6th August 2021, the government changed its mind about this and agreed that everyone with a late application would have their rights protected as soon as they receive a certificate of application.</p> <p>While this was welcome, there are several problems:</p> <ul style="list-style-type: none"> • It is very regrettable that this decision was taken so late. We have seen people who made applications between 1 July 2021 and 6 August 2021,

	<p>who were told in their acknowledgement that they would not have any rights until their status was granted and who were never informed of the change of policy on 6 August 2021. Some people went on to unnecessarily apply for other visas. One of our letters to the Home Office covered such a case - see here.</p> <ul style="list-style-type: none"> • Even more regrettable is the government's refusal to create clear legislation for the rights of those with pending applications. Pending applications are only covered by legislation for those who are “true cohort”, lived in the UK before 31 December 2020, and submitted an application before 30 June 2021. All other pending applications, including late ones and those of joining family members, are told to rely on the direct effect of the withdrawal agreement to assert their rights. The Home Office says that guidance covers these rights, but a lot of this guidance is very confusing and decision makers, including the DWP and local authorities, frequently make the wrong decisions. We have written to the government about this on several occasions, see here and here.
<p>Loss of residence rights for pre-settled status holders</p>	<p>This was taken up by the Independent Monitoring Authority (IMA) in their Judicial Review, with interventions submitted by the3million and the European Commission. We very much welcome the judgment and the fact that the Home Office has now decided not to appeal, but we await to see how the Home Office will change the EUSS to accommodate the judgement. We would call on the Home Office to include us in a consultation process. See https://the3million.org.uk/news/2023-02-15/secretary-state-will-not-appeal-judgment-which-found-brex-it-rule-makes-eu-citizens</p>

We wrote a briefing to the European Economic and Social Committee in July 2022, which summarised our main concerns at that time. It can be found here: <https://the3million.org.uk/publication/2022071402>

A brief summary of other issues:

[EUSS Applications](#)

Delays

We continue to see long delays in the EUSS, especially on EUSS family permit applications, EUSS decisions, administrative reviews and appeals. Statistics are now only published quarterly; our website has a summary of some of the main statistics, see: <https://the3million.org.uk/eu-settlement-scheme-statistics>.

Delays in receiving a **certificate of application** are very serious, as people are prevented from accessing their rights and free NHS healthcare while they do not yet have the certificate. We had extensive correspondence with the Home Office about this (<https://the3million.org.uk/publication/2022050501>) and also urged the IMA to do more about this. They launched an enquiry in July 2022 (https://ima-citizensrights.org.uk/news_events/ima-launches-inquiry-to-investigate-euss-certificate-of-application-delays/) which has not yet published any findings. Recently we have not heard about the same extent of delays as we were hearing in late 2021 and early 2022, but the Home Office appears still to be of the opinion that it does not have to issue the certificates immediately, as stipulated in the Withdrawal

Agreement. The Home Office position is that delays for eligible applicants are justified, due to its concerns about spurious/speculative/fraudulent applications from ineligible applicants.

Even for **those who do have a certificate of application**, there is a struggle to assert the right to work given that employers are directed to the employer checking service, which introduces delays and an extra barrier. We receive many exasperated reports from people who say they are overlooked in favour of other candidates who can prove their right to work instantly.

Appeals are taking a very long time to be implemented when allowed, see this letter we have just written to the Home Office about this: <https://the3million.org.uk/publication/2023021601>. The letter also contains reports of disjointed digital status when EUSS status is granted after a successful appeal.

Administrative reviews are taking an unacceptably long time: see [this FOI](#). Many people, on receiving a refusal, would choose to request an administrative review rather than go for the more expensive and intimidating appeals process. Originally, people were told an administrative review would be concluded within 28 days. This FOI shows that more than half are taking well over 6 months.

COVID

From the immigration perspective, Covid has and continues to cause a lot of problems for people, especially in the area of maintaining continuous residence. Even though some Covid absence and other exemptions were created, people find these difficult to understand and navigate, and they do not allow for the complexity of people's lives where they had more than one long absence due to the pandemic. Exemptions were not made across the board, so there is disparity between circumstances in which a more flexible approach has been adopted as a result of Covid-induced difficulties, and those where it has not.

For example, we continue to see the fallout for durable partners who were unable to get married before the December 2020 deadline due to the Covid restrictions in place at the time. We wrote to the Home Office about this here (<https://the3million.org.uk/publication/2022021501>) and there is an ongoing court case (*Celik(EU exit; marriage; human rights)* [2022] UKUT 00220 (IAC)), on which permission has recently been granted to appeal to the Court of Appeal: <https://www.no5.com/media/news/celik-to-be-heard-by-the-court-of-appeal/>. The case will decide the extent to which proportionality arguments can be relied upon by people who were prevented from inclusion within the "true" cohort of WA beneficiaries purely because of the limitations placed on them by the national lockdown in December 2020.

Support for vulnerable people

The Grant funded network has had to survive from short-term extension to short-term extension and it does not appear there will be any support forthcoming after March 2023. The applications that are being submitted now are invariably more complex, as they often pertain to vulnerable people or family reunion applications involving dependency. Ongoing support is also needed for people who have status, but who were helped to get status by advisers in the first place and cannot manage their digital only status.

We fully support this [letter of 14 Feb 23 from Here for Good signed by Grant Funded Organisations \(GFOs\)](#) which states: *"there are significant pressures currently facing immigration support providers across the UK. There are particularly problems with areas already recognised as 'advice deserts', the widespread lack of access to higher level (OISC Level 2+) advice, and the fact that EUSS support generally is not covered by Legal Aid."*

Home Office Contacts with people

We are very concerned by the Home Office stated methods of contacting individuals. In April 2022 the Home Office changed their [caseworker guidance](#) (see 'Truncated Process') so that they could more easily refuse certain applications after less frequent contact attempts. Many individuals have told us, and other organisations have mentioned this too in the various forums we are members of, that the Home Office will state that they made attempted contact with individuals, but the individuals (or organisations helping individuals) say this is simply not true. A recent 'Report-it!'¹ individual wrote in their report to us:

*"Applied late because of problems with the corona virus. Application was denied twice on ground of providing insufficient evidence - residential. Contacted citizens advice, immigration lawyers (2 different ones), was told to apply again and appeal. Didn't have the financial resources to get more help from the lawyers and eventually gave up (after 1.5 years). **Home Office repeatedly sent the same automated replies & stated that they had tried to contact me which never happened, not on a single occasion- whether by email or phone.**"*

See here for further corroboration by others: <https://freemovement.org.uk/members/forum/subject/ho-caseworker-claims-attempted-contact-unsuccessful/>

Digital status

We continue to see a myriad of problems with the digital-only status. Fundamentally, our concern is that this status is not a stable status that belongs to the individual, rather the individual is completely dependent on repeated requests for permission through a Home Office website. We have seen so many cases where someone can get this permission one day, but lose it the next. We see cases being inaccurate, corrupted and/or inaccessible.

We have written to the Home Office on a number of the **specific technical issues**, see:

- Those with multiple Home Office applications: <https://the3million.org.uk/publication/2022112101>
- Those with corrupted digital status (where photograph is missing and no share code can be created): <https://the3million.org.uk/publication/2022112102>
- Those with 'entangled' status where people see details belonging to someone else, and those who can only get part way through logging into their digital status: <https://the3million.org.uk/publication/2022081202>
- Adding additional names, such as married name, to digital status: <https://the3million.org.uk/publication/2022111801>

We have also dedicated one of our reports to the Independent Monitoring Authority entirely to the challenges of **maintaining the digital status**: <https://the3million.org.uk/publication/2022032801>

¹ The3million launched a reporting tool, called *Report-It!*, on its website in December 2020 - <https://the3million.org.uk/report-it>. We offer follow-up conversations with respondents. It has received over 1,200 reports to date.

As you have acknowledged, we also submitted a report to the Independent Monitoring Authority in November 2022 on **the challenges of travelling with a digital-only status**:

<https://the3million.org.uk/publication/2022112301>. This report warns loudly that we expect problems of denied boarding to increase substantially when the Electronic Travel Authorisation (ETA) scheme is introduced. This is because UK resident migrants will then be dependent on new computer functionality (interactive advance passenger information) to prove why they do not have (and indeed cannot apply for) an ETA.

In early 2021, we developed a **proposal for an alternative implementation of a digital status**, which would reside with the individual rather than on a Home Office web portal, and which is capable of providing a very cost-effective and secure physical backup as needed. We published this proposal in full in June 2021, just after we gave evidence to your select committee. Through pressure in the June 2021 EU-UK Specialised Committee on Citizens Rights, we were granted an initial meeting in late June 2021 with Home Office officials to discuss this proposal.

The officials promised they would engage with it and indeed the Home Office repeatedly stated this engagement to MPs corresponding with their constituents, and in parliamentary debates and questions. For example <https://questions-statements.parliament.uk/written-questions/detail/2021-10-25/62869>) says *“Home Office officials have already met with the 3million group to discuss the use of a QR code system for this purpose. We are actively considering the feasibility of the suggested approach and will respond more fully to the suggestion in due course.”*

It required a House of Lords debate in March 2022 (see [here](#) and [here](#)) to finally generate an official response. The Home Office rejected our proposal, we strongly disagree with the reasons for that and wrote back in March 2022 explaining why, but have heard nothing since.

You can see our proposal and the subsequent correspondence here: <https://the3million.org.uk/publication/2022030802>.

We remain of the strong view that our proposal has substantial merit and deserves to be considered and engaged with in good faith.

The Government has repeatedly recognised that digital-only status will be difficult for some, but repeatedly states that its mitigation of a telephone line is sufficient. For example, their March 2022 letter to us stated: *“We acknowledge some users may find it harder to access their information online. In such circumstances they can call the UKVI Resolution Centre, to have their status information explained to them, and if required, a share code generated for them, which they can then pass on to a checking organisation. **We believe this meets the need to provide a nondigital alternative** for individuals who cannot access the online service, while maintaining the safeguards, including those against fraud or inappropriate data sharing, in the system design.”*

Our *Report-it!* form asks people if they are aware of the UKVI resolution centre and, if so, if they were able to get their problem fixed. We hear again and again that it takes unacceptably long to resolve technical issues. Just one such comment illustrates this: *“No. Met with same response of ‘we are looking into it’ but no action taken for 6 months, problem still unresolved.”*

We have also written to the Home Office multiple times about the inadequacy of the helpline: <https://the3million.org.uk/publication/2022012101>.

In August 2022 we had a meeting with Home Office officials who committed to setting up a forum with us and other organisations specifically to be able to discuss systemic issues with the digital status. Despite raising this at every opportunity, including the most recent EU-UK Specialised Committee on Citizens' Rights, we have only in the last two weeks been invited to attend, at one week's notice, a meeting of an already established Future Borders and Immigration System (FBIS) group. We are not yet clear whether this will address the clear need for a regular forum on problems with digital status.

Other issues

NHS charges

We have been very concerned about NHS charging for secondary healthcare in the following three situations:

1. Late applicants who ultimately go on to receive status, for the period between their deadline and submitting their EUSS application
2. The period between submitting an application and receiving a certificate of application
3. The retrospective charging of healthcare for people who are ultimately refused status, for the period during which they received free NHS healthcare while their application was being considered.

Number 1 is still government policy, and we remain very concerned about this. You can read our letter to the Home Office about this here: <https://the3million.org.uk/publication/2022090701>.

Number 2 is intertwined with the IMA's enquiry into delays for issuing certificates of application.

Number 3 has recently been reversed, for which we are very grateful.

Exclusion from Government online processes

There are a number of cases where government actors are no longer allowing EUSS status holders to access online processes, where formerly they could.

- HMRC gateway - See our correspondence here: <https://the3million.org.uk/publication/2022081201>. It appears that a recent change was made to finally allow recognition of EU passports, but we have not been notified of this and it does not appear to be working for everyone who tries it.
- DBS checks - We have heard anecdotally that the DBS checking services do not cater for share codes and make people use Postal Services which take much longer than the online process. This leads to delays in other processes, such as obtaining licences essential for work. We are looking to gather more information on this.
- DVLA - EU citizens are no longer able to use the online process for renewing or applying for their driving licences. Instead they have to send forms through the post, including their identity documents.

Social security coordination

Social security coordination legislation is extremely complex. There is a real lack of clear and understandable information on this, and we are seeing many cases of people being denied benefits in the UK because a family member receives a small pension from another EU member state, for example, which makes that member state the so-called 'competent state'.

We have seen several cases now where the DWP appears to be hiding behind this competency argument to refuse paying out benefits to citizens living in the UK. Although this problem predates Brexit, we expect more such cases to emerge in the future.

We are trying to work with the EU delegation to create some information sessions in this area.

We think there may be some very unfair legislation at the heart of this which should be looked at closely.

One example was covered in the Press, see: <https://www.mirror.co.uk/news/politics/british-war-hero-disability-benefit-28534585>.

Comprehensive Sickness Insurance (CSI)

Following the European Court of Justice ruling in March 2022, some naturalisation guidance has now been updated by the Home Office. However, we feel the government should consider a compensation scheme because this 20-year injustice will have caused much financial hardship and injustice to thousands of people.

See <https://the3million.org.uk/faq/csi> for our statement on this, and <https://www.csi-justice.org.uk/> for more information.

Rights for those leaving prison and detention

We have a team member within the3million who has been supporting, in conjunction with a firm of immigration solicitors, a number of EU citizens who have left prison or detention. A report on this will be out in due course, but as an indication there are many systemic issues at play for these individuals which make it extremely difficult for this group of ex-offenders to re-integrate and get their life back together. This includes the lack of access to their ID document, for EUSS applications and interactions with DWP and local authorities, incorrect bail conditions denying them the right to work.

There is also the issue that even a one day detention breaks continuity of residence so for pre-settled status holders this means being unable to ever gain settled status. I understand this is a point of difference of WA interpretation between the EU Commission and the UK Government.

[Extra materials/links](#)

Reports to the Independent Monitoring Authority

Since May 2021 we have written four more reports to the Independent Monitoring Authority. All can be found here: <https://the3million.org.uk/ima-reports>

- August 2021: the barriers faced by EU citizens after the 30 June 2021 deadline
- November 2021: Delays in the EU settlement scheme
- March 2022: the challenges of maintaining digital status
- November 2022: travel issues

Correspondence with the government

All our correspondence can be found here: <https://the3million.org.uk/library>. The main topics we have responded on since May 2021 are as follows (for each topic I provide a link to the entire correspondence chain):

- Travel issues for EU citizens (travelling with national identity cards, being asked for proof of immigration status): <https://the3million.org.uk/publication/2022081901>
- Travel issues for non EU citizens with EUSS status: <https://the3million.org.uk/publication/2022081902>
- Alternative implementation of digital status: <https://the3million.org.uk/publication/2022030802>
- Issues around the 'view and prove' helpline: <https://the3million.org.uk/publication/2022012101>
- Digital status technical issues:
 - Those with multiple Home Office applications: <https://the3million.org.uk/publication/2022112101>
 - Those with corrupted digital status (where photograph is missing and no share code can be created): <https://the3million.org.uk/publication/2022112102>
 - Those with 'entangled' status where people see details belonging to someone else, and those who can only get part way through logging into their digital status: <https://the3million.org.uk/publication/2022081202>
 - Adding additional names, such as married name, to digital status: <https://the3million.org.uk/publication/2022111801>
- Briefings (rather than correspondence) on the rollout of digital-only right to work and right to rent to all migrants in the UK: <https://the3million.org.uk/publication/2022053101>
- Delays in the issuing of Certificates of Application: <https://the3million.org.uk/publication/2022050501>
- Rights of those with pending applications:

- Right to work checks failing: <https://the3million.org.uk/publication/2023011601>
- Travel restrictions: <https://the3million.org.uk/publication/2022081903>
- Access to benefits: <https://the3million.org.uk/publication/2022081801>
- Right set out in legislation: <https://the3million.org.uk/publication/2022060801>
- NHS charges for late applicants: <https://the3million.org.uk/publication/2022090701>
- EUSS appeals implementation: <https://the3million.org.uk/publication/2023021601>
- Technical issues around upgrading from pre-settled to settled status: <https://the3million.org.uk/publication/2022100401>
- Children's applications to the EU settlement scheme: <https://the3million.org.uk/publication/2021061401>
- Extended family members: <https://the3million.org.uk/publication/2022020301>
- Durable partners: <https://the3million.org.uk/publication/2022021501>
- Termination of benefits for people without EUSS status: <https://the3million.org.uk/publication/2021102401>
- The withdrawal of the gov.uk Verify service from HMRC and DWP: <https://the3million.org.uk/publication/2022081201>
- Comprehensive sickness insurance and the implementation of the ECJ decision: <https://the3million.org.uk/publication/2022102701>