



By email:

The Rt Hon Priti Patel MP, Secretary of State for the Home Department  
The Rt Hon Sajid Javid MP, Secretary of State for Health and Social Care  
Copied: Minister Kevin Foster MP  
Copied: Home Office SUG team  
Copied: NHS Cost Recovery team  
Copied: Independent Monitoring Authority

30 June 2022

Dear Sajid Javid MP and Priti Patel MP,

**NHS Charging Regulations for late applicants to the EU Settlement Scheme**

We write to you to express our concern over the current NHS Charging Regulations and their impact in the case of late applicants to the EU Settlement Scheme (EUSS), and to ask whether you would consider reviewing the legislation and policy in this area.

**Late applicants to the EUSS**

For individuals (excluding joining family members) who submit a late application to the EUSS and are eventually granted status under the EUSS, the current guidance<sup>1</sup> makes clear that the individual should not be liable to pay for NHS treatment from the moment they submitted their late application (as per paragraph 9.18) of the guidance. the3million has been informed by DHSC that the guidance will be updated to reflect that this also applies to joining family members.

However, the guidance also makes clear that any treatment received between 1 July 2021 and the date they submitted their late application must be chargeable - as per paragraph 9.19 which states "*Charges incurred before the late application was submitted should be recovered*" and paragraph

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<sup>1</sup> Department of Health and Social Care, *Guidance on implementing the overseas visitor charging regulations* (May 2022) <<https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations>> accessed 25 June 2022. We have been informed that this version will shortly be rectified to ensure joining family members have the same late application protection as other late applicants to the EUSS.

9.22 which states “If they receive and pay for relevant services, and then later make a late application which is granted, they should not be refunded for the earlier treatment.” For joining family members this would be the date between three-months post entry to the UK and the date they submitted their late application.

We consider this policy to be not in the spirit of the Government’s provisions around reasonable grounds for late applications. Taking just three examples, all of which are explicitly used as examples in the EUSS guidance<sup>2</sup>:

- **A child whose parents do not make an application for them.** The EUSS guidance says “Where a parent, guardian or Local Authority has failed by the relevant deadline to apply to the EU Settlement Scheme on behalf of a child under the age of 18, or where a Local Authority has failed by the relevant deadline to support a care leaver in applying to the scheme, **that will constitute reasonable grounds for the person – including where they are now an adult – to make a late application to the scheme. It may be some months or even years after the deadline has passed before a person who was a child at the time realises – perhaps when they first need to evidence their immigration status in order to work or study in the UK – that an application to the scheme should have been made on their behalf and was not.**”<sup>3</sup>

If the occasion where they first need to evidence their immigration status is when rushed into hospital after an accident and transferred from A&E to be admitted for urgent and immediately necessary secondary NHS healthcare, then they will be charged, and not refunded, for any healthcare incurred before they are able to submit (or have someone submit on their behalf) an application to the EUSS.

This is a scenario that could be all too likely for someone who is currently a young child, and who has an accident before they are 18 and therefore before they are likely to need to evidence their immigration status to work or study.

- **A new-born baby of parents with pre-settled status** who are unable to obtain identity documents within three months of their child’s birth, and have either not realised that they can submit paper applications or have struggled to obtain a paper application form from the EU Settlement Resolution Centre. Also, as described in the reasonable grounds excerpts from the EUSS Guidance above, some parents may not realise the need to obtain status for their newborn children.<sup>4</sup>

Such a baby could find themselves in the situation of requiring urgent neonatal care, or facing the need for immediately necessary secondary NHS treatment once over three months old, and will be chargeable for any treatment received before an application is submitted. DHSC have confirmed to us that the current policy is that such charges, incurred before a Certificate of Application is obtained, will not be refunded even when the baby is ultimately granted EUSS status.

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<sup>2</sup> Home Office, *EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members* (version 17.0, 13 April 2022) <<https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>> accessed 25 June 2022.

<sup>3</sup> *ibid*, page 38, emphasis added.

<sup>4</sup> *ibid*, page 38.

- **An older retired person who has lived in the UK for many years**, has permanent residence and was unaware of the requirement to apply to the EUSS, because “*they have lived in the UK for a significant period of time and having done so did not realise they must still secure status under the EU Settlement Scheme*”.<sup>5</sup>

If they do not travel, if they live in a house they own themselves without a mortgage, then again for such a person it is extremely likely that the first time they become aware of the need to make an application to the EUSS is when facing urgent NHS secondary healthcare treatment. This is usually a time of unexpected crisis, and the required EUSS application is highly likely to be made after urgent and immediately necessary treatment has already been given. Under current NHS Charging guidance, they will be charged, and not refunded, for this treatment.

To illustrate the devastating impact this policy can have on people, we share two recent examples that have come to our attention:

- M suffered kidney failure and was taken to hospital as an emergency last summer, and was admitted for nearly a month. A few months later they received a huge bill for their treatment, and turned to a charity for help. That charity helped M to receive settled status within a month, however she is still stuck with a bill for nearly £25,000, and is facing debt collector demands.
- J was involved in an accident resulting in a complicated fracture. J thought they had previously applied for settled status with the help of a friend, but it turns out that application had not been fully submitted (this is not uncommon, people can think they have gone through all stages of the application without realising there is a final SUBMIT button to be pressed). Again, after receiving a bill for nearly £21,000, J turned to a charity for help to sort out the EUSS application. J is unable to pay and NHS Trust reminder invoices have now made way for letters from a debt collector.

the3million highlighted the potential for exactly such scenarios in our August 2021 report to the Independent Monitoring Authority<sup>6</sup>, where we also drew attention to situations where NHS Secondary Healthcare treatment is deemed ‘immediately necessary or urgent’.

During an evidence session of the Home Affairs Select Committee, it was clear that such situations are not intended policy. In July 2021<sup>7</sup>, when questioned on such a scenario, the Home Secretary stated explicitly that charges will be refunded on a backdated basis:

*“The fact of the matter is that any claim will be backdated if there is any example such as you have outlined. [...] If there is any example of someone being charged, when that application comes in, that individual will be supported and anything else will be backdated. There are*

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<sup>5</sup> *ibid*, page 45.

<sup>6</sup> the3million, *the3million submission to Independent Monitoring Authority August 2021* (19 August 2021) <<https://www.the3million.org.uk/ima-report-aug-21>> accessed 25 June 2022 paragraphs 228 - 245.

<sup>7</sup> Home Affairs Committee, ‘Oral evidence: The Work of the Home Secretary, HC 192’ (21 July 2021) <<https://committees.parliament.uk/oralevidence/2602/html/>> accessed 25 June 2022 Q187.

*ways and processes in government that are joined up across the NHS and the Home Office. This is about how we treat individual applicants.”*

**We therefore ask the following questions:**

- Q1. Will you review the legislation and policy such that any individual (who is not a joining family member) who submits a late application to the EUSS, is considered to have reasonable grounds for a late application, and is ultimately granted status under the EUSS, is refunded for all NHS treatment charges incurred after 30 June 2021?
- Q2. Will you review the legislation and policy such that any individual (who is a joining family member) who submits a late application to the EUSS, is considered to have reasonable grounds for a late application, and is ultimately granted status under the EUSS, is refunded for all NHS treatment charges incurred after the date which is three months post their entry to (or birth in) the UK?
- Q3. Can you confirm whether an individual (who is a joining family member) remains entitled to free NHS healthcare until their EUSS Family Permit expires even if they have not submitted an application to the EUSS within three months of their arrival in the UK?

Kind regards,

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