

By email:

Minister for Immigration Robert Jenrick MP
Copied: Lord Murray of Blidworth, Parliamentary Under Secretary of State (Lords Minister)
Home Office Safeguarding User Group team
Independent Monitoring Authority

16 February 2023

Dear Robert Jenrick MP,

The process for appeal implementation under the European Union Settlement Scheme (EUSS)

I am writing to you regarding delays in implementation of tribunal appeals under the European Union Settlement Scheme (EUSS). The right of appeal is protected by Article 21 of the EU-UK Withdrawal Agreement. However, statistics released by the Home Office in response to Freedom of Information (FOI) requests show significant delays in processing and implementing appeals.

According to FOI 71669¹ there were 4,994 appeals lodged under the EUSS by 30th June 2022. 2,162 of all lodged appeals (or 43%) were decided at the First-tier Tribunal in the same timeframe and 824 of all decided appeals (or 38%) were allowed.

However, the number of status grants following an appeal was much lower than the number of appeals allowed. There were only 111 grants of pre-settled status and 52 grants of settled status following an appeal by 30th June 2022, so 163 grants of status in total. This represents only 20% of the 824 appeals allowed by that date. Furthermore, a response to an earlier FOI 68356² states that 295 EUSS appeals were allowed at the First-tier Tribunal by 28th February 2022. Given there were only 163 grants of status following an appeal at the end of June 2022, it follows that at least 132 appeals allowed by the First Tier Tribunal by the end of February 2022 (or 45%) had not yet been implemented by the Home Office five months later.

We appreciate that delays in the HM Courts and Tribunals Service (HMCTS) are not part of the Home Office remit. However, the process for appeal implementation *is* part of the Home Office remit and it appears there are serious delays in that area.

Home Office guidance on implementing appeals³ states:

“An allowed appeal should be implemented promptly, otherwise the individual may not be able to access benefits and services to which they are entitled, and they may bring a judicial review challenging the delay in implementation.”

¹ https://www.whatdotheyknow.com/request/eu_settlement_scheme_appeals#incoming-2203079

² https://www.whatdotheyknow.com/request/euss_appeals#incoming-2016205

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906953/Implementing_allowed_appeals.pdf

As an organisation that represents EU citizens in the UK and raises awareness amongst them, we would like to gain a better understanding of the appeal implementation process. We therefore have the following questions:

1. What is the process for implementing EUSS appeal decisions of the First Tier Tribunal?
In particular:
 - a. What organisational resources are dedicated to EUSS appeal implementation at the Home Office?
 - b. Are these resources part of the EUSS caseworking structure, or are they separate from it and part of another organisational unit?
 - c. What is the Home Office policy on onward EUSS appeals to the Upper Tribunal?
 - d. How many such onward appeals have been made in total, and as a percentage of all appeals allowed by the First Tier Tribunal?
2. What are the service standards for EUSS appeal implementation?
3. What are the range of reasons for delays to appeal implementation beyond the deadline for an onward appeal?
4. Is the Home Office satisfied with the current resourcing of EUSS appeal implementation?
5. Is the Home Office currently planning or making any changes to EUSS appeal implementation policy or resourcing?

We also understand that, when implementing the appeal, the Home Office does not necessarily link the new status to the appellant's existing unique application number and identity document number. We have been made aware of a case where, instead, the new status is issued with a new eight-digit reference number starting with a "3", which is similar to the eight-digit reference number for paper applications starting with a "2". The decision letter that grants status to the applicant nevertheless instructs them to access View & Prove with their identity document number. Doing so shows the status holder their original refusal.

6. Does this mean these appeals are not implemented on the main EUSS caseworking database (PEGA) but, instead, on another caseworking system?
7. If it is a different system then what is it?
8. Is the Home Office aware this causes problems for status holders logging to View & Prove using their original application credentials?

We would be grateful to receive a reply by Friday 17 March 2023.

Kind regards,

Monique Hawkins

Interim Co-CEO and Policy and research officer, the3million