

By email:

Tom Pursglove MP - Minister for Immigration  
Olaf Henricson-Bell - EU Director, Foreign, Commonwealth and Development Office

CC:

Lord Sharpe of Epsom - Parliamentary Under Secretary of State at the Home Office  
Home Office SUG team  
Independent Monitoring Authority

28 March 2024

Dear Tom Pursglove MP and Mr Henricson-Bell,

**Digitalisation of UK immigration records and its impact on visa nationals trying to travel home to the UK**

We are writing to you to raise the serious issue of individuals finding themselves unable to travel back to the UK as a direct result of Home Office policy choices and administrative / advice errors.

These situations are arising because of the rushed move to digitalise all UK immigration status before 31 December 2024 - a mere 9 months away - at the very same time as pushing the border 'upstream' as part of its '2025 UK Border Strategy'<sup>1</sup> and 'New Plan for Immigration'<sup>2</sup>.

Individuals who have made the UK their home are finding themselves stranded abroad, incurring huge cost and anxiety, as a result of inconsistent and incoherent policy choices, a lack of coordination between departments, and frequent incorrect advice from different Home Office staff.

I will set out below three very recent case studies that illustrate some of the issues we are seeing, followed by a series of questions and constructive suggestions we ask of the Government. We urgently request your reply by Friday 12 April 2024.

**Case study 1 - EUSS status holders facing de facto 2 month travel ban this year**

Anna<sup>3</sup> is a visa national who has pre-settled status under the EU Settlement Scheme, granted in May 2019. She was issued with a **Biometric Residence Card under the EU Settlement Scheme (BRCE)**, which expires in May 2024. (The Home Office appears to be using BRC to mean a Biometric Residence Card under the 2016 EEA Regulations, and a BRCE to mean a Biometric Residence Card under the EU Settlement Scheme, although this is not used consistently on the Government websites).

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<sup>1</sup> <https://www.gov.uk/government/publications/2025-uk-border-strategy>

<sup>2</sup> <https://www.gov.uk/government/publications/new-plan-for-immigration-legal-migration-and-border-control-strategy>

<sup>3</sup> Personal details changed to protect identity

Anna has travel plans in early June, and is aware that if she leaves the UK, she is not guaranteed to be able to travel back home with an expired BRCE.

This is because the Home Office has not made it mandatory for carriers to accept digital proof status for visa nationals without BRCs, BRCEs or BRPs. We had lengthy correspondence with the Home Office between January and August 2022<sup>4</sup> on this subject, and you will see that the final Home Office response dated 19 August 2022<sup>5</sup> states:

*“We have in addition advised carriers they may rely on the online View and Prove service for evidence a visa national has an online immigration status (or eVisa). We are considering how we might further emphasise this message to carriers to strengthen their awareness of this option, but we cannot currently compel carriers to carry out checks in this way. Consequently, we strongly advise visa nationals to ensure they travel with a valid EUSS family permit, EUSS travel permit or EUSS biometric residence card or a valid UK-issued EEA biometric residence card to avoid difficulties when returning to the UK.”*

The Home Office has never explained why they cannot compel carriers to accept digital status as a visa exemption document, given that this would be a direction under the control of UK law.

Anna has therefore tried to ensure that she has correct documents to be able to travel in June. She has found herself completely unable to do so, facing multiple obstacles in the form of policy choices and administrative implementation:

- **The Home Office gives incorrect responses to applications for replacement BRCEs.** Anna had a BRCE already, and tried to apply for a replacement BRCE. There was no option on the application form to state that her card was about to expire, so she selected the option stating it had already expired. She had to pay £139 to secure an appointment for new biometrics (the fees for most time slots were even more than this). She received a rejection email which states (incorrectly): *“Thank you for your application to exchange your biometric residence card (BRC) issued under the EEA Regulations for a biometric residence card under the EU Settlement Scheme. Unfortunately, we are unable to process your application as you already hold an active BRCE under the EU Settlement Scheme. Your application will therefore be rejected and this cannot be re-instated.”*
- **It is not possible to apply for a replacement BRCE ahead of its expiry date<sup>6</sup>.** Only after many calls to the Resolution Centre and the UKVI helpline was Anna told that it is not possible to apply for a BRCE card **before** expiry.

This is in contrast to those with Biometric Residence Permits (BRPs) issued under other immigration routes. For example, an Indefinite Leave to Remain (ILR) status holder with a BRP issued on 23/5/2014, which expires on 22/5/2024, is able to apply for a replacement BRP at any time before its expiry. Indeed, the Home Office actively encourages<sup>7</sup> early replacement of non-expired BRPs for precisely the reason Anna would like to replace her BRCE: *“If your BRP has less than 3 months validity you may want to replace it now if you need to prove your right to work or rent or you are travelling outside the UK.”*

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<sup>4</sup> All 7 letters of the correspondence are available at <https://the3million.org.uk/publication/2022081902>

<sup>5</sup> <https://the3million.org.uk/sites/default/files/documents/HO-reply-t3m-TravellIssues-19Aug2022-2.pdf>

<sup>6</sup> <https://www.gov.uk/uk-residence-card/replace>

<sup>7</sup> <https://visas-immigration.service.gov.uk/product/biometric-residence-permit-replacement-service>

We remind you that pre-settled status under the EU Settlement Scheme cannot expire for failure to make a subsequent application<sup>8</sup>, so an expiry date on a PSS BRCE should legally be treated in the same way as an expiry date on an ILR BRP. Indeed the Home Office has stated to us in meetings that they consider the expiry date on digital status (and hence on BRCEs) to be a 'document validity' date only.

- **It takes over 9 weeks to get a replacement BRCE after its expiry.** After expiry, one can submit an application for a replacement BRCE. People then have to make an application for a UKVCAS appointment - which can also take time. The Gov.UK website<sup>9</sup> states that *"You'll usually get a decision within 8 weeks of attending your appointment at a UKVCAS service point."*
- **Biometric reuse is not available for obtaining a new BRCE.** The Biometric Reuse guidance<sup>10</sup> does not include EU Settlement Scheme applications. The webpage for applying for a new BRC<sup>11</sup> states:

*"To apply for a new or replacement BRP or BRC, you will need to:*

- *fill in our online application form*
- *supply certain documents*
- *pay a fee (unless you are switching from a paper document)*
- *get your biometrics (photo and fingerprints) taken"*

This means that people like Anna need to apply for a UKVCAS appointment which can be hard to come by without paying high fees, and need to wait for that appointment before the 8 week service standard for issuing a replacement BRCE commences.

The EUSS Quarterly Statistics<sup>12</sup> tell us that as at 31 December 2019, there had been 63,700 grants of pre-settled status to non-EEA citizens, all of whom will therefore have been issued with an 'expiry' date before 31 December 2024. Some of these will have been to non-visa nationals, and this set of statistics does not break down the grant figures to non-EEA nationals between visa and non-visa nationals. However, the statistics to 30 June 2021<sup>13</sup> do provide such a breakdown, and show that, of the grants of pre-settled status to non-EEA citizens, 81% were to visa nationals. Applying that percentage to the grants of status before December 2019 shows there is likely to be a cohort of **over 50,000 visa nationals whose original pre-settled status would have expired before 31 December 2024.**

Many of this cohort will have applied to upgrade to settled status, or will have been receiving automated 2-year extensions to their pre-settled status. The reports we are receiving from people indicate that visa nationals are not automatically receiving replacement BRCEs either when granted an upgrade to settled status, or when granted an extension to their pre-settled status.

Someone who has received settled status is entitled to apply for a new BRCE (settled) before their BRCE (pre-settled) expires - but they need to do this pro-actively and in the face of communications which suggests that it is not necessary to do so (see Case Study 2).

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<sup>8</sup> See judgment in IMA v SSHD December 2022 <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2022/3274>

<sup>9</sup> <https://www.gov.uk/uk-residence-card/replace>

<sup>10</sup> <https://www.gov.uk/government/publications/biometric-information>

<sup>11</sup> <https://visas-immigration.service.gov.uk/product/biometric-residence-permit-replacement-service>

<sup>12</sup> <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-december-2019>

<sup>13</sup> <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-june-2021>

Someone who has had their pre-settled status extended receives an extension grant letter which states: “*If you are not from the EU, Switzerland, Norway, Iceland or Liechtenstein, the expiry date on **your biometric residence card will not be extended in line with your online status**. If your residence card is expired, lost or stolen, you need to apply to replace your biometric residence card before you travel abroad.*”

Therefore someone whose pre-settled status expires at the end of May 2024 will have that pre-settled status extended by two years in April 2024, but will not be able to apply for a replacement BRCE until the beginning of June 2024. They are then unlikely to receive a replacement BRCE before August 2024 - therefore making any summer holiday plans impossible.

### **Case study 2 - EUSS visa nationals are frequently told they do not need physical documents**

Benjamin<sup>14</sup> is a visa national with status under the EU Settlement Scheme, as a family member of an EU citizen. He applied early to the EU Settlement Scheme and was granted pre-settled status in September 2018. He was issued with a BRC, which had an expiry date of September 2023.

In the summer of 2023, he applied for settled status, and expected to receive a new BRCE because he thought he would still need it to travel. When people view their status through View & Prove, there is a link to Government travel guidance<sup>15</sup>, which states

*“If you’re a visa national, you will also be asked by your carrier (for example airline or transport provider) to show a valid visa or visa exemption document such as:*

- *a UK-issued biometric residence card*
- *an EU Settlement Scheme family permit*
- *an EU Settlement Scheme travel permit”*

Nevertheless, when Benjamin enquired after this, he was specifically told by UK Visas and Immigration that **he would not need or receive a new BRCE**, as shown in the email from UKVI below:

*“Thank you for contacting UK Visas and Immigration International Contact Centre.*

*As you got your visa status using the ID app which is why the applicant does not get issued a BRP or BRC. [sic]*

*Your online status shows your rights to stay/live in the UK which means you will not need a BRP or BRC to prove your status.”*

Although Benjamin did have one journey where his digital status was sufficient, his most recent journey back to the UK proved extremely stressful and expensive.

- Easyjet refused to let him board without a BRC or BRCE.
- He contacted UKVI, who told him (entirely incorrectly) to apply for a replacement BRP.
- This involved travelling to a visa application centre, paying a fee and handing in his passport which was then sent to the UK.

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<sup>14</sup> Personal details changed to protect identity

<sup>15</sup> <https://www.gov.uk/government/publications/entering-the-uk-under-the-eu-settlement-scheme-and-eu-settlement-scheme-family-permit>

- He then contacted the3million, and we were able to tell him that this was incorrect advice, as a BRC or BRCE is not the same as a BRP, it is not possible to apply for a replacement BRCE from abroad, and instead one has to apply for an EUSS Travel Permit<sup>16</sup> which can take several weeks.
- We also informed him of the Gov.UK Guidance for Carriers<sup>17</sup> which contains a *discretion* to carriers: “Where a visa national passenger does not have a valid visa or visa exemption document, you may accept evidence of pre-settled or settled status under the EU Settlement Scheme where this is provided by the passenger via the online [‘View and Prove’](#) service.”
- Benjamin therefore withdrew the application for a replacement BRP and had to wait until his passport was returned to him.
- Once he had his passport back, he tried to book a flight with RyanAir, armed with the guidance to carriers. However, RyanAir also refused to let him board, despite being able to demonstrate his UK immigration status via ‘View and Prove’.
- Eventually he was able to fly back with British Airways, who were willing to accept his digital status. Benjamin, who is self-employed, lost out on several weeks’ income as a result of these problems.

### **Case study 3 - even visa nationals with status outside EUSS are told they do not need physical documents**

Carla<sup>18</sup> was granted a graduate visa in January 2023. She was from a country that was not on the visa national list<sup>19</sup> at that time, so she was given an online-only status. In July 2023, her nationality was added to the visa national list. Carla therefore contacted UK Visas and Immigration to request a biometric residence permit, as she was concerned that future travel might be affected.

She received a reply from the UKVI Workflow Team on Study LTR and Graduate LTR which stated:

*“Thank you for your enquiry regarding the delivery of your Biometric Residence Permit (BRP).*

*As part of our move to ‘digital by default’ we are changing how the UK immigration system works. This means that you will be able to do more things online and remotely.*

*During your application you created a UK Visas and Immigration account. This account can be used to log into a number of services which will allow you to make further applications, manage your details, view your eVisa, and prove your immigration status online.*

*Customers who are from a country that requires a visa if entering the United Kingdom for visit purposes will still receive a Biometric Residence Permit for their Graduate permission as well as an eVisa.*

*A full list of these countries can be accessed via the Gov.uk website:*

*<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-visitor-visa-national-list>. As you are a national from [xxx] your immigration status has been confirmed digitally, you will not receive a physical Biometric Residence Permit.”*

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<sup>16</sup> <https://www.gov.uk/euss-travel-permit>

<sup>17</sup> <https://www.gov.uk/government/publications/document-checks-and-charges-for-carriers>

<sup>18</sup> Personal details changed to protect identity

<sup>19</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-visitor-visa-national-list>

This reply is incorrect because her nationality had been added to the visa national list and the team was clearly not aware of this.

When Carla received this email however, she took UKVI's word for it, and thought that probably because she had received her visa before the change to the visa national list, she would not be affected by the new visa requirement.

Sadly this was not the case:

- Carla went on holiday to a country that is not the country of her nationality.
- She is currently stuck outside the UK, unable to board her flight back home.
- She was first denied boarding several days ago by Easyjet.
- She tried to explain her digital status, the immigration officers said that her documents were sent to their liaison in the UK who specifically replied that Carla cannot travel without a BRP - the same BRP that she was denied last August when she requested one from the Home Office.
- She contacted the British embassy but they said they could not help her, as they do not deal with visa issues.
- There is no embassy of her own nationality in the country where she is stuck, and she does not speak the language there.
- She tried to call the Settlement Resolution Centre (0300 123 7379), who were of the opinion that Carla should have applied for a BRP after she received her settled status - which is in fact exactly what Carla had tried to do last year.
- She tried to call the UKVI contact centre who did not understand why Carla was not allowed to board.
- She tried to book a flight home with a different airline yesterday, but was also denied boarding.
- She approached four other airlines, all of which said she would not be allowed to board through them.
- Carla is now incurring more costs to fly back to the country of her own nationality.
- Once there, she will apply for a "Replacement BRP Visa"<sup>20</sup> which is a single-entry vignette in her passport which costs £154.

### **Our questions and urgent recommendations**

There is a fundamental contradiction, which we have many times alerted the Home Office to, between:

- telling individuals that their online status is sufficient and they do not require a BRP or BRC, and
- telling carriers that they must demand a physical proof of status for visa nationals, while
- only giving a mild discretionary direction to carriers that they can accept digital status for EUSS visa nationals, and

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<sup>20</sup> <https://www.gov.uk/biometric-residence-permits/lost-stolen-damaged>

- continuing to hold carriers responsible for the cost of returning passengers. The penalty / liability charge as well as the cost of returning the traveller creates the disincentive to allow travel if there is any doubt about the passenger's visa position.

Therefore:

- Q1. Why are visa nationals with EUSS status not allowed to apply for replacement BRCs **before** they expire?
- Q2. Why do visa nationals with EUSS status need to supply new biometrics before receiving a replacement BRC, rather than being able to benefit from the reuse of biometrics?
- Q3. Why are some visa nationals repeatedly advised by various departments in UK Visas & Immigration that they do not require a BRCE or BRP when their status is extended or new status is granted?
- Q4. Why are all visa nationals not routinely issued with a new BRCE when they are granted settled status even if they previously had either an EEA BRC or an BRCE as a pre-settled status holder?
- Q5. Why are all visa nationals not routinely issued with a new BRCE when their pre-settled status is auto-extended by two years?
- Q6. Why does the auto-extension of pre-settled status take place so close to the original 'expiry' date of pre-settled status, such that even if replacement BRCEs were routinely to be ordered for this cohort, these new BRCEs would be unlikely to arrive in time before their original BRCs expire (and therefore give rise to a period of being unable to travel)?
- Q7. Would you agree that a policy or set of policies which *specifically by its design* results in an individual with EUSS status being unable to travel for any period is a de-facto breach of Article 14(1) of the Withdrawal Agreement which states "*Union citizens [...], their respective family members, [...], who reside in the territory of the host State in accordance with the conditions set out in this Title shall have the right to leave the host State and the right to enter it [...] with a valid passport in the case of their respective family members and other persons who are not Union citizens [...].*"? If not, please explain why not.
- Q8. Would you agree that a policy or set of policies which *specifically by its design* results in an individual with EUSS status (which is an Article 18 WA document) being unable to travel for a period of at least two months is a de-facto breach of Article 14(2) of the Withdrawal Agreement which states "*No exit visa, entry visa or equivalent formality shall be required of holders of a valid document issued in accordance with Article 18 or 26.*"? If not, please explain why not.
- Q9. Why does the discretion to carriers (to accept digital proof of status in the absence of a physical document) in Section 2.4 of the "Charging procedure: a guide for carriers"<sup>21</sup> only apply to visa nationals under the EU Settlement Scheme, rather than to all visa nationals who have been issued with an eVisa?

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<sup>21</sup> <https://www.gov.uk/government/publications/document-checks-and-charges-for-carriers>

- Q10. Why does Section 2.4 of the “Charging procedure: a guide for carriers”<sup>22</sup> only state that carriers **may** accept View & Prove evidence where visa nationals do not have a visa or visa exemption document, rather than that they **must** accept this evidence?
- Q11. Given that the “Carrier Integration” programme (whereby carriers can automatically determine from someone’s travel document whether someone has a valid eVisa) is not estimated to be complete until the end of September 2024, why is the Home Office not:
- Ensuring that every visa national with immigration status in the UK is currently still enabled to have a physical BRP or BRC?
  - Ensuring that all carriers are familiarised with View & Prove, and mandated to accept such proof from individuals?
  - Supplying a 24/7 helpline for individuals with valid eVisas who are stuck abroad unable to board, so that the Home Office can intervene effectively and instruct the carrier to allow such a passenger to board?
- Q12. Why are British embassies / consulates abroad unable to help individuals with valid eVisas to return back to the UK when carriers deny them boarding? Can FCDO instruct and empower all embassies / consulates abroad to be able to intervene when individuals with a valid eVisa is denied boarding, especially in the light of the upcoming digitalisation for all combined with the introduction of ETAs and Universal Permission to Travel?
- Q13. We understand that there are some carriers who are delaying implementing integration of Interactive Advance Passenger Information (iAPI) until the ETA programme is fully enforced.
- When will the ETA programme be fully enforced?
  - How will these carriers carry **any** visa nationals after 31 December 2024, given that all existing BRPs and BRCs will have expired by that date, if they have not integrated with iAPI by that date?
- Q14. Has an impact assessment been carried out for the rollout of eVisas? If so, can you provide us with a copy? And does this impact assessment include the impact on the following cohorts, travelling to the UK after 31 December 2024:
- eVisa holders who are on the UK’s visa national list, regardless of whether the ETA programme is enforced by 31 December 2024 or not?
  - eVisa holders of any nationality, once the ‘Universal Permission to Travel’ principle is enforced?
  - People with valid UK immigration status who have not been successfully migrated to an eVisa by 31 December 2024?

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<sup>22</sup> <https://www.gov.uk/government/publications/document-checks-and-charges-for-carriers>



- d. People with eVisas who are unable to successfully update their eVisa with a new travel document? Especially those who are requested to physically send their new travel document to the Home Office before the update can take effect?
- Q15. What compensation will the Home Office give to individuals with valid eVisas who are stranded abroad and who have to incur costs such as accommodation, replacement flights, visa appointment costs, visa fees, and any opportunity costs associated with their delayed return to the UK?
- Q16. What training is given to all relevant departments within the Home Office, including those administering **all** visa routes, to ensure that all staff are aware of the need for visa nationals with eVisas to still have valid physical proof of status until 31 December 2024, and therefore not to incorrectly advise individuals that an online status will suffice?
- Q17. What training is given to all relevant departments within the Home Office, including those administering **all** visa routes, to ensure that all staff are aware of difference between BRCs and BRPs and in particular the entirely difference advice that needs to be given to an individual who is stranded abroad with a lost, stolen or expired BRC/BRP respectively?
- Q18. How will you ensure that between now and 31 December 2024, all carriers will completely reverse their current behaviour of insisting on physical documentation for visa nationals and refusing to engage with View & Prove, to instead understand that there will be no physical documentation for anyone from 1 January 2025 and View & Prove is the only fallback available to an individual if iAPI does not work for them?
- Q19. How will you ensure that after 31 December 2024, someone whose View & Prove does not work correctly for them will be able to travel to the UK, especially in the light of recent revelations<sup>23</sup> that more than 76,000 individuals have incorrect data displayed when using View & Prove?
- Q20. How will you ensure, once the UK border is 'pushed out' to pre-boarding checks in the form of Universal Permission to Travel, that individuals with previous refusals will be able to board carriers back to the UK, in light of the fact that they are currently unable to pass through an eGate at the UK border due to those historic refusal records<sup>24</sup>, and instead are referred to Border Force officers for detailed manual inspection of their status?
- Q21. Once carrier integration is complete and operational, the Home Office has told us that carriers will not be subject to any fines in cases of the Interactive Advanced Passenger Information service being unavailable. However, will the Home Office also ensure that carriers will not be liable for the cost of returning passengers in the same situation? If not, do you accept that this will lead to many passengers being refused boarding in such situations?

Kind regards,

Monique Hawkins  
Policy and Research Officer, the3million

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<sup>23</sup> <https://www.theguardian.com/uk-news/2024/mar/14/home-office-immigration-database-errors-hit-more-than-76000-people>

<sup>24</sup> <https://www.gov.uk/government/publications/a-re-inspection-of-epassport-gates-may-2023>