

LIVES ON HOLD

An overview of the issues experienced by EU+ citizens since the EUSS deadline, and what the Home Office, employers, and local authorities can do to address them.

25 August 2021

WoRC
Work Rights Centre

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EXECUTIVE SUMMARY

The EU Settlement Scheme (EUSS) was introduced in 2019 to protect the rights of EU, EEA, Swiss citizens and their eligible family members (henceforth EU+ citizens) who wanted to continue living in the UK after Brexit. Officially closed on the 30th of June 2021, with some late applications still accepted, the UK Government heralded it as a success, citing the more than 6 million applications submitted and the pioneering digital system of applying and proving status.

In this briefing, we draw upon case data from our charity's frontline work to highlight the issues identified post-deadline, and recommend ways to mitigate them.

The two months since the deadline highlighted a few important concerns.

- **The backlog.** More than half a million EUSS applications are yet to receive a decision from the Home Office. People awaiting status are struggling to prove their right to work, and consequently reported a loss of job security.
- **Loss of employment security.** Several people who contacted our charity with an EUSS enquiry in the past two months reported a loss of work security. This included dismissal, non-payment, and rejection from recruitment.
- **Late applications.** A number of people have still not applied. This is particularly the case for those who feared that they lacked the evidence required, but also for children whose parents assumed they would get status automatically.
- **Status refused.** Despite the Government's promise to look for reasons to grant rather than reject applications, some were refused. People most at risk appear to be those who arrived in 2020, and struggled to evidence their residence, but also those who lacked the English and IT literacy to navigate the application.
- **Paying for advice.** Many of the people who contacted us reported having paid hundreds of pounds to make their EUSS applications. In some cases, help was provided by well-trained professionals, while in others it came from misinformed amateurs. Overall, it is regrettable that the complexity of the EUSS makes some EU+ citizens feel like they must pay for a private service to secure their status.

A few policy interventions and changes of practice can mitigate these limitations.

- **Employers** would benefit from familiarising themselves with the new right to work checks, particularly for applications awaiting status, and from exercising patience and proportionality.
- **The Home Office** should recognise the fact that the EUSS remains inaccessible to a significant minority of people. They would benefit from physical proof of status, and further support from the EU Resolution Centres.
- **Local authorities** can play a positive role in raising awareness of the scheme, working with the third sector, and investing in emergency financial support to prevent EU+ citizens who lost their right to work and claim state benefits from becoming destitute.

ISSUES SINCE THE 30 JUNE DEADLINE

In less than two months since the EU Settlement Scheme (EUSS) deadline, advisers at the Work Rights Centre heard from 165 people who still had questions about the scheme (Figure 1).

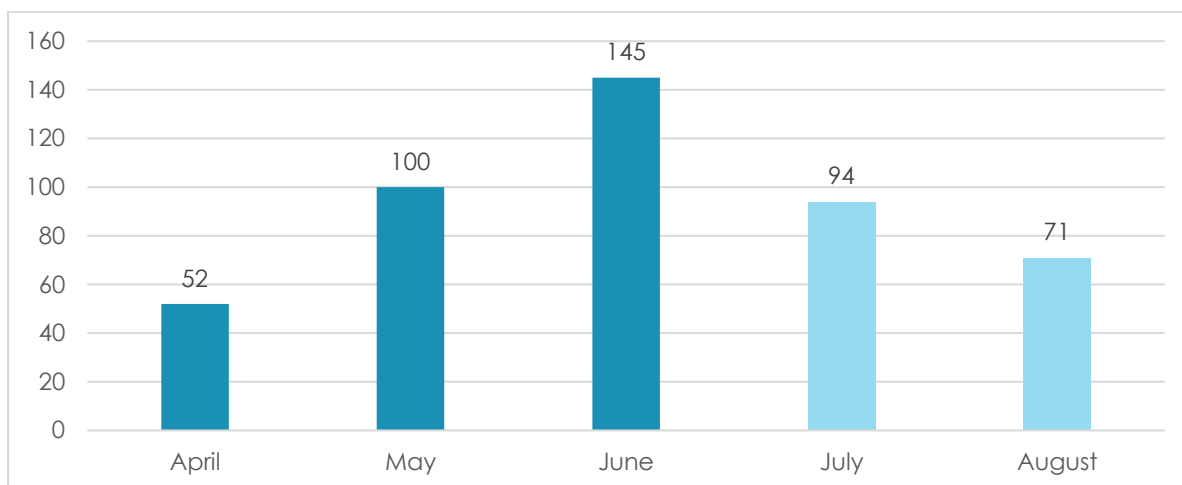


Figure 1 Volume of EUSS enquiries, recorded from 01 April 2021 – 24 Aug 2021. Source: Work Rights Centre client management system.

Despite the government's assertion that the EUSS had been a success, people across the country contacted us to understand their entitlements (particularly for children), make late applications, and in a few cases report loss of work security (Figure 2). In this section we provide an overview of their concerns, and introduce some of the real-world case studies they shared with us.

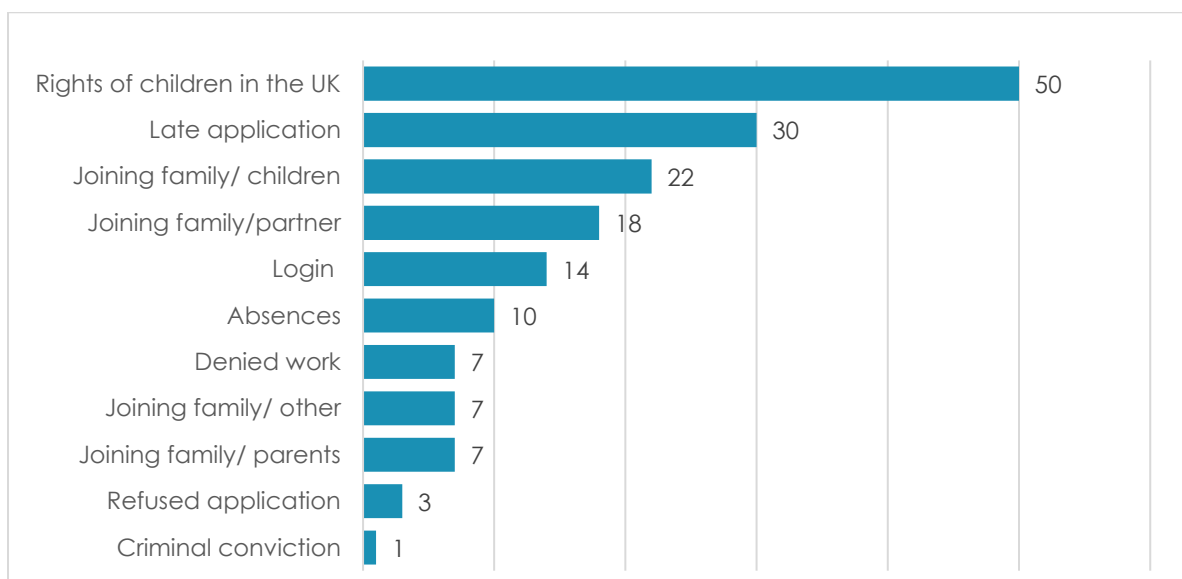


Figure 2 EUSS enquiries by issue, recorded from 01 July 2021 – 24 Aug 2021. Source: Work Rights Centre client management system.

Stuck in the backlog

The transition to a new immigration regime appears to have prompted employers to conduct more stringent immigration checks. Despite the Home Office specifying that new checks were only necessary for applicants recruited from 01 July 2021, in practice employers demanded pre/settled status in job adverts published long before that date and requested to view proof of status from all existing employees. An investigation by the i-journal found that recruiters were requesting proof of status as early as February - worryingly, even when advertising government positions.¹

Employers' concern with checking immigration status has posed a major challenge to EU+ citizens who are yet to receive a decision on their EUSS applications. On the 30th of June when the scheme closed, more than half a million applications were stuck in the backlog, still awaiting an outcome.² In theory, all of them should receive a Certificate of Application (COA), which can be used to show employers that their application is pending and ensure that their rights are protected, as per the Withdrawal Agreement.³ In the murkier world of practice, however, the process is much more complicated and puts them at a disadvantage.

People who submitted their EUSS applications on paper can wait for months before a COA is issued. Notably, even when a COA is available from the Home Office it can be difficult to retrieve by workers, and complicated to utilise by employers. To verify the right to work of someone whose application is pending via the Employer Checking Service, employers need to take more time, input more details, and wait longer for an update from the Home Office. Even if they have the patience to go through that process, some may not like the risk of employing someone whose application might be rejected in a few months' time, once the Home Office gets to it.

¹ Chaplain, C. (2021) Settled status: Job adverts on Government site ask for proof of right to remain, against Home Office guidance. Inews [\[Available online\]](#)

² Home Office (2021) EU Settlement Scheme Statistics. Updated 12 August 2021. [\[Available online\]](#)

³ Home Office (2021) Employer right to work checks supporting guidance. Published 01 July 2021, p 41. [\[Available online\]](#)

A loss of work security

In just eight weeks since the transition to new immigration checks, 8 people contacted us to report a loss of work security. Those who made paper applications and had not yet received an outcome or COA were most at risk. One of our beneficiaries in this situation lost her job at a care home, as she was unable to provide a COA and her employer ran out of patience. But there were also instances where workers provided their employers with a share code, only to realise that IT glitches or employers' own poor knowledge of the process made it impossible to verify the status.

There are serious repercussions to this inability to prove worker status. In the first instance, there is a clear financial implication. The woman who lost her care home job found herself barely able to pay for petrol, and reliant on her overdraft. In a different case, an employment agency refused to pay a construction worker a whole week's wages, while in a third case a major retailer asked one of their staff to take unpaid leave, prompting him to pay £1,200 in legal advice fees to solve the issue.

Jobseekers whose applications are stuck in the backlog are at a particular disadvantage. Employers appear to find it relatively easy to reject would-be applicants who carry lengthy administrative tasks, and opt instead for candidates whose status is already secure. In one case, a man who had sent his ID to the Home Office found himself losing a job offer, after the documents were not returned and he was unable to prove his ID. In another, a man recounted how a Birmingham-based agency rejected his application, even though he had the COA needed.

Sandra, a 45-year-old care home worker who arrived in the UK from Spain as an 11-month-old, had her contract terminated because she couldn't provide her employer with proof of right to work. She submitted her EUSS application on the day of the deadline using the paper form. However, given how the Home Office had not processed it by the time her employer demanded to see her right to work, she was unable to produce a COA, a UAN, or any evidence of her status.*

Sandra commented: "I've been paying tax and national insurance here for almost 30 years... Because I've been in this country all my life, I didn't think I would have any problems. My husband and two children are British."

Until the Home Office sends her a COA, Sandra will be unable to return to her role. During this time, she has experienced financial hardship because her wage was the family's main source of income. Her story was covered by [The Guardian](#). Her battle continues, with support from employment solicitors who offered to help with litigation.

Late applications

Despite the media coverage of the EUSS and some local authorities' and government departments' attempts to raise awareness of the scheme, not everyone applied before the deadline. The high number of applications submitted in June and the Home Office's own admission that applications would be accepted even after the deadline on some grounds, are a clear indication that expecting all eligible EU+ citizens to apply on time was never realistic.⁴

Advisers at the Work Rights Centre are worried about everyone who has not applied. Many people failed to do so because they feared they did not have enough proof to evidence their residence. This is particularly the case of those with informal histories of employment and accommodation, those whose IDs had expired, or those who arrived in the UK in 2020, lived rent-free with friends or family, and struggled to find employment due to Covid-19.

In other cases, people had the records required but were anxious about the digital format of the application, or feared that minor past transgressions (such as motoring offenses) would stand in the way. Finally, some late applicants to the scheme simply assumed they would receive automatic leave to remain, as promised by the Prime Minister during the Brexit campaign.⁵ One man recounted only realising that Brexit ended freedom of movement the moment he arrived in the UK from a short holiday abroad, and got a stamp in his passport. He had been working in construction and paying taxes for years, but it took that encounter with a border official to crystallize the fact that Brexit has reconfigured mobility, and in order to protect his and his family's rights they would all need to apply to the EUSS.

People who haven't applied face several risks. Until the 6th of August, when the Home Office changed its stance, late applicants did not have a right to work and rent in the UK while their applications were being considered.⁶ Even after the change of policy, given the size of the backlog in June there is a danger that late applicants have to wait longer for an outcome - and consequently, that they have to prove their status through the more complicated route based on a COA. This puts them at a disadvantage. Unable to issue the share code expected by many employers and landlords in practice, late applicants can miss out on work opportunities, and see their finances dwindle.

⁴ Home Office (2021) EU Settlement Scheme: information for late applicants. Published 16 July 2021. [\[Available online\]](#)

⁵ Swinford, S. (2019) Boris Johnson pledges 'absolute certainty' for Europeans living in UK. The Times. Published 26 July 2019. [\[Available online\]](#)

⁶ Home Office and Kevin Foster MP (2021) Temporary protection for more applicants to the Settlement Scheme. Published 06 August 2021. [\[Available online\]](#)

We received a call from a woman who had two children and a young sibling, plus a partner, who were living in a rural area in England. Of the five, three hadn't applied to the EUSS because **the nearest place to scan their passports and IDs was closed** (and, until recently, still was) due to Covid. They didn't understand that they could scan their IDs with their smartphone and would likely not have been able to do so without assistance. Furthermore, they failed to grasp the repercussions of applying late because, like many other beneficiaries, they assumed the application to be merely a proof of their rights, rather than a constitutive part of rights.

Our team helped them understand the importance of securing their status and supported them with the application. Overall, however, their case illustrates how some EU+ nationals simply lack the digital and administrative awareness to tackle the double-edged challenge of navigating an online process and overcoming bureaucratic hurdles.

Neylan* is a 23-year-old Bulgarian national who moved to the UK with her husband and two children just before 31 December 2021 when freedom of movement ended. Her employer, a former beneficiary of the charity, suggested she get in touch for support with her EUSS application.

We assisted Neylan by submitting the application along with a letter of support, as well as helping her send additional evidence when the Home Office requested it. After a nervous wait, she received the good news that she had pre-settled status. At this point, having heard her mention children, we asked their ages and discovered that they were born in 2017 and 2019, respectively, and needed her to make applications for them. **Neylan was shocked that they wouldn't automatically receive the same status as her.**

We have since helped her gather evidence and make late applications for them, as well as draft individual cover letters. Service Provision Manager Lora Tabakova, who assisted Neylan, commented: "Some people assume that, if they are granted status, their child will automatically receive it too. Others thought that it wasn't important to apply for children because 'who's going to deport a child?' Sadly, these assumptions aren't reflective of reality."

Status refused

When the EUSS was introduced, the Home Office made it clear that it would be looking for reasons to grant, not reject, applications. A government source told Channel 4's Factcheck⁷: *"We will give a person every chance to apply to the EUSS. In line with the general approach under the EU Settlement Scheme, we continue to look to grant status, rather than look for reasons to refuse."* However, we didn't always see this ethos upheld. From July 2021, as many as 11 people contacted us to seek help when their application was refused. Worryingly, 2 among them were children, whose applications were rejected even when their parents were awarded it.

The risk of rejection appears to be particularly high for people who arrived in the UK towards the end of 2020. In theory, all EU+ citizens who were physically in the country before the end of free movement on 31 December 2021 were eligible to apply to the EUSS. In reality however, those who arrived closest to the end of the year are facing an uphill battle to access their rights, due to a paucity of evidence.

Having arrived during a national lockdown, where face-to-face appointments for GP or school registration were difficult, if not impossible, many EU+ citizens are struggling to provide 'sufficient' proof. In one case, a child's application was rejected after his Boarding Pass dated in December was deemed unsatisfactory by Home Office caseworkers. To make the application stronger, we were told, the parents would have to call the airline (at rates of £1.45/a minute), and get them to write a cover letter, noting that the child was also physically on the plane.

Sudden requests for additional evidence which are difficult, and at times impossible or even absurd to generate, can confine people to the precarious status of being unlawfully resident. Without EUSS, they lose the right to work, rent, study or access welfare in the UK. Notably, they can push people into desperate situations where they lose trust in self, the state, and the system, or prompt them to spend money they cannot afford, on private advice they never should have needed to begin with.

⁷ Worrall, P. (2021) EU citizens who don't have Settlement status decision won't lose all their rights overnight. Channel 4 Factcheck. Published 30 June 2021. [\[Available online\]](#)

Sofia and her children moved to the UK from Romania in 2020, to join her husband. They arrived by car, having taken a ride with someone they met on a Facebook group in order to save money.*

Initially, it was difficult to settle in, as the country was in lockdown. Sofia struggled to register herself and her children with a GP or local school. Having only received formal education until the age of 11, and lacking the digital skills, Sofia wasn't able to navigate these processes online. Instead, she waited until she could do them in person, which happened in the New Year. Sofia didn't realise the problems this would cause.

The burden of proving her residence before the 31st of December 2020 quickly became apparent. A meeting with a recruitment agency, held in December, was proof enough for her to gain pre-settled status, but not her children. While her daughter received status, her son was refused.

The Home Office caseworker who processed the daughter's application had recognised the improbability of an eight-year-old child travelling alone to the UK after the rest of the family had already arrived, but this wasn't the case for her younger brother. With our help, we made another application for him, including a cover letter explaining the situation and including geo-tagged and dated photos of the children taken in the UK in December 2020 as evidence.

This is not the only time we have seen a child refused status for 'lack of evidence' despite their parents having been accepted. The experience left Sofia confused and anxious, leading her to contacting us every time an official-looking letter arrived through the letter box, and panicking that her son would be deported.

Paying for advice

A vast market of private immigration advisers appears to have flourished in the years since the EUSS was introduced. At times well qualified and professional, other times constituted by amateurs, private advisers make a business of helping EU+ citizens understand their status in the UK.

The Work Rights Centre team has heard from dozens of people who had paid for immigration advice. In some cases, they spent considerable amounts of money, to access a fundamental right. Ukrainian-speaking service provider Andrei Savitski, commented: "There's a whole market of consultants who make a business of securing people's right to reside. Without questioning their professionalism, it is regrettable that people should have to pay these sums for something that should be their right. In a kinder world, this type of help would be available to all".

In the most serious cases, the advice that EU+ citizens pay for was erroneous, incomplete, or given in ways which cultivated dependency. We have heard from people who were unable to access their applications, because the contact details provided had been those of the adviser, not theirs. As the case study below demonstrates, we have also encountered cases where poor advice costed them their jobs.

George, a 57-year-old man who was born in Cyprus, arrived in the UK with his family as a toddler. George applied to the EUSS just before the deadline and, due to a lack of I.D., paid an adviser to help him complete the less straight-forward paper form. The adviser incorrectly identified a reference number as his unique application number. Unable to check his right to work, George's employer became impatient and dismissed him. Service provision manager Lora Tabakova commented: "I called the EURC myself and it became apparent that this number he had been given was not the UAN. The fact that advisers, particularly paid ones, are getting very basic information wrong is making this whole thing much more difficult than it should be."

RECOMMENDATIONS

The end of free movement constituted a momentous transformation that affected EU+ citizens, employers, the government, and civil society alike. We each have a part to play in how we navigate the process, and an ability to mitigate some of the limitations described in this briefing. This section summarises our recommendations.

Employers

Stay informed. The immigration checks introduced after 01 July 2021 for EU+ citizens constitute a new process for everyone. There are different ways to check someone's right to work based on whether they have received, or are still awaiting, confirmation of status. Take the time to read the Home Office guidance to employers to familiarise yourself with the process, call the Home Office Employer helpline for questions, and stay informed of updates by following authoritative sources of information.

Be patient. It is important to understand that due to the size of the backlog, IT glitches, as well as workers' and companies' own abilities to navigate the new digital process, some checks will take longer than before. If someone hasn't received a COA, that does not make them an undocumented migrant. They may just be one of the people whose applications are yet to be acknowledged. Please be patient. This may involve building more time into the recruitment process, signposting staff to the EU Resolution Centre, and sharing how-to guides such as those produced by the Work Rights Centre.

Exercise moderation. The Home Office does not require employers to conduct retrospective checks on staff who commenced employment before 30 June 2021. Please don't feel like you have to do it. Singling out staff for additional right to work checks is not only unnecessary, but can constitute a form of discrimination if you select staff based on their nationality or race. Remember that employers have a joint duty towards immigration law, but also towards the laws of employment and equality. As per the Equalities Act 2021, discrimination on the basis of nationality is unlawful and carries serious consequences.

Home Office

Give EU+ citizens simpler proof of status. Digital records can be a convenient format for workers in the knowledge economy, who operate IT systems every day. But thousands of people still lack the hardware, connectivity, and skills to operate digitally. Providing them with the option to apply for physical proof of status is crucial to ensure that the scheme is inclusive and accessible for all.

Increase the capacity of the EURC. Time and again beneficiaries described waiting for hours before an EURC adviser takes their call. This not only makes it harder to resolve their issues, but also erodes trust in the system, and incentivises them to pay for private advice. To support EU+ citizens and their family members through this transformation,

it is crucial that the Home Office bolsters the capacity, and the public visibility, of the EURC.

Facilitate the transition from pre-settled to settled status. Currently, people with pre-settled status have to make a new application for settled status once this expires. There is a risk that they will encounter the same issues of awareness, digital literacy, invalid ID documents, or incomplete evidence, with the same consequences of loss of rights, and dependence upon advisers. The Home Office could mitigate these issues by facilitating this upgrade. This could mean renewing status automatically, once an applicant has met the qualifying residence criteria. Or, at the very least, communicating eligibility for a new status to all existing pre-settled status holders.

Local Councils

Invest in emergency financial support. Though it is impossible to know how many people are yet to apply to the EUSS, what we do know with certainty is that those who have not applied have lost their right to work, study, and claim welfare in the UK. This will increase the number of people with No Recourse to Public Funds, and thus increase demand on food banks and other forms of support provided by the third sector. The pressure on these services is also likely to be increased by the fact that EU+ citizens with pre-settled status are excluded from state benefits. To prevent a crisis of poverty, it is vital that local authorities invest in emergency financial support.

Keep informed. Rules surrounding eligibility for council services for people with pre-settled status are complex, and subject to change following a legal challenge. To ensure that councils don't inadvertently penalise vulnerable EU+ residents, it is essential that key staff are adequately trained. This applies to staff involved in the administration of housing benefits and other housing support, but also those who work in a frontline capacity, and who play a role in signposting and information dissemination.

Raise awareness of the EUSS and associated rights. Many communities remain isolated from the mainstream British news cycle, gathering their information from personal connections or social media sources. This leaves room for error, misinterpretation, and ultimately vulnerability. Local authorities can lead the way in driving information campaigns, making use of local and on-street media, and holding information sessions for employers and other organisations involved in immigration checks.

Work with the voluntary sector to understand, and mitigate, emerging issues. Third sector organisations have been at the forefront of the EUSS, providing information, advice, and documenting EU+ residents' emerging issues. Local authorities can learn from their expertise, and strengthen their communities, by establishing collaborative frameworks. This can include information sharing, resource creation and dissemination, as well as targeted funding.

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