

# ICIBI Submission – the3million

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## Background

1. This submission has been drafted by the3million, a civil society campaign run by and for EU27 citizens resident in the UK. Since July 2016 we have been campaigning to guarantee existing rights for EU27 citizens after Brexit. We argue this can only be achieved through a declaratory system, and only once the citizenship package is ring-fenced in Brexit negotiations. The EU Settled Status (EUSS) scheme in its current form falls short of these requirements. However, while we still campaign for it to be changed to a declaratory system secured in primary legislation, we are monitoring the scheme's implementation to identify emergent problems. We have provided evidence to the House of Commons Home Affairs Select Committee, which has fed into its recent report available [here](#)<sup>1</sup>.
2. The EUSS scheme has to account for the potential dire consequences facing EU citizens and their family members who do not acquire status. A system that is as close as possible to an effective, sound, secure, and seamless solution must be in place to prevent a high number of EU citizens being severely affected. Below, we outline the material reasons why we believe the EUSS scheme does not currently meet these criteria.
3. The information is organised under the five key headers specified in the [EUSS Call for Evidence](#)<sup>2</sup> and then one more headline is added to describe the3million's experience of participating in the EUSS User Groups run by the Home Office.
4. Given our limited capability and resources, this report should be treated as a working document. Its aim is to concisely list key concerns and problems identified. However, should any of the points listed require further exploration or substantiation, the3million will be happy to respond to further queries by email, or discuss the matters presented here over the phone or in person, subject to sufficient notice.

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<sup>1</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2017/eu-settlement-scheme-inquiry-17-19/>

<sup>2</sup> <https://www.gov.uk/government/news/eu-settlement-scheme-call-for-evidence>

### **Information is easy to find, understand and use**

5. Key concern in this area in terms of user information is related to the Home Office publishing information materials primarily online, while information in physical formats such as booklets, flyers, etc. is not readily available. Further concerns relate to poor availability of information in EU27 languages. This mode of communication is most suitable for educated and switched on users but is not appropriate for the most vulnerable users, who are already at risk of facing barriers when accessing the scheme.
6. Similarly, paper forms to apply for EUSS are not readily available. They have to be requested on the phone, and each such request has to be separately justified. This impedes the ability for users to prepare necessary information before starting a live application.
7. Paper forms, once obtained, are 43 pages long and contain complex questions. Some parts of the form do not cater for applicants, who need specialist support to fill them in. For example, the paper form does not allow for applications from users who are family members but do not have a passport or biometric residence permit (BRP). Somali nationals who are relatives of EU citizens, for example, when inside the UK do not have access to passports as Somalia has no functioning embassy. They may also not have BRPs either, as in many cases they were granted permits before the introduction of BRPs.
8. Given the EUSS is almost exclusively an online scheme, it is very problematic that access to phones and other technology for the purposes of completing the application is limited, and the application only works on Android smartphones. We understand that an iPhone app is due to be released but the launch date is not clear, and iPhone users have already been excluded from the Scheme. Further, introducing the iPhone app will do little to facilitate access to the scheme for the vulnerable groups.
9. We also have overall concerns about availability and access to information about applying for the scheme. In particular, long term residents in the UK may hold multiple statuses, and be unclear on their need to apply for the EUSS or on whether they meet the criteria of the scheme. EU27 citizens are often confused with regards to their past Permanent Residence and Indefinite Leave to Remain statuses, and their validity. The feedback we receive through our online forums and community engagement activities also suggests societal status such as home ownership, or length of residence, inform EU27 citizens' views on whether they need to apply, and there is little in terms of communication strategy from the Home Office to directly challenge that.

10. Key concern in this area in terms of stakeholder information is that the Home Office is not disclosing Key Performance Indicators relating to the measuring of the scheme's functioning. Support organisations that are tasked with ensuring the EUSS scheme reaches all users, including the most vulnerable EU27 citizens, only have access to data disclosed by the Home Office in relation to overall numbers of applicants, but no KPIs or baseline figures. This impedes the stakeholders' understanding of the EUSS operation and its progress, as well as their modelling of future spikes in applications and anticipating future problems.
11. Accessing services for those most marginalised is still problematic, and the work of the dedicated EUSS User Group on Safeguarding is not alleviating these concerns. There is a lack of clarity on strategy from the Home Office on this, beyond its attempts to delegate responsibility to the 57 stakeholder organisations through the £9mn grant which falls way short of the needs. Most worrying is the refusal to release, or provide date of release, for Equality Impact Statements. This is further reflected in user group comments under the final header.

### **Processes are simple to follow and transparent**

12. The need to curate status is counterintuitive for many users. Once a person obtains EUSS they have to maintain the status via the portal. Given there is no physical document, which is in itself very problematic, whenever there is a change in circumstances relating to passport, name, telephone number, or email this has to be updated via the online portal. This process requires the EUSS holder to have access to the phone number or email they provided when completing the application, which is often problematic, especially for vulnerable users.
13. Given there is no preview site for the EUSS scheme and paper applications are not readily available, neither end users nor stakeholders are able to establish and assess updates and changes to the application form or procedure. In other areas of immigration applications, which rely on paper-based forms, it is always possible to see changes to them. With the EUSS scheme it is impossible to monitor changes and updates to the application form and procedure, and this very seriously undermines the scheme's transparency for stakeholders, and its credibility for end users.
14. In what follows directly from point 13, end users and supporting organisations are now unable to keep a record of the answers and information provided as part of the application process. This undermines the ability to follow the procedure, and its transparency.
15. Of serious concern to many of our users is the fact that the EUSS application requests National Insurance numbers (NINO) from Permanent Residence card holders, despite the fact that they are not needed for their

application as residency checks need not be run against them. Requesting data not needed to process an application is against GDPR. While the fact stakeholders cannot preview the application makes proving this difficult for organisations like the3million, we have recorded a case of a Bulgarian citizen, self-employed and with a previously issued Permanent Residence document, who applied for settled status. She was told the system could find no residence data match for her, and asked her to send in 5 years' worth of residence evidence, and her passport. However, the EUSS scheme states – and this was confirmed in a recent meeting between the3million and the Home Office – that holders of a PR card are not to be subjected to the automated HMRC and DWP residence checks, and only need to self-declare that they have not left the UK for over 5 years since the date of their PR card. We have seen several other similar reports, which raises serious questions over the transparency of the EUSS scheme.

16. There is a wider concern about the use and storage of data submitted as part of the application, as the Home Office is refusing to disclose it. We have submitted Freedom of Information requests on this matter and are awaiting responses. We are also looking for ways to establish what data the Home Office holds through other research, but the fundamental point is that such non-disclosure runs against the promises of a transparent system.
17. Further, it appears that currently the process prevents re-application, for example when the users seeks to upgrade their status from pre-settled to settled. While we appreciate Minister Caroline Nokes recently [stated](#)<sup>3</sup> this functionality should become available in early July 2019, this has caused problems for some applicants for whom it is important to obtain the EU settled status to be eligible to acquire citizenship. Those who can have dual nationality now but cannot have dual nationality after Brexit are particularly disadvantaged here.
18. The process is also not easy to follow for some vulnerable users, and the documentary evidence required – a passport or ID demonstrating nationality – is problematic in particular for EU27 children. This issue was comprehensively described in the EUSS [briefing](#)<sup>4</sup> by CORAM – Children's Legal Centre. In particular, we would like to draw ICIBI's attention to section *Documentary Issues* on p. 12-13 of the report.

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<sup>3</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-05-10/252826/>

<sup>4</sup> [https://www.childrenslegalcentre.com/wp-content/uploads/2019/03/EUSS-briefing\\_Mar2019\\_FINAL.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2019/03/EUSS-briefing_Mar2019_FINAL.pdf)

19. Entry Clearance – still unable to apply for settled status or pre-settled status from outside the UK. You can only apply for an EU family permit under Appendix EU (Family Permit). The rules (Appendix EU) specifically say that you can apply for entry clearance. So the process does not facilitate what is permitted under the immigration rules.
20. We are also concerned about UKVCAS services. Third country nationals are required to use this corporate partner who is managing applications for the Home Office. There are reports of considerable delays with acquiring appointments, and in some cases applicants have to pay for appointments at UKVCAS centres closest to them. Prices are from £60 upwards where a charge applies, and can reach upwards of £200. Against this raises serious concerns over transparency.

### **Home Office staff appear knowledgeable and competent**

21. Contrasted with this largely negative feedback is the experience of users and stakeholders who were in contact with the telephone service of the EU Settlement Scheme Resolution Centre. To date we have heard overwhelmingly positive feedback from those who used the Resolution Centre.
22. However, there are multiple examples of incompetence within the EUSS scheme itself. Constant changes in evidence to support applications is confusing, unhelpful and makes it difficult to trust the Home Office staff competence. One example is that while the official [list of acceptable documents](#)<sup>5</sup> includes “used travel ticket confirming you entered the UK from another country”, a Bulgarian citizen applying for pre-settled status who sent several documents including a plane ticket and boarding pass was told “the evidence you have provided is not sufficient because we cannot accept flight bookings, boarding passes etc. as evidence” in response, which clearly contradicts the official guidance.
23. Another example of incompetence is the [widely publicised](#)<sup>6</sup> story on email data breach, where the Home Office erroneously shared about 240 personal email addresses in an email to citizens who applied for settled status. This likely breach of the Data Protection Act was blamed on an administrative error but still raises concerns over data protection and users’ privacy.

### **Decisions and actions are ‘right first time’**

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<sup>5</sup> <https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence>

<sup>6</sup> <https://www.theguardian.com/politics/2019/apr/11/home-office-apologises-for-sharing-eu-citizens-email-addresses>

24. We are getting multiple reports of sometimes very significant delays in decision making. For example, we recorded a case of a French citizen, settled in the UK since January 2014, and in continuous employment since then. He applied for settled status in March 2019 but did not receive the confirmation of status until 30<sup>th</sup> May 2019, 60 days after he applied. He was requested to send in ID documents when he originally applied. He complied with that request within three days, but his documents were only returned three weeks later, with no decision regarding his status. A day after his ID documents were returned he received an email asking him to supply ID documents again – but that request was withdrawn once he queried it the following day with the Resolution Centre. He received a certificate of application on 30 May, which merely confirmed the receipt of his application, and then he also received the decision letter later on the same day. Overall he waited 60 days to be granted settled status and the delay was not explained to him.
25. We heard multiple reports of delays in returning documents, with users often waiting for paperwork to be returned, even when a pre-paid envelope is provided.
26. Decision making in relation to automated checks appears inconsistent. Some applicants have to provide information in relation to their residence in the UK when they shouldn't have to and there appear to be discriminatory patterns within automated checks.
27. We have also recorded cases where parents have applied for settled status but have not been able to acquire settled status for their children. For example, a Dutch child was granted pre-settled status after his application was linked to his father's application, while both his parents had been granted settled status. This despite the fact that the government [states](#)<sup>7</sup> that "if your own application is successful, your child will get the same status as you." The father took it up with the Resolution Centre, and three weeks later the child was given settled status. Similarly, in a report publicised on social media, another EU citizen child was [refused](#)<sup>8</sup> settled status despite linking to his EU citizen [father's](#)<sup>9</sup> settled status.

### **Errors are identified, acknowledged and promptly 'put right'**

28. The launch of the EUSS scheme was marred by website crashes and software problems. It is not clear to what extent these have been addressed and what processes are in place for 'spike' management,

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<sup>7</sup> <https://www.gov.uk/settled-status-eu-citizens-families/apply-settled-status-for-child>

<sup>8</sup> <https://twitter.com/Lisambo/status/1117452841650720769>

<sup>9</sup> <https://twitter.com/Lisambo/status/1117462465485377537>

especially in the absence of Key Performance Indicators which would help determine future use of the app and website. The Home Office's ability to be able to manage future surges, linked with the progress of the Scheme and Brexit as such, is unclear. The key point where there is lack of clarity is whether the Home Office will be ready to deal with the issues that will inevitably arise particularly before the final EUSS deadline, whenever that will be.

29. It is at times difficult to assess if errors are identified as they may remain unacknowledged due to lack of transparency. As per point 15, it does appear holders of PR cards are subjected to the automated HMRC and DWP residence checks, despite the fact that they only need to self-declare that they have not left the UK for over 5 years since the date of their PR card. We are unclear as to whether this is an error or deliberate approach (which would contravene the policy) due to lack of transparency in decision-making.

### **Stakeholder engagement and feedback on User Groups**

30. There are multiple problems with the functioning of the Home Office User Groups. Most problematically, their meetings are not minuted despite repeated requests from the stakeholders of the Safeguarding User Group. This clearly falls short of the promises of transparency, but also in practical terms makes any meaningful follow up actions problematic as there is no reference for it and actions are not recorded. This results in actions being requested in one meeting, only to be requested again in another. Finally, on occasion some participants are excluded as the system of notifying Group members about meetings is inconsistent. Given that, and the fact that the Safeguarding User Group has moved to bi-monthly meetings, the absence of minutes seriously undermines opportunities for engagement. This particularly affects poorer resourced and non London based members of the group.
31. One specific example of show the User Group work is undermined is the issue of equality impact statements, which have been repeatedly requested since at least November 2018 but still not released. The standard advice from the Home Office is that "there's a discussion" on whether to publish these as there's no legal duty to do so, which appears a tactic to appease Group members and not genuine engagement.
32. The membership of the Safeguarding Group is also problematic, especially given the lack of voluntary sector representation around homelessness, mental health, and offenders until there was a concerted push by other Group members. The Home Office did have a homelessness charity member from the outset, Salvation Army, but they never attended and so the Group members pushed to include Glass Door. Mental health was not covered until Mind joined in March 2019, and

offenders were not covered until Unlock joined. It appears the Home Office strategy for user engagement is entirely reactive and not proactive.

**Final comments**

We hope the above evidence is useful, and we would welcome any follow up questions or comments. We will continue to monitor the EUSS implementation and are available for questions or comments for this and any subsequent inspection of the scheme.

With best wishes,

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on behalf of the3million

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