31 July 2020

ILPA submission to the Independent Chief Inspector of Borders and Immigration on the EU settlement scheme

Background

1. The Immigration Law Practitioners' Association (ILPA) is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system.

2. Since the EU settlement scheme (EUSS) was launched, our members have been advising EEA+ nationals and their family members and assisting them to make applications under the scheme.[1] A number of our members are organisations which have received grant funding from the Home Office to support vulnerable applicants. Other members have been holding significant numbers of outreach events across the country to advise EEA+ nationals and their families. Our members therefore have experience of a very large spectrum of those making applications to the EUSS, including those making straightforward applications and those making the most complicated ones. Through our members' outreach work, they have also met with those who are only learning about the scheme for the first time and who have not applied to the scheme.

3. In this submission, we provide evidence on the following areas:

    a. Positives of the EU settlement scheme.

    b. Delays in processing applications.

    c. Individuals who have not yet applied.

    d. The role of the Settlement Resolution Centre.

    e. Obtaining paper application forms.

    f. Refusals.

    g. Invalid applications.

    h. Biometric enrolment for non-EEA+ nationals.

    i. Submitting applications from abroad.

[1] We will use EEA+ to refer to the nationals of the 27 EU member states, the three EEA states and Switzerland.

4. Based on the feedback of our members, we have made a number of recommendations as to improvements the Home Office could make and as to matters that we think would benefit from investigation by the Independent Chief Inspector of Borders and Immigration (ICIBI). We have provided a summary of these recommendations at the end of this submission.

Positives of the EU settlement scheme

5. It is widely documented that, compared to other areas of the Home Office, the EU settlement scheme is generally more efficient, responsive and straightforward to deal with. This also matches the experience of our members. We have a very good relationship with the Head of the Euro and Settlement Team who regularly assists us with queries and with cases that may require escalation where something has gone wrong, for which we are grateful.[2] In particular, such links proved very useful during the height of the Covid-19 pandemic, when our queries as to the processes in place were always responded to promptly. We very much hope that the good practice that has been established in the EU settlement scheme could eventually be mirrored across other areas of UK Visas and Immigration.

6. In particular, we see it as a positive that there is a dedicated Settlement Resolution Centre (SRC) which representatives and applicants can call to speak to an individual about their application.[3] This is particularly useful when individuals need to clarify basic information about their application, as well as when logistical assistance is needed such as updating telephone numbers and email addresses. It is very useful indeed for legal representatives to have someone they can speak to about basic matters such as this.

7. It is also positive that the Home Office will generally contact applicants where information is missing or for clarification. Further, the application process for most individuals will be straightforward and can be easily completed. This is especially the case for EEA+ nationals where there is no criminality involved.

8. We understand the EUSS team undertakes internal "lessons learned" workshops but we believe that there is value in there being wider learning across the Home Office.

9. **Recommendation: Given these positives, we believe the ICIBI should investigate the Home Office's plans in relation to reviews and learning exercises as to the good practice that has already been established by the EU settlement scheme and how such good practice can be improved upon and implemented in other areas of the immigration system. Any review should include the views of external stakeholders so that there is**

[2] We note below, however, that this does not help those who do not have access to senior civil servants.
[3] While we believe the existence of the SRC is positive, we do have reservations about the role it carries out, as we set out below, and believe both the Home Office and applicants would benefit from having its role clarified.

agreement as to what is genuinely good practice and where there are areas for improvement.

Delays in processing applications

10. We understand that many applications have proceeded swiftly and smoothly through the system. However, it is notable that almost every practitioner who responded to our call for evidence raised delays as a problem. These delays occur even after all evidence has been submitted and the Home Office has not requested any further information. In some cases these delays relate to individuals for whom the application ought to be entirely straightforward. Delays not only cause a great deal of anxiety, but also may significantly prejudice many individuals as we explain below.

11. To demonstrate the breadth of difficulties our members have faced, we have been given the following examples of delays. Alongside these examples, problems with delays regularly come up in meetings of practitioners.

    - A family of four Greek nationals, all of whom held documents certifying permanent residence issued under the Immigration (European Economic Area) Regulations 2006 or 2016 (hereafter the EEA Regulations), submitted applications on 23 January 2020. By 18 March, three out of four family members had been granted settled status, but still by 15 July the fourth family member had not been granted. The applicant's representative raised the case with the SRC multiple times, only to be told it was still under consideration. The representative raised the case with us as part of our evidence gathering exercise for the purposes of this submission. Given the applicant had a very straightforward application, we decided to raise the case with the Head of Euro and Settlement as it was clear something had gone wrong. The applicant was then very swiftly granted settled status. We provide some comments on this example below.

    - Members regularly report delays in cases where there is an unresolved police investigation according to the police national computer, even after the criminal investigation has come to an end. The policy appears to be to place these applications on hold until the PNC is updated with either the details of a conviction or to confirm that no further action has been taken against the applicant. This is a problem because the PNC is frequently out of date with no clear route for a person to have their records updated. One member reports that one applicant was cleared of any wrongdoing but the PNC still states that there is an ongoing investigation which means their EUSS application remains on hold for an indefinite period until the PNC is updated. It may often be the case that the offences that these individuals are being investigated for would not meet the threshold for a suitability referral to Immigration Enforcement in the first place and so there is no need for the application to be put on hold. The onus ends up resting on the applicant or a support organisation to attempt

to contact the investigating police officer to have the PNC updated to speed up the process. This problem is made worse by the fact that applicants and legal representatives are not informed when Immigration Enforcement referrals are made and no information is provided regarding the reasons why referrals are made in specific cases.

- One member who specialises in EUSS applications and supports an EUSS advice line reported regularly coming across delays of 6-13 months.
- One member reported a case that has been outstanding since August 2019, despite being escalated by a senior official.
- One member has reported a case of a Zambrano carer whose application was lodged in July 2019 whose case remained pending in June 2020, with the Home Office only feeding back that "the case is still in progress".
- One member reported having a case outstanding since October 2019.
- One member said they assisted a Nigerian national who applied as a dependent child of an EEA national in October 2019. He was only granted status in late July 2020.
- One member reported delays with those applying with a retained right of residence. While some of these cases may be more complicated, this is not uniformly the case.
- Members have also reported cases pending for over 12 months and only being resolved once a pre-action protocol for judicial review letter before claim was sent to the Home Office.

12. In relation to the first example above, while it is of course positive that the matter was resolved once we brought it to the attention of the Home Office, it is concerning that there were not processes in place to ensure this application could be identified without this intervention being necessary, especially when attempts were made to raise the delay. We worry about others who may be in this position who do not have legal representatives or who cannot raise such cases through an organisation like ILPA. Further, we were told that for some reason this applicant's case was not matched up with that of his family members. We query whether there may be a wider problem in relation to the joining up of family members' applications as we have heard anecdotally this may be a problem.

13. Our members generally find that communication with the SRC tends to break down when questions are asked as to why there is a delay, with applicants generally not being given a meaningful explanation, which causes stress and anxiety. As with the first example, in some cases it is clear that if an appropriate officer sought to find an explanation to pass on to an applicant, it may become apparent the case has been delayed when it should not have, and cases may be able to proceed more quickly.

14. The Home Office has previously accepted that the information given relating to processing times needs to improve.[4] However, while there may be more information now on the gov.uk website about the types of situations that will lead to an application taking longer to be decided, the information is still not sufficiently useful for applicants. It provides information about situations where processing may take more than one month, but it does not explain cases taking significantly longer, such as six or 12+ months. The reference to "more than one month" has the effect of confusing applicants for whom the process will take significantly longer, causing further anxiety and stress.

15. Applicants faced with delays are prejudiced in the following ways.

    - All applicants are stressed and anxious to have their case resolved as soon as possible. As we approach the end of the transition period this year, and then also the EUSS deadline on 30 June 2021, this stress and anxiety is only going to get worse. The real effect on applicants must not be forgotten.

    - There is a particular problem caused where a decision is delayed for a long period and then results in a refusal, as in such cases the overall process will thus take significantly longer if the matter then proceeds to an Administrative Review or appeal. Where such a refusal is non-appealable because the application was made prior to 11pm 31 January 2020, the individual is restricted either to requesting an Administrative Review or making a fresh application. It is unclear what the situation will be if we are faced with applications which are refused without a right of appeal and after the EU settlement scheme deadline: for these individuals, the delay may be completely fatal to applying under the scheme. This is one of the reasons why we do not believe appeal rights should accrue only to those who submitted applications on or after 11pm 31 January 2020.[5] Given experience suggests the most complicated applications are the most likely to be delayed, but are also the most likely to be refused generally in immigration law, individuals are caught in a double bind.

    - There is a particular cohort of individuals where a refusal is even more complicated. This is where the refusal is because the individual first needs to obtain a "relevant document" (e.g. as a durable partner) under the EEA Regulations before they are eligible under Appendix EU. If the refusal is delayed until after those Regulations are revoked on the commencement of section 1 of the Immigration and Social Security Co-ordination (EU

[4] Home Office response to an ICIBI inspection of the EU Settlement Scheme from April 2019 to August 2019 (27 February 2020), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/867895/The_Home_Office_response_to_the_ICIBI_report__An_inspection_of_the_EU_Settlement_Scheme__April_2019_to_August_2019.pdf, recommendation 2.

[5] ILPA Briefing on the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (30 January 2020), available at https://ilpa.org.uk/wp-content/uploads/resources/35926/20.01.30-ILPA-briefing-on-the-EUSS-Appeals-Regs.pdf.

Withdrawal) Bill, the situation is very unclear as to what avenues will be available to the applicant because they will no longer be able to obtain a "relevant document". There is a lack of clarity as to whether, how and when the Rules are going to change in relation to this requirement. This problem is even worse where the decision is non-appealable if the application was lodged prior to 11pm 31 January 2020. As we explain below, where a relevant document has not been provided, these cases should be able to be refused without significant delays.

- In some cases, especially for those who do not currently have a valid immigration status or a valid immigration document, delayed decisions means they may not be able to work (as Certificates of Application under the EU settlement scheme do not confirm the right to work) or access benefits to which they may be entitled. In the current economic crisis caused by the pandemic, these problems will only get worse, and these problems affect vulnerable groups harder.
- Delays also mean that individuals may not be able to travel overseas to visit family members. Conversely, delays in obtaining EUSS Family Permits (or Travel Permits for the limited class to which that applies) mean family members may be trapped overseas, separated from family in the UK.

16. **Recommendations:**

a. **The ICIBI should investigate a sample of cases that have been delayed at different milestones (e.g. one month, three months, six months, 12+ months) to scrutinise the reasons why a delay has occurred. This sample should include cases which have been delayed as a result of a pending criminal investigation.**

b. **The ICIBI should review the Home Office's policies in relation to the handling of cases with ongoing criminal investigations, including ascertaining at what point such cases are reviewed for an update and looking at whether such cases are put on hold unnecessarily.**

c. **The ICIBI should investigate the Home Office's internal procedures for ensuring family units are processed together (where it is possible to do so) and its procedures for monitoring whether such groupings have been carried out correctly.**

d. **The Home Office should ensure it has proper processes in place that flag cases that have been delayed at different milestones and ensure these are reviewed by a senior caseworker to see whether the matter can be progressed more quickly.**

e. **The Home Office should give clearance to its staff in the SRC to provide clearer and more open reasons as to why there is a delay in a particular case, where it is appropriate to do so.**

f. **The Home Office should consider giving updates to applicants at various points throughout the application lifecycle including meaningful information as to which stage the application is currently at and why the application is delayed.**

g. **The Home Office must review its policy to restrict appeal rights only to those who lodged applications on or after 11pm on 31 January 2020 in light of the significant delays in processing many applications.**

h. **In the absence of extending appeal rights, the Home Office must ensure that the fact that an individual's application was delayed for so long such that it was refused after the EUSS deadline and without a right of appeal will by itself constitute reasonable grounds for a late fresh application.**

i. **The Home Office must clarify how individuals who currently need to obtain a document under the EEA Regulations will be able to apply after those Regulations are revoked.**

Individuals who have not yet applied

17. Our experience indicates there are several groups of individuals who have not yet applied to the scheme or who are not even aware of it. We wish to stress is that it is not just vulnerable individuals who fall within these groups. There are many individuals who would be considered to have straightforward applications and who, in some cases, may be regarded as well-educated and well-informed.

1. No passport/ID document

18. Individuals may not have a valid ID document either because they never had one or it has been lost, stolen or expired whilst living in the UK. These individuals must satisfy the Home Office that the reason that they do not hold a valid ID document is due to reasons beyond their control. This is particularly a problematic for homeless individuals. These problems have been exacerbated because of Covid-19 which has caused embassy closures, difficulties obtaining original documents overseas, or having to travel overseas to obtain passports. We understand the Home Office has been liaising with European embassies on some of these issues but the fact remains it does present a practical difficulty for individuals. The problems in relation to this cohort are particularly problematic for children, as we explain below.

19. Applicants applying without a valid ID document must contact the SRC to issue a paper application form. As we explain below, obtaining the paper form can be a barrier in itself due to difficulties in persuading the call handler to issue the form, which is likely to be exacerbated by the vulnerabilities faced by those who do not have ID documents.

20. There is also a long processing time for these types of applications which would discourage someone from attempting this path. Instead, they will persist in trying to renew their identity document before applying to the scheme. This will become more problematic as the EUSS deadline approaches because there does not appear to be any contingency for those who have attempted to re-document but have not been able to do so in time.

2. Children

21. There is a lack of awareness that children may need to apply, which is particularly the case where such children have been born in the UK.[6] Our members routinely report that many individuals do not think that their children need to make an application to the EU settlement scheme on the basis that their child is British, even though this may not necessarily be the case. Conversely, it is also well-known that some children are applying to the scheme who are British or have an entitlement to register as British even though they do not hold a British passport. The EUSS application process does not contain adequate safeguards to ensure checks are made as to whether or not a child might be British and therefore children are being given an immigration status which is of no legal effect because they are British in law.

22. Children with no valid ID may face additional hurdles with obtaining a valid ID document from the national authorities due to restrictive national legislation. For example, where both parents are required to provide consent for a document to be issued. Our members regularly encounter difficulties obtaining EU passports for children, which is exacerbated where the child is looked after by a primary carer who is not an EEA+ national and where there is no longer contact with the European parent.

3. Older individuals

23. Older individuals, and in particular older women, are struggling with the scheme. This is both in relation to knowing that they need to apply under the scheme and being able to access the scheme when they know they need to apply. Anecdotally our members report older EU citizens often feel they do not need to apply to the EUSS or that they should not have to apply given the UK "is their home". There is also confusion caused by the fact that some older citizens will hold indefinite leave to remain/enter granted many years ago (e.g. if they were an EEA+ citizen who lived in the UK before 1973) and so some older citizens who do not hold such status might

[6] The problems in relation to children, and especially looked after children and care leavers, are well documented: see for example Coram Children's Legal Centre, "Children left out? Securing children's rights to stay in the UK beyond Brexit" (2020) available at https://www.childrenslegalcentre.com/promoting-childrens-rights/policy/brexit-childrens-rights/children-left-out/; Greater Manchester Immigration Aid Unit, "Not so straightforward" (2019) available at https://gmiau.org/not-so-straightforward/; and The Children's Society, "EU Settlement Scheme and Looked After Children and Care Leaves" (2020) available at https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/eu-settlement-scheme-and-looked-after-children-and-care.

think they are protected because their friends/family members are protected when in reality they are not.

24. There are also problems caused by digital exclusion. For example, a member reported hearing from an 80-year-old German national whose British husband has now passed away. She had been granted indefinite leave to enter in an old passport, but she no longer has that passport and the grant has not materialised from a Subject Access Request.[7] She has no mobile phone and so she cannot easily apply under the EU settlement scheme. Her family are too far away to help. Local organisations supporting vulnerable individuals are not currently able to do face-to-face meetings because of the pandemic and because of her age she is particularly vulnerable to the virus.

4. Those who lack capacity

25. Those who lack capacity struggle to know about the scheme and to make applications under the scheme. The Home Office policy and procedure in relation to handling applications by such individuals is not sufficiently clear. This is an issue that our members have been concerned about for quite some time. This is a particular problem where the individual does not have any family members who can support them to make the application. While it is positive that lack of capacity has now been formally noted as being reasonable grounds for failing to apply by the deadline, ultimately such individuals need to be able to apply at some point.[8]

5. Those in prisons and detention centres

26. Organisations working with those in prisons and detention centres have consistently raised issues relating to the provision of information to those in prisons/detention centres and their ability to access the EU settlement scheme.

27. Feedback from organisations suggests that there is extremely limited access to information about the EUSS for those in prison and an immigration detention. In many cases it appears that EEA+ citizens are issued with deportation decisions prior to the end of their sentence with little access to immigration advice as to whether they can challenge the deportation decision which would open up the potential to make a successful EUSS application. The problems of accessing good legal advice in detention centres are well-documented.[9]

28. There is a particular problem in respect of those in prison who for a long time it was understood simply could not apply. It was never entirely clear whether this was a matter of practicality or policy. Our members have received conflicting messages as to what the current position is but the case remains that it is practically impossible to

[7] She may, however, be able to apply to the Windrush scheme, but this will not always be the case.
[8] Letter from Kevin Foster MP, Minister for Future Borders and Immigration (9 April 2020) available at https://committees.parliament.uk/download/file/?url=%2Fpublications%2F660%2Fdocuments%2F2907&slug=kftolmeusss090420pdf.
[9] Bail for Immigration Detainees (February 2020) "Research Paper: Autumn 2019 Legal Advice Survey" available at https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1140/BID_Legal_Advice_Survey_.pdf.

make an application from prison. Given there will be a small cohort of individuals who can apply, it is vital that UKVI resolves this.

6. Those with criminal records

29. Those who have a criminal record are reluctant to apply under the scheme as they are fearful that to do so will mean they face Immigration Enforcement action, even where it is not likely they would be refused under the suitability criteria. While to some extent this fear may be inevitable, the information provided by the Home Office as to what type of offence would be one that would raise a suitability issue does not appear to assuage the anxieties of this group. These anxieties are heightened by the fact that such cases are likely to experience unexplained delays (as we describe above).

30. There are also practical problems this group faces, such as difficulties in obtaining criminal records from outside the UK. The ACRO report will show some international convictions in some cases but not for all countries. The timeframe to get these records may delay application greatly.

7. Individuals in rural areas

31. Those who live in rural and isolated areas struggle to get to towns/cities for support. Charities are trying their utmost to reach everyone, but this can be very difficult with some remote areas. One member reported how charities find they have to go to individual farms because people cannot come to the charity, as this may rely on employers engaging and not all do. The same member reported she had, in July 2020, come across a food processing factory in Lincolnshire for a "household name" where human resources on the ground were not aware about the EU settlement scheme despite most staff being Lithuanian or Polish. While it is encouraging that the member has now found them, it is very concerning to wonder how many others may be out there like this.

8. Those who have a document under the Immigration (European Economic Area) Regulations 2016

32. Those who have a documentary certifying permanent residence or a permanent residence card issued under the EEA Regulations often do not appreciate they now need to apply under the EU settlement scheme.[10] These citizens often feel that they have applied to the Home Office for confirmation of their UK status (many in the aftermath of the referendum outcome), and consequently believe that their residence status is secure. We have also heard anecdotally of individuals applying under this route believing they have actually applied to the EU settlement scheme. When these individuals are granted status under this route (termed the "legacy route" by the Home Office), these individuals do not receive any notification in the letter about the fact that free movement law is being repealed and the need to apply to the EU settlement scheme before the deadline. We are also not aware of any attempts made

[10] This is also the case although less prominent for those with residence cards.

by the Home Office to contact EU citizens and family members who have been issued documents under this route and we are not aware of any plans to do so.

9. Those applying for the wrong status

33. Some individuals are applying for the wrong status when they ought to apply under the EU settlement scheme. A member has reported the example of a Turkish national who, in error, applied for leave to remain as the spouse of a British national when in fact he is married to an EU national with settled status. This application was understandably refused but the Home Office did not point him in the direction of the EU settlement scheme. We believe it would be appropriate in such cases for basic checks to be carried out and where there is an obvious entitlement to apply under the scheme it would be appropriate for the Home Office to point the individual in that direction. We are concerned that different arms of UKVI are not joined up in this approach to the EU settlement scheme.

10. Dual national EEA+ citizens who primarily identify with their non-EEA+ nationality

34. Common examples of such individuals are Dutch or Swedish/Somali nationals, Portuguese/East Timor or Indian (Goan) nationals. Although these citizens hold EU nationality, which has enabled their migration to the UK under EU law, as they identify more strongly with their other non-EU nationality, they will not necessarily be aware that the EUSS applies to their situation. In many cases these citizens do not speak the EU language of their citizenship and therefore outreach communications in this language will not necessarily advance their understanding that the EUSS applies to them.

11. The wider public

35. While it is clear there are specific groups which are particularly at risk of missing the deadline, it is important to note that there are still many in the wider public who are also unaware of the scheme and the importance of applying.

36. One member acts for a large national firm, with R&D, manufacturing and sales activities, and employees working on sites in Norfolk, Northants, Oxfordshire, Berkshire, Croydon, Hertfordshire, Cheshire, and Gloucestershire. Their most recent analysis, as at 22 July 2020, showed that of 300 EU nationals in their workforce, 225 have not reported having secured pre/settled status. While it is possible that some employees have secured their status and not updated the business, the impression of the human resources team was that this was an accurate statistic. These employees include those who would be considered to be well-informed, such as managers, chemists, engineers and lab workers.

37. Another member said:

We will often run outreach sessions where citizens attend on the recommendation of a friend, acquaintance or community organisation and find out that they are required to apply to the EUSS. The implication here is that without these community contacts, the Home Office media strategy has not reached this person or group of persons to inform them that they are

required to apply to the EUSS. Additionally, the Home Office has a negative reputation in some sections of the media and with some communities (for example the Roma community and homeless EU citizens have been the target of excessive and in some cases unlawful Home Office enforcement action in the past), which has led to a distrust of information that comes from this government department. It will often take other actors to convey the message relating to the necessity to apply to the EUSS. It is very difficult to assess how many citizens have not received information educating them about the need to apply to the EUSS.

38. We would note there are a number of sectors, such as the care sector, where there are poor working conditions and where employees may be less likely to receive information and advice about the EU settlement scheme.

39. Similarly, some members also hear reports that EEA+ nationals who do not have a valid passport, and so would need to rely on their valid national ID card to apply, can be very reluctant to submit this document to the Home Office for validation where it is national ID card without a biometric chip that can be scanned. This appears to relate particularly to those in insecure/gig employment as they rely on their national ID card as evidence of their right to work in the UK. Even being without their national ID card for a short period of time can impact on their ability to earn a living and therefore, given the choice, they will retain the ID card for work and will not apply to the EUSS. There also appears to be a fear that the Home Office will lose or refuse to return their identity document which will cause them to lose their income as they will no longer be able to prove the right to work in the UK.

40. The Home Office understands that much of the remaining EUSS work will relate to complex cases and vulnerable applicants. However, it is not clear to what extent the Home Office intends to provide sufficient resources and support to these applicants. Although there will be additional funding provided to successful organisations for the period between September 2020 and April 2021, we have concerns that this funding will not be sufficient to assist highly complex cases. We also do not know whether or not there will be any funding for assistance from April 2021 onwards in the build-up to the EUSS deadline as well as the period afterwards, where applicants will face the additional burden of having to demonstrate they had good reasons for failing to apply to the EUSS. There are already significant problems obtaining good quality immigration advice and this must be viewed against a background of a worsening economy from which the immigration advice market is not immune.

41. It is also in the Home Office's interest to ensure individuals receive good quality advice, as it ensure that the right applications are made on the right routes and reduces administrative burdens of individuals unnecessarily falling out of status.

42. **Recommendations:**

    a. **The Home Office must ensure it provides sufficient resources to support the most complex cases which are likely to emerge in the coming year. There must be adequate provision for advice and support**

even after the EU settlement scheme deadline has passed. It must increase its awareness campaigns.

b. **The Home Office should explain what contingencies it has to support those who currently have no valid ID who have attempted to obtain a document but have not been able to do so before the EUSS deadline.**

c. **The ICIBI should investigate what procedures are in place to assess whether British children are applying under the scheme and assess whether these are adequate.**

d. **The ICIBI should investigate the Home Office's procedures and internal policies for handling applications from those who lack capacity.**

e. **The Home Office should provide clarity as to how applications can be made from within prison and ensure it is properly facilitating such applications.**

f. **The Home Office must set out a plan to ensure that those who have been granted under the legacy route are aware they need to apply under the EU settlement scheme, including by changing legacy grant letters.**

g. **The Home Office must ensure that other teams in UKVI signpost the EU settlement scheme where it is obvious that an individual may benefit under the scheme.**

Settlement Resolution Centre

The role of the SRC

43. We have explained above how we believe the existence of the SRC is overall a positive. However, we also believe that the role of the SRC needs to be clarified. One member which carries out regular outreach sessions said:

    When we talk to citizens about their interactions with the SRC, some of the conversations raise significant concerns about the information that is provided by the SRC which borders on advice and can cross the line. There is an added issue when the information or advice provided is not correct. It is not necessarily the case that the SRC intends to give the wrong information however, given the nature of the EUSS as an immigration system, there is a risk that citizens could misinterpret what is being said to them by the SRC and rely on the wrong information. There is very little accountability at the SRC for erroneous advice provided as it is very difficult to prove what information is provided in a phone call.

44. Practitioners generally do not regard the SRC as a reliable source of information about policy and operational matters. This appeared to be particularly problematic in the earlier days of the EU settlement scheme. It is possible that matters have improved since then, but equally it may be that we have not heard of as many examples of bad practice because they are regarded as commonplace. Either way, it is clear that

significant damage to trust in the SRC was done at an early stage when members regularly reported receiving incorrect or contradictory statements through the SRC.

45. A member has provided this example:

Following changes made to Appendix EU in March 2020 the EUSS began to incorporate family members of "McCarthy" dual nationals. Although these family members were incorporated into the EUSS, it was unclear whether or not these family members were required to use a paper application form or could use the online application process to submit their applications. Three separate attempts to the SRC failed to clarify this information and each resulted in us having to explain to the call handler what a "McCarthy" family was with the call handler then seeking advice from a senior call handler who was still unable to answer the question. An email request to the SRC received any response relating to "Lounes" dual nationals which was irrelevant to the question submitted.

46. **Recommendations:**

    a. **The Home Office should review its training processes for SRC call handlers when new changes are made to policies and the Immigration Rules to ensure that, when policy changes go live, the operations procedures are also ready.**

    b. **The Home Office should clarify what the role of the SRC is in relation to supporting and advising applicants and provide public accountability material as to what is appropriate.**

Obtaining paper application forms

47. Since the routes to apply using paper application forms opened, our members have continually faced difficulties in obtaining them from the SRC. Our members report having effectively to "argue" with those on the telephone lines as to why a paper form is needed and having "difficult conversations". Some perceive the SRC as having an "inappropriate gatekeeping role" in these routes. Often, members will recognise they are having difficulties with one call handler, and so will end the call and immediately phone the SRC again to speak to a different call handler who is more sympathetic and issues the form without too much difficulty. Our members will ultimately keep pushing until they are sent a form, but we are concerned that many of those on paper routes would not do so, particularly given there is an increased likelihood of vulnerable individuals needing to use the paper route.

48. One member who makes a large number of applications reported that their experience differs depending on which application route the request is made under. For example, they found that paper form requests for qualifying British citizen family members were relatively straightforward whereas requests for paper application forms where the applicant has no valid identity document were met with considerable resistance. Further, many members report particular difficulties obtaining application forms for those applying as Zambrano carers. This is likely to be as a result of a Home

Office policy (which many immigration practitioners consider to be unlawful) that restricts eligibility to the Zambrano route to those who do not have, or could not obtain, leave to remain under the Immigration Rules. However, other members did not report such differentiation.

49. The Home Office operates a "triage" model in the issuing of the forms, but the impression of our members is that the effect of this model is that those in the SRC perceive their role to be to exclude applicants from being issued a form rather than to assess whether or not the applicant meets the conditions of a paper route.

50. This perception was heightened more recently when, during the period where the telephone lines had to close because of the pandemic, email responses to requests for paper application forms often included references to an applicant only being "eligible" for a form if they met certain conditions. By introducing an eligibility assessment at the SRC paper form request stage, there is a risk that the SRC are making administrative decisions to refuse to issue a form which has the impact of preventing a person submitting any EUSS application. In these cases, the appropriate course of action is for the SRC to issue a paper written decision that can be challenged by an applicant or an adviser.

51. These are issues we have raised with the Home Office before, and they have explained that they wanted to increase training for SRC handlers. We also appreciate that the Home Office does not want to issue paper forms incorrectly to applicants who stand no chance of being granted under the scheme. However, this must be balanced against applicants who do stand a chance of being granted under the scheme losing out from applying. We believe the current approach favours those who have access to legal representatives who can make the case for them and means those who do not lose out. We believe that, in cases of doubt, the approach should be to issue a form. As this is an issue we have raised for some time, it is clear that the current processes are not working and so more must now be done to resolve this issue.

52. Our understanding is the Home Office does not currently record data on attempts to obtain a paper form and so we are therefore concerned that there is little monitoring as to how this process operates. We are also concerned that there does not appear to be adequate accountability processes to ascertain whether or not forms are being inappropriately withheld.

53. **Recommendations:**

    a. **The Home Office must record and publish data on attempts made to obtain a paper application form and how many are given once offered, broken down by type of application route.**

    b. **The ICIBI should review the accountability processes in place to ensure that the SRC is not preventing eligible applicants from applying by refusing to issue a paper form. This should take account of the fact that vulnerable individuals may be less successful in persuading the SRC about their circumstances.**

c. **The Home Office should review its triage process to ensure that where there is doubt officers err on the side of issuing a paper form.**

Refusals

54. Since eligibility refusals commenced in February 2020, we have been repeatedly asking our members to notify us about cases where an individual has been refused under the EU settlement scheme. Despite there being a very significant number of refusals now, it is striking that our members have only reported coming across a small handful of such refusals. It is therefore very difficult for us to comment at this point on the quality of decision-making in such cases. We therefore believe it would be very beneficial for the ICIBI to review a sizeable sample of refusals to ascertain the quality of decision-making in such cases.

55. We are concerned that most refusals so far relate to applications submitted prior to 31 January 2020 and so therefore do not attract a right of appeal. As we have explained above, this raises particular problems where the application is delayed. There is no logical reason for denying an appeal right to applicants in such cases.

56. The Home Office has said that, where refusals have taken place, caseworkers will have made numerous efforts to contact applicants in an effort to seek additional information in order for them to process the application. It is only when these requests for additional information or not responded to that the Home Office decides to issue an eligibility refusal.

57. However, this picture is not entirely consistent with some of the refusals our members have come across which arose because the applicant is applying as either a durable partner or a dependent relative and they did not submit a "relevant document". As this is a mandatory document, these cases could have been refused swiftly once the Home Office has confirmed that the applicant did not hold a relevant document.

58. One member specialising in EUSS applications told us that in the cases they encountered where this specific refusal ground has arisen, the applicants confirmed that the Home Office made no attempt to contact them to request the relevant document but refused them after a significant delay, only informing them about the requirement to hold a relevant document in the refusal decision.

59. **Recommendations:**

a. **The ICIBI should review a sizeable sample of refusals to ascertain the quality of decision-making in such cases. In particular, this should review whether the refusal could have been made at a much earlier point if the individual had not provided a "relevant document".**

Invalid applications

60. The statistics show that there are a relatively high number (in absolute terms) of invalid applications (23,100 as of 30 June 2020). This suggests this is an issue which would benefit from further investigation. We are concerned that there may be cases which have been treated as invalid but which should properly have been refused and therefore attracted a right of appeal (where an application is "rejected" as invalid it does not attract a right of appeal). Without information, it is impossible to tell if this is the case.

61. The Home Office will have data on what has caused applications to be deemed invalid and therefore could produce more detailed statistics on the common causes. This information would assist applicants and practitioners to identify the common causes of invalid applications which, in turn would assist to determine whether or not an invalid decision is one that may require a right of appeal.

62. One outreach organization has reported that often individuals think that by scanning their passport or national identity card to the Home Office, they have made an application. These individuals do not realise that there is an additional online application form which must be submitted in order to complete the application process. It may be there are a large number of people in this position who will find themselves with invalidated applications down the line without an understanding of what this meant.

63. **Recommendations:**

    a. **The ICIBI should investigate why such large numbers of applications are treated as "invalid".**

    b. **The Home Office should publish more detailed reasons as to why applications are invalid.**

Biometric enrolment for non-EEA+ nationals

64. In order to make their application, non-EEA+ national family members who do not have a biometric residence card must attend a biometric enrolment appointment at a UKVCAS centre, managed by Sopra Steria. However, such appointments are not free unless the individual is able to obtain a free appointment at one of only six centres in the UK. Our members have encounter problems every day obtaining free appointments for their clients across the full spectrum of immigration law and it is something we raise regularly with both Sopra Steria and UKVI.

65. The availability of free appointments has been exacerbated by the pandemic. UKVI has told us that the availability of free appointments is at roughly the same proportion as it was before the pandemic, but because overall capacity in the UKVCAS network is lower, the absolute numbers of free appointments are also lower. This means that many individuals are having to struggle to pay for an appointment because they cannot

find a free appointment. This is particularly problematic for those applying under the EU settlement scheme which is supposed to be a free application.

66. **Recommendation: The ICIBI should investigate the proportion of available free appointments at UKVCAS centres and the difficulties a lack of free appointments places on non-EEA+ citizens applying under the EU settlement scheme.**

Submitting applications from abroad

67. Our members' experience has been that there is insufficient or unclear information available publicly about how the scheme operates from abroad. It is possible this is a consequence of the scheme being rolled out in the UK first before then opening up overseas.

68. At present, the EU Exit: ID Document Check app used to verify the ID of EEA+ nationals must be downloaded in the UK or another EEA member state or Switzerland. As far as we are aware, this information does not appear publicly anywhere. This could become more of an issue as we get closer to the application deadline and with the Coronavirus pandemic still ongoing. This is problematic for applicants based outside these countries, as the alternative is they have to post their passport or national ID card, which is not always possible based on local laws. From 1 January 2021, more EEA+ nationals will be lodging applications from abroad and so we would hope this issue could be resolved soon.

69. There is a further issue in relation to non-EEA nationals who are granted leave to enter under Appendix EU (leaving aside those who are granted under Appendix EU (Family Permit). Our understanding is such individuals are not given an entry clearance vignette and are not provided with any other document that they could show to airlines to demonstrate they have a right to enter the UK. Their biometric residence card they previously held may expire before they can travel. For visa nationals, this means they will face great difficulties traveling to the UK because carriers will not wish to carry them because of carriers' liability: they will have no proof of status they can rely on, as it will be a digital status only. While such individuals could rely on a non-expired biometric residence card, it is unclear why the Home Office is granting a form of immigration status but then asking individuals to rely on a document that does not necessarily reflect that status. Similarly, the individual could apply under the EEA Regulations for an EEA family permit, but there are a variety of reasons why that might not be possible, and in any event is an unnecessary application, causing particular difficulties during the pandemic. We understand this issue has been flagged with the Home Office but it has not yet been rectified.

70. **Recommendations:**

    a. **The Home Office should make clear the EU Exit: ID app must be downloaded in an EEA+ state.**

b. The Home Office should explain why it does not provide non-EEA nationals with replacement biometric residence cards and what the solution is for such individuals to be able to travel to the UK.

Summary of recommendations

Recommendations of matters the ICIBI should investigate

- We believe the ICIBI should investigate the Home Office's plans in relation to reviews and learning exercises as to the good practice that has already been established by the EU settlement scheme and how such good practice can be improved upon and implemented in other areas of the immigration system. Any review should include the views of external stakeholders so that there is agreement as to what is genuinely good practice and where there are areas for improvement.
- The ICIBI should investigate a sample of cases that have been delayed at different milestones (e.g. one month, three months, six months, 12+ months) to scrutinise the reasons why a delay has occurred. This sample should include cases which have been delayed as a result of a pending criminal investigation.
- The ICIBI should review the Home Office's policies in relation to the handling of cases with ongoing criminal investigations, including ascertaining at what point such cases are reviewed for an update and looking at whether such cases are put on hold unnecessarily.
- The ICIBI should investigate the Home Office's internal procedures for ensuring family units are processed together (where it is possible to do so) and its procedures for monitoring whether such groupings have been carried out correctly.
- The ICIBI should investigate what procedures are in place to assess whether British children are applying under the scheme and assess whether these are adequate.
- The ICIBI should investigate the Home Office's procedures and internal policies for handling applications from those who lack capacity.
- The ICIBI should review the accountability processes in place to ensure that the SRC is not preventing eligible applicants from applying by refusing to issue a paper form. This should take account of the fact that vulnerable individuals may be less successful in persuading the SRC about their circumstances.
- The ICIBI should review a sizeable sample of refusals to ascertain the quality of decision-making in such cases. In particular, this should review whether the refusal could have been made at a much earlier point if the individual had not provided a "relevant document".

- The ICIBI should investigate why such large numbers of applications are treated as "invalid".
- The ICIBI should investigate the proportion of available free appointments at UKVCAS centres and the difficulties a lack of free appointments places on non-EEA+ citizens applying under the EU settlement scheme.

Recommendations to the Home Office

- The Home Office should ensure it has proper processes in place that flag cases that have been delayed at different milestones and ensure these are reviewed by a senior caseworker to see whether the matter can be progressed more quickly.
- The Home Office should give clearance to its staff in the SRC to provide clearer and more open reasons as to why there is a delay in a particular case, where it is appropriate to do so.
- The Home Office should consider giving updates to applicants at various points throughout the application lifecycle including meaningful information as to which stage the application is currently at and why the application is delayed.
- The Home Office must review its policy to restrict appeal rights only to those who lodged applications on or after 11pm on 31 January 2020 in light of the significant delays in processing many applications.
- In the absence of extending appeal rights, the Home Office must ensure that the fact that an individual's application was delayed for so long such that it was refused after the EUSS deadline and without a right of appeal will by itself constitute reasonable grounds for a late fresh application.
- The Home Office must clarify how individuals who currently need to obtain a document under the Immigration (European Economic Area) Regulations 2016 will be able to apply after those Regulations are revoked.
- The Home Office must ensure it provides sufficient resources to support the most complex cases which are likely to emerge in the coming year. There must be adequate provision for advice and support even after the EU settlement scheme deadline has passed. It must increase its awareness campaigns.
- The Home Office should explain what contingencies it has to support those who currently have no valid ID who have attempted to obtain a document but have not been able to do so before the EUSS deadline.
- The Home Office should review its training processes for SRC call handlers when new changes are made to policies and the Immigration Rules to ensure that, when policy changes go live, the operations procedures are also ready.

- The Home Office should clarify what the role of the SRC is in relation to supporting and advising applicants and provide public accountability material as to what is appropriate.
- The Home Office must record and publish data on attempts made to obtain a paper application form and how many are given once offered, broken down by type of application route.
- The Home Office should review its triage process to ensure that where there is doubt officers err on the side of issuing a paper form.
- The Home Office should publish more detailed reasons as to why applications are invalid.
- The Home Office should make clear the EU Exit: ID app must be downloaded in an EEA+ state.
- The Home Office should explain why it does not provide non-EEA nationals with replacement biometric residence cards and what the solution is for such individuals to be able to travel to the UK.