

By email: Seema Malhotra MP, Parliamentary Under-Secretary of State for Migration and Citizenship and Parliamentary Under-Secretary of State for Equalities

5 December 2024

Dear Minister,

**eVisas and extending use of expiring Biometric Residence Permits and Cards**

Thank you again for meeting with the3million and ILPA on Tuesday, 26th November. We appreciate your generosity with your time, and listening to our concerns around the eVisa rollout.

We write further to your [Written Statement](#)<sup>1</sup> made yesterday, 4th December.

We welcome your acknowledgment that the digital status system you have inherited from the previous government may have serious implications on the vulnerable and elderly, and leaves many unable to demonstrate their rights. While we are pleased to see your announcement of a temporary period where you will request carriers to accept expired Biometric Residence Permits and Cards (BRP/Cs), we do have a number of questions around this that we felt would be helpful to put in writing ahead of our follow-up meeting next week.

Alongside the questions below, we would also hope to be able to discuss longer-term plans. We are not confident that a temporary three-month period to 31 March 2025 will be sufficient to address the underlying issues with the current implementation of eVisas. We note that you have stated that this date will be kept under review, and we hope to see a lengthier transitional period in which systems can be further tested and made robust.

Furthermore, as we mentioned in our meeting last week, we would very much welcome the opportunity to have a meeting in which we take a step back from the immediate issues arising from the current eVisa rollout, and discuss proof of UK immigration status at a more holistic level.

**Cohorts who cannot benefit from yesterday's announcement**

Yesterday's announcement is intended to allow those with BRP/Cs that expire on or after 31 December 2024 to travel with those expired documents, even in the absence of a functioning eVisa.

However, there are various cohorts that are excluded from this measure who are very vulnerable to facing problems:

- Those whose BRP/Cs expire on any date between 31 October 2024 and 30 December 2024 inclusive, since BRP/Cs were no longer being issued from 31 October 2024.
- Individuals, including those with refugee status, who were first granted immigration status on or after 31 October 2024, but have been unable to access their eVisa.

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<sup>1</sup> [questions-statements.parliament.uk/written-statements/detail/2024-12-04/hcws283](https://questions-statements.parliament.uk/written-statements/detail/2024-12-04/hcws283)

- Those whose leave is extended by section 3C of the Immigration Act 1971 and have not been issued with an eVisa or a BRP/C renewal.
- The existing cohort on whose behalf we have been advocating: people with existing digital-only status (e.g. EU Settlement Scheme and Hong Kong BN(O) visa holders) whose eVisa is not functioning correctly due to errors on Home Office databases, or who have not known (or been able) to link their travel document to their eVisa.

We would like to ask what provisions you have made for these cohorts.

### **Carriers' Liability**

As you will be aware, carriers face two forms of penalty when they allow someone to board a plane (or train/ferry) to the UK who is then, on arrival, not permitted to enter the UK:

1. A fine in the form of a charge under section 40 of the Immigration and Asylum Act 1999 - £2,000 per passenger, as set out in the [Document checks and charges for carriers](#)<sup>2</sup> guidance; and
2. Responsibility for the cost of returning the passenger.

The Home Office has stated that if its interactive Advanced Passenger Information (iAPI) systems are unavailable, the carrier will not be subject to the fines (penalty 1 above), **but** will still be liable for the cost of returning passengers (penalty 2 above). This was most recently confirmed to us [in a letter to the3million](#)<sup>3</sup> dated 8 August 2024.

As you mentioned in our meeting, carriers, being commercial organisations, are risk averse. Therefore, unless they have received confirmation from UK authorities that someone has permission to travel, they will very likely err on the side of caution and deny that person boarding. We have already seen significant evidence of this where many EU citizens, who had a legal right through the Withdrawal Agreement to travel with a national identity card, were nevertheless denied boarding because of this cautious approach.

We are now facing the situation where, less than four weeks before millions of physical BRP/Cs are set to expire, carriers will be informed that they may carry people whose cards have expired. Based on our previous experience, we are emphatic that this message will not filter down to every carrier, every check-in staff member and third party, and every boarding gate staff member.

However, even where the message does successfully reach the relevant decision maker, this measure will not work unless Carriers' Liability rules are urgently revised to match this change.

We ask therefore that the following changes be urgently made to Carriers' Liability before the end of December 2024:

- No Section 40 charges shall be levied against any carrier who allows a person (whether a visa national or non-visa national), who is in possession of a valid passport and a BRP/C that expired on or after 31 December 2024, to travel to the UK.

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<sup>2</sup> [gov.uk/government/publications/document-checks-and-charges-for-carriers](https://www.gov.uk/government/publications/document-checks-and-charges-for-carriers), available from the collection "Check passenger documents": [gov.uk/government/collections/check-passenger-documents](https://www.gov.uk/government/collections/check-passenger-documents)

<sup>3</sup> [the3million.org.uk/publication/2024080801](https://the3million.org.uk/publication/2024080801) response to question 21, on page 8

- Carriers shall not be held liable for the cost of returning any passenger who is denied entry at the UK border but who travelled with a valid passport and a BRP/C that expired on or after 31 December 2024. The current [Document checks and charges for carriers](#) guidance specifically refer to “valid” UK-issued biometric residence permits and cards, where valid is likely to be understood as not having yet expired.
- Carriers shall not incur any section 40 charges or be held liable for the cost of returning any passenger who is denied entry at the UK border but who travelled with a valid passport in circumstances where the iAPI system is unavailable, and the carrier has been unable to obtain a timely response from the Carrier Support Hub.

Furthermore, as we mentioned in the meeting last week, the current [Document checks and charges for carriers](#) guidance does not even require or mandate that carriers also accept evidence of UK status where this is provided by the passenger via the online ‘View and Prove’ service and check the passenger’s status information using the ‘Check someone’s immigration’ status service on gov.uk. Rather it leaves it in their discretion: carriers ‘may’ accept such evidence.

All of this leaves individuals disempowered and likely unable to convince risk averse carriers that they *must* accept available but expired physical documentation or engage with the View and Prove service.

### **Carrier Support Hub**

We welcome the creation of a 24/7 Carrier Support Hub that carriers can contact when they are unsure whether someone has the right to travel to the UK.

However, we do not have any assurance about the performance of this telephone line.

As we also mentioned in our meeting last week, the UKVI Resolution Centre currently regularly has wait times exceeding an hour or more, and we have had reports of people not even being able to enter the queue to the call centre - being told that it is full and to try again. Just yesterday we received a report from someone who wrote “*there were 131 other people waiting on the phone ahead of me.*” On responsiveness of the Carrier Support Hub, the [Document checks and charges for carriers](#) guidance only states:

*“The CSH will make every effort to respond in a timely way to all requests for assistance regardless of the nationality of the passenger (this includes calls concerning British citizens who have lost their documents). CSH staff will also consider that you or your representative may be calling from an airline departure gate and that the time available for a response may be limited.”*

Secondly, the [Document checks and charges for carriers](#) guidance does not mandate the use of the Carrier Support Hub to facilitate someone returning to the UK. Its use is discretionary, and the guidance stresses that the Hub “*has been designed to support carriers in their attempts to prevent inadequately documented passengers (IDPs) travelling to the UK, thereby reduced IDP arrivals and reducing carriers’ liability for CL penalties.*”

Would you be able to give us any information and assurances around the following:

- The response time targets, and current / projected staffing levels of the Carrier Support Hub, and levels, along with planned monitoring, of performance against these targets. Will the performance statistics be published?
- Will the Home Office guarantee to increase resourcing as soon as response time targets are not met?

We also ask for a further change to the Carriers' Liability rules, namely:

- Carriers must be **mandated** to contact the Carrier Support Hub where passengers assert that they have the right to travel to the UK but they are unable to do so due to failures related to the eVisa digitalisation rollout. This is to ensure that passengers' ability and/or right to come home to the UK are put at the heart of the rules guiding carriers' decision making, in light of the UK's changes around digitalisation and pushing out all border checks via the rollout of the Electronic Travel Authorisation (ETA) scheme. This is also in the interest of carriers to avoid dealing with many claims of denial of boarding.

### **24/7 Travel hotline for passengers struggling to board**

As you know, the Carrier Support Hub above is not available for passengers, only for carriers.

Passengers will have no agency to advocate for themselves when faced with denial of boarding, other than trying to plead with airline or gate staff to make use of the Carrier Support Hub, if they are aware of its existence, which almost all passengers are unlikely to be.

The only helpline passengers will have access to is the UKVI Resolution Centre, which is staffed in UK local time from 8am to 8pm Mondays to Fridays, and 9:30am to 4:30pm at the weekend. Outside these hours, people are only able to engage with a web-bot, but this is not fit for purpose when someone's status has a technical fault on it or someone is facing a denial of boarding.

As we have said earlier, there are frequently wait times in excess of one-hour on the helpline, and sometimes people cannot even join the queue for the helpline at all. Furthermore, the number is not a free 0800 number, despite the long wait times. We have received reports from people who used their entire available phone credit in trying to get through.

We discussed in our meeting last week that it is desirable to empower individuals in situations where they are denied boarding. Therefore we ask you to consider:

- Setting up a 24/7 humanly staffed helpline dedicated for use by passengers unable to travel to the UK, which is free to use even from abroad. This helpline must be staffed by people who are then able to contact carriers and intervene in the passenger's situation.
- Ensuring this helpline is sufficiently resourced so that people can receive help in the time-critical setting of not being able to board.

### **Compensation for denial of boarding (and Home Office exclusion of liability)**

We anticipate that many people will struggle to board a plane, train or ferry to return home to the UK. Indeed the Guardian articles of this week<sup>4 5</sup> both include the comment that *"hundreds of UK residents have struggled to access the system from abroad and so cannot return to their homes"*.

From the3million and ILPA's experience with people denied boarding for wishing to travel with a national identity card (because their right to do so is protected by the Withdrawal Agreement), we know that many people incur huge costs when denied boarding. Some have been trapped outside the UK for days or even

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<sup>4</sup> [theguardian.com/politics/2024/dec/02/revealed-ministers-to-postpone-full-shift-to-evisas-next-month](https://www.theguardian.com/politics/2024/dec/02/revealed-ministers-to-postpone-full-shift-to-evisas-next-month), 2 December 2024

<sup>5</sup> [theguardian.com/uk-news/2024/dec/03/uk-delays-full-shift-to-digital-immigration-system-amid-evisa-flaws](https://www.theguardian.com/uk-news/2024/dec/03/uk-delays-full-shift-to-digital-immigration-system-amid-evisa-flaws), 3 December 2024

weeks, thereby having to pay for accommodation and sustenance, new flights, plus often incurring serious opportunity costs for not being able to return to the UK (for example employment consequences, health appointments, family commitments and more).

The common experience faced by these people is that it is extremely difficult to get compensation from the carriers, even where they ought to be entitled to it. Carriers frequently refuse compensation, forcing the passenger to take their case further to the [Civil Aviation Authority](#)<sup>6</sup>. The argument will be about the definition of “adequate travel documentation”.

At the same time, we would argue that the Home Office is in fact responsible for the fact that people do not have easily provable “adequate travel documentation” where there have been problems with the eVisa system. However, you will know that the Home Office has explicitly [denied any liability](#)<sup>7</sup> for any loss or damage that arises from use of the UKVI account, including “*any direct, indirect or consequential loss, any inability to use the UKVI account, any disruption to access to the UKVI account, any information that is lost or corrupted while data is being transmitted, processed or downloaded from the UKVI account.*”

In the light of all the problems that have arisen around the use of UKVI accounts and eVisas (which is set out in [a research paper](#)<sup>8</sup> and in our [correspondence](#)<sup>9</sup> with the Home Office over the last 6 years), we feel that such exclusion of liability is simply not acceptable. Both the Windrush scandal and the Horizon Post Office scandal should be valuable lessons in this regard.

We respectfully request that you consider:

- Reviewing the Home Office’s exclusion of liability for the use of UKVI accounts, and accept full and proper responsibility for situations where people suffer loss as a result of not being able to prove their rights, where they have expired proof of physical immigration status, or no physical proof of immigration status at all.
- Setting up a very clear webpage, which both sets out people’s rights to travel with expired BRP/Cs, but also sets out clearly and plainly what people should do if they are denied boarding, and how they can receive compensation for all losses incurred, whether direct, indirect or consequential.

### **The rollout of the Electronic Travel Authorisation (ETA) Scheme**

Finally, we would like to set out our concern around the continued rollout of the ETA scheme.

For non-visa nationals, the introduction of ETA means that immigration status checks are being pushed outwards from the UK border to thousands of individual check-in desks and boarding gates all around the world, *at the very same time* that proof of that immigration status is being digitalised, and all carriers need to start using the iAPI system that they have been required to integrate into their systems. We are unsure if all carriers are fully up to speed with this integration.

Currently, ETA is only rolled out for 6 countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates)<sup>10</sup>.

<sup>6</sup> [caa.co.uk/passengers-and-public/resolving-travel-problems/delays-and-cancellations/denied-boarding/](https://caa.co.uk/passengers-and-public/resolving-travel-problems/delays-and-cancellations/denied-boarding/)

<sup>7</sup> [gov.uk/government/publications/ukvi-account-terms-and-conditions](https://gov.uk/government/publications/ukvi-account-terms-and-conditions)

<sup>8</sup> "Loss and Liability - Glitching immigration status as a feature of the British border after Brexit" - available at [the3million.org.uk/publication/2024093001](https://the3million.org.uk/publication/2024093001)

<sup>9</sup> [the3million.org.uk/publications](https://the3million.org.uk/publications)

<sup>10</sup> [gov.uk/guidance/check-when-you-can-get-an-electronic-travel-authorisation-eta](https://gov.uk/guidance/check-when-you-can-get-an-electronic-travel-authorisation-eta)

However, from 8 January 2025, another 48 countries will join the ETA rollout - thereby inextricably meaning that UK residents with these 48 nationalities will be prevented from boarding if they are unable to successfully demonstrate their right to enter or remain in the UK. For those now attempting to travel on expired documents (in light of yesterday's announcement), there are likely to be severe problems with certain carriers and officials.

And on 2 April 2025, 34 European countries will join the ETA rollout - again very likely causing issues for UK residents of these 34 countries who will be dependent on the correct functioning of their eVisa to be allowed to board.

We are deeply concerned about the subjection of citizens of a further 82 countries to immigration checks at check-in desks and boarding gates around the world, at a time when the Home Office has publicly acknowledged that the eVisa rollout is suffering problems and delays for vulnerable individuals. If individuals are unable to convince the relevant airline or boarding staff person that they do have extant permission to enter or remain in the UK, they may be erroneously thought to be in need of an ETA, due to confusion on the part of risk averse carriers, who would need to juggle expired physical documentation, eVisas, iAPI, and ETAs.

Therefore, as a final request, may we ask you to urgently consider pausing the ETA rollout for all countries beyond the six to which ETAs have already been rolled out?

We look forward to discussing these matters in greater depth next week and we thank you again for taking the time to meet with us.

Yours sincerely,

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