Evidence report on the impact of Home Office decision-making under the EU Settlement Scheme

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HERE FOR GOOD

1. The EUSS application and WA duties

The Withdrawal Agreement ('WA') makes substantive and procedural provisions around the structure of the EU Settlement Scheme ('EUSS').

Article 18(1) WA in particular provides that:

- The purpose of the application procedure is to verify whether the applicant is entitled to a right of residence. If they are, a document should be granted (18(1)(a)).
- The host state must make sure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided (18(1)(e)). Application forms must be short, simple, user friendly, and adapted to the context of the Agreement (18(1)(f)).
- The competent authorities of the host state must not require applicants to present supporting documents that go beyond what is strictly necessary and proportionate to provide evidence that the conditions relating to the right of residence under this Title have been fulfilled (18(1)(n)).
- The competent authorities of the host state must help applicants to prove their eligibility and avoid any errors or omissions in their applications, and must give applicants the opportunity to provide supplementary evidence and correct any deficiencies, errors or omissions (18(1)(o)).
- The applicant shall have access to judicial and administrative redress procedures against any decision refusing to grant residence status, and such redress procedures must ensure that the decision is not disproportionate (18(1)(r)).

Here for Good has a record of five years' worth of EUSS casework, during this time we have witnessed numerous instances where the approach of the Home Office under the EU Settlement Scheme appears contrary to the duties of Art. 18 WA just outlined.

2. Overview of the issues identified

Throughout this report, we use the phrase 'lack of transparency and clarity' when outlining the issues we have identified. What we aim to describe here is the practice of opaque decision-making and communication with EU Settlement Scheme (EUSS) applicants by the Home Office, and how this negatively impacts the Scheme's ability to operate in a 'smooth, transparent and simple' manner, as well as its ability to 'help applicants to prove their eligibility and avoid any errors or omissions in their applications' as required under the Withdrawal Agreement.

The issues can be grouped into three different stages of the application/granting process under the EUSS. These are:

- **Lack of clarity in Home Office EUSS caseworker communication following an EUSS application**
- **Lack of clarity in EUSS grant letters**
- **Lack of clarity in EUSS refusal letters**

The case studies in this report demonstrate that the experience of EUSS applicants is not one that reflects the Home Office's objectives of providing a smooth, simple or transparent process. Behind every instance, there is a client whose life is seriously impacted, and when taken as a whole, it is clear that the issues are systemic and interconnected.

If, for example, a client who has provided some type of evidence as part of their application is not informed of the reasons why the evidence is not accepted and how they can remedy the situation, it is impossible for them to action the request. This inevitably leads to a higher risk of refusal.

If the refusal letter that then follows omits the the reasons for refusal, and lacks details about the evidence required and the rationale for this, then the applicant inevitably is left without any clear idea of the reasons why and how to remedy this.

Viewed in the light of the increasing figures of refusals based on eligibility in the most recent quarterly statistics[1], the issue becomes even more concerning. The Home Office does not provide a breakdown to demonstrate the proportion of their eligibility refusals that are due to lack of evidence (residence or other) but in our experience, these types of refusals represent the majority of refused clients who approach us, and we suspect this is the same for the rest of the sector.

Since the EUSS deadline of June 2021, we have had a steady increase in referrals sent to us from individuals who have had their EUSS applications refused. In most situations, the deadline to challenge the decisions has passed and they are unable to satisfy the grounds to make a late application (e.g., because they didn't receive legal advice on their first refused application).

This is also recorded in latest Home Office statistics[2] which show that of the estimated six million people applying to the scheme, 881,040 (15%) were repeat applicants. Under the heading of Repeat applicants, these statistics consider all situations in which an applicant has made multiple application including 54% (479,440) of repeat applicants which have moved from pre-settled to settled status.

The remaining figure of repeat applications is not further broken down. For this reason, it is hard for us to be able to present exact statistics of repeat applications that were made after a refusal was issued following a request for further information that was ineffective for the issues analysed in this report. This issue has nevertheless become predominant in our casework.

A request for disclosure of data held by the Home Office may be able to shed further light on this and quantify the cohort of applicants who are refused as a result of the lack of transparency and clarity within the EUSS application process and in the communication from Home Office EUSS caseworkers.

[1] The December 2022 statistic states that 'of the refusals, 99% were refused on eligibility grounds and less than 1% were refused on suitability grounds'.

[2] https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-december-2022/eu-settlement-scheme-quarterly-statistics-december-2022

The issues presented in this report should be considered in conjunction with other issues that are not covered here. Firstly, the current waiting time to receive a decision in an administrative review is 12 months or more. This means that an applicant who, due to lack of transparency and clarity, receives a refusal letter will be waiting for over 12 months for a final decision to be made. If information were to be given to applicants in a more efficient and case-specific way, this could be avoided and the pressure on the administrative review process may be alleviated.

Secondly, we also need to consider that the approach to late applications will change as we move further away from the EUSS deadline. As indicated in Home Office guidance on the subject,

'the more time which has elapsed since the deadline applicable to the person under the scheme, the harder it will be for them to satisfy you that, at the date of application, there are reasonable grounds for their delay in making their application'.

As the June 2021 application deadline moves further away, Home Office EUSS caseworkers may hence take a less lenient approach to late applications. This will impact the number of repeat applications and create an increase in appeal and administrative reviews proceedings.

We want to stress at the outset that most of the issues and case studies provided reflect the situation of those applicants who have access to legal representation in their EUSS application process. As such, this cohort is able to access support by a qualified immigration advisor who can guide them through the application process, answer additional questions and access supplementary help (such as the dedicated EUSS email inbox set up for grant funded organisations assisting vulnerable applicants).

Whilst we welcome the existence of the Home Office's dedicated inbox and the help it has provided, **we are very concerned about the difficulties that unrepresented applicants face.** Applicants who are not represented by an advisor can only access information about their application through the EU Resolution Centre[3] or through publicly available generic information about the Scheme. We have included case studies of clients who were previously unrepresented to give you an idea of the barriers they had to face before obtaining legal representation.

[3] See information about the shortcomings of the EU Resolution Centre on the3 million's website- https://the3million.org.uk/publication/2021121301

3. Lack of clarity in communication with Home Office EUSS caseworker following an EUSS application

Here for Good regularly interacts with Home Office EUSS caseworkers on behalf of our clients who are applying to the EU Settlement Scheme. This primarily concerns requests for further information sent to us or to clients after an EUSS application has been submitted and before it is decided.

a. Information provided in English only

Any communication with a Home Office EUSS caseworker happens only in English and the EU Resolution Centre only provides information in English or Welsh. To our knowledge, the Resolution Centre does not use interpreters to help applicants.

This issue particularly affects unrepresented vulnerable applicants with no or low-level English.

Our client A came to us after receiving a call from the Resolution Centre that left them confused and worried. They don't speak English and were not able to understand or respond to what the caller was asking. The applicant was later refused in their EUSS application, and the refusal letter mentioned that attempts were made to contact them via text, email and phone between a period of 2 weeks but that the information requested had not been provided.

b. Method of contacts and attempts made

Published Home Office guidance on the subject states that the standard process to obtain further evidence requires the following by their caseworkers:

*"**You must make 3 attempts in total over a minimum of 3 weeks to contact the applicant.** The first 2 contacts may be made concurrently by 2 different methods (where the applicant has provided the relevant contact details) – from, ordinarily, telephone call, text, email, letter – and must include the applicant's preferred method of contact, where this has been specified as part of the application.*

*You must give the applicant a **reasonable opportunity in which to provide more information or evidence**, after which a third and final attempt must be made, giving the applicant a response time of a further 7 calendar days.*

[…] If the applicant makes clear that they are unable or unwilling to provide more information or evidence, you must decide the application on the basis of all the information and evidence before you.

A 'reasonable opportunity in which to provide more information or evidence' means, subject to the next paragraph, 14 calendar days, from the date of the attempted contact (or the date on which you discussed the matter with the applicant), in which to provide the information or evidence specified in your request (or which you discussed with the applicant). Where the attempted contact is by letter sent by first-class post, you may assume delivery on the second business day after the date of postage.

You may provide longer than 14 calendar days where, following consultation with your senior caseworker, you are satisfied that there is good reason to do so in the particular circumstances of the case."

This process is an attempt to satisfy the Home Office duties under **(18(1)(o))** (to help applicants to prove their eligibility and avoid any errors or omissions in their applications, and must give applicants the opportunity to furnish supplementary evidence and correct any deficiencies, errors or omissions) **but the issue is how this is implemented in practice.**

On several occasions, Here for Good has received emails from caseworkers saying that they had been unable to contact the client or adviser, **despite neither having been contacted in any of the ways mentioned above.**

On those occasions, we raised the complete lack of contact in our replies to these requests and requested that a log of attempts calls or emails to be sent to us, but we never received any of this information.

We requested this via phone to the Resolution Centre once and we were told that details of these contact attempts were not kept in the system.

In all the cases where we were contacted after "previous failed attempts" (contested by us and not substantiated by the Home Office EUSS caseworker) we managed to obtain the correct status for our client thanks to detailed representations that contested the attempts being made, **but we are very concerned about how this may negatively impact unrepresented applicants.**

On two separate occasions, we received an initial 14-day deadline to provide further information and whilst still within that time frame, we received an additional request for further information citing previous failed attempts to contact us and obtain information. In both matters, we reached out to the dedicated EUSS vulnerability team to complain about this, and the matters were resolved.

Here for Good has seen an increase in referrals and calls on our advice line from individuals who complain that attempts to contact them were never made (e.g. they never received an email, they didn't receive a missed call followed by a voicemail as the guidance requests) but that that their application has nevertheless been refused.

Whilst we understand that attempts to contact applicants may fail (such as the email going to the spam folder) **we are concerned about the apparent lack of transparent records being kept by the Home Office EUSS caseworker and the inability for an applicant or a representative to obtain this information and contest the effectiveness of the attempts being made.**

If the failed attempt then becomes the reason for refusal, the applicant must be able to access these records and the Home Office should need to prove that these attempts were indeed made.

Failure to do so should be considered as a breach of the duties enshrined in Article 18 WA (**must give applicants the opportunity to provide supplementary evidence and correct any deficiencies, errors or omissions**) and of an effective enjoyment of the applicant's right to challenge the decision.

c. Information provided in a standardised manner-eligibility

Requests for further evidence received over emails over the years have in the almost all cases followed a set of standardised templates both with regard to the eligibility and residence evidence.

Regarding eligibility, these templates don't address the specific situation of the applicant, but seem based on standardised scenarios such as: *EEA applicant applying in their own right*, *family member of an EEA national* or *joining family member of a relevant sponsor.*

This naturally does not represent the multiplicity of eligibility scenarios under the Scheme. **As a result, applicants receive standardised requests of information and evidence which they are not able to fulfil as they are not applicable to their situations.**

We want to stress that in our experience, these kinds of standardised requests come after we have sent extremely detailed cover letters and information to the Home Office, where we have described the eligibility of the applicant in detail. This makes these requests for evidence even more concerning as it seems to indicate that **no assessment of the situation of the applicant was made.**

This situation arises frequently in cases concerning **EEA children under the age of 21.**

This cohort of applicants can apply and obtain settled status in line with their parents (if they have settled status) **but this remains *an option only* and is not applicable in the event that the parents have pre-settled status.** In these latter situations, the EEA child will be applying in their own right and will not need to show any family relations.

Nevertheless, in these situations the requests all seem to follow a standardised template that requires applicants to submit a copy of their birth certificates and they are treated **as family member of a EEA national.** This is the case even in those situations where the child is an EEA national who is applying in their own right and/or is not applying relying on parents' status and this is indicated in both the application form and the representation uploaded.

This standardised request normally states:

'We are in the process of considering your application. To complete our consideration we require the following additional information or evidence to help us to make sure we reach the correct decision:

***Evidence of your relationship to the EEA citizen** or their spouse or civil partner (and their relationship to the EEA citizen) as follows:*

- *Full Birth Certificate showing parent's names*

*This is so we can confirm that you meet the definition of **a family member of a relevant EEA citizen as claimed.'***

When we contest the request we often receive a another standardised request (following previously uploaded detailed representations) to which we reply yet again by uploading our original representation. In these instances, we have received a positive answer shortly afterwards.

Whilst the outcome may eventually be positive for the clients in these examples, the situation remains concerning and in our opinion in breach of the duty imposed by the **Art. 18(1)(o) WA** to

'give applicants the opportunity to provide supplementary evidence and correct any deficiencies, errors or omissions' and 'help applicants to prove their eligibility and avoid any errors or omissions in their applications'.

We submit that only if an applicant is **properly** informed and **effectively** helped in proving their eligibility under the Scheme, and **effectively** informed of ways to remedy their omissions and errors, it can be said that the Government duties under the WA have been discharged.

These examples highlight flaws in the system which disproportionally impact unrepresented applicants. An unrepresented child under the age of 21 who applies in their own right and receives an email from a Home Office EUSS caseworker like the one just outlined, will not have the necessary detailed knowledge of Appendix EU to be able to contest the request. This may lead to the applicant not responding to the request or not responding adequately.

If the Home Office EUSS caseworker is not satisfied with the evidence provided, this can lead to a refusal. This refusal may well be incorrect if the applicant had been considered a family member who has not provided evidence of their family relationship, instead of an EEA child who is applying in their own right.

d. Information provided in a standardised manner and without an apparent assessment of information and evidence already submitted - residence evidence

Closely linked to the issue just outlined is **the lack of reference or acknowledgement of evidence previously submitted in communication with Home Office EUSS caseworkers.** In our experience it is extremely rare that caseworkers address and acknowledge evidence previously submitted and their concerns about that piece of evidence.

The majority of requests for further evidence follow their standard templates and make **no reference to the specific document or to the way in which the applicant can remedy any faults or issues with this.**

For applicants for pre-settled status, this normally states:

'If you were in the UK before 11pm on the 31st December 2020, please provide the following:

- *One piece of evidence dated within the six months before your application, and*
- *One piece of evidence dated between June 2020 and 31st December 2020.*

This is because our automated checks did not confirm your residence in the UK and Islands.

Some examples of documents you can use to prove your UK and Islands residence can be found here: https://www.gov.uk/guidance/eu-settlement-scheme-evidenceof-uk-residence'

Or for settled status applicants:

'We are in the process of considering your application. To complete our consideration we require the following additional information or evidence to help us to make sure we reach the correct decision:

Evidence of residence in the UK and Islands to cover the following period:

- *Evidence that you have completed the continuous qualifying period you are relying on*
- *If you are relying on a continuous qualifying period of five years, evidence that, you have not been absent from the UK and Islands for a period of more than five consecutive years since it was completed*
- *If you are relying on a continuous qualifying period of less than five years, evidence that you have not broken that period by an absence of more than six months in any 12-month period or by an absence of up to 12 months which was not for an important reason, or by an absence of more than 12 months. Alternatively, if you have had such an absence, evidence that you have been in the UK within the last six months*

This is because our automated checks did not confirm your residence in the UK and Islands.'

This template email does not address the evidence already provided to highlight how this may not be sufficient.

In our experience, these requests are issued despite Here for Good lawyers uploading full evidence and detailed representations. This makes these requests for evidence even more concerning as it seems to indicate that there has been **no assessment of the situation of the applicant.**

We normally remedy this by **re-uploading** evidence already provided and providing strong representations to contest the request and by asking the caseworker to contact us with specific assessment of the evidence if needed.

Every time we take these steps, a positive decision follows leaving us wondering what type of evidence they considered to be missing in the first place.

This becomes more problematic when these emails reach **unrepresented applicants** who will not have the knowledge and confidence to challenge the request made in the way above in the event they have already provided residence evidence and will not understand how to remedy any error or omissions as no assessment of the evidence provided is given.

As above, whilst the outcome may be positive for the represented clients in these examples, the situation remains concerning and in our opinion in breach of the duty imposed **Art. 18(1)(o) WA** to

'give applicants the opportunity to provide supplementary evidence and correct any deficiencies, errors or omissions' and 'help applicants to prove their eligibility and avoid any errors or omissions in their applications'.

We submit that only if an applicant is **properly** informed and **effectively** helped in proving their eligibility under the Scheme and **effectively** informed of ways to remedy their omissions and errors it can be said that the Government duties under the WA have been met.

The following four case studies illustrate these issues in more detail.

Case study 1

S is an EEA national. They have been identified as vulnerable and eligible for free advice by Here for Good based on their financial situation, they don't have language barriers or IT issues.

S made an application under the Scheme by themselves. After 6 months, they were contacted by a EUSS caseworker to provide ***'one piece of evidence dated within the six months before your application, and one piece of evidence dated between June 2020 and 31st December 2020'.*** S received two identical emails within 2 weeks to each other. Struggling to understand what documents to submit, S called the Resolution Centre and was advised to send bank statements, which they did in the form of screenshots of their online account.

They were contacted again via email after another 4 months. The email said:

'***We are making this request as the evidence you have provided is not sufficient because we cannot accept screenshots on bank statements'.***

A deadline of 7 days was given.

S called the Resolution Centre again and asked if they could provide their tenancy agreement. The Resolution centre confirmed they could rely on that. S uploaded their tenancy agreement (which started in 2020 shortly before the deadline). When S came to Here for Good they told their Here for Good lawyer "I thought if they had a problem they would ask for more"

S was refused for lack of evidence for the relevant period before the end of December 2020 and the refusal letter states that the ***'evidence provided is not sufficient because tenancy agreements are not acceptable evidence without supporting evidence and the mobile bank statements you provided do not show your name or UK address'.***

S was not told before that they could have remedied this by uploading complete bank statements that showed their name and address, or that their tenancy agreement alone would not have been enough. They only found this out once they got in touch with Here for Good.

S quickly provided the Here for Good lawyer with complete statements and other supporting evidence and an administrative review has been submitted. The application remains pending and considering the current timeframe could be pending for 12 months or more. During this time S can only reply on their Certificate of Application.

Case study 2

M is a 2-year-old child at the point of referral to Here for Good. Their parents have been granted status, but the child has been refused for lack of residence evidence before the end of December 2020.

M's father showed Here for Good's lawyer the refusal letter which states that the Home Office has tried to contact the family 8 times. Despite this, they never received any calls or emails. Following these failed attempts and the lack of evidence the child has been refused.

With the help of a Here for Good's lawyer, M submits a further application. As part of this, detailed legal representations were uploaded that confirm how M is an EEA national child who has been residing in the country for less than 5 years. This was also clearly indicated in the application form, where Here for Good's lawyer answered 'no' to the question 'do you want to get your parent or guardian's settled status?.

The evidence submitted included GP records, flight tickets and a letter from the letting agency confirming the length of residence. Here for Good's lawyer also highlighted how a 2-year-old child would have limited access to many types of evidence and also asked the Home Office to consider the impact of Covid-19 on social activities.

2 months after submission, M's Here for Good's lawyer received an email from an EUSS caseworker requesting

'Evidence of your relationship to the EEA citizen or their spouse or civil partner (and their relationship to the EEA citizen) as follows: Full Birth Certificate showing parent's names. This is so we can confirm that you meet the definition of a family member of a relevant EEA citizen as claimed.'

After 3 days the Here for Good's lawyer replied pointing out that the client was an EEA national as defined in Annex 1 to Appendix EU who started residing in the UK before the end of December 2020. As such they will be able to apply under the Scheme in their own rights as an EEA national without the need to apply as the family member. Nevertheless, the Here for Good's lawyer submitted a copy of the client's birth certificate as requested to avoid further delays in reaching a decision in the application.

One day after submitting this further evidence, M's Here for Good lawyer received a further email. This stated:

'We have tried to contact you on numerous times to resolve your application but have had no reply to our various contacts. You must reply by x date, or your application will be decided based on the evidence we have available.

We are in the process of considering your application. To complete our consideration, we require the following additional information or evidence to help us to make sure we reach the correct decision:

Evidence of your relationship to the EEA citizen or their spouse or civil partner (and their relationship to the EEA citizen) as follows:

Proof of address (proof that you live at the same address as your sponsor)

This is so we can confirm that you meet the definition of a family member of a relevant EEA citizen as claimed.'

While working on a reply to highlight the inconsistency in the Home Office caseworker's request, a decision was taken and status was granted without any further information or documents bring provided.

The parents of this client did not speak English and had very limited IT skills. They would not have been able to secure the status of their child without Here for Good's support. The EU Resolution Centre would not have been able to help as they do not use interpreters.

This is in our opinion a clear breach of WA duties under Art. 18.

Case study 3

H, now 2 years old, was born in the UK shortly before the end of the transition period. Their mother (S) took H with her when fleeing domestic abuse. She contacted Here for Good to submit an application for her child who already held pre-settled status b, as a family member who retains their rights of residence following a breakdown of a relationship because of abuse.

Here for Good submitted an application and uploaded evidence and a cover letter that clearly indicated the nature of the application and the abuse suffered. This was a repeat application, with the Home Office already accepting the client as being resident in the UK and awarding them pre-settled status.

20 days after submission H's Here for Good lawyer received a request for further information from a Home Office EUSS caseworker providing a 14 day deadline to provide evidence of their residence in the UK before December 2020, as well as evidence that they have not broken their continuity of residence. Two days after this first request, the Here for Good lawyer received a further email that stated:

'We have tried to contact you on numerous times to resolve your application but have had no reply to our various contacts.'

H's Here for Good lawyer replied to this last email highlighting how the first request for information cannot be considered as a failed attempt as they were still within the deadline to provide the evidence.

Within the curtailed deadline, H's Here for Good lawyer submitted further representations highlighting how some of the evidence requested were already part of their first application. We also provided further evidence and informed the Home Office that the we had submitted a request for GP records and were waiting for a response.

12 days after this, We received another email from a Home Office EUSS caseworker with a 14 days deadline to provide evidence of H's continuity of residence. No assessment of our previous evidence or acknowledgment of the GP request was made. The email followed a template and requested for:

*'**Evidence that you have not broken your continuous qualifying period by an absence of more than 6 months in any 12-month period or by an absence of up to 12 months which was not for an important reason, or by an absence of more than 12 months'.***

2 days after receiving this email, the Home Office issued a refusal letter. It read:

'As you are under the age of 21 you have been considered a child of a relevant EEA. However, you have not provided sufficient evidence to confirm this'

The refusal letter referred to a lack of evidence demonstrating the family relationship to the EEA national. This is despite the fact that we had provided the client's full birth certificate and provided the EEA national name and application number. The same information had been previously provided as part of her first application and would have been present on her Home Office file.

This is also despite the Home Office not having requested any further evidence about the family relationship in previous correspondence.

The refusal letter makes no reference to the application being for a family member who has retained their rights of residence as clearly stated in the application form and the cover letter provided.

The refusal refers to the issue of residence evidence and stated;

'However, you do not meet the requirements for pre-settled status on the basis of a continuous qualifying period for the same reasons you do not meet the requirements for settled status on this basis because you have not provided sufficient requirements for settled status on this basis because you have not provided sufficient evidence to confirm that you have ever resided in the UK and Islands.'

This is despite the client having been granted pre-settled status before and numerous pieces of evidence having uploaded. Nowhere in the decision letter is this evidence acknowledged or properly assessed.

Finally, the refusal letter mentions 6 failed attempts to contact Here for Good as the client's representative.

On the same day, we contacted the EUSS vulnerability team and highlighted the inconsistencies above.

9 days later, H was granted pre-settled status on the basis of their retained rights without the need to provide any other additional information.

Case study 4

K is an EEA national under the age of 21. This is clearly indicated in the application form and the legal representation submitted by their Here for Good lawyer. K's EEA parent does not live in the UK and has stopped all communication with them.

K has lived in the UK their whole life and has attended schools here. As part of their EUSS application, we provided letters from schools confirming their enrolment since preschool.

1 month after submission, we received an email from a Home Office EUSS caseworker giving the client 14 days to provide further evidence

'of your relationship to the EEA citizen or their spouse or civil partner (and their relationship to the EEA citizen) as follows: Living with parents. This is so we can confirm that you meet the definition of a family member of a relevant EEA citizen as claimed' the email also requested 'One piece of evidence confirming your residence dated between June 2020 and 31 December 2020', and 'Evidence that you have not broken your continuous qualifying period by an absence of more than 6 months in any 12-month period or by an absence of up to 12 months which was not for an important reason, or by an absence of more than 12 months'

The email does not mention of any of the evidence already submitted.

7 days after this request, we submitted further representation to the Home Office. The legal representations stressed how K is an EEA national, as defined in Annex 1 to Appendix EU, who started residing in the UK before the end of December 2020. They are therefore able to apply under the Scheme in their own right as an EEA national without the need to apply as a family member, as indicated in the form and legal representations previously submitted. The representations also stressed that residence evidence was already available to the decision maker and that if the decision maker wanted to contest the evidence already provided, they would need to provide us with a detailed response to the evidence already submitted.

Considering the lack of clarity of this request, we also raised this with the EUSS vulnerability team.

A mere ten minutes after our submission, a further email was received that stated: '***We have tried to contact you on numerous times to resolve your application but have had no reply to our various contacts'.*** A curtailed deadline of 7 days was given.

'The request yet again asked for evidence to support the claim that K is a family member (this time asking us to provide evidence of birth certificate) and requested:

'Additional evidence of residence in the UK and Islands to cover the following period: October 2018 to January 2023 OR any other qualifying period you wish to rely on. This is because our automated checks did not confirm the continuous qualifying period of residence in the UK and Islands that you are relying on.'

This request for evidence once again did not address previously provided evidence and failed to explain why previously submitted evidence could not be accepted.

We contacted the EUSS Vulnerability Team again as soon as we received this email.

3 days later K was granted status, without the need to upload any further evidence.

4. Lack of clarity in letters granting status under the EUSS

Here for Good frequently sees the same grant letter template used for different types of EUSS applicants.

We understand that for practical reasons the Home Office may want to rely on templates to convey information around the grant of status under the Scheme to applicants, but **we believe these templates are not varied enough to address the specifics of the different eligibility routes under the Scheme.**

On several occasions we have had individuals reach us via the referral pathway or via our advice line who have had **no idea what the basis of their status is** (e.g. as a family member of a EEA national)

This is in our opinion a clear breach of WA duties under Art. 18 and the EUSS ability to operate in a *'smooth, transparent and simple'*

This is problematic as legal certainty should be upheld by the authorities. It also presents practical issues as clients may fail to meet the eligibility requirements for their specific leave (different routes have different requirements that needs to be satisfied for the relevant period). This can also affect their right to sponsoring family members (this is not available to all status holders under the Scheme) and their ability to apply for settled status.

a. Standardised grant letter

Here for Good encounters two type of grant letters: that for pre-settled status and that for settled status. We have attached a number of redacted grant letters to this report.

Firstly, we compare the text in one letter granting settled status to an **EEA national** to another letter granting settled status to a **non-EEA national family member**.

The first sentences of both letters read as follows:

I am pleased to inform you that your application under the EU Settlement Scheme has been successful and that you have been granted Indefinite Leave in the United Kingdom under paragraph EU2 of Appendix EU to the Immigration Rules. This is also referred to as settled status.'

In the grant letter sent to the non-EEA national family member, there is no mention of settled status being granted on this specific basis.

The only differences between the two grant letters is the heading 'residence card' which appears in the letter to the non-EEA national family member, and the heading 'family member' which appears in the letter to the EEA national.

Different templates hence exist, and **further changes could be made to these templates to clarify the new status and confirm that the status holder has been granted status as the family member of an EEA national.**

In the second example, we compare the text in in one letter granting pre-settled status to an **EEA national** to the text in another letter granting pre-settled status to a **non-EEA national family member who has a derivative right to reside.**

The lack of specific information about the route that the application falls under is even more concerning here as there are stark differences between the eligibility requirements of an EEA national applicant and a family member with a derivative right to reside.

The latter needs to be able to satisfy very specific requirements both throughout the qualifying period and after they are granted pre-settled in order to be able to qualify for settled status.

The first sentences of both letters reads:

'I am pleased to inform you that your application under the EU Settlement Scheme has been successful and that you have been granted Limited Leave in the United Kingdom under paragraph EU3 of Appendix EU to the Immigration Rules. This is also referred to as pre-settled status.'

There is no mention in the second example letter that status is being granted on the basis of being a family member of an EEA national.

The difference between the two letters is minimal and they do not provide an explanation of the route under which the status was granted or of the requirements that must be satisfied throughout. Applicants **are hence left unsure of the basis of their status, as they are not provided with an accurate description of the conditions and details of their leave.**

In our experience the only type of grant letter that mentions the route applied under is the one issued to joining family members. It states:

'I am pleased to inform you that your application under the EU Settlement Scheme has been successful and that you have been granted Limited Leave in the United Kingdom under paragraph EU3A of Appendix EU to the Immigration Rules as a joining family member of a relevant sponsor. This is also referred to as pre-settled status.'

Here for Good advises numerous clients who have reached out to us via our advice line or email advice service who have no idea of the basis of their status (e.g., as a family member of an EEA national). **This is particularly problematic for family members of EEA nationals who need to ensure they satisfy further requirements in order to be eligible to apply for settled status in the future.**

This is also problematic for applicants who may be eligible **under multiple routes**. The text of the grant letters above do not clarify this to the status holder.

It is clear that some variations in wording exist, so the option to include accurate information relevant to the person's situation in the decision letter is in theory available to the Home Office EUSS decision maker.

The Home Office needs to re-draft their grant letters to more clearly convey to the applicant (1) the type of status that was granted to them; (2) the route under which this status was granted and (3) a detailed overview of their route to settled status and the requirements for this.

This lack of information in the grant letters has at times left us unable to ascertain with any certainty whether our application and representations were accepted. For example, we have encountered this issue most frequently with clients who have made an application based on **retained rights of residence.** These family members are according to Appendix EU able to retain their rights of residence following the death of the EEA national or the breakdown of the relationship.

According to Rule EU4 of Appendix EU, applicants who are awarded status under the Scheme as family member are able to continue relying on this, provided that they satisfy the requirements of the definition of a family member who retained their rights of residence, and are hence not required to submit a fresh application.

Some applicants may nevertheless decide to submit a fresh application. In our experience **this happens very frequently with applicants who have fled domestic violence** and who want to inform the Home Office of the breakdown of this relationship immediately whilst they have access to legal advice instead of having to wait for their settled status application.

In these situations, we have supported clients to submit a fresh application as a person who has retained their rights of residence. In most cases in our experience, this is a repeat pre-settled application where representations are made in relation to the abuse suffered and how the client satisfies the requirements.

All of our clients who received a positive decision in this repeat application, received the same standard pre-settled status letter, which states:

'I am pleased to inform you that your application under the EU Settlement Scheme has been successful and that you have been granted Limited Leave in the United Kingdom under paragraph EU3 of Appendix EU to the Immigration Rules. This is also referred to as pre-settled status.'

There is no mention of the decision maker accepting that the fresh evidence provided, for example demonstrating the abuse, was accepted.

b. Online status

The confusion caused by the lack of clarity in grant letters **extends to the online status.** To our knowledge, the View and Prove online portal only shows settled and pre settled status. The concerns raised above apply to this section as well as the applicant will not be able to access detailed information about their status and route to settlement via the online platform.

5. Lack of clarity in letters refusing status

The final issue, which is closely linked to the situations outlined in previous sections, concerns EUSS refusal letters.

If the Home Office sends out a request for further evidence without specifying what is needed, and the applicant as a result fails to satisfy them, the application risks being refused.

The issue is therefore closely connected to the duties mentioned elsewhere in this report imposed by **Art. 18(1)(o)** WA to *'give applicants the opportunity to provide supplementary evidence and to correct any deficiencies, errors or omissions'* and to *'help applicants to prove their eligibility and avoid any errors or omissions in their applications'* taken together with **Art. 18 (1)(e)** duty to ensure procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided **to provide the EUSS applicant with an effective right to challenge a decision as established by Art. 18 (1)(r).**

Worth considering here is the published guidance on delays[4] and the Home Office's current operating time of over 12 months for Admin Reviews. If an applicant finds themselves in a situation where they have received a standardised request for more information relating to evidence already provided, and struggle to understand the request and the type of evidence they are being asked to provide, they may fail to provide the necessary evidence and end up having their application refused as a result. They will need to wait for over 12 months to have this situation rectified.

Putting transparent and clear processes in place earlier on in the application process could help reduce the burden of the current backlog of administrative reviews pending and reduce the allocation of resources currently required by this team.

a. Method of contacts and attempts made

Some of the issues we've covered above are also relevant to refusal letters. These issues are interconnected and have a bearing on each other.

The majority of refusals letters that Here for Good deals with mention that the Home Office EUSS caseworker has been unable to make contact with the applicant or the representative. In the majority of cases these attempts are **strongly contested by the applicant who claims this has not happened.**

There seems to be no record of these attempts being made, and in the context of refusals, **the inability to access these records and query the attempts of contact may impact the ability for an applicant to effectively challenge a decision.**

b. Assessment of evidence in refusal letter

As for the lack of contact, this issue is also closely connected to the lack of clarity around what evidence and documentation is required by the applicant during the EUSS application process.

If an applicant is unclear about the evidence requested, and the Home Office hasn't provided a clear assessment of the evidence that has already been submitted, they will be left confused as to the type of evidence to provide. This may in turn lead to an applicant providing incorrect evidence and a failure on the Home Office part to allow the applicant to correct any mistakes in their application.

The standardised refusal letters often make broad statements about the lack of evidence, **but fail to include an explanation of why the evidence already provided** was not sufficient. One such letter reads:

> *'You have not provided sufficient evidence to confirm that you have ever resided in the UK and Islands. Evidence submitted does not cover the relevant qualifying period. Therefore, you do not meet the requirements for settled status on the basis of a continuous qualifying period of five years. [..].*

[4] https://www.gov.uk/guidance/eu-settlement-scheme-apply-for-an-administrative-review#get-a-decision, latest updated 27 September 2022

However, you do not meet the requirements for pre-settled status on the basis of a continuous qualifying period for the same reasons you do not meet the requirements for settled status on this basis because you have not provided sufficient evidence to confirm that you have ever resided in the UK and Islands.'

This wording does not provide the applicant with the necessary tools to be able to understand the reasons for their application having been refused and how to remedy this.

As mentioned above, the issue of lack of transparency in refusal letters is closely linked to the shortcomings in communications with the applicant and the duty to help the applicant correct their error and omissions.

We would welcome refusal letters that clearly acknowledge the exact reasons for their decision/refusal on the basis of the evidence provided. This would be significantly preferable to refusal letters that make general remarks and fail to give a clear indication of the reasons why a certain piece of evidence was not accepted. This way the applicant in a position to effectively enjoy their right to redress and challenge the decision.

c. Unclear whether an assessment of the applicant's eligibility under other routes within the EUSS is done

We understand that in practice it may be hard for a Home Office caseworker to assess an applicant under multiple routes, but we are also conscious of the duty in the WA under **Article 18 (1) (o)** to **help the applicants to prove their eligibility.**

This should be taken as eligibility under the Scheme as a whole rather that as the more restrictive view of eligibility under the type of application selected. This is particularly true for applicants who may have completed a period of residence in a combination of situations.

We note that refusal letters mention *'we have also considered whether you meet **any of the other eligibility requirements under Appendix EU.** However from the information and evidence provided or otherwise available, you do not meet any of the other eligibility requirements'*

It is unclear whether this happens in practice.

This may for example arise in relation to applications of durable partners who lack a residence card issued before the end of the transition period. These applications are normally refused in line with the definition given in Appendix EU, but no other possible route, such as derivative rights of residence in the event that the couple has a child, seems to be suggested or explored.

On one occasion, we submitted an application under the EUSS for an applicant who had been in a relationship with a EEA national and did not have a residence card, but who also had entered into what appeared to be a civil partnership outside the UK. The refusal letter only focused on the lack of residence card and did not acknowledge our further representations about the additional route mentioned above.

The examples provided in Section 3 regarding EEA children being wrongly assessed as family members, as well as some of the refusals covered in below case studies, also seem to indicate that this further assessment of any other eligibility requirements may not be done in practice. If this was the case, the refusals would not have happened as the Home Office decision maker would have been satisfied that the applicant was in fact an EEA child.

Below we include four case studies that illustrate these issues.

Case study 5

A is a EEA national who entered the UK in February 2022. She submitted an application to the EU Settlement Scheme in April 2022 for pre-settled status as a joining family member of an EU national (her daughter B).

A received correspondence from the Home Office requesting evidence of her dependency on her daughter. Following this request, A sought legal representation from Here for Good as she did not have the funds to pay for a private legal representative.

She then contacted the EU Resolution Centre to request an extension of time to provide the requested documentation in light of having obtained legal representation. Verbal consent was given to allow an extension of time for Here for Good to request and prepare the relevant documentation to demonstrate A's dependency on her daughter in the UK.

Despite this, A received a refusal of her application to the EU Settlement Scheme before she was able to provide her additional evidence.

A request for reconsideration of A's case was submitted by a Here for Good lawyer to the EUSS Vulnerability Team. A substantive response was received maintaining the refusal quoting that A had the right of appeal and was able to submit a fresh "late" application. The email received stated that:

*'**Our decision of the 24 August 2022 was taken based upon the information that had been presented to us by A at that juncture.'***

Consequently, A submitted a fresh application with the previously unconsidered dependency evidence being provided in October 2022.

A received a request by email in November 2022 for further information as below

'Evidence of your relationship to the relevant EEA Sponsor as follows:

- ***A full birth certificate OR,***
- ***An adoption certification OR,***
- ***Sponsor detailed on ID card/Passport OR,***
- ***A previously issued Home Office document OR,***
- ***A family book or any other official document that proves a relationship between you and the relevant EEA Sponsor***

'We also require:

Evidence of your relationship to the relevant EEA Sponsor as follows:

- ***Evidence that with regard to your financial and social conditions, or your health, you cannot (or, for the relevant period, could not) meet your essential living needs (in whole or in part) without the financial or other material support of your relevant EEA Sponsor family member***
- ***Evidence that support is (or was) being provided to you by the relevant EEA Sponsor***

Evidence of dependency might take the form of for example:

- ***Evidence of your financial dependency, such as bank statements or money transfers from the relevant EEA citizen (or qualifying British citizen or relevant sponsor) or the spouse or civil partner***

- ***Evidence that you need and receive (or for the relevant period did so) the personal care of the relevant EEA Sponsor (or qualifying British citizen or relevant sponsor) on serious health grounds, such as a letter from a hospital consultant***

The evidence submitted is insufficient as we require the original documents and don't accept scanned nor copies of them. Please provide evidence of your relationship to your sponsor and evidence of financial or medical dependency from the last six months.'

This request copies and pastes the relevant part of EUSS Guidance but does not address in any way the evidence already provided and the reason why this was not accepted.

At this time A had already provided all evidence of dependency on her daughter.

A detailed statement confirming the level of dependency between A and her daughter, along with updated bank statements with highlighted transactions where financial support had been provided was uploaded.

On the same day that the Here for Good lawyer provided this, another similar request was received that requested:

*'**Evidence of your relationship to the EEA citizen as follows:***

- ***Original Birth certificate***
-

Evidence of dependency to the EEA citizen as follows:

On or before, the date of your application:

- ***Evidence that with regard to your financial and social conditions, or your health, you cannot (or, for the relevant period, could not) meet your essential living needs (in whole or in part) without the financial or other material support of your EEA citizen family member***
- ***Evidence that support is (or was) being provided to you by the EEA citizen***
- ***Evidence of your financial dependency, such as bank statements or money transfers from the relevant EEA citizen (or qualifying British citizen or relevant sponsor) or the spouse or civil partner***
- ***Evidence that you need and receive (or for the relevant period did so) the personal care of the relevant EEA citizen (or qualifying British citizen or relevant sponsor) on serious health grounds, such as a letter from a hospital consultant'***

At this point A's daughters original birth certificate was uploaded. No fresh evidence of dependency was available and so was not uploaded.

A refusal on the decision was received in February 2023 for the following reasons:

'As you have applied on or after 1 July 2021, evidence of your dependency on your relevant sponsor must be provided. For these purposes, 'dependent' means that, as demonstrated by relevant financial, medical, or other documentary evidence:

- ***having regard to your financial and social conditions, or health, you cannot (or for the relevant period could not) meet your essential living needs (in whole or In part) without the financial or other material support of the relevant sponsor or of their spouse or civil partner; and***
- ***the relevant sponsor or their spouse or civil partner is providing you with such support.***
- ***Evidence provided must show applicants and sponsors name on money transfers.Also, these need to be at least 6 months leading up to when the application was made.***
- ***Medical evidence needs to show dependency on sponsor by recommendation of the healthcare professional.***

However, it is considered that you have not provided sufficient evidence to confirm that you are dependent on the relevant sponsor. The evidence provided does not meet the conditions provided above.'

This request copies and pastes the relevant part of EUSS Guidance but does not address in a meaningful way the evidence already provided and the reason why this was not accepted.

A's daughter had provided bank statements showing transactions used to support A and provided a statement confirming the current arrangements and dependency on her. Despite this no particular reference was made to this in the decision.

A chose not to pursue an appeal at this stage and instead decided to leave the UK.

Case study 6

B is a EEA national. They have been in a relationship with another EEA national for over 10 years whom they have children with.

B's partner has been settled in the UK for a long time whilst B and their children decided to move to the UK after the end of December 2020.

B submitted an application under the EUSS once they had moved to the UK.

By the time they reached out to Here for Good, B had submitted two applications. As part of these applications they had provided the children's birth certificates and evidence of the couple living together in the UK.

Both applications were refused on the same grounds; the Home Office decision maker was not satisfied that B had provided enough evidence to be able to show that they were the durable partner of a EEA national.

B showed the Here for Good's lawyer the two refusal letters, the first refusal states:

'Careful consideration has been given as to whether you meet the eligibility requirements for settled status under the EU Settlement Scheme. The relevant requirements are set out in rule EU11 and rule EU11A of Appendix EU to the Immigration Rules. You state that you are a durable partner of a relevant sponsor. However, you have not provided sufficient evidence to confirm this. The reasons for this are explained below. [..]

It is accepted that you meet the criteria to provide alternative evidence of being a durable partner of a relevant sponsor and as such consideration has been given to whether the evidence provided shows that the partnership was formed and was durable before 23:00 GMT on 31 December 2020, and that the partnership remains durable at the date of application (or did so for the period of residence relied upon).

A durable partnership is one where the couple had lived together in a relationship akin to marriage or civil partnership for at least two years by that date and time, unless there was (by that date and time) other significant evidence of the durable relationship.

It is not accepted that the partnership was formed and was durable before 23:00 GMT on 31 December 2020 because there is insufficient evidence of cohabitation and there is insufficient other significant evidence of a durable relationship by 23:00 GMT on 31 December 2020.

It is also not accepted that the partnership remains durable at the date of application because there is insufficient evidence of cohabitation at the date of application'

After this refusal B submitted a further application on their own, this was also refused and the refusal letter uses the same language as the first letter mentioned above:

*'**It is not accepted that the partnership was formed and was durable before 23:00 GMT on 31 December 2020 because there is insufficient evidence of cohabitation and there is insufficient other significant evidence of a durable relationship by 23:00 GMT on 31 December 2020. It is also not accepted that the partnership remains durable at the date of application Because there is insufficient evidence of cohabitation at the date of application.'***

B came to Here for Good after this refusal. Through Here for Good they accessed legal advice and was advised on the type of evidence to provide. Our opinion is that B's case is complex and that they have limited traditional evidence of the relationship. However, this does not take away from the fact that B was **not** supported to understand the reasons for the refusal and understand what other documents they could have provided.

The refusal letter mention 'reasons for this are explained below' but then provides a succinct line about the evidence being insufficient without addressing the documents already submitted and how any errors can be remedied.

As a result, B had submitted two similar applications that were both refused.

Case study 7

K is a non-EEA national who held pre-settled status as the spouse of an EU national. Once K had completed a period of 5 years in the UK as the spouse of an EU national they submitted an application for settled status in January 2023. The application was accompanied with a copy of K's marriage certificate and evidence of the spouse's EU nationality.

K's application was refused in March 2023.

The decision letter states that:

'You state that you are a durable partner of a relevant EEA citizen. However, you have not provided sufficient evidence to confirm this.'

Whilst this refusal letter provides a more detailed assessment of the evidence provided, this also states:

'We have also considered whether you meet any of the other eligibility requirements under Appendix EU. However, from the information and evidence provided, or otherwise available, you do not meet any of the other eligibility requirements.'

This has clearly not happened in this case, as despite K never stating that they were the durable partner of a relevant EEA citizen and instead stating to be the spouse of an EEA citizen and having pre settled status under this basis before, their application was only considered under the durable partner route.

The decision letter does not mention spouse or the marriage certificate uploaded.

K is in the process of challenging this decision.

We note that this case study provides an example of a more detailed assessment of the evidence previously provided. **We want to stress that in our experience this represents a very rare occurrence.** In the vast majority of cases, we do not see this level of scrutiny of the evidence provided.

As discussed in this report, we welcome this and call for **a consistent** application of this approach.

Case study 8

S is a Polish national who applied for pre-settled status in May 2021. The application was refused in July 2021. The decision letter stated the reason for refusal as "rejected" and did not provide any further information.

Here for Good contacted the Home Office EUSS Grants inbox in September asking for a correct decision to be provided. They confirmed that the application would be reconsidered and a new decision was made granting pre-settled status.

As part of our EUSS casework, Here for Good lawyers continue to encounter examples illustrating a lack of transparency and clarity when it comes to Home Office decision-making under the EU Settlement Scheme (EUSS). This report has provided an overview of the real life impact in clients' life by a system operating with opaque decision-making and communication. The way that the EUSS is designed is currently at odds with its ability to operate in a *'smooth, transparent and simple'* manner and to *'help applicants to prove their eligibility and avoid any errors or omissions in their applications'* as required under the Withdrawal Agreement.

We want to draw partners' attention to our growing concern in the hopes that this can lead to **an examination of how rights and duties established by Article 18 of Withdrawal Agreement are being upheld for EU citizens and their family members in practice by the UK Government.**

This initial report focuses on the **lack of clarity in communication by Home Office EUSS caseworkers** at three, interconnecting stages; **following the submission of an EUSS application; receiving an EUSS grant letter** and receiving an **EUSS refusal letter.**

The report includes examples and case studies of issues detected in EUSS caseworker communication with the applicant **following the submission of an EUSS application.** Here, we are primarily concerned about the standardised nature of the requests for further evidence; about an apparent lack of assessment of previously provided evidence; and about their opaque method of recording attempts to reach the applicant to request further information.

We submit that only if an applicant is **properly** and **effectively** informed of ways to remedy their omissions and errors informed and **effectively** helped in proving their eligibility under the Scheme it can be said that the Government duties under Article 18 WA to *'give applicants the opportunity to provide supplementary evidence and correct any deficiencies, errors or omissions'* and *'help applicants to prove their eligibility and avoid any errors or omissions in their applications'* have been met.

We have also raised issues of **clarity in standardised EUSS grant letters** that do not address the basis of the status granted to the applicant and offer very limited specific information of the applicant's situation. We understand that for practical reasons the Home Office may want to rely on templates to convey information around the grant of status under the Scheme, but we believe these templates are not varied enough, nor do they address the specifics of the different eligibility routes under the Scheme as they lack a personalised assessment of the conditions and details of their leave.

The Home Office needs to re-draft their grant letters to more clearly convey to the applicant (1) the type of status that was granted to them; (2) the route under which this status was granted and (3) a detailed overview of their route to settled status and the requirements for this. We submit that this issue ought to be analysed against the WA duties under Art. 18 and the EUSS ability to operate in a *'smooth, transparent and simple'* manner.

Lastly, we raised issues around clarity in **standardised EUSS refusal letters.** As part of our casework, we have come across examples of refusal letters due to lack of evidence where there was no effective assessment of the evidence provided or of their their inadequacies. Such a refusal letter does not provide the applicant with the necessary tools to be able to understand the reasons for their application having been refused and how to remedy this.

We would welcome refusal letters that clearly acknowledge the errors and omissions in the evidence provided based on a clear assessment of the evidence provided, instead of refusal letters that make general remarks and do not address the evidence provided and does not give explanation of its errors and shortcoming (e.g. a clear indication of the reasons why a certain piece of evidence was not accepted). Only in this way is the applicant in a position to effectively enjoy their right to redress and challenge the decision as established by Art. 18 (1)(r).

We submit that only if an applicant is properly informed and effectively helped in proving their eligibility under the Scheme and effectively informed of ways to remedy their omissions and errors can it be said that the Government duties under the WA have been met.

We invite the our partners to look into whether the rights and duties established by the Withdrawal Agreement are being upheld for EU citizens and their family members in practice by the UK Government specifically with regard to Article 18 of the WA.

We would be interested to explore this further with the wider sector to understand the scale of this issue.

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Here for Good

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